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11 **UNITED STATES DISTRICT COURT**  
 12 **SOUTHERN DISTRICT OF CALIFORNIA**

13 LOU BAKER, Individually and on  
 14 Behalf of All Others Similarly Situated,  
 15  
 16 Plaintiff,

17 vs.

18 SEAWORLD ENTERTAINMENT,  
 19 INC., et al.,  
 20 Defendants.

Case No. 3:14-cv-2129-MMA-AGS

**CLASS ACTION**

**JOINT DECLARATION OF  
 JOSHUA E. D'ANCONA AND  
 JEFFREY J. ANGELOVICH IN  
 SUPPORT OF (A) CLASS  
 REPRESENTATIVES' MOTION  
 FOR FINAL APPROVAL OF  
 SETTLEMENT AND PLAN OF  
 ALLOCATION; AND (B) CLASS  
 COUNSEL'S MOTION FOR AN  
 AWARD OF ATTORNEYS' FEES  
 AND LITIGATION EXPENSES**

Hearing Date: July 22, 2020  
 Time: 10:00 a.m. PDT  
 Courtroom: 3D  
 Judge: Hon. Michael M. Anello

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1 We, JOSHUA E. D’ANCONA and JEFFREY J. ANGELOVICH, declare as  
2 follows pursuant to 28 U.S.C. § 1746:

3 1. We, Joshua E. D’Ancona and Jeffrey J. Angelovich, are partners of the  
4 law firms of Kessler Topaz Meltzer & Check, LLP (“Kessler Topaz”) and Nix  
5 Patterson, LLP (“Nix Patterson”), respectively.<sup>1</sup> Kessler Topaz and Nix Patterson  
6 (together, Court-appointed “Class Counsel”) represent plaintiffs Arkansas Public  
7 Employees Retirement System (“APERS”) and Pensionskassen For Børne-Og  
8 Ungdomspædagoger (“PBU” and, together with APERS, Court-appointed “Lead  
9 Plaintiffs” or “Class Representatives”) in this securities class action lawsuit (“Action”).  
10 We have personal knowledge of the matters set forth herein based on our active  
11 supervision of and participation in the prosecution and resolution of the Action.

12 2. We respectfully submit this Joint Declaration in support of Class  
13 Representatives’ motion pursuant to Rule 23(e) of the Federal Rules of Civil Procedure  
14 (“Federal Rules” or “Rules”) for final approval of the proposed settlement  
15 (“Settlement”) with SeaWorld Entertainment, Inc. (“SeaWorld” or the “Company”),  
16 The Blackstone Group L.P., now known as The Blackstone Group Inc. (“Blackstone”),  
17 James Atchison (“Atchison”), James M. Heaney (“Heaney”), and Marc Swanson  
18 (“Swanson”) (collectively, “Defendants”). If approved, the Settlement will resolve all  
19 claims asserted in the Action against Defendants on behalf of the Class certified by the  
20 Court’s November 29, 2017 Order Granting Plaintiffs’ Motion for Class Certification  
21 (ECF No. 259), consisting of all persons and entities who purchased or otherwise  
22 acquired the publicly traded common stock of SeaWorld between August 29, 2013 and  
23 August 12, 2014, who did not sell such acquired securities before August 13, 2014,

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25 <sup>1</sup> Capitalized terms that are not defined in this Joint Declaration have the same  
26 meanings as set forth in the Stipulation and Agreement of Settlement dated February  
27 10, 2020 (“Stipulation”). ECF No. 516-3.



1 and were damaged.<sup>2</sup> The Court preliminarily approved the Settlement and directed  
2 notice thereof to the Class by Order dated February 19, 2020 (“Preliminary Approval  
3 Order”). ECF No. 518.

4 3. We also respectfully submit this Joint Declaration in support of the  
5 proposed plan for allocating the net proceeds of the Settlement to eligible Class  
6 Members (“Plan of Allocation”) and Class Counsel’s motion on behalf of all Plaintiffs’  
7 Counsel<sup>3</sup> for an award of attorneys’ fees and Litigation Expenses (“Fee and Expense  
8 Application”), including Class Representatives’ requests, in accordance with the  
9 Private Securities Litigation Reform Act of 1995 (“PSLRA”), for reimbursement of  
10 their costs in connection with representing the Class.

11 4. For the reasons discussed below and in the accompanying memoranda,<sup>4</sup>  
12 we, on behalf of Class Counsel, respectfully submit that: (i) the terms of the Settlement  
13 are fair, reasonable, and adequate in all respects and should be approved by the Court;  
14 (ii) the proposed Plan of Allocation is fair, reasonable, and adequate and should be  
15 approved by the Court; and (iii) the Fee and Expense Application is fair, reasonable,  
16

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17 <sup>2</sup> Excluded from the Class are: (i) Defendants; (ii) present or former executive  
18 officers of SeaWorld, members of SeaWorld’s Board of Directors, and members of  
19 their immediate families; (iii) any of the foregoing persons’ legal representatives, heirs,  
20 successors or assigns; and (iv) any entity in which Defendants have or had a controlling  
21 interest or any affiliate of SeaWorld. Also excluded from the Class are any persons and  
22 entities that submitted a request for exclusion in connection with Class Notice as set  
23 forth on Appendix 1 to the Stipulation.

21 <sup>3</sup> Plaintiffs’ Counsel refers collectively to: (i) Class Counsel Kessler Topaz and  
22 Nix Patterson; (ii) Liaison Counsel Noonan Lance Boyer & Banach LLP; and  
23 (iii) additional counsel for Class Representatives, Keil & Goodson P.A. and Grant &  
Eisenhofer P.A.

24 <sup>4</sup> In addition to this Joint Declaration, Class Representatives and Class Counsel  
25 are submitting: (i) the Memorandum of Points and Authorities in Support of Class  
26 Representatives’ Motion for Final Approval of Settlement and Plan of Allocation  
27 (“Settlement Memorandum”); and (ii) the Memorandum of Points and Authorities in  
Support of Class Counsel’s Motion for an Award of Attorneys’ Fees and Litigation  
Expenses (“Fee Memorandum”).

1 supported by the facts and the law, and should be granted in all respects. Moreover, the  
2 Settlement, Plan of Allocation, and Fee and Expense Application have the full support  
3 of Class Representatives—two sophisticated, institutional investors that have actively  
4 supervised the Action since its inception. *See* Declaration of Laura Mack Gilson on  
5 behalf of APERS (“APERS Decl.”); Declaration of Carsten Warren Petersen on behalf  
6 of PBU (“PBU Decl.”), attached hereto as Exhibits 1 and 2, respectively.

7 **I. INTRODUCTION**

8 5. Following more than five years of hard-fought litigation, which included  
9 protracted, arm’s-length negotiations facilitated by experienced mediators, Class  
10 Representatives and Class Counsel have succeeded in obtaining a significant common-  
11 fund recovery, in the amount of \$65,000,000 in cash (“Settlement Amount”), for the  
12 benefit of the Class. Pursuant to the Stipulation and Preliminary Approval Order, the  
13 Settlement Amount was completely funded on March 11, 2020, and is currently being  
14 held in the interest-bearing Escrow Account. As provided in the Stipulation, in  
15 exchange for this substantial consideration, the Settlement resolves all claims asserted  
16 in the Action (and related claims) by Class Representatives and the Class against  
17 Defendants and the Defendants’ Releasees.

18 6. At the time the Settlement was reached, the Parties were actively  
19 preparing for a trial that was scheduled to begin in eight days. Until reaching the  
20 agreement to settle, the Parties vigorously litigated this Action. As described in more  
21 detail below, Class Counsel’s efforts included: (i) conducting a thorough legal and  
22 factual investigation into the Class’s claims; (ii) drafting, based on their extensive  
23 investigation, two detailed complaints, including the operative Second Amended  
24 Consolidated Class Action Complaint (“Second Amended Complaint”);  
25 (iii) opposing two motions to dismiss; (iv) conducting significant document discovery,  
26 which included the review of more than 750,000 pages of documents produced by  
27

1 Defendants and various non-parties; (v) taking and/or defending 37 depositions across  
2 the country; (vi) consulting with various experts; (vii) successfully obtaining class  
3 certification and briefing Defendants' subsequent petition to the Ninth Circuit for  
4 permission to appeal the Court's order granting class certification; (viii) exchanging  
5 expert reports and participating in depositions of the Parties' class certification experts,  
6 as well as the Parties' seven merits experts; (ix) briefing and arguing Defendants'  
7 motion for summary judgment; (x) briefing motions *in limine* and motions to exclude  
8 experts; (xi) participating in extensive pre-trial preparations, including *inter alia*, the  
9 exchange of witness lists, exhibit lists, deposition designations, evidentiary objections,  
10 draft jury instructions, and attendance at a pre-trial conference; and (xii) engaging in  
11 protracted, arm's-length settlement negotiations facilitated by two neutrals, including  
12 multiple formal mediation sessions and mediation briefing. As a result of these efforts  
13 and others discussed herein, Class Counsel had a thorough understanding of the  
14 strengths and weaknesses of the Class's claims at the time the Parties agreed to the  
15 Settlement.

16 7. Moreover, in agreeing to the Settlement, Class Representatives and Class  
17 Counsel carefully considered the significant risks associated with advancing the  
18 Class's claims through trial and the likely post-trial appeals. Had the Settlement not  
19 been reached, Defendants would have continued to vigorously contest Class  
20 Representatives' claims.

21 8. At trial, Defendants would have argued, as they did at the motion to  
22 dismiss and summary judgment stages, that the statements at issue in the Action were  
23 not false at the time they were made and that Class Representatives would be unable  
24 to establish that Defendants did not legitimately believe the truth of such statements.  
25 Relatedly, a jury would be asked to evaluate Class Representatives' claims that the  
26 alleged misstatements were materially false or misleading based on internally-

1 recognized business impacts and a failure to test for *Blackfish* impact against  
2 Defendants’ assertions that the impacts were nothing new and a normal feature of  
3 SeaWorld’s existence as a longstanding target of animal activists. Defendants would  
4 also claim that the asserted impacts were small in relation to the overall size of the  
5 Company, and that the business partnerships and consumer communications Class  
6 Representatives pointed to in support of their claims were just noisy outliers.  
7 Defendants also would have asserted that certain of the alleged misstatements  
8 constituted non-actionable opinions or general statements of corporate optimism.

9       9. In addition to the risks associated with establishing the falsity, materiality,  
10 and scienter elements of Class Representatives’ Rule 10b-5 claims, there were also  
11 considerable challenges to Class Representatives’ ability to prove loss causation and  
12 the Class’s full claimed amount of damages at trial. Defendants would vigorously  
13 assert as they did throughout the Action that the price decline in SeaWorld common  
14 stock on the alleged corrective disclosure date was caused by factors unrelated to the  
15 alleged fraud, and that the “truth” regarding Defendants’ alleged fraud was known prior  
16 to the end of the Class Period. Ultimately, resolution of these issues would likely come  
17 down to a “battle of the experts” with no guarantee as to which expert’s testimony or  
18 methodology would be more compelling to a jury.

19       10. The outcome of trial, especially in a complex case such as this, can never  
20 be predicted with any certainty and, but for the Settlement, a recovery for the Class  
21 was entirely at risk. Indeed, any one—or all—of Defendants’ arguments challenging  
22 Class Representatives’ proofs on the elements of falsity, materiality, scienter, loss  
23 causation, or damages could have been accepted by the trier of fact. If Defendants  
24 prevailed on any of these arguments at trial, a recovery for the Class would have been  
25 significantly reduced or eliminated altogether. And, even if Class Representatives and  
26 Class Counsel succeeded in proving liability and damages at trial, Defendants likely

1 would have pursued an appeal—delaying any recovery for years with the possibility,  
2 again, of eliminating it entirely.

3 11. As a result of the litigation efforts discussed herein, as well as their  
4 thorough evaluation of the arguments Defendants would advance at trial, Class  
5 Counsel believe that the Settlement, particularly when viewed in the context of the  
6 risks, uncertainties, and delays of continued litigation, is an excellent result for the  
7 Class. The Settlement Amount of \$65 million represents approximately 14% of the  
8 Class’s maximum potential aggregate damages (i.e., \$465 million) as estimated by  
9 Class Representatives’ damages expert. To put the significance of this recovery into  
10 the appropriate context, Cornerstone Research reported that in 2019, the median  
11 securities class action settlement amount was 4.8% of estimated damages for cases  
12 with estimated damages between \$250 and \$499 million.<sup>5</sup> That same research reported  
13 that, from 2010 through 2018, the median securities class action settlement amount in  
14 cases with estimated damages between \$250 and \$499 million was 3.9% of estimated  
15 damages. *Id.*

16 12. Class Counsel have worked with the Court-authorized Claims  
17 Administrator, Epiq Class Action & Claims Solutions, Inc. (“Epiq”), to disseminate  
18 notice of the Settlement to Class Members as directed in the Preliminary Approval  
19 Order and in the Court’s subsequent Order Granting Class Representatives’ Unopposed  
20

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21 <sup>5</sup> See Laarni T. Bulan & Laura E. Simmons, *Securities Class Action Settlements:*  
22 *2019 Review and Analysis*, Cornerstone Research, at 6 (2020), [www.cornerstone.com/](http://www.cornerstone.com/Publications/Reports/Securities-Class-Action-Settlements-2019-Review-and-Analysis)  
23 [Publications/Reports/Securities-Class-Action-Settlements-2019-Review-and-](http://www.cornerstone.com/Publications/Reports/Securities-Class-Action-Settlements-2019-Review-and-Analysis)  
24 [Analysis](http://www.cornerstone.com/Publications/Reports/Securities-Class-Action-Settlements-2019-Review-and-Analysis). See also Stefan Boettrich & Svetlana Starykh, *Recent Trends in Securities*  
25 *Class Action Litigation: 2018 Full-Year Review*, NERA Economic Consulting, 35  
26 (Jan. 29, 2019), [www.nera.com/content/dam/nera/publications/2019/PUB\\_Year\\_End](http://www.nera.com/content/dam/nera/publications/2019/PUB_Year_End_Trends_012819_Final.pdf)  
27 [Trends\\_012819\\_Final.pdf](http://www.nera.com/content/dam/nera/publications/2019/PUB_Year_End_Trends_012819_Final.pdf) (reporting that the median settlement value between 1996  
and 2018 in securities class actions with estimated investor losses between \$400 and  
\$599 million represented a recovery of approximately 1.8% of estimated aggregate  
investor losses).

1 Ex Parte Motion to Extend Notice Deadlines dated March 16, 2020 (“March 16 Notice  
 2 Order”). In this regard, Epiq has mailed 16,597 Postcard Notices and 4,244 Notices to  
 3 Class Members and their nominees.<sup>6</sup> Additionally, Epiq has posted the Notice and  
 4 Claim Form, along with other documents relevant to the Settlement, on the website:  
 5 [www.SeaWorldSecuritiesLitigation.com](http://www.SeaWorldSecuritiesLitigation.com), and has caused the Summary Notice to be  
 6 published in *Investor’s Business Daily* and transmitted over *PR Newswire*. Barrero  
 7 Decl., ¶¶ 14, 17. As ordered by the Court and stated in the notices, objections are due  
 8 to be received no later than July 1, 2020. To date, no objections have been filed with  
 9 respect to any aspect of the Settlement, Plan of Allocation, or Class Counsel’s request  
 10 for attorneys’ fees and expenses, including reimbursement of costs to Class  
 11 Representatives.<sup>7</sup>

## 12 II. SUMMARY OF CLASS REPRESENTATIVES’ CLAIMS

13 13. Class Representatives brought this Action on behalf of themselves and  
 14 other investors in SeaWorld who comprise the Class, against SeaWorld, Blackstone,  
 15 Atchison, Heaney, and Swanson, alleging violations of certain antifraud provisions of  
 16 the federal securities laws. In particular, Class Representatives alleged (i) violations of  
 17 § 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and U.S. Securities  
 18 and Exchange Commission (“SEC”) Rule 10b-5 by Defendants SeaWorld, Atchison,  
 19 Heaney, and Swanson, and (ii) violations of § 20(a) of the Exchange Act by Defendants  
 20 Atchison, Heaney, and Swanson, as well as Blackstone.

21 14. Class Representatives alleged that Defendants violated federal law by  
 22 making (or controlling the making of) materially false and misleading public  
 23

24 <sup>6</sup> See Declaration of Ed Barrero Regarding: (A) Mailing of Postcard Notice and  
 25 Notice; (B) Posting of Notice and Claim Form on Settlement Website; and (C)  
 26 Publication of Summary Notice (“Barrero Decl.”), at ¶ 12, attached as Exhibit 3 hereto.

27 <sup>7</sup> Should any objections be received, Class Representatives and Class Counsel will  
 address them in their reply to be filed on or before July 15, 2020.



1 statements or omissions during the Class Period denying that the 2013 documentary  
 2 film *Blackfish* had any impact on attendance at certain of SeaWorld’s parks or on  
 3 SeaWorld’s business. ¶ 3.<sup>8</sup> Released in 2013 and shown ever more widely as the year  
 4 progressed, *Blackfish* cast SeaWorld and its business practice of keeping and  
 5 displaying captive orcas in a severely negative light. ¶ 6. The film gained significant  
 6 media attention and generated powerful public backlash towards SeaWorld, for  
 7 example, in protests and on social media. ¶ 8. At the same time, attendance at  
 8 SeaWorld’s orca parks was generally declining. ¶ 9. The market clamored to  
 9 understand why—and notably, if Defendants saw any connection between SeaWorld’s  
 10 business struggles and the prominent film. ¶ 10. Class Representatives claimed that  
 11 Defendants’ denials were false or misleading because there was impact from  
 12 *Blackfish*—discerned internally—on the Company’s business and attendance at  
 13 SeaWorld’s flagship parks throughout the Class Period, and also because the Company  
 14 had failed to test for impact from the film before denying it. ¶¶ 10-14.

15 15. The alleged false and misleading statements or omissions at issue in the  
 16 Action include the following: (i) an August 29, 2013 statement to the *Los Angeles*  
 17 *Times* by a SeaWorld executive asserting that “*Blackfish* has had no attendance  
 18 impact;” (ii) statements made in connection with a November 13, 2013 SeaWorld  
 19 earnings release in which the Company touted slowing attendance declines and  
 20 described attendance declines as attributable entirely to causes other than *Blackfish*;  
 21 (iii) a November 14, 2013 statement to the *Wall Street Journal* by Defendant Atchison  
 22 asserting that (a) “I scratch my head if there’s any notable impact from this film at all,  
 23 and I can’t attribute one to it;” and (b) “ironically our attendance has improved since  
 24 the movie came out;” (iv) a December 20, 2013 statement to the *Orlando Sentinel* by

25 \_\_\_\_\_  
 26 <sup>8</sup> Citations in this § II are to the operative complaint in the Action—the Second  
 27 Amended Complaint (ECF No. 123).



1 Defendant Atchison that “as much data as we have and as much as we look, I can’t  
2 connect anything really between the attention that the film has gotten and any effect on  
3 our business;” (v) statements made on March 13, 2014 in a press release and by  
4 Defendants Atchison and Heaney on an earnings call attributing certain attendance  
5 declines to causes other than *Blackfish* impacts, and asserting that the Company had  
6 seen no impact on the business in connection with the film; and (vi) statements in a  
7 May 14, 2014 earnings release and related Company filings and earnings call remarks  
8 attributing the entirety of disappointing attendance results to factors other than  
9 *Blackfish* impact. ¶¶ 208-34.

10 16. In addition, Class Representatives claim that Defendants Atchison,  
11 Heaney, and Swanson (due to their status as the top three senior executives at  
12 SeaWorld), and Blackstone (due to, *inter alia*, its status as a significant, and for a time  
13 majority, shareholder in SeaWorld) controlled or had the power or authority to control  
14 the making of these statements. ¶¶ 235-51.

15 17. As noted, Class Representatives claimed that during the Class Period,  
16 while Defendants were making the alleged misrepresentations—often in response to  
17 direct questions about *Blackfish* impact from investment analysts or reporters—in  
18 reality, clear, persistent, and significant impacts to SeaWorld’s business and attendance  
19 from *Blackfish* were recognized inside the Company, including by the individual  
20 Defendants. ¶¶ 208-34. For example, beginning prior to the Class Period and  
21 continuing throughout it, sponsorships and business partnerships meant to drive  
22 attendance at SeaWorld parks were canceled or paused, with corporate partners citing  
23 *Blackfish* as a reason why. ¶¶ 150-58. As another example, numerous SeaWorld  
24 consumers and would-be guests, including large catering and group events, canceled  
25 bookings or informed the Company directly or through agents that they would not be  
26 coming back after seeing the film. ¶ 143. At the same time, Class Representatives

1 claimed that Defendants knew SeaWorld had not tested whether *Blackfish* was  
2 affecting the Company's results before publicly denying such impact, causing such  
3 representations to be materially misleading at a minimum.

4 18. Class Representatives asserted that Defendants' alleged fraudulent  
5 misstatements were corrected in August 13, 2014, when the Company admitted for the  
6 first time (albeit indirectly) that *Blackfish* had affected its attendance and performance  
7 in prior months. ¶ 163. Class Representatives claimed this admission was highly  
8 material to investors, as it indicated a structural shift in consumer preference away from  
9 SeaWorld's core offerings, and hence a potentially lengthy decline in attendance and  
10 revenues at the Company's main parks. ¶ 179. Given Defendants' prior denials, the  
11 market reacted with surprise to this new position, and investors rushed to sell their  
12 shares of SeaWorld stock. SeaWorld's stock price lost 33% of its value that day—a  
13 massive drop that Class Representatives claimed was related to Defendants' fraud and  
14 injured Class Members. ¶ 181

### 15 **III. PROCEDURAL HISTORY OF THE ACTION AND PLAINTIFFS'** 16 **COUNSEL'S LITIGATION EFFORTS**

#### 17 **A. Commencement of the Action and Appointment of Lead Plaintiffs** 18 **and Lead Counsel**

19 19. On September 9, 2014, this securities class action was commenced in this  
20 Court with the filing of the initial complaint captioned *Baker v. SeaWorld Entm't, Inc.,*  
21 *et al.*, No. 3:14-cv-02129-MMA-JMA, against SeaWorld, Blackstone, and certain of  
22 SeaWorld's officers and directors. ECF No. 1.

23 20. On November 10, 2014, APERS and PBU (as well as others) moved to be  
24 appointed as lead plaintiffs. ECF Nos. 10, 12, 13. On December 11, 2014, the Court  
25 appointed APERS and PBU as Lead Plaintiffs and approved their selection of Kessler  
26 Topaz and Nix Patterson (f/k/a Nix Patterson & Roach, LLP) as Co-Lead Counsel and  
27

1 Kirby Noonan Lance & Hoge LLP (n/k/a Noonan Lance Boyer & Banach LLP) as  
2 Liaison Counsel. ECF No. 25.

3 21. Thereafter, the Court set a deadline of February 27, 2015 for Lead  
4 Plaintiffs to file an amended complaint. ECF No. 34.

5 **B. Lead Plaintiffs' Investigation and the First Amended Complaint**

6 22. Prior to filing the Consolidated Amended Class Action Complaint ("First  
7 Amended Complaint"), Class Counsel conducted an exhaustive investigation into the  
8 facts underlying this Action. As part of their investigation, Class Counsel reviewed  
9 voluminous publicly available information regarding the potential defendants,  
10 including: (i) SeaWorld's filings with the SEC; (ii) securities and financial analysts'  
11 reports concerning SeaWorld; (iii) SeaWorld's press conferences, investor and analyst  
12 conference calls, and corresponding transcripts thereof; (iv) SeaWorld's press releases  
13 and other public statements; (v) media and industry reports and other publications  
14 concerning SeaWorld and other potential defendants; and (vi) SeaWorld's corporate  
15 website. In addition, Class Counsel, through and in conjunction with their  
16 investigators, contacted or attempted to contact more than 25 potential witnesses,  
17 including former SeaWorld employees. Prior to filing the First Amended Complaint,  
18 Class Counsel also performed extensive legal research to carefully evaluate exactly  
19 which theories of liability Lead Plaintiffs could allege and how to allege them.

20 23. Based upon Class Counsel's thorough investigation, Lead Plaintiffs, and  
21 additional plaintiffs Oklahoma City Employee Retirement System and Pembroke Pines  
22 Firefighters and Police Officers Pension Fund (collectively, "Plaintiffs"), filed the 121-  
23 page First Amended Complaint on February 27, 2015 against Defendants, certain  
24 members of SeaWorld's Board of Directors ("Director Defendants"), and the  
25 underwriters involved in SeaWorld's initial public offering ("IPO") on or about April  
26 18, 2013 and SeaWorld's secondary public offerings on or about December 12, 2013

1 and April 4, 2014 (“Underwriter Defendants”). The First Amended Complaint detailed  
2 the defendants’ alleged violations of §§ 10(b) and 20(a) of the Exchange Act, and SEC  
3 Rule 10b-5, 17 C.F.R. § 240.10b-5, as well as §§ 11, 12(a)(2), and § 15 of the Securities  
4 Act of 1933, 15 U.S.C. §§ 77k, 77l(a)(2), and 77(o) (“Securities Act”). ECF No. 42.

5 **C. Defendants’ Motions to Dismiss the First Amended Complaint and**  
6 **the Court’s Ruling Thereon**

7 24. The named defendants moved to dismiss the First Amended Complaint  
8 on May 29, 2015 pursuant to Rule 12(b)(6) of the Federal Rules. ECF Nos. 88, 89. In  
9 their motions to dismiss, the named defendants argued, *inter alia*, that:

- 10 • The First Amended Complaint should be dismissed in its entirety because  
11 it failed to plead any misrepresentations or omissions at any time.
- 12 • Plaintiffs’ Securities Act claims (and Exchange Act claims to the extent  
13 based upon the risk factor disclosures) should be dismissed because:  
14 (i) the risk factor disclosures were forward-looking and protected by the  
15 PSLRA’s safe harbor and/or the common law bespeaks caution doctrine;  
16 (ii) the risk factor disclosures were statements of opinion and inactionable  
17 under the Supreme Court’s decision in *Omnicare, Inc. v. Laborers District*  
*Council Construction Industry Pension Fund*; and (iii) the alleged  
18 misrepresentations were not material, as they fully disclosed the risk at  
19 issue.
- 20 • Plaintiffs’ claim under § 12 of the Securities Act should be dismissed  
21 against SeaWorld and Blackstone because they did not offer or sell the  
22 securities purchased by Plaintiffs.
- 23 • The First Amended Complaint failed to plead with particularity any facts  
24 creating a “strong inference” of scienter.
- 25 • Plaintiffs failed to plead loss causation because they did not adequately  
26 allege that *Blackfish* caused the price of SeaWorld’s stock to drop.
- 27 • Plaintiffs’ claims under § 15 of the Securities Act and § 20 of the  
28 Exchange Act should be dismissed against all relevant defendants because  
there were no primary violations of either statute, and separately,  
Plaintiffs’ § 15 claim against the Director Defendants and §§ 15 and 20  
claims against Blackstone (with respect to statements made after the

1 December 2013 secondary public offering) should be dismissed because  
2 Plaintiffs did not adequately plead control.

- 3 • And, with respect to the Underwriter Defendants specifically:  
4 (i) Plaintiffs’ claims based on SeaWorld’s IPO and December 2013  
5 secondary offering materials were time-barred; (ii) Plaintiffs lacked  
6 standing to pursue a § 12 claim against the Underwriter Defendants  
7 because they did not allege they directly sold, or actively solicited the sale  
8 of, SeaWorld stock to any of the named plaintiffs; and (iii) Plaintiffs’  
9 Securities Act claims should be dismissed to the extent based on shares  
10 merely “traceable” to one or more of the offerings.

11 25. Upon receiving the motions to dismiss the First Amended Complaint,  
12 Class Counsel reviewed and analyzed the supporting briefing, accompanying exhibits,  
13 and the legal authority cited therein. Class Counsel also conducted additional legal  
14 research into the defendants’ arguments and Plaintiffs’ responses thereto. On July 31,  
15 2015, Plaintiffs filed their oppositions to the motions to dismiss. ECF Nos. 94, 95. In  
16 these filings, Plaintiffs argued, among other things:

- 17 • The First Amended Complaint adequately pled material false and  
18 misleading statements, including: (i) affirmative misstatements denying  
19 *Blackfish* and/or *Blackfish*-related events had any negative effect on  
20 SeaWorld’s brand, reputation, attendance, and/or revenue; (ii) statements  
21 misleadingly attributing the full decline in SeaWorld’s attendance during the Class Period to adverse weather, holiday timing,  
22 and/or changes in pricing strategies, which omitted the effect *Blackfish*  
23 and/or *Blackfish*-related events were having on SeaWorld’s operations; and (iii) statements characterizing *Blackfish*’s negative effect on  
24 SeaWorld’s business operations as contingent or speculative when, in  
25 fact, those effects already were occurring or were reasonably likely to  
26 occur.
- 27 • The offering statements were not forward-looking or statements of  
28 opinion.
- The defendants were statutorily liable under §§ 11 and 12(a)(2) of the  
Securities Act under a theory of strict liability and/or negligence for  
material misstatements and/or omissions in the offering materials.

- 1 • The First Amended Complaint pled a strong inference of scienter,  
2 asserting, among other things, that: (i) the fraud concerned SeaWorld’s  
3 core operations—orca shows and park attendance—and therefore, it  
4 would be absurd to suggest the defendants were unaware *Blackfish* was  
5 negatively impacting SeaWorld’s park attendance; (ii) four former  
6 SeaWorld employees provided reliable, corroborating information  
7 derived from their own personal knowledge, buttressing Plaintiffs’  
8 allegations of fraud; and (iii) Defendant Atchison, SeaWorld’s former  
9 CEO, engaged in insider trading by personally selling 154,000 shares of  
10 SeaWorld common stock in eight sales during the Class Period, and then  
11 resigned shortly after the Class Period, reportedly due to *Blackfish*.
- 12 • The First Amended Complaint adequately pled loss causation.
- 13 • The First Amended Complaint adequately pled § 15 and § 20(a) claims.
- 14 • And, with respect to the Underwriter Defendants in particular:  
15 (i) Plaintiffs’ Securities Act claims based on SeaWorld’s IPO and  
16 December 2013 secondary offering were timely; (ii) the Underwriter  
17 Defendants were sellers within the meaning of § 12(a)(2); and  
18 (iii) Plaintiffs had statutory standing to assert claims under §§ 11 and 12  
19 of the Securities Act.

20 26. On September 18, 2015, the defendants filed replies in support of their  
21 motions to dismiss. ECF Nos. 98, 99. In their replies, the defendants advanced further  
22 arguments in support of their purported bases for dismissing the First Amended  
23 Complaint, including that: (i) the misstatements at issue were not false or misleading  
24 as a matter of law; (ii) Plaintiffs did not adequately allege that the defendants acted  
25 with the requisite scienter; and (iii) Plaintiffs did not allege that *Blackfish* caused the  
26 price of SeaWorld’s stock to drop, failing to adequately plead loss causation.

27 27. Following full briefing on the motions, the Court, by Order dated March  
28 31, 2016, granted the defendants’ motions to dismiss and dismissed the First Amended  
Complaint without prejudice. ECF No. 102. By the same Order, the Court granted  
Plaintiffs leave to file an amended complaint addressing the deficiencies identified by  
the Court in its ruling.







- 1 • Lead Plaintiffs failed to adequately address the flaws in their claims of  
2 misrepresentations identified by the Court in its March 31, 2016 Order  
and, thus, failed to plead any misrepresentations or omissions.
- 3 • Many of the alleged false and misleading statements were statements of  
4 opinion, which, under the Supreme Court’s 2015 decision in *Omnicare*,  
5 are inactionable absent a non-conclusory allegation that the opinions were  
not sincerely held.
- 6 • The Second Amended Complaint set forth no specific allegations  
7 demonstrating that SeaWorld or the individual Defendants issued any  
8 false or misleading statements intentionally or with deliberate  
recklessness and, thus, failed to allege a “strong inference” of scienter.
- 9 • Lead Plaintiffs failed to plead loss causation because they had not  
10 adequately alleged that disclosures regarding *Blackfish* caused the price  
of SeaWorld’s stock to drop.
- 11 • Lead Plaintiffs’ control person claims under § 20(a) against the individual  
12 Defendants and Defendant Blackstone failed because Lead Plaintiffs did  
13 not sufficiently allege a primary violation of Rule 10b-5 and also failed  
14 against Blackstone with respect to statements made after the December  
15 2013 secondary public offering because Lead Plaintiffs failed to plead  
16 facts that plausibly demonstrated Blackstone exercised actual power or  
control over SeaWorld during that time.

17 30. On July 27, 2016, Lead Plaintiffs opposed Defendants’ motion to dismiss,  
18 as well as their request for judicial notice (ECF Nos. 134, 135), and on August 10,  
19 2016, Defendants filed their reply in further support of their motions. ECF Nos. 137,  
20 138.

21 31. Following oral argument, the Court denied Defendants’ motion to dismiss  
22 the Second Amended Complaint on September 30, 2016. ECF Nos. 141, 142. On  
23 October 28, 2016, Defendants filed their Answer to the Second Amended Complaint,  
24 denying its allegations and asserting numerous defenses to the now-sustained claims.  
25 ECF No. 149.



1 2017, the Parties met and conferred extensively to negotiate the scope and parameters  
2 of Defendants' document collection and production, discussing matters such as the  
3 applicable relevant time period and document custodians. Class Representatives served  
4 a second set of document requests on Defendants on March 22, 2018 (bringing the total  
5 number of requests to Defendants to 18). Defendants served responses and objections  
6 to Class Representatives' second set of document requests on April 23, 2018, and the  
7 Parties again promptly met and conferred regarding scope and objections. In addition,  
8 during fact discovery, the Parties served at least 23 document subpoenas on third  
9 parties, including, e.g., SeaWorld's former head of communications, several of  
10 SeaWorld's former communications consultants, certain theme park industry analysts,  
11 travel industry ticket resellers who sold SeaWorld admission tickets, and the  
12 investment banks that ran SeaWorld's initial and secondary public offerings in 2013  
13 and 2014. Class Counsel met and conferred with counsel for many of these third parties  
14 over two dozen times in the aggregate to negotiate the scope and terms of their  
15 respective document productions.

16 36. Class Representatives also responded to numerous document requests  
17 from Defendants. Defendants served their initial document requests on December 21,  
18 2016. Class Representatives timely served responses and objections on January 25,  
19 2017. Defendants served a second set of document requests on Class Representatives  
20 on September 8, 2017, to which Class Representatives timely responded on October 9,  
21 2017. The Parties met and conferred extensively over the scope and parameters of  
22 Class Representatives' document productions in response to Defendants' requests,  
23 ultimately reaching compromise agreements on all necessary points. In responding to  
24 Defendants' document requests, Class Representatives performed diligent and  
25 reasonable searches and document collections, reviewed all potentially relevant  
26

1 documents for responsiveness and privilege, and produced over 15,000 pages of  
2 documents to Defendants in the aggregate.

3 37. Class Representatives also served requests for written discovery on  
4 Defendants. On October 2, 2017, Class Representatives served 14 interrogatories on  
5 Defendants, to which Defendants served written, verified responses and objections on  
6 November 1, 2017. Also on October 2, 2017, Class Representatives served 12 requests  
7 for admission on Defendants. Defendants served responses and objections to the  
8 requests for admission on November 1, 2017. Class Representatives' analyses of these  
9 written discovery responses informed their approaches later in the litigation, including  
10 in depositions and dispositive motion practice.

11 38. Additionally, Class Representatives responded to written discovery  
12 propounded by Defendants. Defendants served interrogatories on Class  
13 Representatives on December 21, 2016, to which Class Representatives timely served  
14 written and verified responses and objections on January 25, 2017, after performing all  
15 the research and review necessary to provide such responses. Defendants served a  
16 second set of interrogatories on October 31, 2018, to which Class Representatives  
17 timely served responses and objections on November 30, 2018. In sum, Defendants  
18 served and Class Representatives responded to 14 interrogatories. Additionally, on  
19 October 31, 2018, Defendants served numerous requests for admission on Class  
20 Representatives, to which Class Representatives timely responded on November 30,  
21 2018.

22 39. In connection with their document productions, on July 24, 2017,  
23 Defendants served voluminous logs of documents withheld or redacted for privilege  
24 on Class Representatives. SeaWorld logged over 2,600 documents withheld, and over  
25 1,290 documents redacted, and Blackstone logged over 300 documents withheld, and  
26 over 230 documents redacted, on privilege or work product grounds. Class  
27

1 Representatives analyzed Defendants' four logs and researched related issues. The  
2 Parties timely met and conferred and exchanged correspondence regarding the logs as  
3 well.

4 40. While, as noted, the Parties met and conferred extensively regarding fact  
5 discovery issues and largely resolved the differences that arose, they also litigated as  
6 many as eight fact discovery-related disputes. Taking just a few examples: (i) on March  
7 31, 2017, Class Representatives filed a motion to compel discovery, requesting relief  
8 related to the scope of Defendants' document searches, document custodians, and  
9 eventual productions; (ii) on December 8, 2017, Class Representatives moved for more  
10 complete responses from Defendants to certain interrogatories; and (iii) on September  
11 14, 2018, Class Representatives moved for an order either barring Defendants from  
12 affirmatively using information they had shielded from discovery on grounds of  
13 privilege at summary judgment and trial, or else deeming any such privilege claims  
14 waived (and such information discoverable) if Defendants asserted positions that rested  
15 in any part on the withheld communications or materials in question. *See* ECF Nos.  
16 170, 270, 313. Each of these discovery-related motions was fully briefed and presented  
17 in oral argument by counsel to the Magistrate Judge assigned to the case at the time.  
18 *See* ECF Nos. 177, 278, 328. While in some instances Class Representatives won the  
19 relief sought (in whole or in part) and in others they did not, all of the motions advanced  
20 the Parties' overall discovery process by further delineating its rules and limitations.

21 41. The Parties also devoted significant time to negotiating, drafting, and  
22 conferring about many discovery-related issues that ultimately were resolved without  
23 the Court's intervention, or resulted in submissions of joint motions by the Parties. For  
24 example, the Parties negotiated a proposed protective order and a proposed order  
25 governing the format and production of electronically stored information, both of  
26 which were submitted to the Court for approval. *See* ECF Nos. 157, 163.

1           42. Class Representatives reviewed and analyzed all of the documents  
2 produced by Defendants and third parties, as well as all written discovery responses  
3 Defendants provided. Bringing these voluminous materials to bear, Class  
4 Representatives deposed or participated in the depositions of 27 fact witnesses. Among  
5 others, Class Representatives deposed: (i) the individual Defendants; (ii) current and  
6 former SeaWorld sales, marketing, and finance employees; (iii) a Blackstone executive  
7 and former SeaWorld director; (iv) two corporate representatives of SeaWorld under  
8 Federal Rule 30(b)(6); (v) certain former SeaWorld executives represented by their  
9 own counsel; (vi) SeaWorld's former board chairman, represented by his own counsel;  
10 and (vii) a third party consultancy formerly retained by SeaWorld, represented by its  
11 own counsel. Class Representatives also participated in the depositions of third parties  
12 noticed by Defendants, such as former employees who provided information to Class  
13 Representatives in the course of their investigation into their claims, and Class  
14 Representatives' former investment advisor, represented by its own counsel. Finally,  
15 Class Representatives prepared and sat for their own depositions pursuant to notices  
16 served by Defendants. Class Counsel devoted substantial time strategically preparing  
17 for, participating in, and traveling to these depositions. Class Counsel ultimately took  
18 or defended depositions in at least thirteen different cities, including: Orlando, Florida;  
19 San Diego, California; Las Vegas, Nevada; San Antonio, Texas; Austin, Texas; New  
20 York, New York; Dallas, Texas; Tampa, Florida; Boston, Massachusetts; Miami,  
21 Florida; Radnor, Pennsylvania; San Francisco, California; and Los Angeles,  
22 California.

23           **G. Class Counsel's Work with Respect to Experts**

24           43. Class Counsel also worked extensively with expert witnesses, and to take  
25 discovery of Defendants' retained expert witnesses, in this Action.  
26



1           44. Class Counsel retained and worked with Chad Coffman, CFA of Global  
2 Economics Group, LLC, who provided expert opinions both in connection with class  
3 certification and at the merits stage. Mr. Coffman submitted an expert report regarding  
4 market efficiency and a model for measuring Class Members' damages in accordance  
5 with Class Representatives' theory of liability that was submitted to the Court along  
6 with Class Representatives' motion for class certification on May 19, 2017. ECF No.  
7 188, Ex. 19. Class Counsel prepared and defended Mr. Coffman in his deposition on  
8 July 20, 2017. Mr. Coffman also evaluated the rebuttal report of Defendants' expert,  
9 Dr. Walter Torous, and, in coordination with Class Counsel, submitted a rebuttal expert  
10 report related to class certification on September 14, 2017. ECF No. 240, Ex. 10.

11           45. After the conclusion of fact discovery, Class Counsel again worked with  
12 Mr. Coffman on a merits expert report, which addressed issues of loss causation,  
13 materiality, and economic damages, and which was served on Defendants on January  
14 22, 2019. Class Counsel similarly worked with Mr. Coffman as he reviewed expert  
15 reports submitted by two of Defendants' retained experts and drafted his rebuttal report  
16 thereto, which Class Counsel served on Defendants on March 1, 2019. Class Counsel  
17 again prepared and defended Mr. Coffman at a second deposition related to merits  
18 issues on March 26, 2019.

19           46. During the merits expert stage, Class Counsel also retained and worked  
20 with Dr. James L. Gibson, Ph.D. on issues of data analysis related to attendance drivers  
21 performed (or not performed) by Defendants during the Class Period. Class Counsel  
22 served Dr. Gibson's expert report on Defendants on January 22, 2019. Class Counsel  
23 also worked in coordination with Dr. Gibson as he reviewed an expert report submitted  
24 by one of Defendants' retained experts and drafted his rebuttal report thereto, which  
25 Class Counsel served on Defendants on March 1, 2019. Finally, Class Counsel assisted  
26 Dr. Gibson in preparing for, and defended him at, his deposition on March 30, 2019.





1 Representatives' expert, Mr. Coffman, who opined that SeaWorld publicly traded  
2 common stock traded in an efficient market during the Class Period and that damages  
3 in the case were subject to common proof that can be computed on a class-wide basis  
4 utilizing a common methodology. *Id.*

5 50. Defendants opposed the Class Certification Motion on July 27, 2017. ECF  
6 No. 198. In their opposition, Defendants argued, among other things, that Class  
7 Representatives failed to proffer a viable theory of class-wide reliance or a damages  
8 methodology that could be applied on a class-wide basis as required by *Comcast Corp.*  
9 *v. Behrend*, 133 S. Ct. 1426 (2013), and that APERS and PBU were not adequate or  
10 typical class representatives. *Id.* On September 14, 2017, Class Representatives filed  
11 their reply in further support of the Class Certification Motion. ECF Nos. 239, 240. On  
12 October 11, 2017, upon leave of the Court, Defendants filed a sur-reply further  
13 opposing the Class Certification Motion, and on October 20, 2017, Class  
14 Representatives filed a sur-sur-reply, further supporting their motion. ECF Nos. 244,  
15 247.

16 51. Following oral argument by the Parties, the Court, by Order dated  
17 November 29, 2017, granted the Class Certification Motion, certifying the Class,  
18 appointing Lead Plaintiffs APERS and PBU as Class Representatives, and appointing  
19 Kessler Topaz and Nix Patterson as Class Counsel. ECF No. 259.

20 52. In connection with their Class Certification Motion, Class  
21 Representatives had submitted to the Court numerous documents produced by  
22 Defendants during discovery and designated as "confidential" pursuant to the  
23 governing protective order in the Action. On July 20, 2017, Class Representatives  
24 moved for an order on their objections to Defendants' confidentiality designations with  
25 respect to these documents. ECF No. 194. After the Parties fully briefed the issues, on  
26 November 3, 2017, the Court granted in part and denied in part Class Representatives'

1 motion, ruling that certain of the documents, or certain portions thereof, were not  
2 confidential. ECF No. 248.

3 **1. Defendants’ Rule 23(f) Petition to the Ninth Circuit**

4 53. On December 13, 2017, Defendants filed a petition with the Ninth Circuit  
5 seeking permission to appeal the Court’s Order granting the Class Certification  
6 Motion. ECF No. 272. Among other things, Defendants contended that a Circuit split  
7 existed among the various U.S. Circuit Courts of Appeals with respect to a defendant’s  
8 ability to rebut the fraud-on-the-market presumption at the class certification stage.  
9 Following significant legal research and briefing around the Christmas holidays, Class  
10 Counsel filed Class Representatives’ Answer to Defendants’ 23(f) petition in the Ninth  
11 Circuit on December 26, 2017. *Pensionskassen For Børne-Og Ungdomspædagoger, et*  
12 *al. v. SeaWorld Entm’t, Inc., et al.*, No. 17-80251 (9th Cir.), ECF No. 8.

13 54. Defendants filed a motion for leave to file a reply in further support of  
14 their 23(f) petition on January 2, 2018. *Id.*, ECF No. 9. Class Representatives filed their  
15 opposition to this motion on January 12, 2018. *Id.*, ECF No. 15. Class Counsel  
16 additionally spent considerable time briefing other issues stemming from Defendants’  
17 23(f) petition, including issues related to the sealing and/or confidentiality of  
18 documents produced by Defendants and other third parties in discovery that were filed  
19 with the Ninth Circuit.

20 55. The Ninth Circuit denied Defendants’ 23(f) petition on June 28, 2018.  
21 ECF No. 307.

22 **2. Notice to the Class**

23 56. Following the Ninth Circuit’s denial of Defendants’ 23(f) petition, Class  
24 Representatives, on October 9, 2018, filed an unopposed motion to approve the form  
25 and manner of notice to the Class and to appoint Epiq as the Claims Administrator in  
26 connection with the dissemination of Class Notice (“Class Notice Motion”). ECF No.

1 324. The Court granted the Class Notice Motion on December 6, 2018 (“Class Notice  
2 Order”). ECF No. 336. Among other things, the Court found the proposed Class Notice  
3 met the requirements of Rule 23 and due process and constituted the best notice  
4 practicable under the circumstances. *Id.*

5 57. Pursuant to the Court’s Class Notice Order, Epiq began disseminating the  
6 Class Notice by mail to potential Class Members and nominees on January 9, 2019.  
7 *See* ECF No. 364, ¶ 8. The Class Notice provided Class Members with the opportunity  
8 to request exclusion from the Class, explained that right, and set forth the procedures  
9 for doing so. *Id.* at Ex. A. The Class Notice also advised Class Members that it would  
10 be within the Court’s discretion whether to permit a second opportunity to request  
11 exclusion if there was a settlement. *Id.* The Class Notice informed Class Members that  
12 if they chose to remain a member of the Class, they would “be bound by all past,  
13 present and future orders and judgments in the Action, whether favorable or  
14 unfavorable.” *Id.* In accordance with the Court’s Class Notice Order, Epiq also caused  
15 a summary notice to be published in *Investor’s Business Daily* and transmitted over *PR*  
16 *Newswire* on January 14, 2019. *Id.*, ¶ 12.

17 58. On April 18, 2019, Class Representatives submitted the Declaration of  
18 Alexander P. Villanova on behalf of Epiq, who reported that Epiq had mailed an  
19 aggregate of 13,555 notices to potential Class Members and nominees via First-Class  
20 mail. *Id.*, ¶ 11. The deadline for submitting requests for exclusion was April 9, 2019.  
21 Five requests for exclusion from the Class were received. *See* Stipulation at Appendix  
22 1; ECF No. 364, ¶¶ 16-17 & Ex. C.

23 **I. Defendants’ Motions for Summary Judgment and the Parties’**  
24 ***Daubert* Motions**

25 59. On April 15, 2019, Defendants filed their motion for summary judgment  
26 (“Summary Judgment Motion”). ECF No. 359. Defendants sought summary judgment

1 with respect to every element of Class Representatives' claims, arguing, among other  
2 things, that summary judgment should be granted because Class Representatives:  
3 (i) could not prove loss causation; (ii) had no evidence of damages; (iii) could not prove  
4 the required elements of materiality, falsity, and scienter; and (iv) could not establish  
5 a primary securities law violation, which doomed their control person liability claims  
6 against the individual Defendants and Defendant Blackstone.

7 60. That same day, the Parties filed several motions to exclude proposed  
8 expert witnesses ("*Daubert* Motions"). ECF Nos. 344, 347, 351, 355, 358. Specifically,  
9 Defendants move to exclude the testimony of all three of Class Representatives'  
10 experts: Dr. Steven P. Feinstein (ECF No. 344), Chad Coffman, CFA (ECF No. 347),  
11 and Dr. James L. Gibson (ECF No. 351). Class Representatives moved to exclude the  
12 testimony of two of Defendants' four experts: Dr. Craig M. Lewis (ECF No. 355) and  
13 Dr. Randolph E. Bucklin (ECF No. 358).

14 61. The briefing related to Defendants' Summary Judgment Motion and the  
15 Parties' *Daubert* Motions was comprehensive, as Defendants forcefully challenged  
16 every substantive element of the Class's claims and every one of the Class's expert  
17 witnesses. Indeed, Class Representatives and Class Counsel devoted substantial time,  
18 effort, and resources into marshaling the evidence they had obtained during discovery  
19 and the pertinent legal authorities to oppose Defendants' motions, culminating, for  
20 example, in the Class's submission of 592 individual exhibits in support of their  
21 opposition and a statement of facts that, once responded to by Defendants via reply,  
22 exceeded 900 pages in length. *See* ECF No. 394-001 (and related exhibits); ECF No.  
23 417-016. Class Counsel prepared additional briefing, including oppositions to each of  
24 Defendants' three *Daubert* motions, numerous briefs related to sealing and  
25 confidentiality of documents and exhibits, and replies in support of the Class's two  
26 *Daubert* motions. ECF Nos. 368-79, 405-10.

1           62. The vast majority of the hundreds of documents submitted by the Parties  
2 as exhibits in connection with summary judgment and *Daubert* briefing were  
3 designated by the producing party as “confidential.” However, after Class  
4 Representatives noted their view that the summary judgment and *Daubert* record  
5 should not be sealed, on July 17, 2019, the Court directed the Parties to meet and confer  
6 on “every exhibit sought to be sealed” in an effort to narrow the dispute, and to report  
7 on their efforts and any remaining dispute as to sealing by August 10, 2019. *See* ECF  
8 No. 429. The Parties met and conferred extensively over more than three weeks, and  
9 reached compromise agreements or uncontested positions as to over 600 exhibits,  
10 successfully narrowing the disputed set of documents to fewer than 25 unique exhibits.  
11 *See* ECF No. 431. The Parties submitted argument as to the remaining disputed  
12 exhibits, on which the Court issued a ruling on September 3, 2019. ECF No. 433.

13           63. Once Defendants’ Summary Judgment Motion and the Parties’ *Daubert*  
14 Motions were fully briefed and following oral argument, the Court, by Order dated  
15 November 18, 2019, denied Defendants’ Summary Judgment Motion in its entirety, as  
16 well as ruled on the Parties’ pending *Daubert* Motions—denying Defendants’ motions  
17 to exclude the testimony and opinions of Dr. Steven P. Feinstein and Chad Coffman,  
18 CFA; granting Defendants’ motion to exclude the testimony and opinions of Dr. James  
19 L. Gibson; granting in part and denying in part Class Representatives’ motion to  
20 exclude the testimony and opinions of Dr. Craig M. Lewis; and granting Class  
21 Representatives’ motion to exclude the testimony and opinions of Dr. Randolph E.  
22 Bucklin. ECF No. 470.

### 23           **J. Preparations for Trial**

24           64. A trial of the Action was scheduled to begin on February 18, 2020. As  
25 such, the Parties had completed the vast majority of pretrial work by the time they  
26 reached an agreement to settle.



1           65. Of particular note, pursuant to the Court’s Pretrial Order dated October  
2 21, 2019, the Parties took the following actions, among others, to prepare for trial. ECF  
3 No. 466.

4           66. On November 22, 2019, the Parties filed and served omnibus motions *in*  
5 *limine*, seeking numerous evidentiary rulings that would shape how their respective  
6 positions would be presented at trial. Class Representatives’ motions requested the  
7 Court to, *inter alia*, bifurcate trial proceedings into two phases—one for class-wide  
8 issues and one for individualized issues—pre-admit certain pieces of evidence, and  
9 preclude Defendants from referring to legal advice or lawyer involvement in Class  
10 Period corporate processes where underlying documents had been withheld during  
11 discovery on privilege grounds. ECF No. 476. Defendants’ motions requested the  
12 Court to, *inter alia*, preclude Class Representatives from arguing that the mental state  
13 of certain corporate executives could be imputed to Defendants for purposes of the  
14 element of scienter, prohibit Class Representatives from playing the *Blackfish* film or  
15 any portion thereof to the jury, and preclude the admission of certain documents and  
16 surveys created by third parties related to SeaWorld’s Class Period attendance issues.  
17 ECF No. 474. The Parties filed briefs in opposition to each other’s *in limine* motions  
18 on December 23, 2019, ECF Nos. 490, 491, and presented oral argument to the Court  
19 on the motions at a pretrial conference on January 21, 2020.

20           67. On December 6, 2019, the Parties exchanged pretrial disclosures pursuant  
21 to Rule 26(a)(3), including lists of proposed witnesses, exhibits, and deposition  
22 designations that may be used at trial. The disclosures were voluminous: for example,  
23 Class Representatives identified 1,095 proposed exhibits, and Defendants identified  
24 720. Each side reviewed and lodged responses and extensive objections to the other’s  
25 witness, deposition designation, and exhibit lists, and served comprehensive counter-  
26 designations, on January 6, 2020. At the pretrial conference on January 21, 2020, the



1 Court directed the Parties to confer and work together to refine their lists of exhibits,  
2 deposition designations and witnesses for trial, and their related, comprehensive  
3 objections to each other's lists of evidence and witnesses. Between January 21 and  
4 January 31, 2020, the Parties worked extensively to narrow these matters as the Court  
5 had directed. On January 31, 2020, in accordance with the Court's directive, the Parties  
6 filed a joint status report with the Court, reporting that they had succeeded in trimming  
7 the proposed trial evidence (for example, collectively cutting over 500 proposed trial  
8 exhibits) and in reducing to just a small handful the number of live objections to each  
9 other's trial evidence. ECF No. 513. As to these remaining objections, the Parties  
10 submitted short position statements and requested a ruling from the Court.

11 68. On December 13, 2019, each side filed a Memorandum of Contentions of  
12 Fact and Law, pursuant to L. Civ. R. 16.1. ECF Nos. 480, 482. Class Representatives'  
13 memorandum included the requisite lists of trial witnesses and exhibits, as well as a  
14 statement of the material contentions of fact and law that they intended to rely upon  
15 and establish at trial, with supporting citations.

16 69. On December 19, 2019, all counsel participated in a conference call  
17 convened by the Court, in which the Court instructed counsel to work jointly to develop  
18 a proposed juror questionnaire for use in connection with the scheduled trial. Over  
19 approximately the next two weeks, counsel exchanged drafts and comments and met  
20 and conferred concerning a set of proposed questions for inclusion in the jury  
21 questionnaire. In accordance with the Court's instruction, on January 8, 2020, the  
22 Parties jointly submitted a set of 43 agreed-upon questions for inclusion in the  
23 questionnaire, and four disputed questions, with each side submitting its position with  
24 respect to the disputed questions. The Court ultimately sent out a jury questionnaire in  
25 mid-January 2020, and provided the responses received to that questionnaire to counsel  
26 on February 3, 2020. The Court directed the Parties to confer over any jointly agreed  
27

1 strikes from the jury pool, in advance of a final pretrial conference scheduled for  
2 February 11, 2020. Class Counsel promptly began the relevant analysis on February 3,  
3 2020.

4 70. Also, in December 2019 and January 2020, Class Counsel developed  
5 additional sections of the final pretrial order (which was due to be finalized and filed  
6 after the final pretrial conference ultimately scheduled for February 11, 2020),  
7 including proposed jury instructions, stipulated facts, statement of the case, and verdict  
8 form. Class Counsel provided initial drafts of, *inter alia*, proposed jury instructions and  
9 stipulations of fact, to Defendants' Counsel and conferred with Defendants' Counsel  
10 regarding the same in the course of an ongoing meet and confer beginning in December  
11 2019.

12 71. As noted above, at a pretrial conference on January 21, 2020, the Court  
13 heard oral argument from the Parties regarding their motions *in limine*, provided  
14 instructions as to the Parties' objections to each other's pretrial disclosures, and  
15 addressed other pretrial matters. At the conclusion of that hearing, the Court ordered  
16 the Parties to provide a joint status report concerning not only their efforts to further  
17 narrow their proposed trial evidence and related objections, but also addressing the  
18 nature and structure of a bifurcated trial, and providing a joint statement that could be  
19 provided to the jury describing *Blackfish*, likely in lieu of showing any part of that film  
20 or its trailer at trial. The Court also set a final pretrial conference date of February 11,  
21 2020, ahead of a trial start date of February 18, 2020. As noted, Class Counsel and  
22 Defendants' Counsel filed the joint report containing the Parties' respective positions  
23 on all of the foregoing points on January 31, 2020. ECF No. 513.

24 72. Class Counsel continuously prepared for trial, including preparation of  
25 witness examinations, proposed statements to the jury, planned evidentiary arguments  
26 and presentations, and illustrative exhibits, including through meetings and calls with  
27

1 trial expert witnesses and jury consultants, until the agreement to settle this Action was  
2 submitted to the Court.

#### 3 **IV. THE SETTLEMENT**

##### 4 **A. The Parties' Settlement Negotiations and Mediation**

5 73. Shortly after discovery efforts commenced, the Parties participated in a  
6 telephonic Early Neutral Evaluation and Case Management Conference pursuant to  
7 Local Rule 16.1(d) with Magistrate Judge Schopler on March 1, 2017. ECF No. 160.  
8 At that time, however, the Parties were not in a position to meaningfully discuss a  
9 possible resolution of the Action. The following day, Magistrate Judge Schopler  
10 entered a Scheduling Order Regulating Discovery and Other Pretrial Proceedings (*see*  
11 ECF No. 166), and the Parties continued their discovery efforts.

12 74. After an additional two years of hard-fought litigation, the Court held a  
13 mandatory settlement conference before Magistrate Judge Schopler on May 9, 2019.  
14 ECF No. 366. In advance of the settlement conference, Class Counsel devoted  
15 significant time to drafting and submitting a comprehensive mediation statement,  
16 supported by numerous exhibits. At the settlement conference, the Parties were  
17 presented with a mediator's proposal, which was not accepted. ECF No. 367.

18 75. In addition to the two sessions before Magistrate Judge Schopler, the  
19 Parties agreed to explore the possibility of resolving the Action through a private  
20 mediator. The Parties selected Jed D. Melnick, Esq. of JAMS and The Weinstein  
21 Melnick Team to serve as the mediator. Mr. Melnick is an experienced mediator with  
22 an extensive background in mediating securities class actions.

23 76. On April 3, 2019, the Parties participated in a formal, in-person mediation  
24 with Mr. Melnick in New York, NY. Prior to the April 2019 mediation, the Parties, at  
25 Mr. Melnick's direction, prepared and exchanged comprehensive mediation statements  
26 setting forth their respective positions on the claims asserted in the Action. At the April  
27

1 2019 mediation, the Parties engaged in arm's-length negotiations; however, while  
2 making certain progress, the Parties were not close to an agreement to settle at the  
3 conclusion of the full-day session

4 77. Following the April 2019 mediation, the Parties continued their  
5 negotiations with the assistance of Mr. Melnick. After several months of additional  
6 negotiations, including another in-person mediation session with Mr. Melnick in  
7 January 2020 in New York, NY, the Parties' accepted Mr. Melnick's subsequent  
8 recommendation and reached an agreement in principle to resolve the Action for \$65  
9 million, subject to documentation.

10 **B. Preparation of Settlement Documentation and Motion for**  
11 **Preliminary Approval of Settlement**

12 78. Thereafter, Class Counsel began working on various documents in  
13 connection with the Parties' agreement to settle the Action, as well as Class  
14 Representatives' anticipated motion for preliminary approval of the Settlement. During  
15 this time, Class Counsel also worked with Class Representatives' damages expert Chad  
16 Coffman, CFA and his colleagues to develop the proposed Plan of Allocation. *See*  
17 § VII below.

18 79. Counsel for the Parties negotiated the specific terms of the Stipulation,  
19 exchanging multiple drafts of the Stipulation (as well as the exhibits thereto). After  
20 negotiating the specific terms of their agreement, the Parties executed the Stipulation  
21 setting forth their final and binding agreement to settle the Action on February 10,  
22 2020. ECF No. 516-3.

23 80. The following day, February 11, 2020, Class Representatives filed the  
24 Stipulation (and related exhibits) along with their Unopposed Motion for Preliminary  
25 Approval of Proposed Settlement and Authorization to Disseminate Notice of the  
26 Settlement to the Class and supporting memorandum. ECF No. 516. On February 19,

1 2020, the Court entered the Preliminary Approval Order, scheduling the final hearing  
2 on the Settlement and related matters for July 22, 2020 at 10:00 a.m. ECF No. 518.

3 **V. RISKS OF CONTINUED LITIGATION**

4 81. Based on publicly available documents, information, and internal  
5 documents obtained through their own investigation, and the evidence developed  
6 during the extensive fact and expert discovery conducted in the Action and in  
7 preparation for trial, Class Counsel believe they have gathered substantial evidence to  
8 support Class Representatives' claims and, barring settlement, were prepared to  
9 proceed to trial on February 18, 2020. Class Counsel also realize, however, that trying  
10 this case would present many major challenges, such as the fact that every witness at  
11 trial, aside from Class Representatives' experts, would be a hostile witness, the fact  
12 that there were no "smoking gun" documents unambiguously establishing Defendants'  
13 liability, the fact that the case involves complex concepts related to securities markets  
14 and financial economics, and the fact that the main corporate Defendant, SeaWorld, is  
15 a longstanding, well-regarded San Diego institution, which may be viewed quite  
16 favorably by a local jury. As such, Class Representatives faced considerable headwinds  
17 and defenses on each and every element of their claims if the Action were to continue  
18 to trial, as well as the inevitable appeals and potential individual-damages trials that  
19 would follow even if Class Representatives obtained a favorable verdict against  
20 Defendants.

21 82. In agreeing to settle, Class Counsel and Class Representatives weighed,  
22 among other things, the substantial cash benefit to Class Members under the terms of  
23 the Settlement against the hurdles facing the Class, including, to name just a few: the  
24 difficulties in explaining to a jury complex concepts related to securities fraud, stock  
25 markets, and economic damages; the risk of litigating against a well-regarded San  
26 Diego entity in San Diego; the fact that the case involved controversial topics, such as

1 animal activism, that could polarize jurors; the fact that all of the fact witnesses at trial  
2 would be hostile to Class Representatives; and the fact that to prevail, Class  
3 Representatives would have to win a unanimous jury verdict, not just persuade a  
4 majority of jurors.

5 83. Class Counsel and Class Representatives also considered that the  
6 complexities of this case might not have been well understood or credited by a jury.  
7 Their allegations were vigorously disputed by Defendants, who were represented by  
8 sophisticated counsel, and who offered reasonably credible explanations and defenses  
9 supported by reputable experts and all of the fact witnesses who would testify live at  
10 trial.

11 **A. Risks Concerning Establishing Defendants’ Liability**

12 84. To gain a fuller, qualitative, and empirically-based understanding of the  
13 various risks Class Representatives would face in presenting their case to the jury at  
14 trial, Class Counsel and their jury consultant conducted a two-day mock jury and focus  
15 group exercise in December 2019. Held in San Diego, California, the goal of the  
16 exercise was to test the strengths and weaknesses of the Parties’ respective cases in  
17 order to enhance Class Representatives’ presentation of their case at trial and maximize  
18 the likelihood of success.

19 85. As part of their preparation for the mock trial, Class Counsel and their  
20 jury consultant spent substantial time reviewing and analyzing the discovery record to  
21 identify the documentary evidence and videotaped fact and expert witness testimony  
22 that best represented each Parties’ case. Furthermore, Class Counsel and their jury  
23 consultant developed demonstrative exhibits that could also be tailored for use at the  
24 actual trial.

25 86. Each mock juror, a resident in the counties from which jurors at the actual  
26 trial of this Action could be drawn, completed a series of questionnaires before, during,  
27



1 and after the various presentations and exercises, conveying their attitudes and  
2 reactions to particular evidence, witnesses, themes, and lines of argument. In addition,  
3 Class Counsel were able to observe the reactions of mock jurors to particular evidence  
4 and testimony during moderated deliberation sessions.

5 87. Class Counsel's jury consultant also prepared an extensive written and  
6 statistical analysis of the results of the exercise. The analysis was examined closely by  
7 Class Counsel and discussed in numerous subsequent strategy sessions for the purpose  
8 of leveraging the information and insights gleaned from the process.

9 88. The mock jury process provided Class Counsel with invaluable insight  
10 into and data on the strengths and weaknesses of Class Representatives' case and how  
11 the strengths could be enhanced and the weaknesses dealt with and ameliorated.

12 89. Armed with this information and the full understanding of the facts  
13 developed throughout the entire litigation, Class Counsel clearly understood that Class  
14 Representatives faced significant risks with respect to establishing Defendants'  
15 liability at trial. The jury would be asked to evaluate Class Representatives' claims that  
16 the alleged misstatements were materially false or misleading based on internally-  
17 recognized business impacts and a failure to test for *Blackfish* impact against  
18 arguments from Defendants that the impacts and reputational harms Class  
19 Representatives point to were nothing new, but were a normal feature of SeaWorld's  
20 status as a longstanding target of animal activists. Defendants would also claim that  
21 the asserted impacts were immaterial relative to the overall size of the Company, and  
22 that the business partnerships and consumer communications Class Representatives  
23 point to were not representative of broader impact. Defendants would emphasize that  
24 the SeaWorld-branded parks set revenue records in the middle of the Class Period, and  
25 argue this was contrary to Class Representatives' theory of clear and sustained impact.  
26 Class Representatives could prevail on the question of falsity on this mixed picture,  
27

1 but they could also lose. Further, with arguably more clear-cut evidence of impact and  
2 falsity accruing later in the Class Period, Class Representatives faced a risk of a partial  
3 victory, in which they win a verdict as to the alleged false and misleading statements  
4 and omissions made during the final few months of the roughly one-year Class Period  
5 but lose as to the earlier months.

6 90. Similarly, Defendants would mount a potentially powerful defense around  
7 the element of scienter. Class Representatives would show facts and conduct  
8 amounting to recklessness sufficient to establish this element, including, for example,  
9 Defendants' failure to test whether there was any *Blackfish* impact before denying it,  
10 and Defendants' alleged "head in the sand" approach of downplaying and dismissing  
11 clear, tangible forms of impact from the film during the Class Period. Defendants,  
12 however, would rebut this evidence with potentially persuasive live witness testimony  
13 from credible current and former SeaWorld executives, denying that they downplayed  
14 or ignored anything of significance, and pointing to analyses the Company did perform  
15 that may indicate the Company had accounted for all attendance and business drivers  
16 without detecting any impact from *Blackfish*. These witnesses would also likely seek  
17 to reject or undermine Class Representatives' interpretations of documentary evidence  
18 that could support liability but are ambiguous. Class Representatives would have no  
19 live fact witness they could call to testify to the contrary. Class Counsel had tested  
20 many of these issues before the mock jury in December, 2019, as well.

21 91. Moreover, Defendants pressed arguments throughout the litigation that  
22 their various corporate procedures, supposedly designed to ensure a rigorous vetting  
23 process by numerous informed stakeholders, employees, and committees, supported  
24 the accuracy of Defendants' public statements. While Class Representatives were  
25 prepared to refute these arguments, there was a distinct risk that the fairly technical and  
26

1 complicated evidence and argument necessary to adequately unwind these arguments  
2 would challenge or frustrate jurors, and be rejected by them.

3 **B. Risks Concerning Loss Causation and Damages**

4 92. Perhaps the most significant risks at trial would relate to the Rule 10b-5  
5 elements of loss causation and damages. Class Representatives' claims in these areas  
6 rest heavily on expert testimony about technical economic and statistical concepts.  
7 Class Representatives' experts' opinions supporting liability would be strenuously  
8 countered by Defendants' experts' contrary opinions. Class Representatives' ability to  
9 prevail would on some level depend on a battle of the experts, the outcome of which is  
10 always impossible to predict.

11 93. The facts regarding loss causation are also likely challenging for Class  
12 Representatives, who claimed that the disclosure that corrected the alleged fraud in the  
13 market included commentary in a quarterly earnings release ostensibly discussing  
14 recent media attention and political pressure in San Diego, California in the context of  
15 announcing poor recent results and lowered guidance for the Company as a whole.  
16 Class Representatives claimed this language effectively admitted to investors the  
17 existence of *Blackfish* impact on SeaWorld attendance and business performance in the  
18 Class Period. In some literal regards, however, the alleged corrective disclosure talks  
19 only about the final few months of the Class Period—not the whole Class Period. As  
20 the Court is aware, Defendants argued throughout this Action that it is illogical and  
21 wrong to claim that this temporally limited disclosure “corrected” anything regarding  
22 the entire Class Period, which stretched well into the prior year. If this simple argument  
23 were accepted by the jury, then Class Representatives' claims could be severely  
24 trimmed or eliminated altogether.

25 94. Class Representatives' damages evidence also bore a risk of being  
26 rejected, in whole or in part, by the jury. Class Representatives claimed that the same

1 amount of artificial inflation—\$7.52 per share—affected Class Members’ SeaWorld  
2 common stock throughout the entire Class Period as a result of Defendants’ alleged  
3 fraud. The evidence for this is purely expert evidence, based on fairly technical  
4 economic analyses. While Class Representatives believe their supporting evidence is  
5 strong, Defendants’ economic expert asserted many technical grounds on which to  
6 reject the claim. Defendants also raised appealing commonsense attacks on Class  
7 Representatives’ damages theory. For example, they argued that the claimed constant  
8 level of inflation on every day of the Class Period does not match the asserted evidence  
9 of impact from *Blackfish*, which did not remain constant, but changed and seemingly  
10 grew significantly over time, and that the theory therefore should be rejected as  
11 illogical, ill-fitting, and unreasonable. Class Representatives faced certain risks that a  
12 jury would embrace Defendants’ damages arguments, and find low, or no damages,  
13 even if liability and causation were otherwise established.

### 14 **C. Jury and Trial Risks**

15 95. Finally, Class Representatives faced major additional risks at trial. The  
16 requirement of a unanimous jury verdict for liability to be established meant that one  
17 single juror with entrenched sympathies to SeaWorld or antipathies toward, e.g., class  
18 action lawsuits could defeat an otherwise meritorious case. The prominence of  
19 SeaWorld as a longtime tourist attraction and fixture in San Diego’s economy  
20 increased the likelihood that one or more jurors would have difficulty finding liability  
21 and damages that could hurt the Company. Controversial political issues such as animal  
22 captivity and activism also underlie many of the facts and events at issue, and could,  
23 in unpredictable ways, strongly affect the way jurors viewed witnesses, evidence, and  
24 attorney arguments. Here again, Class Counsel gained insight into these unique risks  
25 at the mock jury exercise in San Diego in late 2019.

1 96. Given these and other challenges, in light of the guaranteed recovery the  
2 Settlement provides for the Class, Class Counsel and Class Representatives  
3 respectfully submit that the Settlement is fair, reasonable, and adequate and should be  
4 approved.

5 **VI. COMPLIANCE WITH THE COURT’S PRELIMINARY APPROVAL**  
6 **ORDER AND REACTION OF THE CLASS TO DATE**

7 97. By its Preliminary Approval Order, the Court authorized Class Counsel  
8 to retain Epiq as the Claims Administrator to supervise and administer the notice  
9 procedure in connection with the Settlement, as well as the processing of Claims. ECF  
10 No. 518, ¶ 4.<sup>10</sup> In accordance with the Preliminary Approval Order, Epiq, working  
11 under Class Counsel’s supervision: (i) mailed by First-Class mail a copy of the  
12 Postcard Notice to potential Class Members who were previously mailed a copy of the  
13 Class Notice and any other potential Class Members identified through further  
14 reasonable effort, as well as mailed copies of the Postcard Notice to brokers and other  
15 nominees (“Nominees”) who previously requested copies of the Class Notice in bulk;  
16 (ii) mailed a copy of the Notice and Claim Form (together, the “Notice Packet”) to the  
17 Nominees contained in the Claims Administrator’s Nominee database; (iii) published  
18 the Summary Notice in *Investor’s Business Daily* and transmitted it over the *PR*  
19 *Newswire*; and (iv) updated the website developed for the Action in connection with  
20 Class Notice, [www.SeaWorldSecuritiesLitigation.com](http://www.SeaWorldSecuritiesLitigation.com), to provide information about  
21 the Settlement, including downloadable copies of the Notice and Claim Form. Barrero  
22 Decl., ¶¶ 7-14, 17.

23 98. The Postcard Notice contains important information concerning the  
24 Settlement and, along with the Summary Notice, directs recipients to the Settlement

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26 <sup>10</sup> Epiq was previously approved by the Court to be the Administrator for Class  
27 Notice. ECF. No. 336 p. 4.

1 Website for additional information regarding the Settlement (and the Action),  
2 including the long-form Notice, which includes, among other things, details about the  
3 Settlement and a copy of the Plan of Allocation as Appendix A. Collectively, the  
4 notices provide the Class definition, a description of the Settlement, information  
5 regarding the claims asserted in the Action and information to enable Class Members  
6 to determine whether to: (i) participate in the Settlement by completing and submitting  
7 a Claim Form; or (ii) object to any aspect of the Settlement, the Plan of Allocation,  
8 and/or the Fee and Expense Application. The Postcard Notice and Notice also inform  
9 prospective Class Members of Class Counsel's intent to: (i) apply for an award of  
10 attorneys' fees in an amount not to exceed 22% of the Settlement Fund; and (ii) request  
11 reimbursement of Litigation Expenses in connection with the institution, prosecution,  
12 and resolution of the Action in an amount not to exceed \$2.8 million, plus interest,  
13 which amount may include a request for reimbursement of the reasonable costs and  
14 expenses incurred by Class Representatives in an aggregate amount not to exceed  
15 \$150,000. *See* Barrero Decl., Exs. A & B.

16 99. In accordance with the Preliminary Approval Order and subsequent  
17 March 16 Notice Order, Epiq began mailing Postcard Notices to potential Class  
18 Members and Nominees, as well as Notice Packets to Nominees, on April 10, 2020.  
19 Barrero Decl., ¶¶ 7, 10. To date, Epiq has disseminated 16,597 Postcard Notices and  
20 4,244 Notices to potential Class Members and Nominees. *Id.*, ¶ 12. In addition, Epiq  
21 caused the Summary Notice to be published in *Investor's Business Daily* and  
22 transmitted over *PR Newswire* on April 13, 2020. *Id.*, ¶ 14.<sup>11</sup>

23 100. Contemporaneously with the mailing of the Postcard Notices, Epiq  
24 updated the Settlement Website to provide Class Members and other interested parties  
25

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26 <sup>11</sup> In accordance with the Stipulation, Defendants issued notice of the Settlement  
27 pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715.



1 with information concerning the Settlement and important dates and deadlines in  
 2 connection therewith, as well as downloadable copies of the Notice, Claim Form,  
 3 Stipulation, Preliminary Approval Order, and Second Amended Complaint. Barrero  
 4 Decl., ¶ 17. Additionally, Epiq updated the interactive voice-response system callers  
 5 hear when contacting the toll-free helpline for this matter in order to respond to  
 6 inquiries regarding the Settlement. *Id.* ¶¶ 16. Class Members with questions regarding  
 7 the Settlement can also contact Epiq by sending an e-mail to  
 8 info@SeaWorldSecuritiesLitigation.com.

9 101. As noted above and as set forth in the Postcard Notice, Notice, and  
 10 Summary Notice, the deadline for Class Members to submit an objection to the  
 11 Settlement, the Plan of Allocation, and/or the Fee and Expense Application is July 1,  
 12 2020. To date, no objections of any kind have been filed.<sup>12</sup> Should any objections be  
 13 received, Class Counsel will address them in their reply to be filed on July 15, 2020.

14 **VII. THE PLAN FOR ALLOCATING THE NET SETTLEMENT FUND TO**  
 15 **THE CLASS IS FAIR, REASONABLE, AND ADEQUATE**

16 102. In accordance with the Preliminary Approval Order, and as explained in  
 17 the Notice, Class Members who wish to participate in the distribution of the Net  
 18 Settlement Fund (i.e., the Settlement Fund less: (i) any Taxes; (ii) any Notice and  
 19 Administration Costs; (iii) any Litigation Expenses awarded by the Court; (iv) any

20 \_\_\_\_\_  
 21 <sup>12</sup> As discussed above, in connection with the Court's Class Notice Order (ECF  
 22 No. 336), Class Notice was previously disseminated to potential members of the Class  
 23 to notify them of, among other things: (i) the Action pending against the Defendants;  
 24 (ii) the Court's certification of the Action to proceed as a class action on behalf of the  
 25 Court-certified Class; and (iii) their right to request to be excluded from the Class, the  
 26 effect of remaining in the Class or requesting exclusion, and the requirements for  
 27 requesting exclusion. As set forth on Appendix 1 to the Stipulation, five requests for  
 28 exclusion were received pursuant to the Class Notice. Pursuant to the Preliminary  
 Approval Order, the Court exercised its discretion not to provide Class Members with  
 a second opportunity to exclude themselves from the Class in connection with the  
 Settlement proceedings. ECF No. 518, ¶ 11.

1 attorneys' fees awarded by the Court; and (v) any other costs or fees approved by the  
2 Court) must submit a valid Claim Form and all required supporting documentation to  
3 the Court-authorized Claims Administrator, Epiq, postmarked (if mailed), or online  
4 through the Settlement Website, no later than July 16, 2020. As provided in the Notice,  
5 the Net Settlement Fund will be distributed to Authorized Claimants<sup>13</sup> in accordance  
6 with the plan for allocating the Net Settlement Fund among Authorized Claimants  
7 approved by the Court.

8 103. The plan of allocation proposed by Class Representatives (the "Plan of  
9 Allocation" or "Plan") is attached as Appendix A to the Notice. *See* Barrero Decl., Ex.  
10 B. The Plan is designed to achieve an equitable and rational distribution of the Net  
11 Settlement Fund. However, the Plan is not a formal damages analysis and the  
12 calculations made pursuant to it are not intended to be estimates of, nor indicative of,  
13 the amounts that Class Members might have been able to recover after a trial.

14 104. Class Counsel developed the Plan in consultation with Class  
15 Representatives' damages expert, Chad Coffman, CFA, and his team at Global  
16 Economic Group, LLC. The Plan creates a framework for the equitable distribution of  
17 the Net Settlement Fund among Class Members who suffered economic losses as a  
18 result of Defendants' alleged violations of the federal securities laws set forth in the  
19 Second Amended Complaint, as opposed to economic losses caused by market or  
20 industry factors or company-specific factors unrelated thereto. To that end, Class  
21 Representatives' damages expert calculated the estimated amount of alleged artificial  
22 inflation in the per share price of SeaWorld publicly traded common stock over the  
23  
24

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25 <sup>13</sup> As defined in ¶1(c) of the Stipulation, an "Authorized Claimant" is a Class  
26 Member who submits a Claim to the Claims Administrator that is approved by the  
27 Court for payment from the Net Settlement Fund.

1 course of the Class Period that was allegedly proximately caused by Defendants'  
2 alleged materially false and misleading misrepresentations and omissions.

3 105. As set forth in the Plan, a Claimant's Recognized Loss Amount will  
4 depend upon several factors, including the date(s) when the Claimant purchased or  
5 acquired his, her, or its shares of SeaWorld publicly traded common stock during the  
6 Class Period, and whether such shares were sold and if so, when and at what price.<sup>14</sup>  
7 In order to have a Recognized Claim under the Plan, a Claimant must have suffered  
8 damages proximately caused by the disclosure of the relevant truth concealed by  
9 Defendants' alleged fraud. Specifically, shares of SeaWorld common stock purchased  
10 or otherwise acquired during the Class Period (i.e., between August 29, 2013 and  
11 August 12, 2014) must have been held through the alleged corrective disclosure on  
12 August 13, 2014 that removed alleged artificial inflation related to that information.<sup>15</sup>

13 106. Epiq, as the Claims Administrator, will determine each Authorized  
14 Claimant's *pro rata* share of the Net Settlement Fund by dividing the Authorized  
15 Claimant's Recognized Claim (i.e., the sum of the Claimant's Recognized Loss  
16 Amounts as calculated under the Plan) by the total Recognized Claims of all  
17 Authorized Claimants, multiplied by the total amount in the Net Settlement Fund. Class  
18 Representatives' losses will be calculated in the same manner.

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21 <sup>14</sup> The calculation of Recognized Loss Amounts also takes into account the  
22 PSLRA's statutory limitation on recoverable damages. *See* Section 21D(e)(1) of the  
PSLRA.

23 <sup>15</sup> Before the opening of trading on August 13, 2014, the Company announced,  
24 "attendance in the quarter was impacted by demand pressures related to recent media  
25 attention surrounding proposed legislation in the state of California." Class  
26 Representatives alleged that in response to the August 13, 2014 disclosure, SeaWorld's  
common stock price declined \$9.25 per share, or nearly 33%, from a closing price of  
27 \$28.15 per share on August 12, 2014, to a closing price of \$18.90 per share on August  
13, 2014. *See* Second Amended Complaint, ¶ 25.

1           107. Once Epiq has processed all submitted Claim Forms and provided  
2 Claimants with an opportunity to cure any deficiencies in their Claims or challenge the  
3 rejection of their Claims, Class Counsel will file a motion for approval of Epiq's  
4 determinations with respect to all submitted Claims and authorization to distribute the  
5 Net Settlement Fund to Authorized Claimants. As set forth in the Plan, if nine months  
6 after the initial distribution, there is a balance remaining in the Net Settlement Fund  
7 (whether by reason of uncashed checks, or otherwise), and if it is cost-effective to do  
8 so, Class Counsel will conduct a re-distribution of the funds remaining after payment  
9 of any unpaid fees and expenses incurred in administering the Settlement, including  
10 the costs for such re-distribution, to Authorized Claimants who have cashed their initial  
11 distribution checks and would receive at least \$10.00 from such re-distribution. Re-  
12 distributions will be repeated until it is determined that re-distribution of the funds  
13 remaining in the Net Settlement Fund would no longer be cost effective. Thereafter,  
14 any remaining balance will be contributed to non-sectarian, not-for-profit  
15 organization(s), to be recommended by Class Counsel and approved by the Court.

16           108. As discussed in the Settlement Memorandum, the structure of the Plan is  
17 similar to the structure of plans of allocation that have been used to apportion  
18 settlement proceeds in numerous other securities class actions. To date, no objections  
19 to the Plan have been filed. In sum, Class Counsel believe that the Plan provides a fair  
20 and reasonable method to equitably distribute the Net Settlement Fund among  
21 Authorized Claimants, and respectfully submits that the Plan should be approved by  
22 the Court.

### 23 **VIII. THE FEE AND LITIGATION EXPENSE APPLICATION**

24           109. In addition to seeking final approval of the Settlement and approval of the  
25 Plan of Allocation, Class Counsel, on behalf of Plaintiffs' Counsel, are applying for an  
26 award of attorneys' fees and payment of expenses incurred by Plaintiffs' Counsel

1 during the course of the Action. Specifically, Class Counsel are applying for attorneys’  
2 fees in the amount of 22% of the Settlement Fund and for Litigation Expenses in the  
3 total amount of \$2,174,939.19.<sup>16</sup> This amount includes requests for reimbursement in  
4 the aggregate amount of \$70,569.00 for Class Representatives (i.e., \$10,569.00 for  
5 APERS and \$60,000.00 for PBU) in connection with their representation of the Class  
6 in accordance with the PSLRA, 15 U.S.C. § 78u-4(a)(4). *See* APERS Decl., ¶ 14 &  
7 PBU Decl., ¶ 14. As noted above, Class Counsel’s Fee and Expense Application is  
8 consistent with the amounts set forth in the Notice and, to date, no objections to the  
9 maximum amounts of attorneys’ fees and expenses set forth in the Notice have been  
10 filed.

11 110. Through May 31, 2020, Plaintiffs’ Counsel have devoted more than  
12 49,185 hours to this Action, resulting in a total lodestar of \$23,765,584.25.  
13 Accordingly, the fee requested here (which would be \$14,300,000 if the Court grants  
14 Class Counsel’s application for an award of attorneys’ fees that equals 22% of the  
15 Settlement Fund) equates to a *negative* “multiplier” of approximately 0.60 on  
16 Plaintiffs’ Counsel’s lodestar—i.e., a discount on what counsel would have earned had  
17 counsel been compensated by a paying client using counsel’s hourly billing rates.  
18 Moreover, the Fee and Expense Application is fully supported by Class  
19 Representatives and is consistent with retention agreements entered into with counsel

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20 <sup>16</sup> The lodestar and expense submissions of: (i) Joshua E. D’Ancona (“D’Ancona  
21 Fee and Expense Decl.”), on behalf of Kessler Topaz; (ii) Jeffrey J. Angelovich  
22 (“Angelovich Fee and Expense Decl.”), on behalf of Nix Patterson; (iii) Ethan T. Boyer  
23 (“Boyer Fee and Expense Decl.”), on behalf of Noonan Lance Boyer & Banach LLP;  
24 (iv) Matt Keil (“Keil Fee and Expense Decl.”), on behalf of Keil & Goodson P.A.; and  
25 (v) Daniel Berger (“Berger Fee and Expense Decl.”), on behalf of Grant & Eisenhofer  
26 P.A., are attached hereto as Exhibits 4 through 8. These declarations set forth the names  
27 of the attorneys and professional support staff members who worked on the Action and  
28 their hourly rates, the lodestar value of the time expended by such attorneys and  
professional support staff, the expenses incurred by Plaintiffs’ Counsel, and the  
background and experience of the firms.

1 at the outset of their involvement in the Action. *See* APERS Decl., ¶¶ 10-11 & PBU  
2 Decl., ¶¶ 10-11.

3 111. Below is a summary of the primary factual bases for Class Counsel’s Fee  
4 and Expense Application. A full analysis of the factors considered by courts in this  
5 Circuit when evaluating requests for attorneys’ fees and expenses from a common  
6 fund, as well as the supporting legal authority, is presented in the accompanying Fee  
7 Memorandum.<sup>17</sup>

8 **A. Class Counsel’s Fee Request Is Fair and Reasonable and**  
9 **Warrants Approval**

10 **1. The Favorable Settlement Achieved**

11 112. As described above and in the accompanying Fee Memorandum, the \$65  
12 million Settlement is a significant result in absolute terms—representing, as estimated  
13 by Class Representatives’ damages expert, a substantial percentage of the Class’s  
14 maximum potentially recoverable damages had this Action proceeded to trial. More  
15 specifically, using a trading model to estimate the number of shares of SeaWorld  
16 publicly traded common stock purchased during the Class Period and held over the  
17 corrective disclosure on August 13, 2014 and relatedly, an estimate of potential class-  
18 wide damages, Class Representatives’ damages expert estimated potential aggregate  
19 damages, after removal of damages associated with purchases related to the parties that  
20 opted out of the Class in connection with Class Notice, to be approximately \$465  
21 million—or, approximately 14% of potential aggregate damages. This result is also

22 \_\_\_\_\_  
23 <sup>17</sup> Courts in this Circuit consider the following factors when determining whether  
24 a fee percentage sought from a common fund is fair and reasonable: (1) the results  
25 achieved; (2) the risks of litigation; (3) the skill required and quality of work; (4) the  
26 contingent nature of the fee and financial burden carried by the plaintiffs; (5) awards  
27 made in similar cases; (6) the reaction of the class; and (7) the amount of a lodestar  
cross-check. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-50 (9th Cir. 2002).  
*See also* Fee Memorandum, § II.D.



1 significant when considered in view of the substantial risks and obstacles to obtaining  
2 a larger recover (or, any recovery) were the Action to continue to trial. Here, as a result  
3 of the Settlement, numerous Class Members will benefit and receive compensation for  
4 their losses and avoid the substantial risks to recovery in the absence of settlement.

5 **2. The Risks of Litigation and the Need to Ensure the**  
6 **Availability of Competent Counsel in High-Risk Contingent**  
7 **Cases**

8 113. The risks faced by Class Counsel in prosecuting this Action are highly  
9 relevant to the Court's consideration of an award of attorneys' fees, as well as its  
10 approval of the Settlement. Here, Defendants adamantly deny any wrongdoing and, if  
11 the Action had continued, would have aggressively litigated their defenses through trial  
12 and the appeals that would likely follow. As detailed in § V above, Class Counsel and  
13 Class Representatives faced significant risks to proving Defendants' liability, loss  
14 causation, and damages.

15 114. These case-specific litigation risks are in addition to the risks  
16 accompanying securities litigation generally, such as the fact that this Action is  
17 governed by stringent PSLRA requirements and case law interpreting the federal  
18 securities laws and was undertaken on a contingent-fee basis. From the outset, Class  
19 Counsel understood that this would be a complex, expensive, and potentially lengthy  
20 litigation with no guarantee of ever being compensated for the substantial investment  
21 of time and financial expenditures that vigorous prosecution of the case would require.  
22 In undertaking that responsibility, Class Counsel were obligated to ensure that  
23 sufficient resources (in terms of attorney and support-staff time) were dedicated to  
24 prosecuting the Action, and that funds were available to compensate vendors and  
25 consultants and to cover the considerable out-of-pocket costs that a case like this  
26 typically demands. With an average lag time of several years for these cases to

1 conclude, the financial burden on contingent-fee counsel is far greater than on a firm  
2 that is paid on an hourly, ongoing basis. Class Counsel alone have dedicated nearly  
3 49,000 hours in prosecuting this Action for the benefit of the Class, yet have received  
4 no compensation for their efforts.

5 115. Here, Plaintiffs' Counsel also fully bore the risk that no recovery would  
6 be achieved. Class Counsel are aware that despite the most vigorous and competent  
7 efforts, a law firm's success in contingent litigation such as this is never guaranteed.  
8 Moreover, it takes hard work and diligence by skilled counsel to develop the facts and  
9 theories that are needed to sustain a complaint or win at trial, or to persuade  
10 sophisticated defendants to engage in serious settlement negotiations at meaningful  
11 levels. Class Counsel are aware of many hard-fought lawsuits in which, because of the  
12 discovery of facts unknown when the case commenced, or changes in the law during  
13 the pendency of the case, or a decision of a judge or jury following a trial on the merits,  
14 excellent professional efforts by a plaintiff's counsel produced no fee for counsel.

15 116. The United States Supreme Court and numerous other courts have  
16 repeatedly recognized that the public has a strong interest in having experienced and  
17 able counsel enforce the federal securities laws through private actions. *See, e.g.,*  
18 *Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. 299, 310 (1985) (private  
19 securities actions provide “a most effective weapon in the enforcement of the  
20 securities laws and are a ‘necessary supplement to [SEC] action.’”) (citation omitted);  
21 *see also* Fee Memorandum, § II.A. Vigorous private enforcement of the federal  
22 securities laws can only occur if private investors can obtain some parity in  
23 representation with that available to large corporate defendants. If this important public  
24 policy is to be carried out, courts should award fees that adequately compensate  
25 plaintiffs' counsel, taking into account the risks undertaken in prosecuting a securities  
26 class action as well as the economics involved.

1           117. Plaintiffs' Counsel's efforts, in the face of substantial risks and  
2           uncertainties, have resulted in what Class Counsel believe to be a significant and  
3           certain recovery for the Class. In these circumstances, and in consideration of  
4           Plaintiffs' Counsel's hard work and the favorable result achieved, Class Counsel  
5           believe the 22% fee request is fair and reasonable and should be approved.

6                           **3. The Time and Labor Devoted to the Action by Plaintiffs'**  
7                           **Counsel**

8           118. Class Counsel and the other Plaintiffs' Counsel firms devoted substantial  
9           time to the prosecution of the Action. As more fully described above, Plaintiffs'  
10          Counsel: (i) conducted a thorough investigation into the claims asserted in the Action;  
11          (ii) filed two detailed complaints; (iii) opposed two rounds of briefing on Defendants'  
12          motions to dismiss the complaints; (iv) conducted significant document discovery,  
13          which included reviewing more than 750,000 pages of documents produced by  
14          Defendants and various non-parties; (v) deposed and/or defended 37 depositions across  
15          the country; (vi) successfully moved for class certification and retained and consulted  
16          with an expert in connection therewith; (vii) exchanged expert reports on class  
17          certification and participated in depositions of the Parties' class certification experts;  
18          (viii) briefed and prevailed against Defendants' petition for permission to appeal the  
19          class certification order to the Ninth Circuit; (ix) exchanged expert reports and  
20          participated in depositions of the Parties' seven merits experts; (x) briefed and argued  
21          Defendants' motion for summary judgment; (xi) briefed motions *in limine* and motions  
22          to exclude experts; (xii) participated in extensive pre-trial preparations; and (xiii)  
23          prepared for and engaged in settlement negotiations, including three formal mediation  
24          sessions. *See supra* ¶¶ 22-80. At all times throughout the Action, Plaintiffs' Counsel's  
25          efforts were driven and focused on advancing the litigation to achieve the most  
26

1 successful outcome for the Class, whether through settlement or trial, by the most  
2 efficient means possible.

3 119. The time devoted to this Action by Plaintiffs' Counsel is set forth in the  
4 Fee and Expense Declarations attached hereto as Exhibits 4 through 8. Included with  
5 the Fee and Expense Declarations are schedules that summarize the time expended by  
6 the attorneys and professional support staff employees at each firm, as well as expenses  
7 ("Fee and Expense Schedules"). The Fee and Expense Schedules report the amount of  
8 time spent by each attorney and professional support staff employee who worked on  
9 the Action and their resulting "lodestar," i.e., their hours multiplied by their hourly  
10 rates.

11 120. The hourly rates of Plaintiffs' Counsel here range from \$415 per hour to  
12 \$1,000 per hour for partners, \$265 per hour to \$690 per hour for other attorneys, \$85  
13 per hour to \$305 per hour for paralegals and law clerks, and \$275 per hour to \$305 per  
14 hour for in-house investigators. *See* D'Ancona Fee and Expense Decl., Ex. A;  
15 Angelovich Fee and Expense Decl., Ex. A; Boyer Fee and Expense Decl., Ex. A; Keil  
16 Fee and Expense Decl., Ex. A; and Berger Fee and Expense Decl., Ex. A. These hourly  
17 rates are reasonable for this type of complex litigation. *See* Fee Memorandum, § II.C.2,  
18 n. 9.

19 121. In total, from the inception of this Action through May 31, 2020,  
20 Plaintiffs' Counsel expended over 49,185 hours on the investigation, prosecution, and  
21 resolution of the claims against Defendants for a total lodestar of \$23,765,584.25.<sup>18</sup>  
22 Thus, pursuant to a lodestar "cross-check," Class Counsel's fee request of 22% of the  
23

24 <sup>18</sup> Class Counsel will continue to perform legal work on behalf of the Class should  
25 the Court approve the Settlement. Additional resources will be expended assisting  
26 Class Members with their Claim Forms and related inquiries and working with the  
27 Claims Administrator, Epiq, to ensure the smooth progression of claims processing.  
No additional legal fees will be sought for this work.

1 Settlement Fund (or \$14.3 million), if awarded, would yield a “negative” multiplier of  
2 approximately 0.60 on Plaintiffs’ Counsel’ lodestar, which falls below the range of  
3 positive multipliers awarded in other complex cases, including other securities class  
4 actions, by courts in this Circuit and elsewhere. *See* Fee Memorandum, § II.C.2.

5 **4. The Quality of Plaintiffs’ Counsel’s Representation**

6 122. The skill and diligence of Plaintiffs’ Counsel also supports the requested  
7 fee. In particular, as set forth in the firms’ résumés, Class Counsel are experienced and  
8 skilled firms in the area of complex litigation, including securities class actions, and  
9 have a successful track record in these actions throughout the country. *See* D’Ancona  
10 Fee and Expense Decl., Ex. D; Angelovich Fee and Expense Decl., Ex. C. The  
11 substantial result achieved for the Class here reflects the superior quality of this  
12 representation.

13 123. The quality of the work performed by Class Counsel in obtaining the  
14 Settlement should also be evaluated in light of the quality of opposing counsel.  
15 Defendants in this case were represented by experienced counsel from the nationally  
16 prominent defense firms, Simpson Thacher & Bartlett LLP and Katten Muchin  
17 Rosenman LLP. These firms vigorously and ably defended the Action for over five  
18 years. In the face of this formidable defense, Class Counsel were nonetheless able to  
19 develop a case that was sufficiently strong to persuade Defendants to settle the Action  
20 on terms that are favorable to the Class.

21 **5. Class Representatives’ Endorsement of the Fee Application**

22 124. Class Representatives are sophisticated institutional investors that closely  
23 supervised and monitored both the prosecution and the settlement of this Action. Class  
24 Representatives have evaluated Class Counsel’s fee request and believe it to be fair  
25 and reasonable. The 22% fee request is also authorized by and made pursuant to  
26 agreements made between Class Representatives and Class Counsel at the outset of the  
27

1 Action. As set forth in the declarations submitted on behalf of APERS and PBU, Class  
2 Representatives have concluded that the requested fee has been earned based on the  
3 efforts of Plaintiffs' Counsel and the favorable recovery obtained for the Class in a  
4 case that involved serious risk. *See* APERS Decl., ¶¶ 10-11 & PBU Decl., ¶¶ 10-11.  
5 Accordingly, Class Representatives' endorsement of Class Counsel's fee request  
6 further demonstrates its reasonableness and this endorsement should be given  
7 meaningful weight in the Court's consideration of the fee award.

8 **B. Class Counsel's Request for Litigation Expenses**  
9 **Warrants Approval**

10 **1. Class Counsel Seek Reimbursement of Plaintiffs' Counsel's**  
11 **Reasonable and Necessary Litigation Expenses from the**  
12 **Settlement Fund**

13 125. Class Counsel seek payment from the Settlement Fund of \$2,104,370.19  
14 for expenses that were reasonably and necessarily incurred by Plaintiffs' Counsel in  
15 connection with the Action. The Notice informs the Class that Class Counsel will apply  
16 for Litigation Expenses in an amount not to exceed \$2.8 million, plus interest, which  
17 amount may include a request for reimbursement of the reasonable costs and expenses  
18 incurred by Class Representatives directly related to their representation of the Class  
19 in accordance with 15 U.S.C. § 78u-4(a)(4), in an amount not to exceed \$150,000. The  
20 amount of Litigation Expenses requested by Class Counsel, along with the aggregate  
21 amount requested by Class Representatives (i.e., \$70,569.00), is well below the  
22 maximum expense amount set forth in the Notice, to which no Class Member to date  
23 has filed an objected.

24 126. From the inception of this Action, Plaintiffs' Counsel were aware that they  
25 might not recover any of the expenses they incurred in prosecuting the claims against  
26 Defendants and, at a minimum, would not recover any expenses until the Action was



1 successfully resolved. Plaintiffs' Counsel also understood that, even assuming the  
2 Action was ultimately successful, an award of expenses would not compensate counsel  
3 for the lost use or opportunity costs of funds advanced to prosecute the claims against  
4 Defendants. Plaintiffs' Counsel were motivated to, and did, take significant steps to  
5 minimize expenses wherever practicable without jeopardizing the vigorous and  
6 efficient prosecution of the Action.

7 127. Plaintiffs' Counsel's expenses include charges for, among other things:  
8 (i) experts and consultants in connection with various stages of the litigation;  
9 (ii) establishing and maintaining a database to house the documents produced in  
10 discovery; (iii) online factual and legal research; (iv) deposition-related expenses;  
11 (v) mediation; (vi) travel; and (vii) document reproduction.<sup>19</sup> Courts have consistently  
12 found that these kinds of expenses are payable from a fund recovered by counsel for  
13 the benefit of a class.

14 128. The largest component of Plaintiffs' Counsel's expenses (i.e.,  
15 \$1,143,882.92, or approximately 54% of their total expenses) was incurred for experts  
16 and consultants. As detailed above, the retention of these experts and consultants was  
17 necessary and reasonable in order to prove Class Representatives' claims and to meet  
18 the considerable challenges posed by Defendants' retention of several well-  
19 credentialed experts. *See supra* ¶¶ 43-48. This category of expenses also includes the  
20 costs of Class Representatives' jury/trial consultants. Another large component of  
21

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22 <sup>19</sup> As set forth in the Fee and Expense Declarations attached as Exhibits 4 through  
23 8 hereto, these expenses are reflected on the books and records maintained by these  
24 firms. These books and records are prepared from expense vouchers, check records and  
25 other source materials, and are an accurate record of the expenses incurred. Plaintiffs'  
26 Counsel's expenses are listed in detail in their firm's respective declarations, each of  
27 which identifies the specific category of expense for which Plaintiffs' Counsel seek  
reimbursement. These expense items are billed separately and are not duplicated in  
each firm's billing rates.

1 Plaintiffs' Counsel's expenses (i.e., \$364,426.33, or approximately 17% of their total  
2 expenses) was for travel. Substantial travel was required to prosecute this Action (e.g.,  
3 participate in depositions throughout the country, attend Court hearings, attend in-  
4 person mediations, and prepare for trial in San Diego), and Plaintiffs' Counsel incurred  
5 the costs of airline tickets, meals, and lodging. Relatedly, Plaintiffs' Counsel incurred  
6 \$191,168.01, or approximately 9% of their total expenses, for the costs of court  
7 reporters, videographers, and transcripts in connection with the many depositions they  
8 took or defended across the country.

9 129. In connection with their discovery efforts, Plaintiffs' Counsel incurred  
10 \$141,185.19 for document management costs, including the retention of an outside  
11 vendor to host the document database utilized to effectively and efficiently review and  
12 analyze the documents produced in this Action. Plaintiffs' Counsel also incurred  
13 \$74,698.80 for research. This amount represents charges for computerized research  
14 services such as Lexis, Westlaw, and PACER. It is standard practice for attorneys to  
15 use online services to assist them in researching legal and factual issues, and indeed,  
16 courts recognize that these tools create efficiencies in litigation and ultimately save  
17 money for clients and the class. In addition, Class Counsel incurred \$37,506.00 for  
18 charges related to mediation with Jed D. Melnick, Esq. of JAMS and The Weinstein  
19 Melnick Team.

20 130. The other expenses for which Plaintiffs' Counsel seek payment are the  
21 types of expenses that are necessarily incurred in litigation and routinely charged to  
22 clients billed by the hour. These expenses include, among others, outside investigators;  
23 court fees; court reporters, videographers, and transcripts; process servers; document-  
24 reproduction costs; telephone charges; and postage and delivery expenses.

1                                   **2. Reimbursement to Class Representatives Is Fair and**  
2                                   **Reasonable**

3           131. The PSLRA specifically provides that an “award of reasonable costs and  
4 expenses (including lost wages) directly relating to the representation of the class” may  
5 be made to “any representative party serving on behalf of a class.” 15 U.S.C. § 78u-  
6 4(a)(4). Accordingly, Class Representatives seek reimbursement of their reasonable  
7 costs incurred directly for their work representing the Class in the aggregate amount of  
8 \$70,569.00 (i.e., \$10,569.00 to APERS and \$60,000.00 to PBU). The amount of time  
9 and effort devoted to this Action by Class Representatives is detailed in their  
10 accompanying declarations, attached as Exhibits 1 and 2 hereto.

11           132. As discussed in the Fee Memorandum and the accompanying  
12 declarations, APERS and PBU have been fully committed to pursuing the Class’s  
13 claims since they became involved in the litigation. Both APERS and PBU have  
14 provided valuable assistance to Plaintiffs’ Counsel during the prosecution and  
15 resolution of the Action. Moreover, the efforts expended by Class Representatives  
16 during the course of this Action, as set forth in the APERS Decl., ¶¶ 5-7 and the PBU  
17 Decl., ¶¶ 5-7, including communicating with Class Counsel, reviewing pleadings and  
18 motion papers, gathering and reviewing documents in response to discovery requests,  
19 preparing for and being deposed, and participating in the settlement negotiations, are  
20 precisely the types of activities courts have found to support reimbursement to class  
21 representatives, and fully support this request for reimbursement.

22                                   **IX. CONCLUSION**


23           133. For all the reasons set forth above, Class Counsel respectfully submit that  
24 the Settlement and the Plan of Allocation should be approved as fair, reasonable, and  
25 adequate. Class Counsel further submit that the requested fee in the amount of 22% of  
26 the Settlement Fund should be approved as fair and reasonable, and the request for  
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Litigation Expenses in the total amount of \$2,174,939.19, plus interest, which amount includes Class Representatives' costs in the aggregate amount of \$70,569.00, should also be approved as fair and reasonable.

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

Executed in Radnor, Pennsylvania this 17th day of June, 2020.

  
\_\_\_\_\_  
Joshua E. D'Ancona

Executed in Austin, Texas this 17th day of June, 2020.

\_\_\_\_\_  
Jeffrey J. Angelovich

1 Litigation Expenses in the total amount of \$2,174,939.19, plus interest, which amount  
2 includes Class Representatives' costs in the aggregate amount of \$70,569.00, should  
3 also be approved as fair and reasonable.

4 134. We declare, under penalty of perjury under the laws of the United States  
5 of America, that the foregoing is true and correct.

6  
7 Executed in Radnor, Pennsylvania this 17th day of June, 2020.

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12 Joshua E. D'Ancona

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14 Executed in Austin, Texas this 17th day of June, 2020.

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 17, 2020, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system. Based upon the records currently on file, the Clerk of the Court will transmit a Notice of Electronic Filing to all counsel of record.

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

/s/ Joshua E. D'Ancona  
Joshua E. D'Ancona



# **EXHIBIT 1**

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

LOU BAKER, individually and on  
behalf of all others similarly situated,

Plaintiff,

vs.

SEAWORLD ENTERTAINMENT,  
INC., et al.,

Defendants.

No. 3:14-cv-02129-MMA-AGS

CLASS ACTION

**DECLARATION OF LAURA MACK  
GILSON ON BEHALF OF  
ARKANSAS PUBLIC EMPLOYEES  
RETIREMENT SYSTEM IN  
SUPPORT OF (A) CLASS  
REPRESENTATIVES' MOTION FOR  
FINAL APPROVAL OF  
SETTLEMENT AND PLAN OF  
ALLOCATION; AND (B) CLASS  
COUNSEL'S MOTION FOR AN  
AWARD OF ATTORNEYS' FEES  
AND LITIGATION EXPENSES**

1 I, Laura Mack Gilson, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

2 1. I am Chief Legal Counsel of Arkansas Public Employees Retirement  
3 System (“APERS”), one of the Court-appointed Lead Plaintiffs and Class  
4 Representatives in this securities class action (the “Action”).<sup>1</sup> I submit this Declaration  
5 in support of (i) Class Representatives’ motion for final approval of the proposed  
6 Settlement and approval of the proposed Plan of Allocation; and (ii) Class Counsel’s  
7 motion for an award of attorneys’ fees and Litigation Expenses, including APERS’s  
8 request for reimbursement of costs incurred in connection with its representation of the  
9 Class in the Action.

10 2. I am aware of and understand the requirements and responsibilities of a  
11 representative plaintiff in a securities class action, including those set forth in the  
12 Private Securities Litigation Reform Act of 1995 (“PSLRA”). I have personal  
13 knowledge of the matters set forth in this Declaration and, if called upon, I could and  
14 would testify competently thereto.

15 **I. APERS’s Oversight of the Action**

16 3. Created by statute in 1957, APERS is a multi-employer defined benefit  
17 retirement plan for employees of the State of Arkansas. Participating employers  
18 include state agencies, counties, municipal entities, and school districts. As of June 30,  
19 2019, APERS’s defined benefit retirement plan served more than 84,000 active and  
20 retired members and their beneficiaries, and APERS had over \$9.9 billion in assets  
21 under management.

22 4. In December 2014, APERS along with Pensionskassen For Børne-Og  
23 Ungdomspædagoger (“PBU”) were appointed by the Court as Lead Plaintiffs in this  
24

25  
26 <sup>1</sup> Unless otherwise defined in this Declaration, all capitalized terms have the  
27 meanings set out in the Stipulation and Agreement of Settlement dated February 10,  
2020 (ECF No. 516-3).



1 Action. Thereafter, in November 2017, APERS and PBU were appointed by the Court  
2 as Class Representatives in connection with the Court's certification of the Class.

3 5. APERS, through the involvement of APERS employees, including  
4 APERS's former executive director Gail H. Stone and Jessica Middleton, Chief Legal  
5 Counsel closely supervised, carefully monitored, and actively participated in all  
6 material aspects of the prosecution and resolution of the Action. APERS received  
7 periodic status reports from Class Counsel as well as specific updates on important  
8 case developments throughout the litigation, and participated in discussions with Class  
9 Counsel concerning the prosecution of the Action, the strengths and risks to the claims  
10 asserted against Defendants, the scheduled February 2020 jury trial, and potential  
11 settlement.

12 6. In particular, throughout the course of the Action, Gail Stone and Jessica  
13 Middleton (i) regularly communicated with Class Counsel by email, telephone, written  
14 correspondence, and in-person meetings regarding the posture and progress of the case,  
15 significant developments in the Action, and case strategy; (ii) reviewed significant  
16 pleadings and briefs filed in the Action, as well as Court orders; (iii) assisted in  
17 searching for and producing documents and information requested by Defendants in  
18 the course of discovery; (iv) consulted with Class Counsel concerning the Parties'  
19 settlement negotiations as they progressed, including prior to, during, and after the two  
20 formal mediations with Jed D. Melnick Esq. of JAMS and The Weinstein Melnick  
21 Team; and (v) evaluated and approved the proposed \$65 million Settlement.

22 7. In addition, APERS's former executive director Gail H. Stone, in her  
23 capacity as an entity representative for APERS, was deposed by counsel for Defendants  
24 on July 7, 2017 in New York, New York. Ms. Stone spent a substantial amount of time  
25 preparing for, traveling to, and appearing at that deposition.  
26

1 **II. APERS Endorses Approval of the Settlement**

2 8. Based on its involvement throughout the prosecution and resolution of the  
3 claims asserted in the Action, APERS believes that the proposed Settlement is fair,  
4 reasonable, and adequate to the Class. APERS believes that the Settlement represents  
5 a favorable recovery for the Class, particularly in light of the substantial risks of  
6 continuing to litigate the Action through trial and post-trial proceedings and recovering  
7 a judgment larger than the proposed Settlement. Therefore, APERS endorses approval  
8 of the Settlement by the Court.

9 9. APERS also believes that the proposed Plan of Allocation represents a  
10 fair and reasonable method for valuing claims submitted by Class Members, and for  
11 distributing the Net Settlement Fund among Class Members who submit valid and  
12 timely Claim Forms, and APERS supports the Court's approval of the Plan of  
13 Allocation.

14 **III. APERS Supports Class Counsel's Motion for an Award of Attorneys' Fees**  
15 **and Litigation Expenses**

16 10. While it is understood that the ultimate determination of Class Counsel's  
17 request for attorneys' fees and expenses rests with the Court, APERS believes that  
18 Class Counsel's request, on behalf of all Plaintiffs' Counsel, for an award of attorneys'  
19 fees in the amount of 22% of the Settlement Fund is reasonable in light of the result  
20 achieved in the Action, the risks undertaken, and the quality of the work performed by  
21 Plaintiffs' Counsel on behalf of Class Representatives and the Class. APERS has  
22 evaluated the fee request by considering the significant recovery obtained for the Class  
23 in the Action, the risks of the Action and the obstacles to prevailing at trial and  
24 obtaining a larger recovery for the Class, the stage of the Action, and its observations  
25 of the high-quality work performed by Plaintiffs' Counsel throughout the litigation,  
26 and has authorized this fee request to the Court for its ultimate determination. Class



1 Counsel's fee request is also consistent with the retainer agreement entered into at the  
2 outset of APERS's involvement in the Action.

3 11. APERS further believes that Plaintiffs' Counsel's Litigation Expenses are  
4 reasonable and represent costs and expenses necessary for the prosecution and  
5 resolution of the claims in the Action. Based on the foregoing, and consistent with its  
6 obligation to the Class to obtain the best result at the most efficient cost, APERS fully  
7 supports Class Counsel's motion for an award of attorneys' fees and Litigation  
8 Expenses.

9 12. APERS understands that reimbursement of a class representative's  
10 reasonable costs and expenses is authorized under the PSLRA. For this reason, in  
11 connection with Class Counsel's request for Litigation Expenses, APERS seeks  
12 reimbursement for the costs it incurred directly relating to its representation of the  
13 Class in the Action.

14 13. My primary responsibility at APERS involves overseeing all legal matters  
15 including class actions. As noted herein, Ms. Stone, APERS's executive director  
16 throughout the course of the Action through December 31, 2018, also devoted  
17 substantial time to the Action on behalf of APERS. Ms. Stone had principal  
18 responsibility for administering the retirement system, including monitoring this  
19 litigation. Additionally, during the course of the Action, Jessica Middleton, APERS's  
20 Chief Legal Counsel at that time, also devoted time to the Action.

21 14. The foregoing APERS employees dedicated substantial time to  
22 supervising and participating in the Action on behalf of APERS, including time spent  
23 communicating with Class Counsel, reviewing significant Court filings, overseeing the  
24 collection of APERS documents in response to discovery requests, reviewing written  
25 discovery responses, preparing for and attending a deposition, and participating in the  
26 settlement negotiations and formal mediation process. The time that APERS staff



1 devoted to the representation of the Class in this Action was time that we otherwise  
 2 would have spent on other work for APERS and, thus, represented a cost to APERS.  
 3 Accordingly, APERS seeks reimbursement in the total amount of **\$10,569** for the time  
 4 of the following APERS personnel:

<b>Personnel</b>	<b>Hours</b>	<b>Rate<sup>2</sup></b>	<b>Total</b>
<b>Gail Stone</b>	<b>89</b>	<b>\$86.00 USD</b>	<b>\$7,654</b>
<b>Jessica Middleton</b>	<b>67</b>	<b>\$43.50 USD</b>	<b>\$2,915</b>
<b>TOTAL:</b>			<b>\$10,569</b>

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 10 **IV. Conclusion**

11 15. In conclusion, APERS, a Court-appointed Lead Plaintiff and Class  
 12 Representative, which was actively involved throughout the prosecution and settlement  
 13 of the Action, endorses the Settlement as fair, reasonable, and adequate, and believes  
 14 it represents an excellent recovery for the Class in light of the risks of taking the Action  
 15 to trial. APERS further supports Class Counsel’s motion for an award of attorneys’  
 16 fees and Litigation Expenses and believes that it represents fair and reasonable  
 17 compensation for counsel in light of the recovery obtained for the Class, the substantial  
 18 work conducted, and the litigation risks. And finally, APERS requests reimbursement  
 19 for certain of its costs under the PSLRA as set forth above. Accordingly, APERS  
 20 respectfully requests that the Court approve (i) Class Representatives’ motion for final  
 21 approval of the proposed Settlement and Plan of Allocation; and (ii) Class Counsel’s  
 22 motion for an award of attorneys’ fees and Litigation Expenses.

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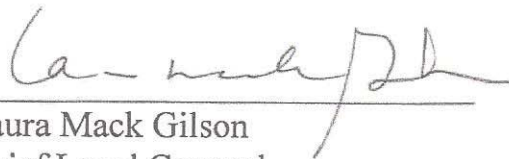
<sup>2</sup> This rate is based on the annual salary of the APERS personnel.

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DECLARATION OF LAURA MACK GILSON IN SUPPORT OF SETTLEMENT, PLAN OF ALLOCATION, AND  
 MOTION FOR AN AWARD OF ATTORNEYS’ FEES AND LITIGATION EXPENSES  
 CASE NO. 3:14-CV-02129-MMA-AGS

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

4 Executed this 16<sup>th</sup> day of June, 2020.

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6 Laura Mack Gilson  
7 Chief Legal Counsel  
8 Arkansas Public Employees  
9 Retirement System

# **EXHIBIT 2**

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

LOU BAKER, individually and on  
behalf of all others similarly situated,

Plaintiff,

vs.

SEAWORLD ENTERTAINMENT,  
INC., et al.,

Defendants.

No. 3:14-cv-02129-MMA-AGS

CLASS ACTION

**DECLARATION OF CARSTEN  
WARREN PETERSEN ON BEHALF  
OF PENSIONSKASSEN FOR  
BØRNE-OG  
UNGDOMSPÆDAGOGER IN  
SUPPORT OF (A) CLASS  
REPRESENTATIVES' MOTION FOR  
FINAL APPROVAL OF  
SETTLEMENT AND PLAN OF  
ALLOCATION; AND (B) CLASS  
COUNSEL'S MOTION FOR AN  
AWARD OF ATTORNEYS' FEES  
AND LITIGATION EXPENSES**

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DECLARATION OF CARSTEN WARREN PETERSEN IN SUPPORT OF SETTLEMENT, PLAN OF ALLOCATION,  
AND  
MOTION FOR AN AWARD OF ATTORNEYS' FEES AND LITIGATION EXPENSES  
CASE NO. 3:14-CV-02129-MMA-AGS



1 I, Carsten Warren Petersen, pursuant to 28 U.S.C. § 1746, hereby declare as  
2 follows:

3 1. I am Chief Investment Officer at Pensionskassen For Børne-Og  
4 Ungdomspædagoger (“PBU”), one of the Court-appointed Lead Plaintiffs and Class  
5 Representatives in this securities class action (the “Action”).<sup>1</sup> I submit this Declaration  
6 in support of (i) Class Representatives’ motion for final approval of the proposed  
7 Settlement and approval of the proposed Plan of Allocation; and (ii) Class Counsel’s  
8 motion for an award of attorneys’ fees and Litigation Expenses, including PBU’s  
9 request for reimbursement of costs incurred in connection with its representation of the  
10 Class in the Action.

11 2. I am aware of and understand the requirements and responsibilities of a  
12 representative plaintiff in a securities class action, including those set forth in the  
13 Private Securities Litigation Reform Act of 1995 (“PSLRA”). I have personal  
14 knowledge of the matters set forth in this Declaration and, if called upon, I could and  
15 would testify competently thereto.

16 **I. PBU’s Oversight of the Action**

17 3. Established in 1976, PBU is a Danish pension fund for teachers. PBU  
18 currently has approximately 110,000 members and over \$10 billion in assets under  
19 management.

20 4. In December 2014, PBU along with Arkansas Public Employees  
21 Retirement System (“APERS”) were appointed by the Court as Lead Plaintiffs in this  
22 Action. Thereafter, in November 2017, PBU and APERS were appointed by the Court  
23 as Class Representatives in connection with the Court’s certification of the Class.

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25 <sup>1</sup> Unless otherwise defined in this Declaration, all capitalized terms have the  
26 meanings set out in the Stipulation and Agreement of Settlement dated February 10,  
2020 (ECF No. 516-3).





1 favorable recovery for the Class, particularly in light of the substantial risks of  
2 continuing to litigate the Action through trial and post-trial proceedings and recovering  
3 a judgment larger than the proposed Settlement. Therefore, PBU endorses approval of  
4 the Settlement by the Court.

5 9. PBU also believes that the proposed Plan of Allocation represents a fair  
6 and reasonable method for valuing claims submitted by Class Members, and for  
7 distributing the Net Settlement Fund among Class Members who submit valid and  
8 timely Claim Forms, and PBU supports the Court’s approval of the Plan of Allocation.

9 **III. PBU Supports Class Counsel’s Motion for an Award of Attorneys’ Fees**  
10 **and Litigation Expenses**

11 10. While it is understood that the ultimate determination of Class Counsel’s  
12 request for attorneys’ fees and expenses rests with the Court, PBU believes that Class  
13 Counsel’s request, on behalf of all Plaintiffs’ Counsel, for an award of attorneys’ fees  
14 in the amount of 22% of the Settlement Fund is reasonable in light of the result  
15 achieved in the Action, the risks undertaken, and the quality of the work performed by  
16 Plaintiffs’ Counsel on behalf of Class Representatives and the Class. PBU has  
17 evaluated the fee request by considering the significant recovery obtained for the Class  
18 in the Action, the risks of the Action and the obstacles to prevailing at trial and  
19 obtaining a larger recovery for the Class, the stage of the Action, and its observations  
20 of the high-quality work performed by Plaintiffs’ Counsel throughout the litigation,  
21 and has authorized this fee request to the Court for its ultimate determination. Class  
22 Counsel’s fee request is also consistent with the retainer agreement entered into at the  
23 outset of PBU’s involvement in the Action.

24 11. PBU further believes that Plaintiffs’ Counsel’s Litigation Expenses are  
25 reasonable and represent costs and expenses necessary for the prosecution and  
26 resolution of the claims in the Action. Based on the foregoing, and consistent with its

1 obligation to the Class to obtain the best result at the most efficient cost, PBU fully  
 2 supports Class Counsel’s motion for an award of attorneys’ fees and Litigation  
 3 Expenses.

4 12. PBU understands that reimbursement of a class representative’s  
 5 reasonable costs and expenses is authorized under the PSLRA. For this reason, in  
 6 connection with Class Counsel’s request for Litigation Expenses, PBU seeks  
 7 reimbursement for the costs it incurred directly relating to its representation of the  
 8 Class in the Action.

9 13. As Chief Investment Officer at PBU, I am responsible for overseeing all  
 10 of PBU’s investment activities. I am also a member of the investment committee where  
 11 all major decisions are taken with regard to asset allocation.

12 14. I, together with others at PBU, dedicated substantial time to supervising  
 13 and participating in the Action on behalf of PBU, including time spent communicating  
 14 with Class Counsel, reviewing significant Court filings, overseeing the collection of  
 15 PBU documents in response to discovery requests, reviewing written discovery  
 16 responses, preparing for and attending a deposition, and participating in the settlement  
 17 negotiations and formal mediation process. The time that I and others at PBU devoted  
 18 to the representation of the Class in this Action was time that we otherwise would have  
 19 spent on other work for PBU and, thus, represented a cost to PBU. Accordingly, PBU  
 20 seeks reimbursement in the total amount of \$60,000 for the time of the following PBU  
 21 personnel:

<b>Personnel</b>	<b>Hours</b>	<b>Rate<sup>2</sup></b>	<b>Total</b>
<b>Carsten Warren Petersen</b>	<b>200</b>	<b>180</b>	<b>36,000</b>
<b>Jonas Bhatti</b>	<b>200</b>	<b>120</b>	<b>24,000</b>

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 26 <sup>2</sup> This rate is based on the annual salary of the PBU personnel.



<b>TOTAL:</b>	<b>400</b>	<b>150</b>	<b>60,000</b>

**IV. Conclusion**

15. In conclusion, PBU, a Court-appointed Lead Plaintiff and Class Representative, which was actively involved throughout the prosecution and settlement of the Action, endorses the Settlement as fair, reasonable, and adequate, and believes it represents an excellent recovery for the Class in light of the risks of taking the Action to trial. PBU further supports Class Counsel’s motion for an award of attorneys’ fees and Litigation Expenses and believes that it represents fair and reasonable compensation for counsel in light of the recovery obtained for the Class, the substantial work conducted, and the litigation risks. And finally, PBU requests reimbursement for certain of its costs under the PSLRA as set forth above. Accordingly, PBU respectfully requests that the Court approve (i) Class Representatives’ motion for final approval of the proposed Settlement and Plan of Allocation; and (ii) Class Counsel’s motion for an award of attorneys’ fees and Litigation Expenses.

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

Executed this the 16<sup>th</sup> day of June, 2020.



\_\_\_\_\_  
 Carsten Warren Petersen  
 Chief Investment Officer  
 Pensionskassen For Børne-Og  
 Ungdomspædagoger

DECLARATION OF CARSTEN WARREN PETERSEN IN SUPPORT OF SETTLEMENT, PLAN OF ALLOCATION,  
 AND  
 MOTION FOR AN AWARD OF ATTORNEYS’ FEES AND LITIGATION EXPENSES  
 CASE NO. 3:14-CV-02129-MMA-AGS

# **EXHIBIT 3**

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

LOU BAKER, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

SEAWORLD ENTERTAINMENT,  
INC., et al.,

Defendants.

Case No.: 14-cv-2129-MMA-AGS

**CLASS ACTION**

**DECLARATION OF ED  
BARRERO REGARDING:  
(A) MAILING OF POSTCARD  
NOTICE AND NOTICE;  
(B) POSTING OF NOTICE  
AND CLAIM FORM ON  
SETTLEMENT WEBSITE; AND  
(C) PUBLICATION OF  
SUMMARY NOTICE**

1 I, Ed Barrero, declare and state as follows, pursuant to 28 U.S.C. § 1746:

2 1. I am a Senior Project Manager employed by Epiq Class Action &  
3 Claims Solutions, Inc. (“Epiq”). The following statements are based on my personal  
4 knowledge and information provided to me by other Epiq employees working under  
5 my supervision and, if called on to do so, I could and would testify competently  
6 thereto.

7 2. Pursuant to the Court’s Order Granting Class Representatives’  
8 Unopposed Motion for Preliminary Approval of Class Action Settlement and  
9 Authorizing Dissemination of Notice of the Settlement to the Class entered on  
10 February 19, 2020 (ECF No. 518) (the “Preliminary Approval Order”), Class  
11 Counsel were authorized to retain Epiq, the administrator previously approved by  
12 the Court to administer the dissemination of the Class Notice (*see* ¶ 5 below), to  
13 supervise and administer the notice procedure in connection with the proposed  
14 Settlement of the above-captioned class action litigation (the “Action”) as well as  
15 the processing of Claims.<sup>1</sup>

16 3. In accordance with the Preliminary Approval Order and the Court’s  
17 subsequent Order Granting Class Representatives’ Unopposed Ex Parte Motion to  
18 Extend Notice Deadlines entered March 16, 2020 (ECF No. 520) (the “March 16th  
19 Notice Order”), I submit this Declaration in order to provide the Court and the Parties  
20 to the Action with information regarding, among other things:

- 21 (i) the mailing of the Postcard Notice;
- 22 (ii) the mailing of the Notice of (I) Proposed Settlement;
- 23 (II) Settlement Fairness Hearing; and (III) Motion for Attorneys’ Fees and Litigation

24  
25 <sup>1</sup> Unless otherwise defined herein, all capitalized terms shall have the same  
26 meanings as set forth in the Stipulation and Agreement of Settlement dated February  
27 10, 2020 (ECF No. 516-3) (the “Stipulation”).



1 Expenses (the “Notice”) and the Proof of Claim and Release Form (the “Claim  
2 Form” and together with the Notice, the “Notice Packet”) to the brokers and  
3 nominees contained in Epiq’s nominee database;

4 (iii) the posting of the Notice and Claim Form to the website previously  
5 developed for the Action, [www.SeaWorldSecuritiesLitigation.com](http://www.SeaWorldSecuritiesLitigation.com), and;

6 (iv) the publication and transmission of the Summary Notice of (I) Proposed  
7 Settlement; (II) Settlement Fairness Hearing; and (III) Motion for Attorneys’ Fees  
8 and Litigation Expenses (the “Summary Notice”).

9 **DISSEMINATION OF THE POSTCARD NOTICE**  
10 **TO POTENTIAL CLASS MEMBERS**

11 4. Pursuant to the Preliminary Approval Order, Epiq was responsible for  
12 disseminating the Postcard Notice to potential Class Members who were previously  
13 mailed a copy of the Class Notice (*see* ¶ 5 below) and who did not previously opt  
14 out of the Class,<sup>2</sup> and any other potential Class Members who were otherwise  
15 identified through further reasonable efforts. By definition, Class Members are all  
16 persons and entities who purchased or otherwise acquired the publicly traded  
17 common stock of SeaWorld Entertainment, Inc. (“SeaWorld”) between August 29,  
18 2013 and August 12, 2014, who did not sell such acquired securities before August  
19 13, 2014, and were damaged (the “Class”).<sup>3</sup>

20 \_\_\_\_\_  
21 <sup>2</sup> Pursuant to its Preliminary Approval Order, the Court exercised its discretion  
22 not to permit Class Members a second opportunity to exclude themselves from the  
23 Class in connection with the Settlement.

24 <sup>3</sup> Excluded from the Class are: (i) Defendants; (ii) present or former executive  
25 officers of SeaWorld, members of SeaWorld’s Board of Directors, and members of  
26 their immediate families; (iii) any of the foregoing persons’ legal representatives,  
27 heirs, successors or assigns; and (iv) any entity in which Defendants have or had a  
controlling interest or any affiliate of SeaWorld. Also excluded from the Class are  
any persons and entities that submitted a request for exclusion in connection with  
Class Notice as set forth on Appendix 1 to the Stipulation.



1 the names and addresses of the 4,961 potential Class Members contained on the  
2 mailing list compiled from the Class Notice mailing. On April 10, 2020 (the “Notice  
3 Date”), Epiq caused the Postcard Notices to be mailed to these 4,961 potential Class  
4 Members by First-Class mail, postage prepaid. A copy of the Postcard Notice is  
5 attached hereto as Exhibit A.

6 8. In addition, Epiq mailed a total of 7,237 Postcard Notices in bulk to  
7 those Nominees who previously requested copies of the Class Notice (in bulk) to  
8 forward to their beneficial owners directly.

9 **DISSEMINATION OF THE NOTICE PACKET TO**  
10 **BROKERS AND NOMINEES**

11 9. Pursuant to the Preliminary Approval Order, Epiq was also responsible  
12 for disseminating the Notice Packet to the Nominees contained in Epiq’s Nominee  
13 Database. As in most securities class actions, the large majority of potential Class  
14 Members are expected to be beneficial purchasers whose securities are held in “street  
15 name” – i.e., the securities are purchased by Nominees in the name of the Nominee,  
16 on behalf of the beneficial purchasers. At the time of mailing, the Nominee Database  
17 contained 1,267 mailing addresses.<sup>5</sup>

18 10. Prior to mailing the Notice Packets, Epiq formatted the Notice Packet  
19 and caused it to be printed and personalized with the names and addresses of the  
20 1,267 Nominees contained in Epiq’s Nominee Database. On April 10, 2020, Epiq  
21 caused these 1,267 Notice Packets to be mailed by First-Class mail, postage prepaid  
22 to the Nominees. The Notice Packets mailed to Nominees included an instructional  
23 cover letter explaining that if the Nominee had previously submitted names and  
24

25 <sup>5</sup> While the Nominee Database was substantially the same as the database used  
26 for the January 2019 Class Notice mailing, Epiq continuously updates its Nominee  
27 Database with new addresses when they are received, and eliminates duplicates or  
28 obsolete addresses when identified (as brokers merge or go out of business).

1 addresses in connection with the January 2019 Class Notice mailing, or had  
2 previously requested copies of the Class Notice in bulk, it did not need to submit  
3 that information again unless it had additional names and addresses to provide or  
4 needed a different number of Postcard Notices. Epiq performed additional email  
5 outreach to the largest Nominees in order to verify that they did not have additional  
6 names and addresses of potential Class Members to submit. A copy of the Notice  
7 Packet and accompanying cover letter mailed to Nominees is attached hereto as  
8 Exhibit B.

9 11. In response to requests received from Nominees and potential Class  
10 Members since the initial mailing, Epiq has disseminated an additional 62 Postcard  
11 Notices and 2,977 Notice Packets by First-Class mail to potential Class Members  
12 and Nominees. Epiq has also received requests from Nominees for an additional  
13 4,337 Postcard Notices, in bulk, to forward directly to their clients. All requests for  
14 Postcard Notices and Notice Packets received by Epiq have been responded to in a  
15 timely manner.

16 12. As of June 16, 2020, an aggregate of 16,597 Postcard Notices and 4,244  
17 Notice Packets have been disseminated to potential Class Members and Nominees  
18 by First-Class mail.

19 13. As of June 16, 2020, 209 Postcard Notices and 115 Notice Packets have  
20 been returned by the United States Postal Service to Epiq as undelivered as addressed  
21 (“UAA”). None of the Postcard Notices and Notices returned UAA had forwarding  
22 addresses.

23 **PUBLICATION OF THE SUMMARY NOTICE**

24 14. The Court’s Preliminary Approval Order also directed the Summary  
25 Notice to be published once in *Investor’s Business Daily* and to be transmitted once  
26 over *PR Newswire* no later than ten (10) calendar days after the Notice Date. Epiq  
27

1 did both on April 13, 2020. See Exhibit C attached hereto (confirmation of  
2 publication signed by Kathleen Komraus, Media and Design Manager at Epiq).

3 **CALL CENTER SERVICES**

4 15. Beginning on January 9, 2019, in connection with the Class Notice  
5 mailing, Epiq established and currently maintains a toll-free telephone number,  
6 (877) 893-2672, for the Action. The toll-free telephone number is set forth in the  
7 Postcard Notice, Notice, Claim Form, Summary Notice, and on the Settlement  
8 Website.

9 16. The toll-free telephone number connects callers with an Interactive  
10 Voice Recording (“IVR”). The toll-free telephone number with pre-recorded  
11 information is available 24 hours a day, 7 days a week. The IVR provides callers  
12 access to pre-recorded information regarding the Action and the Settlement. The  
13 IVR also allows callers to request that a copy of the Notice Packet be mailed to them.  
14 Callers requiring further help have the option to be transferred to a live operator  
15 during business hours, Monday through Friday from 6:00 a.m. to 6:00 p.m. Pacific  
16 Time (excluding official holidays). During other hours, callers may leave a message  
17 for an agent to call them back. Epiq has promptly responded to each telephone  
18 inquiry and will continue to address inquiries to the toll-free telephone number.

19 **SETTLEMENT WEBSITE**

20 17. In connection with the Class Notice mailing, Epiq established and  
21 currently maintains a website dedicated to this Action  
22 ([www.SeaWorldSecuritiesLitigation.com](http://www.SeaWorldSecuritiesLitigation.com)). The Settlement Website includes  
23 information regarding the Action and the Settlement, including the objection and  
24 claim filing deadlines and the date, time, and location of the Court’s Settlement  
25 Fairness Hearing. Copies of the Notice, Claim Form, Stipulation, Preliminary  
26 Approval Order, operative complaint, and other relevant documents are posted on  
27



1 the Settlement Website and are available for downloading. In addition, the  
2 Settlement Website provides Class Members with the ability to submit their Claim  
3 Form online and also includes a link to a document with detailed instructions for  
4 institutions submitting their claims electronically. The address for the Settlement  
5 Website is set forth in the Postcard Notice, Notice, Claim Form, and Summary  
6 Notice. The Settlement Website is accessible 24 hours a day, 7 days a week. Epiq  
7 will continue operating, maintaining and, as appropriate, updating the Settlement  
8 Website until the conclusion of the administration of this Settlement.

9

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

12

13 Executed on June 16, 2020, at Lake Success, NY.

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Ed Barrero

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***EXHIBIT A***

*Baker v. SeaWorld Entertainment, Inc.*  
Claims Administrator  
P.O. Box 3170  
Portland, OR 97208-3170

**BARCODE  
NO-PRINT  
ZONE**

FIRST-CLASS MAIL  
U.S. POSTAGE PAID  
Portland, OR  
PERMIT NO. 2882

**COURT-ORDERED LEGAL NOTICE**

*Baker v. SeaWorld Entertainment, Inc., et al.*  
Case No.: 3:14-cv-2129-MMA-AGS (S.D. Cal.)

Your legal rights may be affected by this securities class action. You may be eligible for a cash payment from the Settlement. Please read this notice carefully.

For more information, please visit:  
[www.SeaWorldSecuritiesLitigation.com](http://www.SeaWorldSecuritiesLitigation.com);  
email: [info@SeaWorldSecuritiesLitigation.com](mailto:info@SeaWorldSecuritiesLitigation.com);  
or call: 1-877-893-2672.

<<MAIL ID>>  
<<NAME 1>>  
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**Barcode No-Print Zone**

**THIS POSTCARD PROVIDES ONLY LIMITED INFORMATION ABOUT THE SETTLEMENT. PLEASE VISIT [WWW.SEAWORLDSERVICESLITIGATION.COM](http://WWW.SEAWORLDSERVICESLITIGATION.COM) FOR MORE INFORMATION.**

The parties in *Baker v. SeaWorld Entertainment, Inc.*, et al., Case No.: 3:14-cv-2129-MMA-AGS (S.D. Cal.) ("Action") have reached a proposed settlement of the claims against SeaWorld Entertainment, Inc. ("SeaWorld"), The Blackstone Group L.P. (n/k/a The Blackstone Group Inc.), James Atchison, James M. Heaney, and Marc Swanson (collectively, "Defendants"). If approved, the Settlement will resolve the Action in which Class Representatives alleged Defendants made false and misleading statements and omissions denying the 2013 documentary film *Blackfish* had any impact on attendance at certain of SeaWorld's parks or its business. Defendants deny any liability or wrongdoing. You received this notice because you, or an investment account for which you serve as a custodian, may be a member of the following certified Class: All persons and entities who purchased or otherwise acquired the publicly traded common stock of SeaWorld between August 29, 2013 and August 12, 2014, who did not sell such acquired securities before August 13, 2014, and were damaged.

Pursuant to the Settlement, Defendants have agreed to pay \$65,000,000 in cash, which, after deduction of Court-awarded fees and expenses, notice and administration costs, and taxes, will be allocated among Class Members who submit valid claims, in exchange for the Settlement of the Action and the release of all claims asserted in the Action and related claims. **For additional information regarding the Settlement, please review the full Notice at [www.SeaWorldSecuritiesLitigation.com](http://www.SeaWorldSecuritiesLitigation.com). If you are a Class Member, your pro rata share of the Settlement will depend on the number of valid claims submitted, and the number, size, and timing of your transactions in SeaWorld common stock during the relevant time period. If all Class Members elect to participate in the Settlement, the estimated average recovery per eligible share of SeaWorld common stock will be approximately \$1.05 before deduction of Court-approved fees and expenses. Your actual share of the Settlement will be determined by the Plan of Allocation set forth in the full Notice, or other plan ordered by the Court.**

**To qualify for a payment from the Settlement, you must submit a valid Claim Form.** The Claim Form can be found and submitted on the Settlement Website, or you can request that one be mailed to you. **Claim Forms must be postmarked (if mailed), or submitted online, by July 16, 2020.** If you want to object to any aspect of the Settlement, you must file and serve an objection by July 1, 2020. The full Notice provides instructions on how to submit a Claim Form and how to object, all of which you must comply with. Because Class Members were previously provided the opportunity to request exclusion from the Class in connection with class certification, the Court is not permitting a second opportunity to request exclusion in connection with the settlement proceedings.

The Court will hold a hearing on **July 22, 2020 at 10:00 a.m.**, to consider, among other things, whether to approve the Settlement and a request by the lawyers representing the Class for up to 22% of the Settlement Fund in attorneys' fees, plus litigation expenses of no more than \$2.8 million (which equals a cost of approximately \$0.28 per share of SeaWorld common stock). You may attend the hearing and ask to be heard by the Court, but you do not have to. **For more information, call 1-877-893-2672, send an email to [info@SeaWorldSecuritiesLitigation.com](mailto:info@SeaWorldSecuritiesLitigation.com) or visit [www.SeaWorldSecuritiesLitigation.com](http://www.SeaWorldSecuritiesLitigation.com).**

***EXHIBIT B***



*Baker v. SeaWorld Entertainment, Inc., et al.*  
P.O. Box 3170  
Portland, OR 97208-3170

Website: [www.SeaWorldSecuritiesLitigation.com](http://www.SeaWorldSecuritiesLitigation.com)  
Email: [info@SeaWorldSecuritiesLitigation.com](mailto:info@SeaWorldSecuritiesLitigation.com)  
Phone: 877-893-2672

## NOTICE TO SECURITIES BROKERS AND OTHER NOMINEES

### TIME-SENSITIVE, COURT-ORDERED ACTION REQUIRED ON YOUR PART

*Baker v. SeaWorld Entertainment, Inc., et al.*  
Case No.: 3:14-cv-2129-MMA-AGS (S.D. Cal.)

A proposed Settlement of the above-referenced securities class action lawsuit (the “Action”) has been reached. Enclosed is the Settlement Notice and Claim Form (the “Notice Packet”), which is also available on the Settlement website.

Subject to certain exclusions, the “Class” consists of all persons and entities who purchased or otherwise acquired the publicly traded common stock of SeaWorld Entertainment, Inc. (“SeaWorld”) between August 29, 2013 and August 12, 2014, who did not sell such acquired securities before August 13, 2014, and were damaged (the “Class”). The CUSIP for SeaWorld common stock is 81282V10. The ticker symbol is SEAS.

You were previously sent a Notice of Pendency of Class Action (the “Class Notice”) in January 2019, notifying you of the Court’s certification of the Action to proceed as a class action. If, in connection with the mailing of the Class Notice, you previously provided the Claims Administrator with the names and addresses of persons and entities on whose behalf you purchased or acquired the publicly traded common stock of SeaWorld between August 29, 2013 and August 12, 2014 (“Potential Class Members”), you **DO NOT** need to resubmit those names and addresses (unless that information has changed – e.g., Potential Class Member has changed address). Copies of the Court-approved Postcard Notice will be forwarded to those Potential Class Members by the Claims Administrator.

If, in connection with the mailing of the Class Notice, you requested that copies of the Class Notice be sent to you for forwarding by you to Potential Class Members **WITHOUT** providing the names and addresses to the Claims Administrator, you will be mailed the same number of Postcard Notices to forward to those Potential Class Members. If you require a different number of Postcard Notices than you requested in connection with the mailing of the Class Notice, please send an email to [info@SeaWorldSecuritiesLitigation.com](mailto:info@SeaWorldSecuritiesLitigation.com) and let the Claims Administrator know how many Postcard Notices you require. You must mail the Postcard Notices to the Potential Class Members within **seven (7) calendar days** of your receipt of the Postcard Notices. Please note, in the Class Notice, you were advised that if you elected to forward the Class Notice to Potential Class Members, you must retain your mailing records for use in connection with any further notices that may be provided in the Action.

If you **NEITHER** previously submitted names and addresses of Potential Class Members to the Claims Administrator **NOR** requested notices to forward to Potential Class Members, as outlined above, **OR** if you have names and addresses of Potential Class Members that were not included in your previous submission to the Claims Administrator, you **MUST** submit a request for Postcard Notices or submit the names and addresses of Potential Class Members to the Claims Administrator, no later than **seven (7) calendar days** from receipt of this notice. If you request copies of the Postcard Notice for forwarding by you, you must mail them to Potential Class Members within **seven (7) calendar days** of your receipt of the Postcard Notices from the Claims Administrator.

#### **If you are providing a list of names and addresses to the Claims Administrator:**

- I. Compile a list of names and addresses of beneficial owners who purchased or acquired the publicly traded common stock of SeaWorld between August 29, 2013 and August 12, 2014.

**For Questions, Please Call: 877-893-2672**

- II. Prepare the list in Microsoft Excel format following the “Electronic Name and Address File Layout” below. A preformatted spreadsheet can also be found on the “Nominees” page of the website [www.SeaWorldSecuritiesLitigation.com](http://www.SeaWorldSecuritiesLitigation.com). Then do one of the following:
- A. Email the spreadsheet(s) to [info@SeaWorldSecuritiesLitigation.com](mailto:info@SeaWorldSecuritiesLitigation.com); or
  - B. Upload the spreadsheet(s) to the “Nominees” page of the website, [www.SeaWorldSecuritiesLitigation.com](http://www.SeaWorldSecuritiesLitigation.com); or
  - C. Burn the Microsoft Excel file(s) to a CD or DVD, and mail the CD or DVD to the following address:

*Baker v. SeaWorld Entertainment, Inc., et al.*  
 c/o Epiq Class Action & Claims Solutions, Inc.  
 P.O. Box 3170  
 Portland, OR 97208-3170

**If you are mailing the Postcard Notice to Potential Class Members:**

If you elect to mail the Postcard Notice to beneficial owners yourself, additional copies of the Postcard Notice may be requested via email to [info@SeaWorldSecuritiesLitigation.com](mailto:info@SeaWorldSecuritiesLitigation.com). As noted above, you must forward the Postcard Notice to the beneficial owners within **seven (7) calendar days** of your receipt of the Postcard Notices. **You must also send a statement to the Claims Administrator at the address above confirming that the mailing was made, and you must retain your mailing records for use in connection with any further notices that may be provided in the Action.**

**Expense Reimbursement**

Reasonable expenses are eligible for reimbursement (including postage and costs to compile names and addresses), provided an invoice documenting the expenses for which reimbursement is sought is timely submitted to the Claims Administrator. Please provide any invoice within one month of completion of the Postcard Notice mailing or delivery of your list of names and addresses. Any disputes as to the reasonableness or documentation of the expenses requested are subject to review by the Court.

**Electronic Name and Address File Layout**

Column	Description	Length	Notes
A	Account #	15	Unique identifier for each record
B	Beneficial owner's first name	25	
C	Beneficial owner's middle name	15	
D	Beneficial owner's last name	30	
E	Joint beneficial owner's first name	25	
F	Joint beneficial owner's middle name	15	
G	Joint beneficial owner's last name	30	
H	Business or record owner's name	60	Businesses, trusts, IRAs, and other types of accounts
I	Representative or contact name	45	
J	Address 1	35	
K	Address 2	25	
L	City	25	
M	U.S. state or Canadian province	2	U.S. and Canada addresses only <sup>1</sup>
N	ZIP Code	10	
O	Country (other than U.S.)	15	
P	Email Address	35	

If you have any questions, you may contact the Claims Administrator by calling 877-893-2672 or by sending an email to [info@SeaWorldSecuritiesLitigation.com](mailto:info@SeaWorldSecuritiesLitigation.com). Thank you for your cooperation.

<sup>1</sup> For countries other than the U.S. and Canada, place any territorial subdivision in “Address 2” field.

**For Questions, Please Call: 877-893-2672**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

LOU BAKER, individually and on  
behalf of all others similarly situated,

Plaintiff,

vs.

SEAWORLD ENTERTAINMENT,  
INC., et al.,

Defendants.

Case No.: 3:14-cv-2129-MMA-AGS

**CLASS ACTION**

**NOTICE OF (I) PROPOSED SETTLEMENT; (II) SETTLEMENT  
FAIRNESS HEARING; AND (III) MOTION FOR ATTORNEYS' FEES  
AND LITIGATION EXPENSES**

**TO: ALL PERSONS AND ENTITIES WHO PURCHASED OR OTHERWISE ACQUIRED THE  
PUBLICLY TRADED COMMON STOCK OF SEAWORLD ENTERTAINMENT, INC.  
("SEAWORLD") BETWEEN AUGUST 29, 2013 AND AUGUST 12, 2014, WHO DID NOT SELL  
SUCH ACQUIRED SECURITIES BEFORE AUGUST 13, 2014, AND WERE DAMAGED.**

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

**NOTICE OF SETTLEMENT:** This Notice has been issued pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the United States District Court for the Southern District of California ("Court"). Please be advised that the Court-appointed representatives for the Court-certified Class, Arkansas Public Employees Retirement System and Pensionskassen For Børne-Og Ungdomspædagoger (together, "Class Representatives"), on behalf of themselves and the Class, have reached a proposed settlement of the above-captioned action ("Action") with SeaWorld, The Blackstone Group L.P., now known as The Blackstone Group Inc. ("Blackstone"), James Atchison, James M. Heaney, and Marc Swanson (SeaWorld, Blackstone, Mr. Atchison, Mr. Heaney, and Mr. Swanson are collectively referred to herein as "Defendants") for \$65,000,000 in cash that, if approved, will resolve all claims in the Action ("Settlement"). The terms and provisions of the Settlement are contained in the Stipulation and Agreement of Settlement dated February 10, 2020 ("Stipulation").<sup>1</sup>

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

**If you have questions about this Notice, the proposed Settlement, or your eligibility to participate in the Settlement, please DO NOT contact the Court, the Clerk's Office, Defendants, or Defendants' Counsel. All questions should be directed to the Claims Administrator or Class Counsel (see ¶ 70 below).**

**Additional information about the Settlement is available on the website,  
[www.SeaWorldSecuritiesLitigation.com](http://www.SeaWorldSecuritiesLitigation.com).**

1. **Description of the Action and the Class:** This Notice relates to a proposed Settlement of claims in a pending securities class action brought by SeaWorld investors alleging, among other things, that Defendants violated the federal securities laws by making false and misleading statements and omissions. A more detailed description of the Action is set forth in ¶¶ 11-29 below. The Settlement, if approved by the Court, will settle the claims of the Class, as defined in ¶ 30 below.

<sup>1</sup> The Stipulation can be viewed at [www.SeaWorldSecuritiesLitigation.com](http://www.SeaWorldSecuritiesLitigation.com). Any capitalized terms used in this Notice that are not otherwise defined herein shall have the meanings ascribed to them in the Stipulation.

**Questions? Call toll free 1-877-893-2672 or visit [www.SeaWorldSecuritiesLitigation.com](http://www.SeaWorldSecuritiesLitigation.com)**

2. **Statement of the Class's Recovery:** Subject to Court approval, Class Representatives, on behalf of themselves and the Class, have agreed to settle the Action in exchange for a settlement payment of \$65,000,000 in cash ("Settlement Amount") to be deposited into an escrow account. The Net Settlement Fund (i.e., the Settlement Amount plus any and all interest earned thereon ("Settlement Fund") less: (i) any Taxes; (ii) any Notice and Administration Costs; (iii) any Litigation Expenses awarded by the Court; (iv) any attorneys' fees awarded by the Court; and (v) any other costs or fees approved by the Court) will be distributed in accordance with a plan of allocation approved by the Court, which will determine how the Net Settlement Fund shall be allocated among members of the Class. The proposed plan of allocation ("Plan of Allocation") is attached hereto as Appendix A.

3. **Estimate of Average Amount of Recovery Per Share:** Based on Class Representatives' damages expert's estimate of the number of shares of SeaWorld publicly traded common stock purchased or otherwise acquired during the Class Period that may have been affected by the conduct at issue in the Action (excluding shares purchased or otherwise acquired by persons and entities who excluded themselves from the Class in connection with Class Notice and are listed on Appendix 1 to the Stipulation), and assuming that all Class Members elect to participate in the Settlement, the estimated average recovery per eligible share of SeaWorld common stock (before the deduction of any Court-approved fees, expenses, and costs as described herein) is approximately \$1.05. **Class Members should note, however, that the foregoing average recovery per eligible share is only an estimate.** Some Class Members may recover more or less than this estimated amount depending on, among other factors: (i) when and the price at which they purchased/acquired shares of SeaWorld common stock; (ii) whether they sold their shares of SeaWorld common stock and, if so, when; (iii) the total number and value of valid Claims submitted to participate in the Settlement; (iv) the amount of Notice and Administration Costs; and (v) the amount of attorneys' fees and Litigation Expenses awarded by the Court. Distributions to Class Members will be made based on the Plan of Allocation attached hereto as Appendix A or such other plan of allocation as may be ordered by the Court.

4. **Average Amount of Damages Per Share:** The Parties do not agree on the average amount of damages per share of SeaWorld publicly traded common stock that would be recoverable if Class Representatives were to prevail in the Action. Among other things, Defendants do not agree with the assertion that they violated the federal securities laws or that any damages were suffered by any members of the Class as a result of their conduct.

5. **Attorneys' Fees and Expenses Sought:** Class Counsel have not received any payment of attorneys' fees for their representation of the Class in the Action, which has been pending since 2014, and have advanced the funds to pay expenses incurred to prosecute the Action with the expectation that if they were successful in recovering money for the Class, they would receive fees and be reimbursed for their expenses from the Settlement Fund, as is customary in this type of litigation. Class Counsel, Kessler Topaz Meltzer & Check, LLP and Nix Patterson, LLP, on behalf of Plaintiffs' Counsel, will apply to the Court for an award of attorneys' fees in an amount not to exceed 22% of the Settlement Fund. In addition, Class Counsel will apply for reimbursement of Litigation Expenses incurred by Plaintiffs' Counsel in connection with the institution, prosecution, and resolution of the claims against Defendants, in an amount not to exceed \$2.8 million, plus interest, which amount may include a request for reimbursement of the reasonable costs and expenses incurred by Class Representatives directly related to their representation of the Class in the Action in accordance with 15 U.S.C. §78u-4(a)(4), in an aggregate amount not to exceed \$150,000. Any fees and expenses awarded by the Court will be paid from the Settlement Fund. Class Members are not personally liable for any such fees or expenses. The estimated average cost per eligible share of SeaWorld common stock, if the Court approves Class Counsel's fee and expense application, is approximately \$0.28 per share. **Please note that this amount is only an estimate.**

6. **Identification of Attorneys' Representatives:** Class Representatives and the Class are represented by Joshua E. D'Ancona, Esq. of Kessler Topaz Meltzer & Check, LLP, 280 King of Prussia Road, Radnor, PA 19087, 1-610-667-7706, info@ktmc.com, [www.ktmc.com](http://www.ktmc.com); and Jeffrey J. Angelovich, Esq. of Nix Patterson, LLP, 3600 N. Capital of Texas Hwy., Suite B350, Austin, TX 78746, 1-512-328-5333, [www.nixlaw.com](http://www.nixlaw.com). Further information regarding the Action, the Settlement, and this Notice may be obtained by contacting the Claims Administrator at: *Baker v. SeaWorld Entertainment, Inc., et al.*, c/o Epiq Class Action & Claims Solutions, Inc., P.O. Box 3170, Portland, OR 97208-3170; 1-877-893-2672; info@SeaWorldSecuritiesLitigation.com, or by visiting the website for the Action, [www.SeaWorldSecuritiesLitigation.com](http://www.SeaWorldSecuritiesLitigation.com).

7. **Reasons for the Settlement:** Class Representatives' principal reason for entering into the Settlement is the immediate cash benefit for the Class without the risk or the delays and costs inherent in further litigation. Here, had the Settlement not been reached, the Parties would have proceeded to a jury trial. Indeed, the Settlement was reached just prior to trial, which was scheduled to commence on February 18, 2020. The benefit of the Settlement must be considered against the risk that a smaller recovery—or no recovery at all—might be achieved after trial, or after the likely and lengthy appeals that would have followed a trial, including individual reliance challenges that necessarily would have followed any trial victory by the Class. Defendants, who deny all allegations of wrongdoing or liability whatsoever, are entering into the Settlement solely to eliminate the uncertainty, burden, and expense of further litigation.

**Questions? Call toll free 1-877-893-2672 or visit [www.SeaWorldSecuritiesLitigation.com](http://www.SeaWorldSecuritiesLitigation.com)**

**YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT:**

<p><b>SUBMIT A CLAIM FORM POSTMARKED (IF MAILED), OR ONLINE, NO LATER THAN JULY 16, 2020.</b></p>	<p>This is the only way to be eligible to receive a payment from the Settlement Fund. If you are a Class Member, you will be bound by the Settlement as approved by the Court and you will give up any Released Plaintiffs’ Claims (defined in ¶ 39 below) that you have against Defendants and the other Defendants’ Releasees (defined in ¶ 40 below), so it is in your interest to submit a Claim Form.</p>
<p><b>OBJECT TO THE SETTLEMENT BY SUBMITTING A WRITTEN OBJECTION SO THAT IT IS RECEIVED NO LATER THAN JULY 1, 2020.</b></p>	<p>If you do not like the proposed Settlement, the proposed Plan of Allocation, and/or the requested attorneys’ fees and Litigation Expenses, you may object by writing to the Court and explaining why you do not like them. In order to object, you must be a member of the Class.</p>
<p><b>GO TO A HEARING ON JULY 22, 2020 AT 10:00 A.M., AND FILE A NOTICE OF INTENTION TO APPEAR SO THAT IT IS RECEIVED NO LATER THAN JULY 1, 2020.</b></p>	<p>If you have filed a written objection and wish to appear at the hearing, you must also file a notice of intention to appear by July 1, 2020, which allows you to speak in Court, at the discretion of the Court, about the fairness of the Settlement, the Plan of Allocation, and/or the request for attorneys’ fees and Litigation Expenses. If you submit a written objection, you may (but you do not have to) attend the hearing.</p>
<p><b>DO NOTHING.</b></p>	<p>If you are a member of the Class and you do not submit a valid Claim Form, you will not be eligible to receive any payment from the Settlement Fund. You will, however, remain a member of the Class, which means that you give up your right to sue about the claims that are resolved by the Settlement and you will be bound by any judgments or orders entered by the Court in the Action.</p>

**These rights and options—and the deadlines to exercise them—are further explained in this Notice. Please Note: The date and time of the Settlement Fairness Hearing—currently scheduled for July 22, 2020 at 10:00 a.m.—is subject to change without further notice to the Class. If you plan to attend the hearing, you should check the website [www.SeaWorldSecuritiesLitigation.com](http://www.SeaWorldSecuritiesLitigation.com) or with Class Counsel as set forth above to confirm that no change to the date and/or time of the hearing has been made.**

**Questions? Call toll free 1-877-893-2672 or visit [www.SeaWorldSecuritiesLitigation.com](http://www.SeaWorldSecuritiesLitigation.com)**



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## WHAT IS THE PURPOSE OF THIS NOTICE?

8. The Court has directed the issuance of this Notice to inform potential Class Members about the proposed Settlement and their options in connection therewith before the Court rules on the proposed Settlement. Additionally, Class Members have the right to understand how this class action lawsuit may generally affect their legal rights. If the Court approves the Settlement and the Plan of Allocation (or some other plan of allocation), the Claims Administrator selected by Class Representatives and approved by the Court will make payments pursuant to the Settlement after any objections and appeals are resolved.

9. The purpose of this Notice is to inform potential Class Members of the terms of the proposed Settlement, and of the hearing to be held by the Court to consider the fairness, reasonableness, and adequacy of the Settlement, the proposed Plan of Allocation, and the motion by Class Counsel for an award of attorneys' fees and Litigation Expenses ("Settlement Fairness Hearing"). See ¶ 58 below for details about the Settlement Fairness Hearing, including the date and location of the hearing.

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

## WHAT IS THIS CASE ABOUT?

11. This is a securities class action against Defendants for alleged violations of the federal securities laws during the Class Period. Class Representatives alleged Defendants issued a series of false and misleading statements and omissions during the Class Period denying the 2013 documentary film *Blackfish* had any impact on attendance at certain of SeaWorld's parks or its business. Defendants deny the allegations of wrongdoing asserted in the Action and deny any liability whatsoever to any members of the Class.

12. The Action was commenced more than five years ago, on September 9, 2014, with the filing of a putative securities class action in the Court against SeaWorld, Blackstone, and certain of SeaWorld's officers and directors.

13. Pursuant to the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4, as amended ("PSLRA"), notice to the public was issued setting forth the deadline by which putative Class Members could move the Court to be appointed to act as lead plaintiffs. By Order dated December 11, 2014, the Court appointed Arkansas Public Employees Retirement System and Pensionskassen For Børne-Og Ungdomspædagoger as Lead Plaintiffs,

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and approved Lead Plaintiffs' selection of Kessler Topaz Meltzer & Check, LLP and Nix Patterson & Roach, LLP (n/k/a Nix Patterson, LLP) as Co-Lead Counsel and Kirby Noonan Lance & Hoge LLP (n/k/a Noonan Lance Boyer & Banach LLP) as Liaison Counsel.

14. On February 27, 2015, Lead Plaintiffs filed their Consolidated Amended Class Action Complaint ("First Amended Complaint"), asserting violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, 15 U.S.C. §§ 78j(b) and 78t(a) ("Exchange Act"), and Rule 10b-5, promulgated thereunder, 17 C.F.R. § 240.10b-5, as well as Sections 11, 12(a)(2), and 15 of the Securities Act of 1933, 15 U.S.C. §§ 77k, 771(a)(2), and 77(o) ("Securities Act").

15. Defendants moved to dismiss the First Amended Complaint on May 29, 2015. This motion was fully briefed by the Parties. By Order dated March 31, 2016, the Court granted Defendants' motions and dismissed the First Amended Complaint without prejudice. By the same Order, the Court granted Lead Plaintiffs leave to file an amended complaint addressing the deficiencies noted by the Court.

16. In accordance with the Court's March 2016 Order, Lead Plaintiffs, on May 31, 2016, filed the Second Amended Consolidated Class Action Complaint ("Second Amended Complaint"), which dropped certain defendants and the Securities Act claims, and asserted violations of Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder against Defendants SeaWorld, James Atchison, James M. Heaney, and Marc Swanson, and violations of Section 20(a) of the Exchange Act against Messrs. Atchison, Heaney, and Swanson, and Blackstone.

17. On June 29, 2016, Defendants moved to dismiss the Second Amended Complaint for failure to state a claim under Federal Rules of Civil Procedure 9(b) and 12(b)(6), as well as the PSLRA. Defendants' motion was fully briefed, and following oral argument, the Court denied the motion to dismiss on September 30, 2016. On October 28, 2016, Defendants filed their Answer to the Second Amended Complaint, denying the surviving allegations and asserting certain defenses.

18. Thereafter, discovery in the Action commenced. From October 2016 through March 2019, the Parties engaged in extensive fact and expert discovery, including: (i) the production of over 750,000 pages of documents by Defendants and third parties and over 15,000 pages of documents by Class Representatives; (ii) 37 fact and expert depositions; (iii) the exchange of opening and rebuttal reports for a total of 7 merits experts; and (iv) litigation of approximately 8 discovery-related motions. The Parties also served and responded to interrogatories, exchanged numerous letters, and held numerous conferences concerning discovery issues.

19. On May 19, 2017, Lead Plaintiffs filed their motion for class certification, which Defendants opposed on July 27, 2017. This motion was fully briefed by the Parties. Following oral argument, the Court, by Order dated November 29, 2017, granted Lead Plaintiffs' motion for class certification, certifying the Class, appointing Lead Plaintiffs Arkansas Public Employees Retirement System and Pensionskassen For Børne-Og Ungdomspædagoger as Class Representatives, and appointing Kessler Topaz Meltzer & Check, LLP and Nix Patterson & Roach, LLP (n/k/a Nix Patterson, LLP) as Class Counsel.

20. Defendants filed a petition with the Court of Appeals for the Ninth Circuit ("Ninth Circuit") seeking permission to appeal the Court's Order granting class certification on December 13, 2017. Class Representatives opposed the petition. The Ninth Circuit denied Defendants' petition on June 28, 2018.

21. On October 9, 2018, Class Representatives filed an unopposed motion to approve the form and manner of notice to the Class. The Court granted the motion on December 6, 2018. Thereafter, the Notice of Pendency of Class Action ("Class Notice") was provided to the Class and a summary notice was published. The Class Notice and summary notice each informed potential Class Members that requests for exclusion from the Class were to be submitted no later than April 9, 2019. Out of the thousands of Class Notices distributed, a total of five requests for exclusion from the Class were received, as listed on Appendix 1 to the Stipulation.<sup>2</sup>

22. On April 3, 2019, the Parties conducted an in-person, arm's-length mediation session before private mediator Jed D. Melnick, Esq. of JAMS, in an effort to explore resolving the Action. The Parties were too far apart in their respective positions to reach a resolution at the mediation, and the Action continued to be litigated.

23. On April 15, 2019, Defendants filed their motion for summary judgment ("Summary Judgment Motion") pursuant to Federal Rule of Civil Procedure 56, asserting that there was no genuine issue as to any material fact and that Defendants were entitled to judgment as a matter of law. On the same day, Defendants moved to exclude the testimony of Class Representatives' three experts pursuant to Federal Rule of Evidence 702 and *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993) ("*Daubert* motions"). Also on April 15, 2019, Class Representatives moved to exclude the testimony of two of Defendants' experts.

<sup>2</sup> Pursuant to its Order Preliminarily Approving Settlement and Providing for Notice ("Preliminary Approval Order") dated February 18, 2020, because Class Members had the opportunity to exclude themselves in connection with the Class Notice, the Court is exercising its discretion not to permit Class Members a second opportunity to exclude themselves from the Class in connection with the Settlement.

24. On May 9, 2019, the Court held a mandatory settlement conference before Magistrate Judge Schopler. At the settlement conference, the Parties were presented with a mediator's proposal, which was not accepted.

25. On May 24, 2019, Class Representatives opposed Defendants' Summary Judgment Motion and the Parties opposed each other's *Daubert* motions. Following full briefing by the Parties and oral argument, the Court, by Order dated November 18, 2019, denied Defendants' Summary Judgment Motion. By the same Order, the Court granted in part and denied in part the Parties' *Daubert* motions.

26. Thereafter, the Parties engaged in substantial trial preparations, including submission of proposed exhibit and witness lists; filed *in limine* motions; and exchanged their contentions of law and fact and other key pretrial disclosures. A final pre-trial conference and argument on the Parties' *in limine* motions was held on January 21, 2020. A status hearing was scheduled for February 11, 2020, and a trial of the Action was scheduled to begin on February 18, 2020.

27. While trial preparations were ongoing, the Parties agreed to reengage with respect to the possibility of resolving the Action, with the assistance of Jed D. Melnick, Esq. of JAMS. Following hard-fought, arm's-length negotiations, the Parties accepted the mediator's recommendation to resolve the Action for \$65 million.

28. On February 10, 2020, the Parties entered into the Stipulation, which sets forth the specific terms and conditions of the Settlement. The Stipulation can be viewed at [www.SeaWorldSecuritiesLitigation.com](http://www.SeaWorldSecuritiesLitigation.com).

29. By Order dated February 18, 2020, the Court preliminarily approved the Settlement, authorized notice of the Settlement to be provided to potential Class Members, and scheduled the Settlement Fairness Hearing to consider whether to grant final approval to the Settlement.

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

30. If you are a member of the Class who has not previously sought exclusion from the Class in connection with the Class Notice, you are subject to the Settlement. The Class certified by the Court on November 29, 2017 consists of:

**All persons and entities who purchased or otherwise acquired the publicly traded common stock of SeaWorld between August 29, 2013 and August 12, 2014, who did not sell such acquired securities before August 13, 2014, and were damaged.**

Excluded from the Class are: (i) Defendants; (ii) present or former executive officers of SeaWorld, members of SeaWorld's Board of Directors, and members of their immediate families; (iii) any of the foregoing persons' legal representatives, heirs, successors or assigns; and (iv) any entity in which Defendants have or had a controlling interest or any affiliate of SeaWorld. Also excluded from the Class are any persons and entities that submitted a request for exclusion in connection with Class Notice as set forth on Appendix 1 to the Stipulation.

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

**IF YOU WISH TO BE ELIGIBLE TO PARTICIPATE IN THE DISTRIBUTION OF PROCEEDS FROM THE SETTLEMENT, YOU ARE REQUIRED TO SUBMIT A CLAIM FORM AND THE REQUIRED SUPPORTING DOCUMENTATION POSTMARKED (IF MAILED), OR ONLINE, NO LATER THAN JULY 16, 2020. YOU CAN OBTAIN A CLAIM FORM AT [WWW.SEAWORLDSECURITIESLITIGATION.COM](http://WWW.SEAWORLDSECURITIESLITIGATION.COM) OR BY CALLING 1-877-893-2672.**

### WHAT ARE CLASS REPRESENTATIVES' REASONS FOR THE SETTLEMENT?

31. The Settlement is the result of more than five years of hard-fought litigation and extensive, arm's-length negotiations by the Parties and was reached just before a trial of the Action was set to commence. Class Representatives believe that the claims asserted against Defendants have merit; however, they recognized the substantial risks they faced in successfully obtaining a favorable verdict for the Class at trial and through the likely appeals that would follow.

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32. In particular, Class Representatives recognized that Defendants had significant defenses to their claims. Throughout the Action, Defendants asserted that the statements at issue in the Action were not false at the time they were made and that Class Representatives would be unable to establish that Defendants did not legitimately believe the truth of such statements. Defendants also argued that certain of these statements constituted non-actionable opinions or general statements of corporate optimism. Relatedly, Defendants contended that they did not act with the required intent, or “scienter.” Class Representatives also faced challenges with respect to establishing that the stock price decline was attributable to the alleged false statements sustained by the Court, and thus the actual damages a jury might award. Specifically, and among other arguments, Defendants argued that the price decline in SeaWorld common stock on the alleged corrective disclosure date was caused by factors unrelated to the alleged fraud, as well as that the “truth” regarding Defendants’ alleged fraud was revealed prior to the end of the Class Period. Had the jury accepted any of Defendants’ arguments or viewed the facts in favor of Defendants in whole or in part, or if the Court or Ninth Circuit in subsequent proceedings accepted these arguments or theories, Class Representatives’ ability to obtain a recovery for the Class could have been reduced or eliminated. Further, even if completely or partly successful at trial, Class Representatives would still have to prevail on the appeals that would likely follow. Thus, there were significant risks attendant to the continued prosecution of the Action, including the risk of zero recovery.

33. In light of these risks, the amount of the Settlement, and the immediacy of recovery to the Class, Class Representatives and Class Counsel believe that the proposed Settlement is fair, reasonable, and adequate, and in the best interests of the Class. Class Representatives and Class Counsel believe that the Settlement provides a favorable result for the Class, namely \$65,000,000 in cash (less the various deductions described in this Notice), as compared to the risk that the claims in the Action would produce a smaller, or no, recovery after trial, and appeals, possibly years in the future.

34. Defendants have denied the claims asserted against them in the Action and deny having engaged in any wrongdoing or violation of law of any kind whatsoever. Defendants have agreed to the Settlement to eliminate the burden and expense of continued litigation, and the Settlement may not be construed as an admission of any wrongdoing by Defendants in this or any other action or proceeding.

### **WHAT MIGHT HAPPEN IF THERE WERE NO SETTLEMENT?**

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

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

36. As a Class Member, you are represented by Class Representatives and Class Counsel, unless you enter an appearance through counsel of your own choice and at your own expense. You are not required to retain your own counsel, but if you choose to do so, such counsel must file a notice of appearance on your behalf and must serve copies of his or her appearance on the attorneys listed in the section entitled, “When And Where Will The Court Decide Whether To Approve The Settlement?,” on page 10 below.

37. If you are a Class Member and you wish to object to the Settlement, the Plan of Allocation, and/or Class Counsel’s application for attorneys’ fees and Litigation Expenses, and if you did not previously exclude yourself from the Class in connection with Class Notice (as listed on Appendix 1 to the Stipulation), you may present your objections by following the instructions in the section entitled, “When And Where Will The Court Decide Whether To Approve The Settlement?,” on page 10 below.

38. If you are a Class Member, you will be bound by any orders issued by the Court. If the Settlement is approved, the Court will enter a judgment (“Judgment”). The Judgment will dismiss with prejudice the claims against Defendants and will provide that, upon the Effective Date of the Settlement, Class Representatives and each of the other Class Members, on behalf of themselves, and their respective heirs, executors, administrators, trusts, trustees, estates, beneficiaries, legatees, insurers, reinsurers, predecessors, successors, and assigns (and assignees of each of the foregoing), in their capacities as such, shall be deemed to have, and by operation of law and of the Judgment shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Plaintiffs’ Claim (as defined in ¶ 39 below) against Defendants and the other Defendants’ Releasees (as defined in ¶ 40 below), and shall forever be barred and enjoined from prosecuting any or all of the Released Plaintiffs’ Claims against any of the Defendants’ Releasees.

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39. “Released Plaintiffs’ Claims” means any and all claims, rights, duties, controversies, obligations, demands, actions, debts, sums of money, suits, contracts, agreements, promises, damages, losses, judgments, liabilities, allegations, arguments, and causes of action of every nature and description, whether known claims or Unknown Claims, whether arising under federal, state, local, common, statutory, administrative, or foreign law, or any other law, rule or regulation, at law or in equity, whether class or individual in nature, whether fixed or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, whether matured or unmatured, that Class Representatives or any other member of the Class: (i) asserted in the Action (including both Securities Act and Exchange Act claims) or (ii) could have asserted in any court or forum that arise out of or are based upon the allegations, transactions, facts, matters or occurrences, representations, or omissions set forth in the Action, and that relate in any way, directly or indirectly, to the purchase, sale, acquisition, disposition, or holding of the publicly traded common stock of SeaWorld during the Class Period. “Released Plaintiffs’ Claims” do not include (i) any claims relating to the enforcement of the Settlement; (ii) the claims asserted in the action captioned *Kistenmacher v. Atchison, et al.*, No. 10437-VCN (Del. Ch.); (iii) the claims asserted in the action captioned *Highfields Capital I, LP, et al. v. SeaWorld Entertainment, Inc., et al.*, Case No. 3:18-cv-01276-MMA-AGS (S.D. Cal.); and (iv) any claims of any person or entity that submitted a request for exclusion as set forth on Appendix 1 to the Stipulation.

40. “Defendants’ Releasees” means (i) Defendants and their attorneys, the Blackstone Funds,<sup>3</sup> and the Former Defendants; (ii) the current and former parents, affiliates, subsidiaries, portfolio entities, successors, predecessors, partners, members, shareholders, assigns, and assignees of each of the foregoing in (i); and (iii) the current and former officers, employees, directors, partners, Immediate Family members, heirs, trusts, trustees, executors, estates, administrators, beneficiaries, agents, affiliates, insurers, reinsurers, predecessors, successors, assigns and advisors of each of the persons or entities listed in (i) and (ii), in their capacities as such.

41. “Unknown Claims” means any Released Plaintiffs’ Claims which Class Representatives or any other Class Member do not know or suspect to exist in his, her, or its favor at the time of the release of such claims, and any Released Defendants’ Claims which any Defendant does not know or suspect to exist in his or its favor at the time of the release of such claims, which, if known by him, her, or it, might have affected his, her, or its decision(s) with respect to this Settlement, including, but not limited to, whether or not to object to the Settlement or to the release of the Released Claims. With respect to any and all Released Claims, the Parties stipulate and agree that, upon the Effective Date of the Settlement, Class Representatives and Defendants shall expressly waive, and each of the Class Members shall be deemed to have, and by operation of the Judgment or the Alternative Judgment, if applicable, shall have, expressly waived, the provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law or foreign law, which is similar, comparable, or equivalent to California Civil Code §1542, which provides:

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

The Parties acknowledge that they may hereafter discover facts in addition to or different from those which he or it or their counsel now knows or believes to be true with respect to the subject matter of the Released Claims, but, upon the Effective Date, Class Representatives and Defendants shall expressly settle and release, and each of the other Class Members shall be deemed to have, and by operation of the Judgment or the Alternate Judgment, if applicable, shall have, settled and released, any and all Released Claims without regard to the subsequent discovery or existence of such different or additional facts. Class Representatives and Defendants acknowledge, and each of the other Class Members shall be deemed by operation of law to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the Settlement.

42. The Judgment will also provide that, upon the Effective Date of the Settlement, Defendants, on behalf of themselves, and their respective heirs, executors, administrators, trusts, trustees, estates, beneficiaries, legatees, insurers, reinsurers, predecessors, successors, and assigns (and assignees of each of the foregoing), in their capacities as such, shall be deemed to have, and by operation of law and of the Judgment shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Defendants’ Claim (as defined in ¶ 43 below) against Class Representatives and the other Plaintiffs’ Releasees (as defined in ¶ 44 below), and shall forever be barred and enjoined from prosecuting any or all of the Released Defendants’ Claims against any of the Plaintiffs’ Releasees. This Release shall not apply to any person or entity who previously submitted a request for exclusion from the Class in connection with the Class Notice as set forth on Appendix 1 to the Stipulation.

<sup>3</sup> The Blackstone Funds are SW Delaware L.P., SW Delaware A L.P., SW Delaware B L.P., SW Delaware C L.P., SW Delaware D L.P., SW Delaware E L.P., SW Delaware F L.P., SW Delaware Co-Invest L.P., SW Delaware (GS) L.P., SW Delaware (GSO) L.P., and SW Cayman Limited.

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43. “Released Defendants’ Claims” means any and all claims, rights, duties, controversies, obligations, demands, actions, debts, sums of money, suits, contracts, agreements, promises, damages, losses, judgments, liabilities, allegations, arguments, and causes of action of every nature and description, whether known claims or Unknown Claims, whether arising under federal, state, local, common, statutory, administrative, or foreign law, or any other law, rule or regulation, at law or in equity, whether class or individual in nature, whether fixed or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, whether matured or unmatured, that arise out of or relate in any way to the institution, prosecution, or settlement of the claims asserted in the Action against Defendants. “Released Defendants’ Claims” do not include any claims relating to the enforcement of the Settlement.

44. “Plaintiffs’ Releasees” means (i) Class Representatives, their attorneys and all other Class Members; (ii) the current and former parents, affiliates, subsidiaries, successors, predecessors, assigns, and assignees of each of the foregoing in (i); and (iii) the current and former officers, directors, Immediate Family members, heirs, trusts, trustees, executors, estates, administrators, beneficiaries, agents, affiliates, insurers, reinsurers, predecessors, successors, assigns, and advisors of each of the persons or entities listed in (i) and (ii), in their capacities as such.

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

45. To be eligible for a payment from the proceeds of the Settlement, you must be a member of the Class and you must timely complete and return the Claim Form with adequate supporting documentation *postmarked (if mailed), or submitted online at [www.SeaWorldSecuritiesLitigation.com](http://www.SeaWorldSecuritiesLitigation.com), no later than July 16, 2020*. You can obtain a copy of the Claim Form on the website, [www.SeaWorldSecuritiesLitigation.com](http://www.SeaWorldSecuritiesLitigation.com), or you may request that a Claim Form be mailed to you by calling the Claims Administrator toll free at 1-877-893-2672, or by emailing the Claims Administrator at [info@SeaWorldSecuritiesLitigation.com](mailto:info@SeaWorldSecuritiesLitigation.com). **Please retain all records of your ownership of and transactions in SeaWorld common stock, as they may be needed to document your Claim.** If you previously requested exclusion from the Class in connection with Class Notice or do not submit a timely and valid Claim Form, you will not be eligible to share in the Net Settlement Fund.

### HOW MUCH WILL MY PAYMENT BE?

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

47. Pursuant to the Settlement, Defendants shall pay or cause to be paid \$65,000,000 in cash. The Settlement Amount will be deposited into an escrow account. The Settlement Amount, plus any interest earned thereon, is referred to as the “Settlement Fund.” If the Settlement is approved by the Court and the Effective Date occurs, the Net Settlement Fund will be distributed to Class Members who submit valid Claim Forms, in accordance with the proposed Plan of Allocation or such other plan of allocation as the Court may approve.

48. The Net Settlement Fund will not be distributed unless and until the Court has approved the Settlement and a plan of allocation and that decision is affirmed on appeal (if any) and/or the time for any petition for rehearing, appeal, or review, whether by certiorari or otherwise, has expired.

49. Neither Defendants nor any other person or entity that paid any portion of the Settlement Amount on their behalf are entitled to get back any portion of the Settlement Fund once the Court’s order or judgment approving the Settlement becomes Final. Defendants and the other Defendants’ Releasees shall not have any liability, obligation, or responsibility for the administration of the Settlement, the disbursement of the Net Settlement Fund, or the Plan of Allocation.

50. Unless the Court otherwise orders, any Class Member who fails to submit a Claim Form postmarked (if mailed), or online, on or before July 16, 2020 shall be fully and forever barred from receiving payments pursuant to the Settlement, but will in all other respects remain a Class Member and be subject to the provisions of the Stipulation, including the terms of any Judgment entered and the Releases given. This means that each Class Member releases the Released Plaintiffs’ Claims (as defined in ¶ 39 above) against the Defendants’ Releasees (as defined in ¶ 40 above) and will be enjoined and prohibited from prosecuting any of the Released Plaintiffs’ Claims against any of the Defendants’ Releasees whether or not such Class Member submits a Claim Form.

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51. Participants in and beneficiaries of any employee retirement and/or benefit plan (“Employee Plan”) should NOT include any information relating to shares of SeaWorld common stock purchased/acquired through an Employee Plan in any Claim Form they submit in the Action. They should include ONLY those eligible shares of SeaWorld common stock purchased/acquired during the Class Period outside of an Employee Plan. Claims based on any Employee Plan(s)’ purchases/acquisitions of eligible SeaWorld common stock during the Class Period may be made by the Employee Plan(s)’ trustees.

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

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

54. Only Class Members or persons authorized to submit a Claim on their behalf will be eligible to share in the distribution of the Net Settlement Fund. Persons and entities that are excluded from the Class by definition or that previously excluded themselves from the Class in connection with the Class Notice will not be eligible to receive a distribution from the Net Settlement Fund and should not submit Claim Forms.

55. **Appendix A to this Notice sets forth the Plan of Allocation for allocating the Net Settlement Fund among Authorized Claimants, as proposed by Class Representatives. At the Settlement Fairness Hearing, Class Counsel will request the Court approve the Plan of Allocation. The Court may modify the Plan of Allocation, or approve a different plan of allocation, without further notice to the Class.**

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

56. Class Counsel, on behalf of all Plaintiffs’ Counsel, will apply to the Court for an award of attorneys’ fees and reimbursement of Litigation Expenses. Class Counsel’s motion for attorneys’ fees will not exceed 22% of the Settlement Fund and their motion for Litigation Expenses will not exceed \$2.8 million in expenses incurred in connection with the prosecution and resolution of the Action, plus interest. Class Counsel’s motion for attorneys’ fees and Litigation Expenses, which may include a request for reimbursement of the reasonable costs and expenses incurred by Class Representatives directly related to their representation of the Class in accordance with 15 U.S.C. § 78u-4(a)(4), in an aggregate amount not to exceed \$150,000, will be filed by June 17, 2020, and the Court will consider Class Counsel’s motion at the Settlement Fairness Hearing. A copy of Class Counsel’s motion for fees and Litigation Expenses will be available for review at [www.SeaWorldSecuritiesLitigation.com](http://www.SeaWorldSecuritiesLitigation.com) once it is filed. Any award of attorneys’ fees and reimbursement of Litigation Expenses, including any reimbursement of costs and expenses to Class Representatives, will be paid from the Settlement Fund prior to allocation and payment to Authorized Claimants. *Class Members are not personally liable for any such attorneys’ fees or expenses.*

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

57. **Class Members do not need to attend the Settlement Fairness Hearing. The Court will consider any submission made in accordance with the provisions below even if a Class Member does not attend the hearing.** Please Note: The date and time of the Settlement Fairness Hearing may change without further written notice to the Class. If you plan on attending the hearing, please check the website, [www.SeaWorldSecuritiesLitigation.com](http://www.SeaWorldSecuritiesLitigation.com), or contact Class Counsel to confirm that the date and/or time of the hearing has not changed.

58. The Settlement Fairness Hearing will be held on **July 22, 2020 at 10:00 a.m.**, before the Honorable Michael M. Anello in Courtroom 3D at the Edward J. Schwartz United States Courthouse, 221 West Broadway, San Diego, CA 92101. The Court reserves the right to approve the Settlement, the Plan of Allocation, Class Counsel’s motion for an award of attorneys’ fees and Litigation Expenses, and/or any other matter related to the Settlement at or after the Settlement Fairness Hearing without further notice to the members of the Class.

59. Any Class Member may object to the Settlement, the Plan of Allocation, and/or Class Counsel’s motion for an award of attorneys’ fees and reimbursement of Litigation Expenses. Objections must be in writing. You must file any written objection, together with copies of all other papers and briefs supporting the objection, with the Clerk’s Office at the United States District Court for the Southern District of California at the address set forth below, as well as serve copies on Class Counsel and Defendants’ Counsel at the addresses set forth below *on or before July 1, 2020.*

**Questions? Call toll free 1-877-893-2672 or visit [www.SeaWorldSecuritiesLitigation.com](http://www.SeaWorldSecuritiesLitigation.com)**

<u><b>Clerk's Office</b></u>	<u><b>Class Counsel</b></u>	<u><b>Defendants' Counsel</b></u>
United States District Court Southern District of California Edward J. Schwartz United States Courthouse 221 West Broadway San Diego, CA 92101	Joshua E. D'Ancona, Esq. Kessler Topaz Meltzer & Check, LLP 280 King of Prussia Road Radnor, PA 19087  Jeffrey J. Angelovich, Esq. Nix Patterson, LLP 3600 N. Capital of Texas Hwy. Suite B350 Austin, TX 78746	<b>Counsel for Defendants SeaWorld Entertainment, Inc., James M. Heaney, Marc Swanson, and The Blackstone Group Inc.</b>  Jonathan K. Youngwood, Esq. Simpson Thacher & Bartlett LLP 425 Lexington Avenue New York, NY 10017  <b>Counsel for Defendant James Atchison</b>  Michael J. Diver, Esq. Katten Muchin Rosenman LLP 525 W. Monroe Street Chicago, IL 60661-3693

60. Any objection, filing, or other submission by the objecting Class Member must: (a) state the name, address, and telephone number of the person or entity objecting and be signed by the objector; (b) state with specificity the grounds for the Class Member's objection, including any legal and evidentiary support the Class Member wishes to bring to the Court's attention and whether the objection applies only to the objector, to a specific subset of the Class, or to the entire Class; and (c) include documents sufficient to prove membership in the Class, *including* the number of shares of SeaWorld publicly traded common stock that the objecting Class Member: (A) owned as of the opening of trading on August 29, 2013, and (B) purchased/acquired and/or sold during the Class Period, as well as the dates, number of shares, and prices of each such purchase/acquisition and sale. The objecting Class Member shall provide documentation establishing membership in the Class through copies of brokerage confirmation slips or monthly brokerage account statements, or an authorized statement from the objector's broker containing the transactional and holding information found in a broker confirmation slip or account statement.

61. **You may not object to the Settlement, Plan of Allocation, and/or Class Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses if you excluded yourself from the Class in connection with the previously disseminated Class Notice and are listed on Appendix 1 to the Stipulation.<sup>4</sup>**

62. You may submit an objection without having to appear at the Settlement Fairness Hearing. You may not, however, appear at the Settlement Fairness Hearing to present your objection unless: (1) you first submit a written objection in accordance with the procedures described above, (2) you first submit your notice of appearance in accordance with the procedures described below, or (3) the Court orders otherwise.

63. If you wish to be heard orally at the hearing in opposition to the approval of the Settlement, the Plan of Allocation, and/or Class Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses, and if you timely submit a written objection as described above, you must also file a notice of appearance with the Clerk's Office and serve it on Class Counsel and Defendants' Counsel at the addresses set forth in ¶ 59 above so that it is **received on or before July 1, 2020**. Persons who intend to object and desire to present evidence at the Settlement Fairness Hearing must include in their written objection or notice of appearance the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the hearing. Such persons may be heard orally at the discretion of the Court.

64. You are not required to hire an attorney to represent you in making written objections or in appearing at the Settlement Fairness Hearing. However, if you decide to hire an attorney, it will be at your own expense, and that attorney must file a notice of appearance with the Court and serve it on Class Counsel and Defendants' Counsel at the addresses set forth in ¶ 59 above so that the notice is **received on or before July 1, 2020**.

<sup>4</sup> As this Class was previously certified and, in connection therewith, Class Members had the opportunity to exclude themselves from the Class, the Court has exercised its discretion not to allow a second opportunity for exclusion in connection with the settlement proceedings.

**Questions? Call toll free 1-877-893-2672 or visit [www.SeaWorldSecuritiesLitigation.com](http://www.SeaWorldSecuritiesLitigation.com)**

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

### WHAT IF I BOUGHT SHARES OF SEAWORLD COMMON STOCK ON SOMEONE ELSE'S BEHALF?

66. **Please Note:** If you previously provided the names and addresses of persons and entities on whose behalf you purchased or otherwise acquired the publicly traded common stock of SeaWorld between August 29, 2013 and August 12, 2014, in connection with the Class Notice, and (i) those names and addresses remain current and (ii) you have no additional names and addresses for potential Class Members to provide to the Claims Administrator, *you need do nothing further at this time*. The Claims Administrator will mail a Postcard Notice to the beneficial owners whose names and addresses were previously provided in connection with the Class Notice. If you elected to mail the Class Notice directly to beneficial owners, you were advised that you must retain the mailing records for use in connection with any further notices that may be provided in the Action. If you elected this option, the Claims Administrator will forward the same number of Postcard Notices to you to send to the beneficial owners. If you require more copies of the Postcard Notice than you previously requested in connection with the Class Notice mailing, please contact the Claims Administrator, Epiq Class Action & Claims Solutions, Inc., toll free at 1-877-893-2672, and let them know how many additional packets you require. You must mail the Postcard Notice to the beneficial owners within seven (7) calendar days of your receipt of the Postcard Notices.

67. If you have not already provided the names and addresses for persons and entities on whose behalf you purchased or otherwise acquired the publicly traded common stock of SeaWorld between August 29, 2013 and August 12, 2014 in connection with the Class Notice, then the Court has ordered that you must, WITHIN SEVEN (7) CALENDAR DAYS OF YOUR RECEIPT OF THIS NOTICE, either: (i) send the Postcard Notice to all beneficial owners of such SeaWorld common stock, or (ii) send a list of the names and addresses of such beneficial owners to the Claims Administrator at *Baker v. SeaWorld Entertainment, Inc., et al.*, c/o Epiq Class Action & Claims Solutions, Inc., P.O. Box 3170, Portland, OR 97208-3170, in which event the Claims Administrator shall promptly mail the Postcard Notice to such beneficial owners. **AS STATED ABOVE, IF YOU HAVE ALREADY PROVIDED THIS INFORMATION IN CONNECTION WITH THE CLASS NOTICE, UNLESS THAT INFORMATION HAS CHANGED (E.G., BENEFICIAL OWNER HAS CHANGED ADDRESS), IT IS UNNECESSARY TO PROVIDE SUCH INFORMATION AGAIN.**

68. Upon full and timely compliance with these directions, nominees who mail the Postcard Notice to beneficial owners may seek reimbursement of their reasonable expenses actually incurred by providing the Claims Administrator with proper documentation supporting the expenses for which reimbursement is sought. Such properly documented expenses incurred by nominees in compliance with these directions shall be paid from the Settlement Fund, with any disputes as to the reasonableness or documentation of expenses incurred subject to review by the Court.

69. Copies of this Notice and the Claim Form may be obtained from the website, [www.SeaWorldSecuritiesLitigation.com](http://www.SeaWorldSecuritiesLitigation.com), by calling the Claims Administrator toll free at 1-877-893-2672, or by emailing the Claims Administrator at [info@SeaWorldSecuritiesLitigation.com](mailto:info@SeaWorldSecuritiesLitigation.com).

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

70. This Notice contains only a summary of the terms of the Settlement. For the terms and conditions of the Settlement, please see the Stipulation available at [www.SeaWorldSecuritiesLitigation.com](http://www.SeaWorldSecuritiesLitigation.com). More detailed information about the matters involved in the Action can be obtained by accessing the Court docket in this case, for a fee, through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.casd.uscourts.gov>, or by visiting, during regular office hours, the Office of the Clerk, United States District Court for the Southern District of California, Edward J. Schwartz United States Courthouse, 221 West Broadway, San Diego, CA 92101. Additionally, copies of any related orders entered by the Court and certain other filings in the Action will be posted on the website, [www.SeaWorldSecuritiesLitigation.com](http://www.SeaWorldSecuritiesLitigation.com).

Questions? Call toll free 1-877-893-2672 or visit [www.SeaWorldSecuritiesLitigation.com](http://www.SeaWorldSecuritiesLitigation.com)

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

*Baker v. SeaWorld Entertainment, Inc., et al.*  
c/o Epiq Class Action & Claims Solutions, Inc.  
P.O. Box 3170  
Portland, OR 97208-3170  
1-877-893-2672  
info@SeaWorldSecuritiesLitigation.com  
[www.SeaWorldSecuritiesLitigation.com](http://www.SeaWorldSecuritiesLitigation.com)

and/or

Joshua E. D'Ancona, Esq.  
**Kessler Topaz Meltzer  
& Check, LLP**  
280 King of Prussia Road  
Radnor, PA 19087  
1-610-667-7706  
info@ktmc.com  
[www.ktmc.com](http://www.ktmc.com)

Jeffrey J. Angelovich, Esq.  
**Nix Patterson, LLP**  
3600 N. Capital of Texas Hwy.  
Suite B350  
Austin, TX 78746  
1-512-328-5333  
[www.nixlaw.com](http://www.nixlaw.com)

**PLEASE DO NOT CALL OR WRITE THE COURT, THE CLERK'S  
OFFICE, DEFENDANTS, OR DEFENDANTS' COUNSEL  
REGARDING THIS NOTICE.**

Dated: April 10, 2020

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

Questions? Call toll free 1-877-893-2672 or visit [www.SeaWorldSecuritiesLitigation.com](http://www.SeaWorldSecuritiesLitigation.com)



## APPENDIX A

### **Proposed Plan of Allocation of Net Settlement Fund Among Authorized Claimants**

The Plan of Allocation set forth herein is the plan that is being proposed to the Court for approval by Class Representatives after consultation with their damages expert. The Court may approve the Plan of Allocation with or without modification, or approve another plan of allocation, without further notice to the Class. Any Orders regarding a modification of the Plan of Allocation will be posted on the website [www.SeaWorldSecuritiesLitigation.com](http://www.SeaWorldSecuritiesLitigation.com). Defendants have had, and will have, no involvement or responsibility for the terms or application of the Plan of Allocation.

The objective of the proposed Plan of Allocation is to equitably distribute the Net Settlement Fund among those Class Members who suffered economic losses as a result of the alleged violations of the federal securities laws set forth in the Second Amended Complaint, as opposed to economic losses caused by market or industry factors or company-specific factors unrelated thereto. To that end, Class Representatives' damages expert calculated the estimated amount of alleged artificial inflation in the per share price of SeaWorld common stock over the course of the Class Period that was allegedly proximately caused by Defendants' alleged materially false and misleading misrepresentations and omissions.

Calculations made pursuant to the Plan of Allocation do not represent a formal damages analysis that has been adjudicated in the Action and are not intended to measure the amounts that Class Members would recover after a trial. Nor are these calculations intended to be estimates of the amounts that will be paid to Authorized Claimants pursuant to the Settlement. The computations under the Plan of Allocation are only a method to weigh the claims of Authorized Claimants against one another for the purposes of making *pro rata* allocations of the Net Settlement Fund.

For losses to be compensable damages under the federal securities laws, the disclosure of the allegedly misrepresented information must be the cause of the decline in the price of the security. Accordingly, to have a "Recognized Loss Amount" pursuant to the Plan of Allocation, a person or entity must have purchased or otherwise acquired SeaWorld publicly traded common stock during the Class Period (i.e., between August 29, 2013 and August 12, 2014) and *held such SeaWorld common stock through* the alleged corrective disclosure on August 13, 2014 that removed the alleged artificial inflation related to that information.<sup>5</sup>

### **CALCULATION OF RECOGNIZED LOSS AMOUNTS**

1. For purposes of determining whether a Claimant has a "Recognized Claim," purchases, acquisitions, and sales of SeaWorld common stock will first be matched on a First In, First Out ("FIFO") basis as set forth in ¶ 5 below.
2. A "Recognized Loss Amount" will be calculated as set forth below for each share of SeaWorld common stock purchased or otherwise acquired between August 29, 2013 and August 12, 2014, that is listed in the Claim Form and for which adequate documentation is provided. To the extent that the calculation of a Claimant's Recognized Loss Amount results in a negative number, that number shall be set to zero. The sum of a Claimant's Recognized Loss Amounts will be the Claimant's "Recognized Claim."
3. A Claimant's Recognized Loss Amount will be calculated as follows:
  - a. For each share of SeaWorld common stock purchased or otherwise acquired during the Class Period and subsequently sold prior to the opening of trading on August 13, 2014 (the date of the alleged corrective disclosure), the Recognized Loss Amount is \$0.

<sup>5</sup> Before the opening of trading on August 13, 2014, the Company announced, "attendance in the quarter was impacted by demand pressures related to recent media attention surrounding proposed legislation in the state of California." Class Representatives alleged that in response to the August 13, 2014 disclosure, SeaWorld's common stock price declined \$9.25 per share, or nearly 33%, from a closing price of \$28.15 per share on August 12, 2014, to a closing price of \$18.90 per share on August 13, 2014. *See* Second Amended Complaint ¶16.

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- b. For each share of SeaWorld common stock purchased or otherwise acquired during the Class Period and sold after the opening of trading on August 13, 2014, and before the close of trading on November 10, 2014,<sup>6</sup> the Recognized Loss Amount shall be *the least of*:
  - i. \$7.52 (the dollar amount of alleged artificial inflation) per share; or
  - ii. the actual purchase/acquisition price of each share (excluding taxes, commissions, and fees) *minus* the 90-day Look-Back Value as set forth in **Table 1** below; or
  - iii. the Out of Pocket Loss, calculated as the actual purchase/acquisition price per share (excluding taxes, commissions, and fees) *minus* the actual sale price per share (excluding taxes, commissions, and fees).<sup>7</sup>
- c. For each share of SeaWorld common stock held as of the close of trading on November 10, 2014 (i.e., the last day of the 90-day Look-Back Period), the Recognized Loss Amount shall be *the lesser of*:
  - i. \$7.52 (the dollar amount of alleged artificial inflation) per share; or
  - ii. the actual purchase/acquisition price of each share (excluding taxes, commissions, and fees) *minus* \$19.34 (the average closing price of SeaWorld common stock during the 90-day Look-Back Period (i.e., August 13, 2014 through November 10, 2014), as shown on the last line in **Table 1** below).

#### **ADDITIONAL PROVISIONS**

4. The Net Settlement Fund will be allocated among all Authorized Claimants whose Distribution Amount (defined in ¶9 below) is \$10.00 or greater.

5. If a Class Member has more than one purchase/acquisition or sale of SeaWorld common stock during the Class Period, all purchases/acquisitions and sales shall be matched on a FIFO basis. Class Period sales will be matched first against any holdings of SeaWorld common stock at the beginning of the Class Period, and then against purchases/acquisitions of SeaWorld common stock, in chronological order, beginning with the earliest purchase/acquisition made during the Class Period.

6. Purchases/acquisitions and sales of SeaWorld common stock shall be deemed to have occurred on the “contract” or “trade” date as opposed to the “settlement” or “payment” date. The receipt or grant by gift, inheritance, or operation of law of SeaWorld common stock during the Class Period, shall not be deemed a purchase, acquisition, or sale of the SeaWorld common stock for the calculation of an Authorized Claimant’s Recognized Claim, nor shall the receipt or grant be deemed an assignment of any claim relating to the purchase/acquisition of such SeaWorld common stock unless: (i) the donor or decedent purchased or otherwise acquired such SeaWorld common stock during the Class Period; (ii) no Claim Form was submitted by or on behalf of the donor, on behalf of the decedent, or by anyone else with respect to such SeaWorld common stock; and (iii) it is specifically so provided in the instrument of gift or assignment.

7. The date of covering a “short sale” is deemed to be the date of purchase or acquisition of the SeaWorld common stock. The date of a “short sale” is deemed to be the date of sale of the SeaWorld common stock. In accordance with the Plan of Allocation, however, the Recognized Loss Amount on “short sales” is zero. In the event that a Claimant has an opening short position in SeaWorld common stock, the earliest purchases or acquisitions during the Class Period shall be matched against such opening short position and not be entitled to a recovery until that short position is fully covered.

<sup>6</sup> November 10, 2014 represents the last day of the 90-day period subsequent to the end of the Class Period, i.e., August 12, 2014 (the “90-day Look-Back Period;” the period of August 13, 2014 through November 10, 2014). The PSLRA imposes a statutory limitation on recoverable damages using the 90-day Look-Back Period. This limitation is incorporated into the calculation of a Class Member’s Recognized Loss Amount. Specifically, a Class Member’s Recognized Loss Amount cannot exceed the difference between the purchase price paid for the SeaWorld common stock and the average price of SeaWorld common stock during the 90-day Look-Back Period if the SeaWorld common stock was held through November 10, 2014, the end of this period. Losses on SeaWorld common stock purchased/acquired during the period between August 29, 2013 and August 12, 2014, and sold during the 90-day Look-Back Period cannot exceed the difference between the purchase price paid for the SeaWorld common stock and the average price of SeaWorld common stock during the portion of the 90-day Look-Back Period elapsed as of the date of sale (the “90-day Look-Back Value”), as set forth in **Table 1** below.

<sup>7</sup> To the extent that the calculation of an Out of Pocket Loss results in a negative number reflecting a gain on the transaction, that number shall be set to zero.

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8. SeaWorld publicly traded common stock is the only security eligible for recovery under the Plan of Allocation. Option contracts to purchase or sell SeaWorld common stock also are not securities eligible to participate in the Settlement. With respect to SeaWorld common stock purchased or sold through the exercise of an option, the purchase/sale date of the SeaWorld common stock is the exercise date of the option and the purchase/sale price is the exercise price of the option. Any Recognized Loss Amount arising from purchases of SeaWorld common stock acquired during the Class Period through the exercise of an option on SeaWorld common stock<sup>8</sup> shall be computed as provided for other purchases of SeaWorld common stock in the Plan of Allocation.

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

10. After the initial distribution of the Net Settlement Fund, the Claims Administrator will make reasonable and diligent efforts to have Authorized Claimants cash their distribution checks. To the extent any monies remain in the Net Settlement Fund by reason of uncashed checks, or otherwise, nine (9) months after the initial distribution, if Class Counsel, in consultation with the Claims Administrator, determine that it is cost-effective to do so, the Claims Administrator will conduct a re-distribution of the funds remaining after payment of any unpaid fees and expenses incurred in administering the Settlement, including for such re-distribution, to Authorized Claimants who have cashed their initial distributions and who would receive at least \$10.00 from such re-distribution. Additional re-distributions may occur thereafter if Class Counsel, in consultation with the Claims Administrator, determine that additional re-distributions, after deduction of any additional fees and expenses incurred in administering the Settlement, including for such re-distributions, would be cost-effective. At such time as it is determined that the re-distribution of funds remaining in the Net Settlement Fund is not cost-effective, the remaining balance shall be contributed to non-sectarian, not-for-profit organization(s), to be recommended by Class Counsel and approved by the Court.

11. Payment pursuant to the Plan of Allocation, or such other plan of allocation as may be approved by the Court, shall be conclusive against all Authorized Claimants. No person shall have any claim against Class Representatives, Plaintiffs’ Counsel, Class Representatives’ damages expert, Defendants, Defendants’ Counsel, any of the other Plaintiffs’ Releasees or Defendants’ Releasees, or the Claims Administrator or other agent designated by Class Counsel arising from distributions made substantially in accordance with the Stipulation, the Plan of Allocation approved by the Court, or further orders of the Court. Class Representatives, Defendants, and their respective counsel, and all other Defendants’ Releasees, shall have no responsibility or liability whatsoever for the investment or distribution of the Settlement Fund or the Net Settlement Fund; the Plan of Allocation; the determination, administration, calculation, or payment of any Claim Form or nonperformance of the Claims Administrator; the payment or withholding of Taxes; or any losses incurred in connection therewith.

<sup>8</sup> This includes (1) purchases of SeaWorld common stock as the result of the exercise of a call option, and (2) purchases of SeaWorld common stock by the seller of a put option as a result of the buyer of such put option exercising that put option.

**Table 1**  
**SeaWorld Common Stock 90-Day Look-Back Value**  
**by Sale/Disposition Date**

<b>Sale Date</b>	<b>90-Day Look-Back Value</b>	<b>Sale Date</b>	<b>90-Day Look-Back Value</b>
8/13/2014	\$18.90	9/29/2014	\$20.05
8/14/2014	\$18.45	9/30/2014	\$20.02
8/15/2014	\$18.52	10/1/2014	\$19.99
8/18/2014	\$18.62	10/2/2014	\$19.96
8/19/2014	\$18.63	10/3/2014	\$19.93
8/20/2014	\$18.69	10/6/2014	\$19.91
8/21/2014	\$18.73	10/7/2014	\$19.87
8/22/2014	\$18.92	10/8/2014	\$19.85
8/25/2014	\$19.06	10/9/2014	\$19.81
8/26/2014	\$19.20	10/10/2014	\$19.78
8/27/2014	\$19.35	10/13/2014	\$19.74
8/28/2014	\$19.45	10/14/2014	\$19.70
8/29/2014	\$19.55	10/15/2014	\$19.66
9/2/2014	\$19.62	10/16/2014	\$19.62
9/3/2014	\$19.66	10/17/2014	\$19.58
9/4/2014	\$19.70	10/20/2014	\$19.54
9/5/2014	\$19.74	10/21/2014	\$19.51
9/8/2014	\$19.79	10/22/2014	\$19.48
9/9/2014	\$19.82	10/23/2014	\$19.46
9/10/2014	\$19.87	10/24/2014	\$19.45
9/11/2014	\$19.92	10/27/2014	\$19.43
9/12/2014	\$19.95	10/28/2014	\$19.42
9/15/2014	\$19.98	10/29/2014	\$19.42
9/16/2014	\$20.00	10/30/2014	\$19.41
9/17/2014	\$20.02	10/31/2014	\$19.40
9/18/2014	\$20.04	11/3/2014	\$19.40
9/19/2014	\$20.06	11/4/2014	\$19.39
9/22/2014	\$20.07	11/5/2014	\$19.37
9/23/2014	\$20.07	11/6/2014	\$19.37
9/24/2014	\$20.08	11/7/2014	\$19.35
9/25/2014	\$20.07	11/10/2014	\$19.34
9/26/2014	\$20.06		

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*Baker v. SeaWorld Entertainment, Inc., et al.*  
c/o Epiq Class Action & Claims Solutions, Inc.  
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Website: [www.SeaWorldSecuritiesLitigation.com](http://www.SeaWorldSecuritiesLitigation.com)

**PROOF OF CLAIM AND RELEASE FORM**

To be eligible to receive a share of the Net Settlement Fund in connection with the proposed Settlement, you must complete and sign this Proof of Claim and Release Form (“Claim Form”) and mail it by First-Class Mail to the above address, or submit it online at [www.SeaWorldSecuritiesLitigation.com](http://www.SeaWorldSecuritiesLitigation.com), **postmarked (or received) no later than July 16, 2020.**

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

**Do not mail or deliver your Claim Form to the Court, the Parties to the Action, or their counsel. Submit your Claim Form only to the Claims Administrator at the address set forth above, or online at [www.SeaWorldSecuritiesLitigation.com](http://www.SeaWorldSecuritiesLitigation.com).**

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**PART I – GENERAL INSTRUCTIONS**

1. It is important that you completely read and understand the Notice of (I) Proposed Settlement; (II) Settlement Fairness Hearing; and (III) Motion for Attorneys’ Fees and Litigation Expenses (“Notice”), including the proposed Plan of Allocation set forth therein. The Notice is available for download on the website [www.SeaWorldSecuritiesLitigation.com](http://www.SeaWorldSecuritiesLitigation.com). The Notice describes the proposed Settlement, how Class Members are affected by the Settlement, and the manner in which the Net Settlement Fund will be distributed if the Settlement and Plan of Allocation are approved by the Court. The Notice also contains the definitions of many of the defined terms (which are indicated by initial capital letters) used in this Claim Form. By signing and submitting this Claim Form, you will be certifying that you have read and that you understand the Notice, including the terms of the Releases described therein and provided for herein.

2. This Claim Form is directed to **all persons and entities who purchased or otherwise acquired the publicly traded common stock of SeaWorld Entertainment, Inc. (“SeaWorld”) between August 29, 2013 and August 12, 2014, who did not sell such acquired securities before August 13, 2014, and were damaged (“Class”).** Certain persons and entities are excluded from the Class by definition as set forth in ¶ 30 of the Notice.

3. By submitting this Claim Form, you are making a request to share in the proceeds of the Settlement described in the Notice. **IF YOU ARE NOT A CLASS MEMBER** (*see* definition of Class set forth in ¶ 30 of the Notice), **OR IF YOU SUBMITTED A REQUEST FOR EXCLUSION FROM THE CLASS IN CONNECTION WITH THE PREVIOUSLY DISSEMINATED CLASS NOTICE AND ARE LISTED ON APPENDIX 1 TO THE STIPULATION, DO NOT SUBMIT A CLAIM FORM AS YOU MAY NOT, DIRECTLY OR INDIRECTLY, PARTICIPATE IN THE SETTLEMENT.** **THUS, IF YOU ARE EXCLUDED FROM THE CLASS, ANY CLAIM FORM THAT YOU SUBMIT, OR THAT MAY BE SUBMITTED ON YOUR BEHALF, WILL NOT BE ACCEPTED.**

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

Questions? Call 1-877-893-2672 or visit [www.SeaWorldSecuritiesLitigation.com](http://www.SeaWorldSecuritiesLitigation.com)



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

6. **Please note:** Only SeaWorld common stock purchased or otherwise acquired during the Class Period (*i.e.*, between August 29, 2013 and August 12, 2014), is eligible under the Settlement. However, pursuant to the “90-day Look-Back Period” (described in the Plan of Allocation set forth in the Notice), your sales of SeaWorld common stock during the period from August 13, 2014 through and including the close of trading on November 10, 2014 will be used for purposes of calculating loss amounts under the Plan of Allocation. Therefore, in order for the Claims Administrator to be able to balance your claim, the requested purchase information during the 90-day Look-Back Period must also be provided. **Failure to report all transaction and holding information during the requested time periods may result in the rejection of your claim.**

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

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

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

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

- (a) expressly state the capacity in which they are acting;
- (b) identify the name, account number, last four digits of the Social Security Number (or Taxpayer Identification Number), address, and telephone number of the beneficial owner of the SeaWorld common stock (or other person or entity on whose behalf they are acting with respect to); and
- (c) furnish herewith evidence of their authority to bind to the Claim Form the person or entity on whose behalf they are acting. (Authority to complete and sign a Claim Form cannot be established by stockbrokers demonstrating only that they have discretionary authority to trade securities in another person’s accounts.)

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

Questions? Call 1-877-893-2672 or visit [www.SeaWorldSecuritiesLitigation.com](http://www.SeaWorldSecuritiesLitigation.com)

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

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

14. If you have questions concerning the Claim Form, or need additional copies of the Claim Form or a copy of the Notice, you may contact the Claims Administrator, Epiq Class Action & Claims Solutions, Inc., at the above address, by email at [info@SeaWorldSecuritiesLitigation.com](mailto:info@SeaWorldSecuritiesLitigation.com), or by toll free phone at 1-877-893-2672, or you can visit the website, [www.SeaWorldSecuritiesLitigation.com](http://www.SeaWorldSecuritiesLitigation.com), where copies of the Claim Form and Notice are available for downloading.

15. **NOTICE REGARDING ELECTRONIC FILES:** Certain Claimants with large numbers of transactions may request, or may be requested, to submit information regarding their transactions in electronic files. To obtain the *mandatory* electronic filing requirements and file layout, you may visit the website, [www.SeaWorldSecuritiesLitigation.com](http://www.SeaWorldSecuritiesLitigation.com), or you may email the Claims Administrator's electronic filing department at [info@SeaWorldSecuritiesLitigation.com](mailto:info@SeaWorldSecuritiesLitigation.com). **Any file submitted that is not in accordance with the required electronic filing format will be subject to rejection.** No electronic files will be considered to have been properly submitted unless the Claims Administrator issues an email to you to that effect. **Do not assume that your file has been received until you receive this email. If you do not receive such an email within 10 days of your submission, you should contact the Claims Administrator's electronic filing department at [info@SeaWorldSecuritiesLitigation.com](mailto:info@SeaWorldSecuritiesLitigation.com) to inquire about your file and confirm it was received.**

**IMPORTANT PLEASE NOTE:**

**YOUR CLAIM IS NOT DEEMED FILED UNTIL YOU RECEIVE AN ACKNOWLEDGEMENT POSTCARD. THE CLAIMS ADMINISTRATOR WILL ACKNOWLEDGE RECEIPT OF YOUR CLAIM FORM BY MAIL WITHIN 60 DAYS. IF YOU DO NOT RECEIVE AN ACKNOWLEDGEMENT POSTCARD WITHIN 60 DAYS, CALL THE CLAIMS ADMINISTRATOR TOLL FREE AT 1-877-893-2672.**

Questions? Call 1-877-893-2672 or visit [www.SeaWorldSecuritiesLitigation.com](http://www.SeaWorldSecuritiesLitigation.com)

**PART II – CLAIMANT IDENTIFICATION**

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

Beneficial Owner's First Name	MI	Beneficial Owner's Last Name
<input type="text"/>	<input type="text"/>	<input type="text"/>

Co-Beneficial Owner's First Name	MI	Co-Beneficial Owner's Last Name
<input type="text"/>	<input type="text"/>	<input type="text"/>

Entity Name (if Claimant is not an individual)

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

Address (street name and number)

Address (apartment, unit, or box number)

City	State	ZIP Code
<input type="text"/>	<input type="text"/>	<input type="text"/>

Country (if not USA)

Last four digits of Social Security Number or Taxpayer Identification Number

Telephone Number (home)	Telephone Number (work)
<input type="text"/> - <input type="text"/> - <input type="text"/>	<input type="text"/> - <input type="text"/> - <input type="text"/>

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

Account Number (where securities were traded)<sup>1</sup>

Claimant Account Type (check appropriate box):

- Individual (includes joint owner accounts)       C Corporation       S Corporation
- Trust/Estate       Partnership
- Other \_\_\_\_\_ (please specify)
- Limited Liability Company—choose tax classification
  - C Corporation       S Corporation       Partnership

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

**Questions? Call 1-877-893-2672 or visit [www.SeaWorldSecuritiesLitigation.com](http://www.SeaWorldSecuritiesLitigation.com)**



**PART IV - RELEASE OF CLAIMS AND SIGNATURE**

**YOU MUST ALSO READ THE RELEASE AND CERTIFICATION BELOW AND SIGN ON PAGE 7 OF THIS CLAIM FORM.**

I (we) hereby acknowledge that, pursuant to the terms set forth in the Stipulation and Agreement of Settlement dated February 10, 2020, without further action by anyone, upon the Effective Date of the Settlement, I (we), on behalf of myself (ourselves) and my (our) heirs, executors, administrators, trusts, trustees, estates, beneficiaries, legatees, insurers, reinsurers, predecessors, successors, and assigns (and assignees of each of the foregoing), in their capacities as such, shall be deemed to have, and by operation of law and of the Judgment shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Plaintiffs' Claim against Defendants and the other Defendants' Releasees, and shall forever be barred and enjoined from prosecuting any or all of the Released Plaintiffs' Claims against any of the Defendants' Releasees.

**CERTIFICATION**

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

1. that I (we) have read and understand the contents of the Notice and this Claim Form, including the Releases provided for in the Settlement and the terms of the Plan of Allocation;
2. that the Claimant(s) is a (are) member(s) of the Class, as defined in the Notice, and is (are) not excluded by definition from the Class as set forth in the Notice;
3. that the Claimant(s) did not submit a request for exclusion from the Class in connection with the previously disseminated Class Notice;
4. that I (we) own(ed) the SeaWorld publicly traded common stock identified in the Claim Form and have not assigned the claim against Defendants or any of the other Defendants' Releasees to another, or that, in signing and submitting this Claim Form, I (we) have the authority to act on behalf of the owner(s) thereof;
5. that the Claimant(s) has (have) not submitted any other claim covering the same purchases/acquisitions of SeaWorld publicly traded common stock and knows (know) of no other person having done so on the Claimant's (Claimants') behalf;
6. that the Claimant(s) submit(s) to the jurisdiction of the Court with respect to the Claimant's (Claimants') claim and for purposes of enforcing the Releases set forth herein;
7. that I (we) agree to furnish such additional information with respect to this Claim Form as Class Counsel, the Claims Administrator, or the Court may require;
8. that the Claimant(s) waive(s) the right to trial by jury, to the extent it exists, agree(s) to the determination by the Court of the validity or amount of this Claim and waives any right of appeal or review with respect to such determination;
9. that I (we) acknowledge that the Claimant(s) will be bound by and subject to the terms of any judgment(s) that may be entered in the Action; and
10. that the Claimant(s) is (are) NOT subject to backup withholding under the provisions of Section 3406(a)(1)(C) of the Internal Revenue Code because (a) the Claimant(s) is (are) exempt from backup withholding or (b) the Claimant(s) has (have) not been notified by the IRS that he/she/it/they is (are) subject to backup withholding as a result of a failure to report all interest or dividends or (c) the IRS has notified the Claimant(s) that he/she/it/they is (are) no longer subject to backup withholding. **If the IRS has notified the Claimant(s) that he/she/it/they is (are) subject to backup withholding, please strike out the language in the preceding sentence indicating that the claim is not subject to backup withholding in the certification above.**

Questions? Call 1-877-893-2672 or visit [www.SeaWorldSecuritiesLitigation.com](http://www.SeaWorldSecuritiesLitigation.com)



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

Signature of Claimant

Date   -   -    
MM DD YY

Print Claimant name here

Date   -   -    
MM DD YY

Signature of joint Claimant, if any

Date   -   -    
MM DD YY

Print joint Claimant name here

Date   -   -    
MM DD YY

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

Signature of person signing on behalf of Claimant

Date   -   -    
MM DD YY

Print name of person signing on behalf of Claimant here

Date   -   -    
MM DD YY

Capacity of person signing on behalf of Claimant, if other than an individual, e.g., executor, president, trustee, custodian, etc. (Must provide evidence of authority to act on behalf of Claimant – see ¶ 10 on page 2 of this Claim Form.)

Questions? Call 1-877-893-2672 or visit [www.SeaWorldSecuritiesLitigation.com](http://www.SeaWorldSecuritiesLitigation.com)

**REMINDER CHECKLIST**

1. Sign the above release and certification. If this Claim Form is being made on behalf of joint Claimants, then both must sign.
2. Attach only **copies** of acceptable supporting documentation as these documents will not be returned to you.
3. Do not highlight any portion of the Claim Form or any supporting documents.
4. Keep copies of the completed Claim Form and any supporting documentation for your own records.
5. The Claims Administrator will acknowledge receipt of your Claim Form by mail, within 60 days. Your claim is not deemed filed until you receive an acknowledgement postcard. **If you do not receive an acknowledgement postcard within 60 days, please call the Claims Administrator toll free at 1-877-893-2672.**
6. If your address changes in the future, you must send the Claims Administrator written notification of your new address. If you change your name, inform the Claims Administrator.
7. If you have any questions or concerns regarding your claim, please contact the Claims Administrator at the address below, by email at [info@SeaWorldSecuritiesLitigation.com](mailto:info@SeaWorldSecuritiesLitigation.com), or by toll free phone at 1-877-893-2672, or you may visit the website, [www.SeaWorldSecuritiesLitigation.com](http://www.SeaWorldSecuritiesLitigation.com). DO NOT call the Court, Defendants, or Defendants' Counsel with questions regarding your claim.

**THIS CLAIM FORM MUST BE MAILED TO THE CLAIMS ADMINISTRATOR BY FIRST-CLASS MAIL, OR SUBMITTED ONLINE AT [WWW.SEAWORLDSECURITIESLITIGATION.COM](http://WWW.SEAWORLDSECURITIESLITIGATION.COM), POSTMARKED (OR RECEIVED) NO LATER THAN JULY 16, 2020. IF MAILED, THE CLAIM FORM SHOULD BE ADDRESSED AS FOLLOWS:**

***Baker v. SeaWorld Entertainment, Inc., et al.***  
**c/o Epiq Class Action & Claims Solutions, Inc.**  
**P.O. Box 3170**  
**Portland, OR 97208-3170**

If mailed, a Claim Form received by the Claims Administrator shall be deemed to have been submitted when posted, if a postmark date on or before July 16, 2020, is indicated on the envelope and it is mailed First-Class, and addressed in accordance with the above instructions. In all other cases, a Claim Form shall be deemed to have been submitted when actually received by the Claims Administrator.

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

**Questions? Call 1-877-893-2672 or visit [www.SeaWorldSecuritiesLitigation.com](http://www.SeaWorldSecuritiesLitigation.com)**

***EXHIBIT C***

## CONFIRMATION OF PUBLICATION

IN THE MATTER OF: *SeaWorld Securities Litigation*

I, Kathleen Komraus, hereby certify that

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

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

*4.13.2020 – Investor’s Business Daily*  
*4.13.2020 – PR Newswire*

x *Kathleen Komraus*  
(Signature)

*Media & Design Manager*  
(Title)

INVES OR'S BUSINESS DAILY

MU UAL FUND PERFORMANCE

WEEK OF APRIL 13, 2020 A11

Table with columns for Small-Cap Growth Funds vs. Big-Cap Growth Funds, Growth Funds vs. Value Funds, and Growth Funds vs. Growth Funds. Includes fund names, performance metrics, and dates.

op Growth Funds

Table listing top performing op Growth Funds with columns for Fund Name, Performance Rating, and Assets.

op Growth Funds

Table listing top performing op Growth Funds with columns for Fund Name, Performance Rating, and Assets.

U.S. Stock Cash Position

Table showing U.S. Stock Cash Position with columns for Month, % Change, and % of Assets.

U.S. Stock Cash Position

Table showing U.S. Stock Cash Position with columns for Month, % Change, and % of Assets.

U.S. Stock Cash Position

Large table listing various U.S. Stock Cash Positions with columns for Fund Name, Performance Rating, and Assets.

U.S. Stock Cash Position

Large table listing various U.S. Stock Cash Positions with columns for Fund Name, Performance Rating, and Assets.

U.S. Stock Cash Position

Large table listing various U.S. Stock Cash Positions with columns for Fund Name, Performance Rating, and Assets.

U.S. Stock Cash Position

Large table listing various U.S. Stock Cash Positions with columns for Fund Name, Performance Rating, and Assets.

NOTICE OF OFFER TO PURCHASE FOR CASH

Up to 1,000,000 Shares of common stock of Hines Global REIT, Inc. (the "Company") by MacKenzie Real Capital, Inc. (collectively the "Purchasers")

This announcement is neither an offer to buy nor a solicitation of an offer to sell Shares. The Offer is being made solely by the Offeror.

For copies of the Tender Offer Documents, call CTT at 1-800-337-9990, make a written request addressed to 365 S. Grand Avenue, Suite 1000, Pleasanton, CA 94566.

For copies of the Tender Offer Documents, call CTT at 1-800-337-9990, make a written request addressed to 365 S. Grand Avenue, Suite 1000, Pleasanton, CA 94566.

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# Kessler Topaz Meltzer & Check, LLP and Nix Patterson LLP Announce Proposed Settlement Involving Purchasers of SeaWorld Entertainment, Inc. Common Stock

NEWS PROVIDED BY  
**Kessler Topaz Meltzer & Check, LLP and Nix Patterson LLP** →  
Apr 13, 2020, 08:00 ET

SAN DIEGO, April 13, 2020 /PRNewswire/ --

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

LOU BAKER, individually and on  
behalf of all others similarly situated,

Plaintiff,

vs.

SEAWORLD ENTERTAINMENT,  
INC., et al.,

Defendants.

Case No.: 3:14-cv-2129-MMA-AGS

CLASS ACTION

**SUMMARY NOTICE OF (I) PROPOSED SETTLEMENT;  
(II) SETTLEMENT FAIRNESS HEARING; AND (III) MOTION FOR  
ATTORNEYS' FEES AND LITIGATION EXPENSES**

**TO: All persons and entities who purchased or otherwise acquired the publicly traded common stock of SeaWorld Entertainment, Inc. ("SeaWorld") between August 29, 2013 and August 12, 2014, who did not sell such acquired securities before August 13, 2014, and were damaged ("Class").** Certain persons and entities are excluded from the Class as set forth in detail in the Stipulation and Agreement of Settlement dated February 10, 2020 ("Stipulation") and the Notice described below.

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

YOU ARE HEREBY NOTIFIED, pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the United States District Court for the Southern District of California ("Court"), that the Court-appointed Class Representatives Arkansas Public Employees Retirement System and Pensionskassen For Børne-Og Ungdomspædagoger (together, "Class Representatives"), on behalf of themselves and the Court-certified Class in the above-captioned securities class action ("Action"), have reached a proposed settlement of the Action with defendants SeaWorld, The Blackstone Group L.P. (now known as The Blackstone Group Inc.), James Atchison, James M. Heaney, and Marc Swanson (collectively, "Defendants"), for \$65,000,000 in cash that, if approved, will resolve all claims in the Action.

A hearing will be held on **July 22, 2020 at 10:00 a.m.**, before the Honorable Michael M. Anello in Courtroom 3D at the Edward J. Schwartz United States Courthouse, 221 West Broadway, San Diego, CA 92101, to determine whether: (i) the proposed Settlement should be approved as fair, reasonable, and adequate; (ii) the Action should be dismissed with prejudice against Defendants, and the releases specified and described in the Stipulation (and in the Notice described below) should be entered; (iii) the proposed Plan of Allocation should be approved as fair and reasonable; and (iv) Class Counsel's motion for an award of attorneys' fees and reimbursement of litigation expenses should be approved.

**If you are a member of the Class, your rights will be affected by the pending Action and the Settlement, and you may be entitled to share in the Settlement Fund.** This notice provides only a summary of the information contained in the detailed Notice of (I) Proposed Settlement; (II) Settlement Fairness Hearing; and (III) Motion for Attorneys' Fees and Litigation Expenses ("Notice"). You may obtain a copy of the Notice, along with the Claim Form, on the website for the Action, [www.SeaWorldSecuritiesLitigation.com](http://www.SeaWorldSecuritiesLitigation.com). You may also obtain a copy of the Notice and Claim Form by writing to the Claims Administrator at *Baker v. SeaWorld Entertainment, Inc., et al., c/o Epiq Class Action & Claims Solutions, Inc.*, P.O. Box 3170, Portland, OR 97208-3170; by calling toll free 1-877-893-2672; or by sending an email to [info@SeaWorldSecuritiesLitigation.com](mailto:info@SeaWorldSecuritiesLitigation.com).

If you are a member of the Class, in order to be eligible to receive a payment under the proposed Settlement, you must submit a Claim Form **postmarked (if mailed), or online at [www.SeaWorldSecuritiesLitigation.com](http://www.SeaWorldSecuritiesLitigation.com), no later than July 16, 2020**, in accordance with the instructions set forth in the Claim Form. If you are a Class Member and do not submit a proper Claim Form, you will not be eligible to share in the distribution of the net proceeds of the Settlement, but you will nevertheless be bound by any releases, judgments, or orders entered by the Court in the Action.

Any objections to the proposed Settlement, the proposed Plan of Allocation, and/or Class Counsel's motion for an award of attorneys' fees and reimbursement of litigation expenses, must be filed with the Court and delivered to Class Counsel and Defendants' Counsel such that they are **received no later than July 1, 2020**, in accordance with the instructions set forth in the Notice. As this Class was previously certified and, in connection therewith, Class Members had the opportunity to exclude themselves from the Class, the Court has exercised its discretion not to allow a second opportunity for exclusion in connection with the settlement proceedings.

**PLEASE DO NOT CONTACT THE COURT, THE CLERK'S OFFICE, DEFENDANTS, OR DEFENDANTS' COUNSEL REGARDING THIS NOTICE.** All questions about this notice, the Settlement, or your eligibility to participate in the Settlement should be directed to the Claims Administrator or Class Counsel.

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

c/o Epiq Class Action & Claims Solutions, Inc.

P.O. Box 3170

Portland, OR 97208-3170

1-877-893-2672

[info@SeaWorldSecuritiesLitigation.com](mailto:info@SeaWorldSecuritiesLitigation.com)

[www.SeaWorldSecuritiesLitigation.com](http://www.SeaWorldSecuritiesLitigation.com)

All other inquiries should be made to Class Counsel:

Joshua E. D'Ancona, Esq.  
Kessler Topaz Meltzer & Check, LLP  
280 King of Prussia Road  
Radnor, PA 19087  
1-610-667-7706  
[info@ktmc.com](mailto:info@ktmc.com)  
[www.ktmc.com](http://www.ktmc.com)

Jeffrey J. Angelovich, Esq.  
Nix Patterson, LLP  
3600 N. Capital of Texas Hwy.  
Suite B350  
Austin, TX 78746  
1-512-328-5333  
[www.nixlaw.com](http://www.nixlaw.com)

DATED: April 13, 2020 BY ORDER OF THE COURT  
United States District Court  
Southern District of California

SOURCE Kessler Topaz Meltzer & Check, LLP and Nix Patterson LLP

Related Links

<http://www.seaworldsecuritieslitigation.com/>

# **EXHIBIT 4**

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

LOU BAKER, Individually and on  
Behalf of All Others Similarly Situated,

Plaintiff,

vs.

SEAWORLD ENTERTAINMENT,  
INC., et al.,

Defendants.

Case No. 3:14-cv-02129-MMA-AGS

**CLASS ACTION**

**DECLARATION OF JOSHUA E.  
D’ANCONA IN SUPPORT OF CLASS  
COUNSEL’S MOTION FOR  
ATTORNEYS’ FEES AND  
LITIGATION EXPENSES FILED ON  
BEHALF OF KESSLER TOPAZ  
MELTZER & CHECK, LLP**



1 I, Joshua E. D’Ancona, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

2 1. I am a partner in the law firm of Kessler Topaz Meltzer & Check, LLP  
3 (“Kessler Topaz”), one of the Court-appointed Class Counsel firms in the above-  
4 captioned securities class action (“Action”).<sup>1</sup> I submit this declaration in support of  
5 Class Counsel’s application for an award of attorneys’ fees in connection with services  
6 rendered by Plaintiffs’ Counsel in the Action, as well as for payment of Litigation  
7 Expenses incurred in connection with the Action. Unless otherwise stated herein, I have  
8 personal knowledge of the facts set forth herein and, if called upon, could and would  
9 testify thereto.

10 2. My firm, as one of the Court-appointed Class Counsel firms, was involved  
11 in all aspects of the litigation of the Action and its resolution, as set forth in the  
12 accompanying Joint Declaration of Joshua E. D’Ancona and Jeffrey J. Angelovich in  
13 Support of (A) Class Representatives’ Motion for Final Approval of Settlement and  
14 Plan of Allocation; and (B) Class Counsel’s Motion for an Award of Attorneys’ Fees  
15 and Litigation Expenses.

16 3. Based on my work in the Action as well as the review of time records  
17 reflecting work performed by other attorneys and professional support staff employees  
18 at Kessler Topaz in the Action (“Timekeepers”) as reported by the Timekeepers, I  
19 directed the preparation of the chart set forth as Exhibit 1 hereto. The chart in Exhibit  
20 1: (i) identifies the names and employment positions (*i.e.*, titles) of the Timekeepers  
21 who devoted ten (10) or more hours to the Action; (ii) provides the total number of  
22 hours that each Timekeeper expended in connection with work on the Action, from the  
23 time when potential claims were being investigated through May 31, 2020;

24

25 \_\_\_\_\_  
26 <sup>1</sup> All capitalized terms that are not otherwise defined herein shall have the  
27 meanings set forth in the Stipulation and Agreement of Settlement dated February 10,  
28 2020 (ECF No. 516-3).

1 (iii) provides each Timekeeper’s current hourly rate; and (iv) provides the total lodestar  
2 of each Timekeeper and the entire firm. For Timekeepers who are no longer employed  
3 by Kessler Topaz, the hourly rate used is the hourly rate for such employee in his or  
4 her final year of employment by my firm. This chart was prepared from daily time  
5 records regularly prepared and maintained by my firm in the ordinary course of  
6 business, which are available at the request of the Court. All time expended in  
7 preparing Class Counsel’s application for attorneys’ fees and expenses has been  
8 excluded.

9 4. The hourly rates for the Timekeepers, as set forth in Exhibit 1, are their  
10 standard rates. My firm’s hourly rates are largely based upon a combination of the title,  
11 cost to the firm, and the specific years of experience for each attorney and professional  
12 support staff employee, as well as market rates for practitioners in the field. These  
13 hourly rates are the same as, or comparable to, rates submitted by Kessler Topaz and  
14 accepted by courts in other complex class actions for purposes of “cross-checking”  
15 lodestar against a proposed fee based on the percentage of the fund method, as well as  
16 determining a reasonable fee under the lodestar method.

17 5. I believe that the number of hours expended and the services performed  
18 by the attorneys and professional support staff employees at or on behalf of Kessler  
19 Topaz were reasonable and necessary for the effective and efficient prosecution and  
20 resolution of the Action. The total number of hours expended by Kessler Topaz in the  
21 Action, from inception through May 31, 2020, as reflected in Exhibit 1, is 29,132. The  
22 total lodestar for my firm, as reflected in Exhibit 1, is \$14,807,601.75, consisting of  
23 \$14,150,100.50 for attorneys’ time and \$657,501.25 for professional support staff time.

24 6. Expense items are being submitted separately and are not duplicated in  
25 my firm’s hourly rates. As set forth in Exhibit 2 hereto, Kessler Topaz is seeking  
26 payment for a total of \$884,680.86 in expenses incurred in connection with the

1 prosecution and resolution of the Action. My firm has applied “caps” to certain travel  
2 expenses (i.e., airfare, meals, and lodging). In addition, internal reproduction costs  
3 have been capped at \$0.10 per page. In my judgment, these expenses were reasonable  
4 and expended for the benefit of the Class in this Action.

5 7. The expenses incurred by Kessler Topaz in the Action are reflected on the  
6 books and records of my firm. These books and records are prepared from expense  
7 vouchers, check records, and other source materials and are an accurate record of the  
8 expenses incurred. I believe these expenses were reasonable and expended for the  
9 benefit of the Class in the Action.

10 8. My firm was also responsible for maintaining a litigation expense fund on  
11 behalf of Class Counsel (“Litigation Expense Fund”) to facilitate payment of certain  
12 common expenses in connection with the prosecution and resolution of the Action. As  
13 reflected in Exhibit 3 attached hereto, the Litigation Expense Fund has received  
14 deposits from Class Counsel totaling \$1,645,000.00<sup>2</sup> and has incurred a total of  
15 \$1,540,445.15 in expenses. Accordingly, there is a balance in the Litigation Expense  
16 Fund of \$105,061.51, and this amount has been deducted from the expenses Kessler  
17 Topaz is seeking as set forth in Exhibit 2 hereto.

18 9. The expenses incurred in the Action and paid from the Litigation Expense  
19 Fund are reflected on the books and records of my firm. These books and records are  
20 prepared from expense vouchers, check records, and other source materials and are an  
21 accurate record of the expenses incurred. I believe these expenses were reasonable and  
22 expended for the benefit of the Class in the Action.

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26 <sup>2</sup> The Litigation Expense Fund has earned interest of \$506.66.

1           10. With respect to the standing of my firm, attached hereto as Exhibit 4 is a  
2 firm résumé, which includes information about my firm and biographical information  
3 concerning the firm’s attorneys.

4           I declare, under penalty of perjury, that the foregoing facts are true and correct.  
5 Executed on June 17, 2020.



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JOSHUA E. D’ANCONA

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**EXHIBIT 1***Baker v. SeaWorld Entertainment, Inc., et al.*

No. 3:14-cv-02129-MMA-AGS

**KESSLER TOPAZ MELTZER & CHECK, LLP****TIME REPORT****From Inception Through May 31, 2020**

<b>NAME</b>	<b>HOURLY RATE</b>	<b>HOURS</b>	<b>LODESTAR</b>
<b>Partners</b>			
Amjed, Naumon	\$850.00	56.10	\$47,685.00
Berman, Stuart L.	\$920.00	183.30	\$168,636.00
Castaldo, Gregory M.	\$920.00	1,415.50	\$1,302,260.00
D'Ancona, Joshua E.	\$780.00	4,607.90	\$3,594,162.00
Degnan, Ryan	\$780.00	68.70	\$53,586.00
Kaplan, Stacey	\$820.00	344.20	\$282,244.00
Kessler, David	\$920.00	112.90	\$103,868.00
Materese, Josh*	\$700.00	291.00	\$203,700.00
Topaz, Marc A.	\$920.00	25.80	\$23,736.00
Yarnoff, Michael	\$750.00	490.00	\$367,500.00
Zagar, Eric L.	\$920.00	35.25	\$32,430.00
<b>Counsel / Associates</b>			
Dodemaide, Andrew	\$400.00	35.70	\$14,280.00
Enck, Jennifer	\$690.00	216.60	\$149,454.00
Feldman, Samuel	\$400.00	541.90	\$216,760.00
Koneski, Megan	\$450.00	919.50	\$413,775.00
Materese, Josh*	\$505.00	3,673.30	\$1,855,016.50
<b>Staff Attorneys</b>			
Barksdale, LaMarlon R.	\$385.00	1,100.00	\$423,500.00
Berger, Stacey	\$385.00	1,106.60	\$426,041.00

DECLARATION OF JOSHUA E. D'ANCONA IN SUPPORT OF CLASS COUNSEL'S MOTION FOR ATTORNEYS' FEES  
AND LITIGATION EXPENSES FILED ON BEHALF OF KESSLER TOPAZ MELTZER & CHECK, LLP  
CASE NO. 3:14-CV-02129-MMA-AGS



1	Chapman Smith, Quiana	\$385.00	31.70	\$12,204.50
2	Hu, Sufei	\$385.00	1,984.70	\$764,109.50
3	Starks, Melissa J.	\$385.00	3,348.20	\$1,289,057.00
4	Tomich, Alexandra	\$385.00	3,532.00	\$1,359,820.00
5	Triebl, Jacqueline A.	\$385.00	2,717.60	\$1,046,276.00
6	<b>Paralegals / Law Clerks</b>			
7	Bigelow, Emily	\$305.00	184.90	\$56,394.50
8	Cashwell, Amy	\$250.00	17.00	\$4,250.00
9	Hankins, Andrew	\$275.00	1,094.50	\$300,987.50
10	Holtzman, Joshua	\$85.00	85.30	\$7,250.50
11	Paffas, Holly	\$260.00	19.60	\$5,096.00
12	Potts, Denise	\$250.00	218.70	\$54,675.00
13	Swift, Mary R.	\$305.00	45.30	\$13,816.50
14	<b>Investigators</b>			
15	Armstrong, Quinn	\$275.00	10.00	\$2,750.00
16	Maginnis, Jamie	\$325.00	254.10	\$82,582.50
17	Marshall, Kate	\$275.00	16.75	\$4,606.25
18	Molina, Henry	\$325.00	260.50	\$84,662.50
19	Monks, William	\$500.00	26.50	\$13,250.00
20	Rabbiner, David	\$450.00	60.40	\$27,180.00
21	<b>TOTALS</b>		<b>29,132.00</b>	<b>\$14,807,601.75</b>

\* Josh Materese became a partner of Kessler Topaz effective January 1, 2020. As reflected in this chart, Mr. Materese’s 2020 partner hourly rate is being used for purposes of calculating his lodestar for January 1, 2020 through May 31, 2020; Mr. Materese’s 2019 associate hourly rate is being used for purposes of calculating his lodestar prior to January 1, 2020.

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**EXHIBIT 2**

*Baker v. SeaWorld Entertainment, Inc., et al.*

No. 3:14-cv-02129-MMA-AGS

**KESSLER TOPAZ MELTZER & CHECK, LLP**

**EXPENSE REPORT**

CATEGORY	AMOUNT
Court Fees	\$1,236.00
Postage & Overnight Mail	\$4,072.07
Internal Printing & Copying	\$27,604.00
Out of Town Travel (Meals, Hotels & Transportation)	\$99,600.52
Local Transportation	\$465.29
Working Meals	\$6,975.01
On-Line Legal & Factual Research*	\$27,289.48
Litigation Expense Fund Contributions	\$822,500.00
<b>TOTAL EXPENSES:</b>	<b>\$989,742.37</b>
Balance Remaining in Litigation Expense Fund	(\$105,061.51)
<b>TOTAL EXPENSES SOUGHT:</b>	<b>\$884,680.86</b>

\* On-line research is billed to each case based on actual time usage at a set charge by the vendor. There are no administrative charges included in these figures.

**EXHIBIT 3**

*Baker v. SeaWorld Entertainment, Inc., et al.*

No. 3:14-cv-02129-MMA-AGS

**KESSLER TOPAZ MELTZER & CHECK, LLP**

**LITIGATION EXPENSE FUND**

<b>CONTRIBUTIONS TO THE LITIGATION EXPENSE FUND</b>	
	<b>Amount</b>
Kessler Topaz Meltzer & Check, LLP	\$822,500.00
Nix Patterson, LLP	\$822,500.00
Interest	\$506.66
<b>Total:</b>	<b>\$1,645,506.66</b>

<b>EXPENSES INCURRED BY THE LITIGATION EXPENSE FUND</b>	
<b>Category</b>	<b>Amount</b>
Court Reporters, Videographers & Transcripts	\$114,653.35
Messenger Services	\$129.60
External Printing & Copying	\$9,998.57
Out of Town Travel (Meals, Hotels & Transportation)*	\$128,610.53
Experts & Consultants	\$902,427.83
Mediation	\$37,506.00
Outside Investigators	\$57,449.79
Document Hosting & Management	\$141,185.19
Translation Services	\$643.52
Service of Process	\$3,553.20
Litigation Support & Trial Preparation	\$144,287.57
<b>TOTAL EXPENSES INCURRED:</b>	<b>\$1,540,445.15</b>
<b>BALANCE IN LITIGATION EXPENSE FUND:</b>	<b>\$105,061.51*</b>

\* This balance has been deducted from the expenses Kessler Topaz is seeking as set forth in Exhibit 2.

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**EXHIBIT 4**

*Baker v. SeaWorld Entertainment, Inc., et al.*

No. 3:14-cv-02129-MMA-AGS

**KESSLER TOPAZ MELTZER & CHECK, LLP**

**FIRM RÉSUMÉ**



280 King of Prussia Road, Radnor, Pennsylvania 19087 • 610-667-7706 • Fax: 610-667-7056 • info@ktmc.com  
One Sansome Street, Suite 1850, San Francisco, CA 94104 • 415-400-3000 • Fax: 415-400-3001 • info@ktmc.com

[www.ktmc.com](http://www.ktmc.com)

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## FIRM PROFILE

Since 1987, Kessler Topaz Meltzer & Check, LLP has specialized in the prosecution of securities class actions and has grown into one of the largest and most successful shareholder litigation firms in the field. With offices in Radnor, Pennsylvania and San Francisco, California, the Firm is comprised of 94 attorneys as well as an experienced support staff consisting of over 80 paralegals, in-house investigators, legal clerks and other personnel. With a large and sophisticated client base (numbering over 180 institutional investors from around the world -- including public and Taft-Hartley pension funds, mutual fund managers, investment advisors, insurance companies, hedge funds and other large investors), Kessler Topaz has developed an international reputation for excellence and has extensive experience prosecuting securities fraud actions. For the past several years, the National Law Journal has recognized Kessler Topaz as one of the top securities class action law firms in the country. In addition, the Legal Intelligencer recently awarded Kessler Topaz with its Class Action Litigation Firm of The Year award. Lastly, Kessler Topaz and several of its attorneys are regularly recognized by Legal500 and Benchmark: Plaintiffs as leaders in our field.

Kessler Topaz is serving or has served as lead or co-lead counsel in many of the largest and most significant securities class actions pending in the United States, including actions against: Bank of America, Duke Energy, Lehman Brothers, Hewlett Packard, Johnson & Johnson, JPMorgan Chase, Morgan Stanley and MGM Mirage, among others. As demonstrated by the magnitude of these high-profile cases, we take seriously our role in advising clients to seek lead plaintiff appointment in cases, paying special attention to the factual elements of the fraud, the size of losses and damages, and whether there are viable sources of recovery.

Kessler Topaz has recovered billions of dollars in the course of representing defrauded shareholders from around the world and takes pride in the reputation we have earned for our dedication to our clients. Kessler Topaz devotes significant time to developing relationships with its clients in a manner that enables the Firm to understand the types of cases they will be interested in pursuing and their expectations. Further, the Firm is committed to pursuing meaningful corporate governance reforms in cases where we suspect that systemic problems within a company could lead to recurring litigation and where such changes also have the possibility to increase the value of the underlying company. The Firm is poised to continue protecting rights worldwide.



## **NOTEWORTHY ACHIEVEMENTS**

*During the Firm's successful history, Kessler Topaz has recovered billions of dollars for defrauded stockholders and consumers. The following are among the Firm's notable achievements:*

### **Securities Fraud Litigation**

#### ***In re Bank of America Corp. Securities, Derivative, and Employee Retirement Income Security Act (ERISA) Litigation, Master File No. 09 MDL 2058:***

Kessler Topaz, as Co-Lead Counsel, brought an action on behalf of lead plaintiffs that asserted claims for violations of the federal securities laws against Bank of America Corp. ("BoA") and certain of BoA's officers and board members relating to BoA's merger with Merrill Lynch & Co. ("Merrill") and its failure to inform its shareholders of billions of dollars of losses which Merrill had suffered before the pivotal shareholder vote, as well as an undisclosed agreement allowing Merrill to pay up to \$5.8 billion in bonuses before the acquisition closed, despite these losses. On September 28, 2012, the Parties announced a \$2.425 billion case settlement with BoA to settle all claims asserted against all defendants in the action which has since received final approval from the Court. BoA also agreed to implement significant corporate governance improvements. The settlement, reached after almost four years of litigation with a trial set to begin on October 22, 2012, amounts to 1) the sixth largest securities class action lawsuit settlement ever; 2) the fourth largest securities class action settlement ever funded by a single corporate defendant; 3) the single largest settlement of a securities class action in which there was neither a financial restatement involved nor a criminal conviction related to the alleged misconduct; 4) the single largest securities class action settlement ever resolving a Section 14(a) claim (the federal securities provision designed to protect investors against misstatements in connection with a proxy solicitation); and 5) by far the largest securities class action settlement to come out of the subprime meltdown and credit crisis to date.

#### ***In re Tyco International, Ltd. Sec. Litig., No. 02-1335-B (D.N.H. 2002):***

Kessler Topaz, which served as Co-Lead Counsel in this highly publicized securities fraud class action on behalf of a group of institutional investors, achieved a record \$3.2 billion settlement with Tyco International, Ltd. ("Tyco") and their auditor PricewaterhouseCoopers ("PwC"). The \$2.975 billion settlement with Tyco represents the single-largest securities class action recovery from a single corporate defendant in history. In addition, the \$225 million settlement with PwC represents the largest payment PwC has ever paid to resolve a securities class action and is the second-largest auditor settlement in securities class action history.

The action asserted federal securities claims on behalf of all purchasers of Tyco securities between December 13, 1999 and June 7, 2002 ("Class Period") against Tyco, certain former officers and directors of Tyco and PwC. Tyco is alleged to have overstated its income during the Class Period by \$5.8 billion through a multitude of accounting manipulations and shenanigans. The case also involved allegations of looting and self-dealing by the officers and directors of the Company. In that regard, Defendants L. Dennis Kozlowski, the former CEO and Mark H. Swartz, the former CFO have been sentenced to up to 25 years in prison after being convicted of grand larceny, falsification of business records and conspiracy for their roles in the alleged scheme to defraud investors.

As presiding Judge Paul Barbadoro aptly stated in his Order approving the final settlement, "[i]t is difficult to overstate the complexity of [the litigation]." Judge Barbadoro noted the extraordinary effort required to pursue the litigation towards its successful conclusion, which included the review of more than 82.5 million pages of documents, more than 220 depositions and over 700 hundred discovery requests and responses. In addition to the complexity of the litigation, Judge Barbadoro also highlighted the great risk undertaken by

Co-Lead Counsel in pursuit of the litigation, which he indicated was greater than in other multi-billion dollar securities cases and “put [Plaintiffs] at the cutting edge of a rapidly changing area of law.”

In sum, the Tyco settlement is of historic proportions for the investors who suffered significant financial losses and it has sent a strong message to those who would try to engage in this type of misconduct in the future.

***In re Tenet Healthcare Corp. Sec. Litig., No. CV-02-8462-RSWL (Rx) (C.D. Cal. 2002):***

Kessler Topaz served as Co-Lead Counsel in this action. A partial settlement, approved on May 26, 2006, was comprised of three distinct elements: (i) a substantial monetary commitment of \$215 million by the company; (ii) personal contributions totaling \$1.5 million by two of the individual defendants; and (iii) the enactment and/or continuation of numerous changes to the company’s corporate governance practices, which have led various institutional rating entities to rank Tenet among the best in the U.S. in regards to corporate governance. The significance of the partial settlement was heightened by Tenet’s precarious financial condition. Faced with many financial pressures — including several pending civil actions and federal investigations, with total contingent liabilities in the hundreds of millions of dollars — there was real concern that Tenet would be unable to fund a settlement or satisfy a judgment of any greater amount in the near future. By reaching the partial settlement, we were able to avoid the risks associated with a long and costly litigation battle and provide a significant and immediate benefit to the class. Notably, this resolution represented a unique result in securities class action litigation — personal financial contributions from individual defendants. After taking the case through the summary judgment stage, we were able to secure an additional \$65 million recovery from KPMG – Tenet’s outside auditor during the relevant period – for the class, bringing the total recovery to \$281.5 million.

***In re Wachovia Preferred Securities and Bond/Notes Litigation, Master File No. 09 Civ. 6351 (RJS) (S.D.N.Y.):***

Kessler Topaz, as court-appointed Co-Lead Counsel, asserted class action claims for violations of the Securities Act of 1933 on behalf of all persons who purchased Wachovia Corporation (“Wachovia”) preferred securities issued in thirty separate offerings (the “Offerings”) between July 31, 2006 and May 29, 2008 (the “Offering Period”). Defendants in the action included Wachovia, various Wachovia related trusts, Wells Fargo as successor-in-interest to Wachovia, certain of Wachovia’s officer and board members, numerous underwriters that underwrote the Offerings, and KPMG LLP (“KPMG”), Wachovia’s former outside auditor. Plaintiffs alleged that the registration statements and prospectuses and prospectus supplements used to market the Offerings to Plaintiffs and other members of the class during the Offerings Period contained materially false and misleading statements and omitted material information. Specifically, the Complaint alleged that in connection with the Offerings, Wachovia: (i) failed to reveal the full extent to which its mortgage portfolio was increasingly impaired due to dangerously lax underwriting practices; (ii) materially misstated the true value of its mortgage-related assets; (iii) failed to disclose that its loan loss reserves were grossly inadequate; and (iv) failed to record write-downs and impairments to those assets as required by Generally Accepted Accounting Principles (“GAAP”). Even as Wachovia faced insolvency, the Offering Materials assured investors that Wachovia’s capital and liquidity positions were “strong,” and that it was so “well capitalized” that it was actually a “provider of liquidity” to the market. On August 5, 2011, the Parties announced a \$590 million cash settlement with Wells Fargo (as successor-in-interest to Wachovia) and a \$37 million cash settlement with KPMG, to settle all claims asserted against all defendants in the action. This settlement was approved by the Hon. Judge Richard J. Sullivan by order issued on January 3, 2012.

***In re Initial Public Offering Sec. Litig., Master File No. 21 MC 92(SAS):***

This action settled for \$586 million on January 1, 2010, after years of litigation overseen by U.S. District Judge Shira Scheindlin. Kessler Topaz served on the plaintiffs’ executive committee for the case, which was based upon the artificial inflation of stock prices during the dot-com boom of the late 1990s that led to

the collapse of the technology stock market in 2000 that was related to allegations of laddering and excess commissions being paid for IPO allocations.

***In re Longtop Financial Technologies Ltd. Securities Litigation, No. 11-cv-3658 (S.D.N.Y.):***

Kessler Topaz, as Lead Counsel, brought an action on behalf of lead plaintiffs that asserted claims for violations of the federal securities laws against Longtop Financial Technologies Ltd. (“Longtop”), its Chief Executive Officer, Weizhou Lian, and its Chief Financial Officer, Derek Palaschuk. The claims against Longtop and these two individuals were based on a massive fraud that occurred at the company. As the CEO later confessed, the company had been a fraud since 2004. Specifically, Weizhou Lian confessed that the company’s cash balances and revenues were overstated by hundreds of millions of dollars and it had millions of dollars in unrecorded bank loans. The CEO further admitted that, in 2011 alone, Longtop’s revenues were overstated by about 40 percent. On November 14, 2013, after Weizhou Lian and Longtop failed to appear and defend the action, Judge Shira Scheindlin entered default judgment against these two defendants in the amount of \$882.3 million plus 9 percent interest running from February 21, 2008 to the date of payment. The case then proceeded to trial against Longtop’s CFO who claimed he did not know about the fraud - and was not reckless in not knowing - when he made false statements to investors about Longtop’s financial results. On November 21, 2014, the jury returned a verdict on liability in favor of plaintiffs. Specifically, the jury found that the CFO was liable to the plaintiffs and the class for each of the eight challenged misstatements. Then, on November 24, 2014, the jury returned its damages verdict, ascribing a certain amount of inflation to each day of the class period and apportioning liability for those damages amongst the three named defendants. The Longtop trial was only the 14th securities class action to be tried to a verdict since the passage of the Private Securities Litigation Reform Act in 1995 and represents a historic victory for investors.

***Operative Plasterers and Cement Masons International Association Local 262 Annuity Fund v. Lehman Brothers Holdings, Inc., No. 1:08-cv-05523-LAK (S.D.N.Y.):***

Kessler Topaz, on behalf of lead plaintiffs, asserted claims against certain individual defendants and underwriters of Lehman securities arising from misstatements and omissions regarding Lehman's financial condition, and its exposure to the residential and commercial real estate markets in the period leading to Lehman’s unprecedented bankruptcy filing on September 14, 2008. In July 2011, the Court sustained the majority of the amended Complaint finding that Lehman’s use of Repo 105, while technically complying with GAAP, still rendered numerous statements relating to Lehman’s purported Net Leverage Ratio materially false and misleading. The Court also found that Defendants’ statements related to Lehman’s risk management policies were sufficient to state a claim. With respect to loss causation, the Court also failed to accept Defendants’ contention that the financial condition of the economy led to the losses suffered by the Class. As the case was being prepared for trial, a \$517 million settlement was reached on behalf of shareholders --- \$426 million of which came from various underwriters of the Offerings, representing a significant recovery for investors in this now bankrupt entity. In addition, \$90 million came from Lehman’s former directors and officers, which is significant considering the diminishing assets available to pay any future judgment. Following these settlements, the litigation continued against Lehman’s auditor, Ernst & Young LLP. A settlement for \$99 million was subsequently reached with Ernst & Young LLP and was approved by the Court.

***Minneapolis Firefighters' Relief Association v. Medtronic, Inc. et al. Case No. 0:08-cv-06324-PAM-AJB (D. Minn.):***

Kessler Topaz brought an action on behalf of lead plaintiffs that alleged that the company failed to disclose its reliance on illegal “off-label” marketing techniques to drive the sales of its INFUSE Bone Graft (“INFUSE”) medical device. While physicians are allowed to prescribe a drug or medical device for any use they see fit, federal law prohibits medical device manufacturers from marketing devices for any uses not specifically approved by the United States Food and Drug Administration. The company’s off-label marketing practices have resulted in the company becoming the target of a probe by the federal government

which was revealed on November 18, 2008, when the company's CEO reported that Medtronic received a subpoena from the United States Department of Justice which is "looking into off-label use of INFUSE." After hearing oral argument on Defendants' Motions to Dismiss, on February 3, 2010, the Court issued an order granting in part and denying in part Defendants' motions, allowing a large portion of the action to move forward. The Court held that Plaintiff successfully stated a claim against each Defendant for a majority of the misstatements alleged in the Complaint and that each of the Defendants knew or recklessly disregarded the falsity of these statements and that Defendants' fraud caused the losses experienced by members of the Class when the market learned the truth behind Defendants' INFUSE marketing efforts. While the case was in discovery, on April 2, 2012, Medtronic agreed to pay shareholders an \$85 million settlement. The settlement was approved by the Court by order issued on November 8, 2012.

***In re Brocade Sec. Litig., Case No. 3:05-CV-02042 (N.D. Cal. 2005) (CRB):***

The complaint in this action alleges that Defendants engaged in repeated violations of federal securities laws by backdating options grants to top executives and falsified the date of stock option grants and other information regarding options grants to numerous employees from 2000 through 2004, which ultimately caused Brocade to restate all of its financial statements from 2000 through 2005. In addition, concurrent SEC civil and Department of Justice criminal actions against certain individual defendants were commenced. In August, 2007 the Court denied Defendant's motions to dismiss and in October, 2007 certified a class of Brocade investors who were damaged by the alleged fraud. Discovery is currently proceeding and the case is being prepared for trial. Furthermore, while litigating the securities class action Kessler Topaz and its co-counsel objected to a proposed settlement in the Brocade derivative action. On March 21, 2007, the parties in *In re Brocade Communications Systems, Inc. Derivative Litigation*, No. C05-02233 (N.D. Cal. 2005) (CRB) gave notice that they had obtained preliminary approval of their settlement. According to the notice, which was buried on the back pages of the Wall Street Journal, Brocade shareholders were given less than three weeks to evaluate the settlement and file any objection with the Court. Kessler Topaz client Puerto Rico Government Employees' Retirement System ("PRGERS") had a large investment in Brocade and, because the settlement was woefully inadequate, filed an objection. PRGERS, joined by fellow institutional investor Arkansas Public Employees Retirement System, challenged the settlement on two fundamental grounds. First, PRGERS criticized the derivative plaintiffs for failing to conduct any discovery before settling their claims. PRGERS also argued that derivative plaintiff's abject failure to investigate its own claims before providing the defendants with broad releases from liability made it impossible to weigh the merits of the settlement. The Court agreed, and strongly admonished derivative plaintiffs for their failure to perform this most basic act of service to their fellow Brocade shareholders. The settlement was rejected and later withdrawn. Second, and more significantly, PRGERS claimed that the presence of the well-respected law firm Wilson, Sonsini Goodrich and Rosati, in this case, created an incurable conflict of interest that corrupted the entire settlement process. The conflict stemmed from WSGR's dual role as counsel to Brocade and the Individual Settling Defendants, including WSGR Chairman and former Brocade Board Member Larry Sonsini. On this point, the Court also agreed and advised WSGR to remove itself from the case entirely. On May 25, 2007, WSGR complied and withdrew as counsel to Brocade. The case settled for \$160 million and was approved by the Court.

***In re Satyam Computer Services, Ltd. Sec. Litig., No. 09 MD 02027 (BSJ) (S.D.N.Y.):***

Kessler Topaz served as Co-Lead Counsel in this securities fraud class action in the Southern District of New York. The action asserts claims by lead plaintiffs for violations of the federal securities laws against Satyam Computer Services Limited ("Satyam" or the "Company") and certain of Satyam's former officers and directors and its former auditor PricewaterhouseCoopers International Ltd. ("PwC") relating to the Company's January 7, 2009, disclosure admitting that B. Ramalinga Raju ("B. Raju"), the Company's former chairman, falsified Satyam's financial reports by, among other things, inflating its reported cash balances by more than \$1 billion. The news caused the price of Satyam's common stock (traded on the National Stock Exchange of India and the Bombay Stock Exchange) and American Depository Shares ("ADSs") (traded on the New York Stock Exchange ("NYSE")) to collapse. From a closing price of \$3.67



per share on January 6, 2009, Satyam's common stock closed at \$0.82 per share on January 7, 2009. With respect to the ADSs, the news of B. Raju's letter was revealed overnight in the United States and, as a result, trading in Satyam ADSs was halted on the NYSE before the markets opened on January 7, 2009. When trading in Satyam ADSs resumed on January 12, 2009, Satyam ADSs opened at \$1.14 per ADS, down steeply from a closing price of \$9.35 on January 6, 2009. Lead Plaintiffs filed a consolidated complaint on July 17, 2009, on behalf of all persons or entities, who (a) purchased or otherwise acquired Satyam's ADSs in the United States; and (b) residents of the United States who purchased or otherwise acquired Satyam shares on the National Stock Exchange of India or the Bombay Stock Exchange between January 6, 2004 and January 6, 2009. Co-Lead Counsel secured a settlement for \$125 million from Satyam on February 16, 2011. Additionally, Co-Lead Counsel was able to secure a \$25.5 million settlement from PwC on April 29, 2011, who was alleged to have signed off on the misleading audit reports.

***In re BankAtlantic Bancorp, Inc. Sec. Litig., Case No. 07-CV-61542 (S.D. Fla. 2007):***

On November 18, 2010, a panel of nine Miami, Florida jurors returned the first securities fraud verdict to arise out of the financial crisis against BankAtlantic Bancorp. Inc., its chief executive officer and chief financial officer. This case was only the tenth securities class action to be tried to a verdict following the passage of the Private Securities Litigation Reform Act of 1995, which governs such suits. Following extensive post-trial motion practice, the District Court upheld all of the Jury's findings of fraud but vacated the damages award on a narrow legal issue and granted Defendant's motion for a judgment as a matter of law. Plaintiffs appealed to the U.S. Court of Appeals for the Eleventh Circuit. On July 23, 2012, a three-judge panel for the Appeals Court found the District Court erred in granting the Defendant's motion for a judgment as a matter of law based in part on the Jury's findings (perceived inconsistency of two of the Jury's answers to the special interrogatories) instead of focusing solely on the sufficiency of the evidence. However, upon its review of the record, the Appeals Court affirmed the District Court's decision as it determined the Plaintiffs did not introduce evidence sufficient to support a finding in its favor on the element of loss causation. The Appeals Court's decision in this case does not diminish the five years of hard work which Kessler Topaz expended to bring the matter to trial and secure an initial jury verdict in the Plaintiffs' favor. This case is an excellent example of the Firm's dedication to our clients and the lengths it will go to try to achieve the best possible results for institutional investors in shareholder litigation.

***In re AremisSoft Corp. Sec. Litig., C.A. No. 01-CV-2486 (D.N.J. 2002):***

Kessler Topaz is particularly proud of the results achieved in this case before the Honorable Joel A. Pisano. This case was exceedingly complicated, as it involved the embezzlement of hundreds of millions of dollars by former officers of the Company, one of whom remains a fugitive. In settling the action, Kessler Topaz, as sole Lead Counsel, assisted in reorganizing AremisSoft as a new company to allow for it to continue operations, while successfully separating out the securities fraud claims and the bankrupt Company's claims into a litigation trust. The approved Settlement enabled the class to receive the majority of the equity in the new Company, as well as their pro rata share of any amounts recovered by the litigation trust. During this litigation, actions have been initiated in the Isle of Man, Cyprus, as well as in the United States as we continue our efforts to recover assets stolen by corporate insiders and related entities.

***In re CVS Corporation Sec. Litig., C.A. No. 01-11464 JLT (D.Mass. 2001):***

Kessler Topaz, serving as Co-Lead Counsel on behalf of a group of institutional investors, secured a cash recovery of \$110 million for the class, a figure which represents the third-largest payout for a securities action in Boston federal court. Kessler Topaz successfully litigated the case through summary judgment before ultimately achieving this outstanding result for the class following several mediation sessions, and just prior to the commencement of trial.

***In re Marvell Technology, Group, Ltd. Sec. Lit., Master File No. 06-06286 RWM:***

Kessler Topaz served as Co-Lead Counsel in this securities class action brought against Marvell Technology Group Ltd. (“Marvell”) and three of Marvell’s executive officers. This case centered around an alleged options backdating scheme carried out by Defendants from June 2000 through June 2006, which enabled Marvell’s executives and employees to receive options with favorable option exercise prices chosen with the benefit of hindsight, in direct violation of Marvell’s stock option plan, as well as to avoid recording hundreds of millions of dollars in compensation expenses on the Marvell’s books. In total, the restatement conceded that Marvell had understated the cumulative effect of its compensation expense by \$327.3 million, and overstated net income by \$309.4 million, for the period covered by the restatement. Following nearly three years of investigation and prosecution of the Class’ claims as well as a protracted and contentious mediation process, Co-Lead Counsel secured a settlement for \$72 million from defendants on June 9, 2009. This Settlement represents a substantial portion of the Class’ maximum provable damages, and is among the largest settlements, in total dollar amount, reached in an option backdating securities class action.

***In re Delphi Corp. Sec. Litig., Master File No. 1:05-MD-1725 (E.D. Mich. 2005):***

In early 2005, various securities class actions were filed against auto-parts manufacturer Delphi Corporation in the Southern District of New York. Kessler Topaz its client, Austria-based mutual fund manager Raiffeisen Kapitalanlage-Gesellschaft m.b.H. (“Raiffeisen”), were appointed as Co-Lead Counsel and Co-Lead Plaintiff, respectively. The Lead Plaintiffs alleged that (i) Delphi improperly treated financing transactions involving inventory as sales and disposition of inventory; (ii) improperly treated financing transactions involving “indirect materials” as sales of these materials; and (iii) improperly accounted for payments made to and credits received from General Motors as warranty settlements and obligations. As a result, Delphi’s reported revenue, net income and financial results were materially overstated, prompting Delphi to restate its earnings for the five previous years. Complex litigation involving difficult bankruptcy issues has potentially resulted in an excellent recovery for the class. In addition, Co-Lead Plaintiffs also reached a settlement of claims against Delphi’s outside auditor, Deloitte & Touche, LLP, for \$38.25 million on behalf of Delphi investors.

***In re Royal Dutch Shell European Shareholder Litigation, No. 106.010.887, Gerechtshof Te Amsterdam (Amsterdam Court of Appeal):***

Kessler Topaz was instrumental in achieving a landmark \$352 million settlement on behalf non-US investors with Royal Dutch Shell plc relating to Shell’s 2004 restatement of oil reserves. This settlement of securities fraud claims on a class-wide basis under Dutch law was the first of its kind, and sought to resolve claims exclusively on behalf of European and other non-United States investors. Uncertainty over whether jurisdiction for non-United States investors existed in a 2004 class action filed in federal court in New Jersey prompted a significant number of prominent European institutional investors from nine countries, representing more than one billion shares of Shell, to actively pursue a potential resolution of their claims outside the United States. Among the European investors which actively sought and supported this settlement were Alecta pensionsförsäkring, ömsesidigt, PKA Pension Funds Administration Ltd., Swedbank Robur Fonder AB, AP7 and AFA Insurance, all of which were represented by Kessler Topaz.

***In re Computer Associates Sec. Litig., No. 02-CV-1226 (E.D.N.Y. 2002):***

Kessler Topaz served as Co-Lead Counsel on behalf of plaintiffs, alleging that Computer Associates and certain of its officers misrepresented the health of the company’s business, materially overstated the company’s revenues, and engaged in illegal insider selling. After nearly two years of litigation, Kessler Topaz helped obtain a settlement of \$150 million in cash and stock from the company.

***In re The Interpublic Group of Companies Sec. Litig., No. 02 Civ. 6527 (S.D.N.Y. 2002):***

Kessler Topaz served as sole Lead Counsel in this action on behalf of an institutional investor and received final approval of a settlement consisting of \$20 million in cash and 6,551,725 shares of IPG common stock. As of the final hearing in the case, the stock had an approximate value of \$87 million, resulting in a total



settlement value of approximately \$107 million. In granting its approval, the Court praised Kessler Topaz for acting responsibly and noted the Firm's professionalism, competence and contribution to achieving such a favorable result.

***In re Digital Lightwave, Inc. Sec. Litig., Consolidated Case No. 98-152-CIV-T-24E (M.D. Fla. 1999):***

The firm served as Co-Lead Counsel in one of the nation's most successful securities class actions in history measured by the percentage of damages recovered. After extensive litigation and negotiations, a settlement consisting primarily of stock was worth over \$170 million at the time when it was distributed to the Class. Kessler Topaz took on the primary role in negotiating the terms of the equity component, insisting that the class have the right to share in any upward appreciation in the value of the stock after the settlement was reached. This recovery represented an astounding approximately two hundred percent (200%) of class members' losses.

***In re Transkaryotic Therapies, Inc. Sec. Litig., Civil Action No.: 03-10165-RWZ (D. Mass. 2003):***

After five years of hard-fought, contentious litigation, Kessler Topaz as Lead Counsel on behalf of the Class, entered into one of largest settlements ever against a biotech company with regard to non-approval of one of its drugs by the U.S. Food and Drug Administration ("FDA"). Specifically, the Plaintiffs alleged that Transkaryotic Therapies, Inc. ("TKT") and its CEO, Richard Selden, engaged in a fraudulent scheme to artificially inflate the price of TKT common stock and to deceive Class Members by making misrepresentations and nondisclosures of material facts concerning TKT's prospects for FDA approval of Replagal, TKT's experimental enzyme replacement therapy for Fabry disease. With the assistance of the Honorable Daniel Weinstein, a retired state court judge from California, Kessler Topaz secured a \$50 million settlement from the Defendants during a complex and arduous mediation.

***In re PNC Financial Services Group, Inc. Sec. Litig., Case No. 02-CV-271 (W.D. Pa. 2002):***

Kessler Topaz served as Co-Lead Counsel in a securities class action case brought against PNC bank, certain of its officers and directors, and its outside auditor, Ernst & Young, LLP ("E&Y"), relating to the conduct of Defendants in establishing, accounting for and making disclosures concerning three special purpose entities ("SPEs") in the second, third and fourth quarters of PNC's 2001 fiscal year. Plaintiffs alleged that these entities were created by Defendants for the sole purpose of allowing PNC to secretly transfer hundreds of millions of dollars worth of non-performing assets from its own books to the books of the SPEs without disclosing the transfers or consolidating the results and then making positive announcements to the public concerning the bank's performance with respect to its non-performing assets. Complex issues were presented with respect to all defendants, but particularly E&Y. Throughout the litigation E&Y contended that because it did not make any false and misleading statements itself, the Supreme Court's opinion in *Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164 (1993) foreclosed securities liability for "aiding or abetting" securities fraud for purposes of Section 10(b) liability. Plaintiffs, in addition to contending that E&Y did make false statements, argued that Rule 10b-5's deceptive conduct prong stood on its own as an independent means of committing fraud and that so long as E&Y itself committed a deceptive act, it could be found liable under the securities laws for fraud. After several years of litigation and negotiations, PNC paid \$30 million to settle the action, while also assigning any claims it may have had against E&Y and certain other entities that were involved in establishing and/or reporting on the SPEs. Armed with these claims, class counsel was able to secure an additional \$6.6 million in settlement funds for the class from two law firms and a third party insurance company and \$9.075 million from E&Y. Class counsel was also able to negotiate with the U.S. government, which had previously obtained a disgorgement fund of \$90 million from PNC and \$46 million from the third party insurance carrier, to combine all funds into a single settlement fund that exceeded \$180 million and is currently in the process of being distributed to the entire class, with PNC paying all costs of notifying the Class of the settlement.

***In re SemGroup Energy Partners, L.P., Sec. Litig., No. 08-md-1989 (DC) (N.D. Okla.):***

Kessler Topaz, which was appointed by the Court as sole Lead Counsel, litigated this matter, which ultimately settled for \$28 million. The defense was led by 17 of the largest and best capitalized defense law firms in the world. On April 20, 2010, in a fifty-page published opinion, the United States District Court for the Northern District of Oklahoma largely denied defendants' ten separate motions to dismiss Lead Plaintiff's Consolidated Amended Complaint. The Complaint alleged that: (i) defendants concealed SemGroup's risky trading operations that eventually caused SemGroup to declare bankruptcy; and (ii) defendants made numerous false statements concerning SemGroup's ability to provide its publicly-traded Master Limited Partnership stable cash-flows. The case was aggressively litigated out of the Firm's San Francisco and Radnor offices and the significant recovery was obtained, not only from the Company's principals, but also from its underwriters and outside directors.

***In re Liberate Technologies Sec. Litig., No. C-02-5017 (MJJ) (N.D. Cal. 2005):***

Kessler Topaz represented plaintiffs which alleged that Liberate engaged in fraudulent revenue recognition practices to artificially inflate the price of its stock, ultimately forcing it to restate its earnings. As sole Lead Counsel, Kessler Topaz successfully negotiated a \$13.8 million settlement, which represents almost 40% of the damages suffered by the class. In approving the settlement, the district court complimented Lead Counsel for its "extremely credible and competent job."

***In re Riverstone Networks, Inc. Sec. Litig., Case No. CV-02-3581 (N.D. Cal. 2002):***

Kessler Topaz served as Lead Counsel on behalf of plaintiffs alleging that Riverstone and certain of its officers and directors sought to create the impression that the Company, despite the industry-wide downturn in the telecom sector, had the ability to prosper and succeed and was actually prospering. In that regard, plaintiffs alleged that defendants issued a series of false and misleading statements concerning the Company's financial condition, sales and prospects, and used inside information to personally profit. After extensive litigation, the parties entered into formal mediation with the Honorable Charles Legge (Ret.). Following five months of extensive mediation, the parties reached a settlement of \$18.5 million.

## **Shareholder Derivative Actions**

***In re Facebook, Inc. Class C Reclassification Litig., C.A. No. 12286-VCL (Del. Ch. Sept. 25, 2017):***

Kessler Topaz served as co-lead counsel in this stockholder class action that challenged a proposed reclassification of Facebook's capital structure to accommodate the charitable giving goals of its founder and controlling stockholder Mark Zuckerberg. The Reclassification involved the creation of a new class of nonvoting Class C stock, which would be issued as a dividend to all Facebook Class A and Class B stockholders (including Zuckerberg) on a 2-for-1 basis. The purpose and effect of the Reclassification was that it would allow Zuckerberg to sell billions of dollars worth of nonvoting Class C shares without losing his voting control of Facebook. The litigation alleged that Zuckerberg and Facebook's board of directors breached their fiduciary duties in approving the Reclassification at the behest of Zuckerberg and for his personal benefit. At trial Kessler Topaz was seeking a permanent injunction to prevent the consummation of the Reclassification. The litigation was carefully followed in the business and corporate governance communities, due to the high-profile nature of Facebook, Zuckerberg, and the issues at stake. After almost a year and a half of hard fought litigation, just one business day before trial was set to commence, Facebook and Zuckerberg abandoned the Reclassification, granting Plaintiffs complete victory.

***In re CytRx Stockholder Derivative Litig., Consol. C.A. No. 9864-VCL (Del. Ch. Nov. 20, 2015):***

Kessler Topaz served as co-lead counsel in a shareholder derivative action challenging 2.745 million "spring-loaded" stock options. On the day before CytRx announced the most important news in the Company's history concerning the positive trial results for one of its significant pipeline drugs, the Compensation Committee of CytRx's Board of Directors granted the stock options to themselves, their

fellow directors and several Company officers which immediately came “into the money” when CytRx’s stock price shot up immediately following the announcement the next day. Kessler Topaz negotiated a settlement recovering 100% of the excess compensation received by the directors and approximately 76% of the damages potentially obtainable from the officers. In addition, as part of the settlement, Kessler Topaz obtained the appointment of a new independent director to the Board of Directors and the implementation of significant reforms to the Company’s stock option award processes. The Court complimented the settlement, explaining that it “serves what Delaware views as the overall positive function of stockholder litigation, which is not just recovery in the individual case but also deterrence and norm enforcement.”

***International Brotherhood of Electrical Workers Local 98 Pension Fund v. Black, et al., Case No. 37-2011-00097795-CU-SL-CTL (Sup. Ct. Cal., San Diego Feb. 5, 2016) (“Encore Capital Group, Inc.”):*** Kessler Topaz, as co-lead counsel, represented International Brotherhood of Electrical Workers Local 98 Pension Fund in a shareholder derivative action challenging breaches of fiduciary duties and other violations of law in connection with Encore’s debt collection practices, including robo-signing affidavits and improper use of the court system to collect alleged consumer debts. Kessler Topaz negotiated a settlement in which the Company implemented industry-leading reforms to its risk management and corporate governance practices, including creating Chief Risk Officer and Chief Compliance Officer positions, various compliance committees, and procedures for consumer complaint monitoring.

***In re Southern Peru Copper Corp. Derivative Litigation, Consol. CA No. 961-CS (Del. Ch. 2011):*** Kessler Topaz served as co-lead counsel in this landmark \$2 billion post-trial decision, believed to be the largest verdict in Delaware corporate law history. In 2005, Southern Peru, a publicly-traded copper mining company, acquired Minera Mexico, a private mining company owned by Southern Peru’s majority stockholder Grupo Mexico. The acquisition required Southern Peru to pay Grupo Mexico more than \$3 billion in Southern Peru stock. We alleged that Grupo Mexico had caused Southern Peru to grossly overpay for the private company in deference to its majority shareholder’s interests. Discovery in the case spanned years and continents, with depositions in Peru and Mexico. The trial court agreed and ordered Grupo Mexico to pay more than \$2 billion in damages and interest. The Delaware Supreme Court affirmed on appeal.

***Quinn v. Knight, No. 3:16-cv-610 (E.D. Va. Mar. 16, 2017) (“Apple REIT Ten”):*** This shareholder derivative action challenged a conflicted “roll up” REIT transaction orchestrated by Glade M. Knight and his son Justin Knight. The proposed transaction paid the Knights millions of dollars while paying public stockholders less than they had invested in the company. The case was brought under Virginia law, and settled just ten days before trial, with stockholders receiving an additional \$32 million in merger consideration.

***Kastis v. Carter, C.A. No. 8657-CB (Del. Ch. Sept. 19, 2016) (“Hemispherx Biopharma, Inc.”):*** This derivative action challenged improper bonuses paid to two company executives of this small pharmaceutical company that had never turned a profit. In response to the complaint, Hemispherx’s board first adopted a “fee-shifting” bylaw that would have required stockholder plaintiffs to pay the company’s legal fees unless the plaintiffs achieved 100% of the relief they sought. This sort of bylaw, if adopted more broadly, could substantially curtail meritorious litigation by stockholders unwilling to risk losing millions of dollars if they bring an unsuccessful case. After Kessler Topaz presented its argument in court, Hemispherx withdrew the bylaw. Kessler Topaz ultimately negotiated a settlement requiring the two executives to forfeit several million dollars’ worth of accrued but unpaid bonuses, future bonuses and director fees. The company also recovered \$1.75 million from its insurance carriers, appointed a new independent director to the board, and revised its compensation program.

***Montgomery v. Erickson, Inc., et al., C.A. No. 8784-VCL (Del. Ch. Sept. 12, 2016):***

Kessler Topaz represented an individual stockholder who asserted in the Delaware Court of Chancery class action and derivative claims challenging merger and recapitalization transactions that benefitted the company's controlling stockholders at the expense of the company and its minority stockholders. Plaintiff alleged that the controlling stockholders of Erickson orchestrated a series of transactions with the intent and effect of using Erickson's money to bail themselves out of a failing investment. Defendants filed a motion to dismiss the complaint, which Kessler Topaz defeated, and the case proceeded through more than a year of fact discovery. Following an initially unsuccessful mediation and further litigation, Kessler Topaz ultimately achieved an \$18.5 million cash settlement, 80% of which was distributed to members of the stockholder class to resolve their direct claims and 20% of which was paid to the company to resolve the derivative claims. The settlement also instituted changes to the company's governing documents to prevent future self-dealing transactions like those that gave rise to the case.

***In re Helios Closed-End Funds Derivative Litig., No. 2:11-cv-02935-SHM-TMP (W.D. Tenn.):***

Kessler Topaz represented stockholders of four closed-end mutual funds in a derivative action against the funds' former investment advisor, Morgan Asset Management. Plaintiffs alleged that the defendants mismanaged the funds by investing in riskier securities than permitted by the funds' governing documents and, after the values of these securities began to precipitously decline beginning in early 2007, cover up their wrongdoing by assigning phony values to the funds' investments and failing to disclose the extent of the decrease in value of the funds' assets. In a rare occurrence in derivative litigation, the funds' Boards of Directors eventually hired Kessler Topaz to prosecute the claims against the defendants on behalf of the funds. Our litigation efforts led to a settlement that recovered \$6 million for the funds and ensured that the funds would not be responsible for making any payment to resolve claims asserted against them in a related multi-million dollar securities class action. The fund's Boards fully supported and endorsed the settlement, which was negotiated independently of the parallel securities class action.

***In re Viacom, Inc. Shareholder Derivative Litig., Index No. 602527/05 (New York County, NY 2005):***

Kessler Topaz represented the Public Employees' Retirement System of Mississippi and served as Lead Counsel in a derivative action alleging that the members of the Board of Directors of Viacom, Inc. paid excessive and unwarranted compensation to Viacom's Executive Chairman and CEO, Sumner M. Redstone, and co-COOs Thomas E. Freston and Leslie Moonves, in breach of their fiduciary duties. Specifically, we alleged that in fiscal year 2004, when Viacom reported a record net loss of \$17.46 billion, the board improperly approved compensation payments to Redstone, Freston, and Moonves of approximately \$56 million, \$52 million, and \$52 million, respectively. Judge Ramos of the New York Supreme Court denied Defendants' motion to dismiss the action as we overcame several complex arguments related to the failure to make a demand on Viacom's Board; Defendants then appealed that decision to the Appellate Division of the Supreme Court of New York. Prior to a decision by the appellate court, a settlement was reached in early 2007. Pursuant to the settlement, Sumner Redstone, the company's Executive Chairman and controlling shareholder, agreed to a new compensation package that, among other things, substantially reduces his annual salary and cash bonus, and ties the majority of his incentive compensation directly to shareholder returns.

***In re Family Dollar Stores, Inc. Derivative Litig., Master File No. 06-CVS-16796 (Mecklenburg County, NC 2006):***

Kessler Topaz served as Lead Counsel, derivatively on behalf of Family Dollar Stores, Inc., and against certain of Family Dollar's current and former officers and directors. The actions were pending in Mecklenburg County Superior Court, Charlotte, North Carolina, and alleged that certain of the company's officers and directors had improperly backdated stock options to achieve favorable exercise prices in violation of shareholder-approved stock option plans. As a result of these shareholder derivative actions, Kessler Topaz was able to achieve substantial relief for Family Dollar and its shareholders. Through Kessler Topaz's litigation of this action, Family Dollar agreed to cancel hundreds of thousands of stock options



granted to certain current and former officers, resulting in a seven-figure net financial benefit for the company. In addition, Family Dollar has agreed to, among other things: implement internal controls and granting procedures that are designed to ensure that all stock options are properly dated and accounted for; appoint two new independent directors to the board of directors; maintain a board composition of at least 75 percent independent directors; and adopt stringent officer stock-ownership policies to further align the interests of officers with those of Family Dollar shareholders. The settlement was approved by Order of the Court on August 13, 2007.

***Carbon County Employees Retirement System, et al., Derivatively on Behalf of Nominal Defendant Southwest Airlines Co. v. Gary C. Kelly, et al. Cause No. 08-08692 (District Court of Dallas County, Texas):***

As lead counsel in this derivative action, we negotiated a settlement with far-reaching implications for the safety and security of airline passengers.

Our clients were shareholders of Southwest Airlines Co. (Southwest) who alleged that certain officers and directors had breached their fiduciary duties in connection with Southwest's violations of Federal Aviation Administration safety and maintenance regulations. Plaintiffs alleged that from June 2006 to March 2007, Southwest flew 46 Boeing 737 airplanes on nearly 60,000 flights without complying with a 2004 FAA Airworthiness Directive requiring fuselage fatigue inspections. As a result, Southwest was forced to pay a record \$7.5 million fine. We negotiated numerous reforms to ensure that Southwest's Board is adequately apprised of safety and operations issues, and implementing significant measures to strengthen safety and maintenance processes and procedures.

***The South Financial Group, Inc. Shareholder Litigation, C.A. No. 2008-CP-23-8395 (S.C. C.C.P. 2009):***

Represented shareholders in derivative litigation challenging board's decision to accelerate "golden parachute" payments to South Financial Group's CEO as the company applied for emergency assistance in 2008 under the Troubled Asset Recovery Plan (TARP).

We sought injunctive relief to block the payments and protect the company's ability to receive the TARP funds. The litigation was settled with the CEO giving up part of his severance package and agreeing to leave the board, as well as the implementation of important corporate governance changes one commentator described as "unprecedented."

## **Options Backdating**

In 2006, the Wall Street Journal reported that three companies appeared to have "backdated" stock option grants to their senior executives, pretending that the options had been awarded when the stock price was at its lowest price of the quarter, or even year. An executive who exercised the option thus paid the company an artificially low price, which stole money from the corporate coffers. While stock options are designed to incentivize recipients to drive the company's stock price up, backdating options to artificially low prices undercut those incentives, overpaid executives, violated tax rules, and decreased shareholder value.

Kessler Topaz worked with a financial analyst to identify dozens of other companies that had engaged in similar practices, and filed more than 50 derivative suits challenging the practice. These suits sought to force the executives to disgorge their improper compensation and to revamp the companies' executive compensation policies. Ultimately, as lead counsel in these derivative actions, Kessler Topaz achieved significant monetary and non-monetary benefits at dozens of companies, including:

***Comverse Technology, Inc.:*** Settlement required Comverse’s founder and CEO Kobi Alexander, who fled to Namibia after the backdating was revealed, to disgorge more than \$62 million in excessive backdated option compensation. The settlement also overhauled the company’s corporate governance and internal controls, replacing a number of directors and corporate executives, splitting the Chairman and CEO positions, and instituting majority voting for directors.

***Monster Worldwide, Inc.:*** Settlement required recipients of backdated stock options to disgorge more than \$32 million in unlawful gains back to the company, plus agreeing to significant corporate governance measures. These measures included (a) requiring Monster’s founder Andrew McKelvey to reduce his voting control over Monster from 31% to 7%, by exchanging super-voting stock for common stock; and (b) implementing new equity granting practices that require greater accountability and transparency in the granting of stock options moving forward. In approving the settlement, the court noted “the good results, mainly the amount of money for the shareholders and also the change in governance of the company itself, and really the hard work that had to go into that to achieve the results....”

***Affiliated Computer Services, Inc.:*** Settlement required executives, including founder Darwin Deason, to give up \$20 million in improper backdated options. The litigation was also a catalyst for the company to replace its CEO and CFO and revamp its executive compensation policies.

## **Mergers & Acquisitions Litigation**

### ***City of Daytona Beach Police and Fire Pension Fund v. ExamWorks Group, Inc., et al., C.A. No. 12481-VCL (Del. Ch.):***

On September 12, 2017, the Delaware Chancery Court approved one of the largest class action M&A settlements in the history of the Delaware Chancery Court, a \$86.5 million settlement relating to the acquisition of ExamWorks Group, Inc. by private equity firm Leonard Green & Partners, LP.

The settlement caused ExamWorks stockholders to receive a 6% improvement on the \$35.05 per share merger consideration negotiated by the defendants. This amount is unusual especially for litigation challenging a third-party merger. The settlement amount is also noteworthy because it includes a \$46.5 million contribution from ExamWorks’ outside legal counsel, Paul Hastings LLP.

### ***In re ArthroCare Corporation S’holder Litig., Consol. C.A. No. 9313-VCL (Del. Ch. Nov. 13, 2014):***

Kessler Topaz, as co-lead counsel, challenged the take-private of Arthrocare Corporation by private equity firm Smith & Nephew. This class action litigation alleged, among other things, that Arthrocare’s Board breached their fiduciary duties by failing to maximize stockholder value in the merger. Plaintiffs also alleged that the merger violated Section 203 of the Delaware General Corporation Law, which prohibits mergers with “interested stockholders,” because Smith & Nephew had contracted with JP Morgan to provide financial advice and financing in the merger, while a subsidiary of JP Morgan owned more than 15% of Arthrocare’s stock. Plaintiffs also alleged that the agreement between Smith & Nephew and the JP Morgan subsidiary violated a “standstill” agreement between the JP Morgan subsidiary and Arthrocare. The court set these novel legal claims for an expedited trial prior to the closing of the merger. The parties agreed to settle the action when Smith & Nephew agreed to increase the merger consideration paid to Arthrocare stockholders by \$12 million, less than a month before trial.

### ***In re Safeway Inc. Stockholders Litig., C.A. No. 9445-VCL (Del. Ch. Sept. 17, 2014):***

Kessler Topaz represented the Oklahoma Firefighters Pension and Retirement System in class action litigation challenging the acquisition of Safeway, Inc. by Albertson’s grocery chain for \$32.50 per share in cash and contingent value rights. Kessler Topaz argued that the value of CVRs was illusory, and Safeway’s shareholder rights plan had a prohibitive effect on potential bidders making superior offers to acquire



Safeway, which undermined the effectiveness of the post-signing “go shop.” Plaintiffs sought to enjoin the transaction, but before the scheduled preliminary injunction hearing took place, Kessler Topaz negotiated (i) modifications to the terms of the CVRs and (ii) defendants’ withdrawal of the shareholder rights plan. In approving the settlement, Vice Chancellor Laster of the Delaware Chancery Court stated that “the plaintiffs obtained significant changes to the transaction . . . that may well result in material increases in the compensation received by the class,” including substantial benefits potentially in excess of \$230 million.

***In re MPG Office Trust, Inc. Preferred Shareholder Litig., Cons. Case No. 24-C-13-004097 (Md. Cir. Oct. 20, 2015):***

Kessler Topaz challenged a coercive tender offer whereby MPG preferred stockholders received preferred stock in Brookfield Office Properties, Inc. without receiving any compensation for their accrued and unpaid dividends. Kessler Topaz negotiated a settlement where MPG preferred stockholders received a dividend of \$2.25 per share, worth approximately \$21 million, which was the only payment of accrued dividends Brookfield DTLA Preferred Stockholders had received as of the time of the settlement.

***In re Globe Specialty Metals, Inc. Stockholders Litig., C.A. 10865-VCG (Del. Ch. Feb. 15, 2016):***

Kessler Topaz served as co-lead counsel in class action litigation arising from Globe’s acquisition by Grupo Atlantica to form Ferroglobe. Plaintiffs alleged that Globe’s Board breached their fiduciary duties to Globe’s public stockholders by agreeing to sell Globe for an unfair price, negotiating personal benefits for themselves at the expense of the public stockholders, failing to adequately inform themselves of material issues with Grupo Atlantica, and issuing a number of materially deficient disclosures in an attempt to mask issues with the negotiations. At oral argument on Plaintiffs’ preliminary injunction motion, the Court held that Globe stockholders likely faced irreparable harm from the Board’s conduct, but reserved ruling on the other preliminary injunction factors. Prior to the Court’s final ruling, the parties agreed to settle the action for \$32.5 million and various corporate governance reforms to protect Globe stockholders’ rights in Ferroglobe.

***In re Dole Food Co., Inc. Stockholder Litig., Consol. C.A. No. 8703-VCL, 2015 WL 5052214 (Del. Ch. Aug. 27, 2015):***

On August 27, 2015, Vice Chancellor J. Travis Laster issued his much-anticipated post-trial verdict in litigation by former stockholders of Dole Food Company against Dole’s chairman and controlling stockholder David Murdock. In a 106-page ruling, Vice Chancellor Laster found that Murdock and his longtime lieutenant, Dole’s former president and general counsel C. Michael Carter, unfairly manipulated Dole’s financial projections and misled the market as part of Murdock’s efforts to take the company private in a deal that closed in November 2013. Among other things, the Court concluded that Murdock and Carter “primed the market for the freeze-out by driving down Dole’s stock price” and provided the company’s outside directors with “knowingly false” information and intended to “mislead the board for Mr. Murdock’s benefit.”

Vice Chancellor Laster found that the \$13.50 per share going-private deal underpaid stockholders, and awarded class damages of \$2.74 per share, totaling \$148 million. That award represents the largest post-trial class recovery in the merger context. The largest post-trial derivative recovery in a merger case remains Kessler Topaz’s landmark 2011 \$2 billion verdict in *In re Southern Peru*.

***In re Genentech, Inc. Shareholders Lit., Cons. Civ. Action No. 3991-VCS (Del. Ch. 2008):***

Kessler Topaz served as Co-Lead Counsel in this shareholder class action brought against the directors of Genentech and Genentech’s majority stockholder, Roche Holdings, Inc., in response to Roche’s July 21, 2008 attempt to acquire Genentech for \$89 per share. We sought to enforce provisions of an Affiliation Agreement between Roche and Genentech and to ensure that Roche fulfilled its fiduciary obligations to Genentech’s shareholders through any buyout effort by Roche. After moving to enjoin the tender offer, Kessler Topaz negotiated with Roche and Genentech to amend the Affiliation Agreement to allow a

negotiated transaction between Roche and Genentech, which enabled Roche to acquire Genentech for \$95 per share, approximately \$3.9 billion more than Roche offered in its hostile tender offer. In approving the settlement, then-Vice Chancellor Leo Strine complimented plaintiffs' counsel, noting that this benefit was only achieved through "real hard-fought litigation in a complicated setting."

***In re GSI Commerce, Inc. Shareholder Litig., Consol. C.A. No. 6346-VCN (Del. Ch. Nov. 15, 2011):***

On behalf of the Erie County Employees' Retirement System, we alleged that GSI's founder breached his fiduciary duties by negotiating a secret deal with eBay for him to buy several GSI subsidiaries at below market prices before selling the remainder of the company to eBay. These side deals significantly reduced the acquisition price paid to GSI stockholders. Days before an injunction hearing, we negotiated an improvement in the deal price of \$24 million.

***In re Amicas, Inc. Shareholder Litigation, 10-0174-BLS2 (Suffolk County, MA 2010):***

Kessler Topaz served as lead counsel in class action litigation challenging a proposed private equity buyout of Amicas that would have paid Amicas shareholders \$5.35 per share in cash while certain Amicas executives retained an equity stake in the surviving entity moving forward. Kessler Topaz prevailed in securing a preliminary injunction against the deal, which then allowed a superior bidder to purchase the Company for an additional \$0.70 per share (\$26 million). The court complimented Kessler Topaz attorneys for causing an "exceptionally favorable result for Amicas' shareholders" after "expend[ing] substantial resources."

***In re Harleysville Mutual, Nov. Term 2011, No. 02137 (C.C.P., Phila. Cnty.):***

Kessler Topaz served as co-lead counsel in expedited merger litigation challenging Harleysville's agreement to sell the company to Nationwide Insurance Company. Plaintiffs alleged that policyholders were entitled to receive cash in exchange for their ownership interests in the company, not just new Nationwide policies. Plaintiffs also alleged that the merger was "fundamentally unfair" under Pennsylvania law. The defendants contested the allegations and contended that the claims could not be prosecuted directly by policyholders (as opposed to derivatively on the company's behalf). Following a two-day preliminary injunction hearing, we settled the case in exchange for a \$26 million cash payment to policyholders.

## **Consumer Protection and Fiduciary Litigation**

***In re: J.P. Jeanneret Associates Inc., et al., No. 09-cv-3907 (S.D.N.Y.):***

Kessler Topaz served as lead counsel for one of the plaintiff groups in an action against J.P. Jeanneret and Ivy Asset Management relating to an alleged breach of fiduciary and statutory duty in connection with the investment of retirement plan assets in Bernard Madoff-related entities. By breaching their fiduciary duties, Defendants caused significant losses to the retirement plans. Following extensive hard-fought litigation, the case settled for a total of \$216.5 million.

***In re: National City Corp. Securities, Derivative and ERISA Litig, No. 08-nc-7000 (N.D. Ohio):***

Kessler Topaz served as a lead counsel in this complex action alleging that certain directors and officers of National City Corp. breached their fiduciary duties under the Employee Retirement Income Security Act of 1974. These breaches arose from an investment in National City stock during a time when defendants knew, or should have known, that the company stock was artificially inflated and an imprudent investment for the company's 401(k) plan. The case settled for \$43 million on behalf of the plan, plaintiffs and a settlement class of plan participants.

***Alston, et al. v. Countrywide Financial Corp. et al., No. 07-cv-03508 (E.D. Pa.):***

Kessler Topaz served as lead counsel in this novel and complex action which alleged that Defendants Countrywide Financial Corporation, Countrywide Home Loans, Inc. and Balboa Reinsurance Co. violated

the Real Estate Settlement Procedure Act (“RESPA”) and ultimately cost borrowers millions of dollars. Specifically, the action alleged that Defendants engaged in a scheme related to private mortgage insurance involving kickbacks, which are prohibited under RESPA. After three and a half years of hard-fought litigation, the action settled for \$34 million.

***Trustees of the Local 464A United Food and Commercial Workers Union Pension Fund, et al. v. Wachovia Bank, N.A., et al., No. 09-cv-00668 (DNJ):***

For more than 50 years, Wachovia and its predecessors acted as investment manager for the Local 464A UFCW Union Funds, exercising investment discretion consistent with certain investment guidelines and fiduciary obligations. Until mid-2007, Wachovia managed the fixed income assets of the funds safely and conservatively, and their returns closely tracked the Lehman Aggregate Bond Index (now known as the Barclay’s Capital Aggregate Bond Index) to which the funds were benchmarked. However, beginning in mid-2007 Wachovia significantly changed the investment strategy, causing the funds’ portfolio value to drop drastically below the benchmark. Specifically, Wachovia began to dramatically decrease the funds’ holdings in short-term, high-quality, low-risk debt instruments and materially increase their holdings in high-risk mortgage-backed securities and collateralized mortgage obligations. We represented the funds’ trustees in alleging that, among other things, Wachovia breached its fiduciary duty by: failing to invest the assets in accordance with the funds’ conservative investment guidelines; failing to adequately monitor the funds’ fixed income investments; and failing to provide complete and accurate information to plaintiffs concerning the change in investment strategy. The matter was resolved privately between the parties.

***In re Bank of New York Mellon Corp. Foreign Exchange Transactions Litig., No. 1:12-md-02335 (S.D.N.Y.):***

On behalf of the Southeastern Pennsylvania Transportation Authority Pension Fund and a class of similarly situated domestic custodial clients of BNY Mellon, we alleged that BNY Mellon secretly assigned a spread to the FX rates at which it transacted FX transactions on behalf of its clients who participated in the BNY Mellon’s automated “Standing Instruction” FX service. BNY Mellon determined this spread by executing its clients’ transactions at one rate and then, typically, at the end of the trading day, assigned a rate to its clients which approximated the worst possible rates of the trading day, pocketing the difference as riskless profit. This practice was despite BNY Mellon’s contractual promises to its clients that its Standing Instruction service was designed to provide “best execution,” was “free of charge” and provided the “best rates of the day.” The case asserted claims for breach of contract and breach of fiduciary duty on behalf of BNY Mellon’s custodial clients and sought to recover the unlawful profits that BNY Mellon earned from its unfair and unlawful FX practices. The case was litigated in collaboration with separate cases brought by state and federal agencies, with Kessler Topaz serving as lead counsel and a member of the executive committee overseeing the private litigation. After extensive discovery, including more than 100 depositions, over 25 million pages of fact discovery, and the submission of multiple expert reports, Plaintiffs reached a settlement with BNY Mellon of \$335 million. Additionally, the settlement is being administered by Kessler Topaz along with separate recoveries by state and federal agencies which bring the total recovery for BNY Mellon’s custodial customers to \$504 million. The settlement was finally approved on September 24, 2015. In approving the settlement, Judge Lewis Kaplan praised counsel for a “wonderful job,” recognizing that they were “fought tooth and nail at every step of the road.” In further recognition of the efforts of counsel, Judge Kaplan noted that “[t]his was an outrageous wrong by the Bank of New York Mellon, and plaintiffs’ counsel deserve a world of credit for taking it on, for running the risk, for financing it and doing a great job.”

***CompSource Oklahoma v. BNY Mellon Bank, N.A., No. CIV 08-469-KEW (E.D. Okla. October 25, 2012):***

Kessler Topaz served as Interim Class Counsel in this matter alleging that BNY Mellon Bank, N.A. and the Bank of New York Mellon (collectively, “BNYM”) breached their statutory, common law and contractual duties in connection with the administration of their securities lending program. The Second Amended

Complaint alleged, among other things, that BNYM imprudently invested cash collateral obtained under its securities lending program in medium term notes issued by Sigma Finance, Inc. -- a foreign structured investment vehicle (“SIV”) that is now in receivership -- and that such conduct constituted a breach of BNYM’s fiduciary obligations under the Employee Retirement Income Security Act of 1974, a breach of its fiduciary duties under common law, and a breach of its contractual obligations under the securities lending agreements. The Complaint also asserted claims for negligence, gross negligence and willful misconduct. The case recently settled for \$280 million.

***Transatlantic Holdings, Inc., et al. v. American International Group, Inc., et al., American Arbitration Association Case No. 50 148 T 00376 10:***

Kessler Topaz served as counsel for Transatlantic Holdings, Inc., and its subsidiaries (“TRH”), alleging that American International Group, Inc. and its subsidiaries (“AIG”) breached their fiduciary duties, contractual duties, and committed fraud in connection with the administration of its securities lending program. Until June 2009, AIG was TRH’s majority shareholder and, at the same time, administered TRH’s securities lending program. TRH’s Statement of Claim alleged that, among other things, AIG breached its fiduciary obligations as investment advisor and majority shareholder by imprudently investing the majority of the cash collateral obtained under its securities lending program in mortgage backed securities, including Alt-A and subprime investments. The Statement of Claim further alleged that AIG concealed the extent of TRH’s subprime exposure and that when the collateral pools began experiencing liquidity problems in 2007, AIG unilaterally carved TRH out of the pools so that it could provide funding to its wholly owned subsidiaries to the exclusion of TRH. The matter was litigated through a binding arbitration and TRH was awarded \$75 million.

***Board of Trustees of the AFTRA Retirement Fund v. JPMorgan Chase Bank, N.A. – Consolidated Action No. 09-cv-00686 (SAS) (S.D.N.Y.):***

On January 23, 2009, the firm filed a class action complaint on behalf of all entities that were participants in JPMorgan’s securities lending program and that incurred losses on investments that JPMorgan, acting in its capacity as a discretionary investment manager, made in medium-term notes issue by Sigma Finance, Inc. – a now defunct structured investment vehicle. The losses of the Class exceeded \$500 million. The complaint asserted claims for breach of fiduciary duty under the Employee Retirement Income Security Act (ERISA), as well as common law breach of fiduciary duty, breach of contract and negligence. Over the course of discovery, the parties produced and reviewed over 500,000 pages of documents, took 40 depositions (domestic and foreign) and exchanged 21 expert reports. The case settled for \$150 million. Trial was scheduled to commence on February 6, 2012.

***In re Global Crossing, Ltd. ERISA Litigation, No. 02 Civ. 7453 (S.D.N.Y. 2004):***

Kessler Topaz served as Co-Lead Counsel in this novel, complex and high-profile action which alleged that certain directors and officers of Global Crossing, a former high-flier of the late 1990’s tech stock boom, breached their fiduciary duties under the Employee Retirement Income Security Act of 1974 (“ERISA”) to certain company-provided 401(k) plans and their participants. These breaches arose from the plans’ alleged imprudent investment in Global Crossing stock during a time when defendants knew, or should have known, that the company was facing imminent bankruptcy. A settlement of plaintiffs’ claims restoring \$79 million to the plans and their participants was approved in November 2004. At the time, this represented the largest recovery received in a company stock ERISA class action.

***In re AOL Time Warner ERISA Litigation, No. 02-CV-8853 (S.D.N.Y. 2006):***

Kessler Topaz, which served as Co-Lead Counsel in this highly-publicized ERISA fiduciary breach class action brought on behalf of the Company’s 401(k) plans and their participants, achieved a record \$100 million settlement with defendants. The \$100 million restorative cash payment to the plans (and, concomitantly, their participants) represents the largest recovery from a single defendant in a breach of fiduciary action relating to mismanagement of plan assets held in the form of employer securities. The



action asserted claims for breach of fiduciary duties pursuant to the Employee Retirement Income Security Act of 1974 (“ERISA”) on behalf of the participants in the AOL Time Warner Savings Plan, the AOL Time Warner Thrift Plan, and the Time Warner Cable Savings Plan (collectively, the “Plans”) whose accounts purchased and/or held interests in the AOLTW Stock Fund at any time between January 27, 1999 and July 3, 2003. Named as defendants in the case were Time Warner (and its corporate predecessor, AOL Time Warner), several of the Plans’ committees, as well as certain current and former officers and directors of the company. In March 2005, the Court largely denied defendants’ motion to dismiss and the parties began the discovery phase of the case. In January 2006, Plaintiffs filed a motion for class certification, while at the same time defendants moved for partial summary judgment. These motions were pending before the Court when the settlement in principle was reached. Notably, an Independent Fiduciary retained by the Plans to review the settlement in accordance with Department of Labor regulations approved the settlement and filed a report with Court noting that the settlement, in addition to being “more than a reasonable recovery” for the Plans, is “one of the largest ERISA employer stock action settlements in history.”

***In re Honeywell International ERISA Litigation, No. 03-1214 (DRD) (D.N.J. 2004):***

Kessler Topaz served as Lead Counsel in a breach of fiduciary duty case under ERISA against Honeywell International, Inc. and certain fiduciaries of Honeywell defined contribution pension plans. The suit alleged that Honeywell and the individual fiduciary defendants, allowed Honeywell’s 401(k) plans and their participants to imprudently invest significant assets in company stock, despite that defendants knew, or should have known, that Honeywell’s stock was an imprudent investment due to undisclosed, wide-ranging problems stemming from a consummated merger with Allied Signal and a failed merger with General Electric. The settlement of plaintiffs’ claims included a \$14 million payment to the plans and their affected participants, and significant structural relief affording participants much greater leeway in diversifying their retirement savings portfolios.

***Henry v. Sears, et. al., Case No. 98 C 4110 (N.D. Ill. 1999):***

The Firm served as Co-Lead Counsel for one of the largest consumer class actions in history, consisting of approximately 11 million Sears credit card holders whose interest rates were improperly increased in connection with the transfer of the credit card accounts to a national bank. Kessler Topaz successfully negotiated a settlement representing approximately 66% of all class members’ damages, thereby providing a total benefit exceeding \$156 million. All \$156 million was distributed automatically to the Class members, without the filing of a single proof of claim form. In approving the settlement, the District Court stated: “. . . I am pleased to approve the settlement. I think it does the best that could be done under the circumstances on behalf of the class. . . . The litigation was complex in both liability and damages and required both professional skill and standing which class counsel demonstrated in abundance.”

## **Antitrust Litigation**

***In re: Flonase Antitrust Litigation, No. 08-cv-3149 (E.D. Pa.):***

Kessler Topaz served as a lead counsel on behalf of a class of direct purchaser plaintiffs in an antitrust action brought pursuant to Section 4 of the Clayton Act, 15 U.S.C. § 15, alleging, among other things, that defendant GlaxoSmithKline (GSK) violated Section 2 of the Sherman Act, 15 U.S.C. § 2, by engaging in “sham” petitioning of a government agency. Specifically, the Direct Purchasers alleged that GSK unlawfully abused the citizen petition process contained in Section 505(j) of the Federal Food, Drug, and Cosmetic Act and thus delayed the introduction of less expensive generic versions of Flonase, a highly popular allergy drug, causing injury to the Direct Purchaser Class. Throughout the course of the four year litigation, Plaintiffs defeated two motions for summary judgment, succeeded in having a class certified and conducted extensive discovery. After lengthy negotiations and shortly before trial, the action settled for \$150 million.

***In re: Wellbutrin SR Antitrust Litigation, No. 04-cv-5898 (E.D. Pa.):***

Kessler Topaz was a lead counsel in an action which alleged, among other things, that defendant GlaxoSmithKline (GSK) violated the antitrust, consumer fraud, and consumer protection laws of various states. Specifically, Plaintiffs and the class of Third-Party Payors alleged that GSK manipulated patent filings and commenced baseless infringement lawsuits in connection wrongfully delaying generic versions of Wellbutrin SR and Zyban from entering the market, and that Plaintiffs and the Class of Third-Party Payors suffered antitrust injury and calculable damages as a result. After more than eight years of litigation, the action settled for \$21.5 million.

***In re: Metoprolol Succinate End-Payor Antitrust Litigation, No. 06-cv-71 (D. Del.):***

Kessler Topaz was co-lead counsel in a lawsuit which alleged that defendant AstraZeneca prevented generic versions of Toprol-XL from entering the market by, among other things, improperly manipulating patent filings and filing baseless patent infringement lawsuits. As a result, AstraZeneca unlawfully monopolized the domestic market for Toprol-XL and its generic bio-equivalents. After seven years of litigation, extensive discovery and motion practice, the case settled for \$11 million.

***In re Remeron Antitrust Litigation, No. 02-CV-2007 (D.N.J. 2004):***

Kessler Topaz was Co-Lead Counsel in an action which challenged Organon, Inc.'s filing of certain patents and patent infringement lawsuits as an abuse of the Hatch-Waxman Act, and an effort to unlawfully extend their monopoly in the market for Remeron. Specifically, the lawsuit alleged that defendants violated state and federal antitrust laws in their efforts to keep competing products from entering the market, and sought damages sustained by consumers and third-party payors. After lengthy litigation, including numerous motions and over 50 depositions, the matter settled for \$36 million.

## **OUR PROFESSIONALS**

### **PARTNERS**

**JULES D. ALBERT**, a partner of the Firm, concentrates his practice in mergers and acquisition litigation and stockholder derivative litigation. Mr. Albert received his law degree from the University of Pennsylvania Law School, where he was a Senior Editor of the *University of Pennsylvania Journal of Labor and Employment Law* and recipient of the James Wilson Fellowship. Mr. Albert also received a Certificate of Study in Business and Public Policy from The Wharton School at the University of Pennsylvania. Mr. Albert graduated *magna cum laude* with a Bachelor of Arts in Political Science from Emory University. Mr. Albert is licensed to practice law in Pennsylvania, and has been admitted to practice before the United States District Court for the Eastern District of Pennsylvania.

Mr. Albert has litigated in state and federal courts across the country, and has represented stockholders in numerous actions that have resulted in significant monetary recoveries and corporate governance improvements, including: *In re Sunrise Senior Living, Inc. Deriv. Litig.*, No. 07-00143 (D.D.C.); *Mercier v. Whittle, et al.*, No. 2008-CP-23-8395 (S.C. Ct. Com. Pl., 13th Jud. Cir.); *In re K-V Pharmaceutical Co. Deriv. Litig.*, No. 06-00384 (E.D. Mo.); *In re Progress Software Corp. Deriv. Litig.*, No. SUCV2007-01937-BLS2 (Mass. Super. Ct., Suffolk Cty.); *In re Quest Software, Inc. Deriv. Litig.* No 06CC00115 (Cal. Super. Ct., Orange Cty.); and *Quaco v. Balakrishnan, et al.*, No. 06-2811 (N.D. Cal.).

**NAUMON A. AMJED**, a partner of the Firm, concentrates his practice on new matter development with a focus on analyzing securities class action lawsuits, direct (or opt-out) actions, non-U.S. securities and shareholder litigation, SEC whistleblower actions, breach of fiduciary duty cases, antitrust matters, data



breach actions and oil and gas litigation. Mr. Amjed is a graduate of the Villanova University School of Law, *cum laude*, and holds an undergraduate degree in business administration from Temple University, *cum laude*. Mr. Amjed is a member of the Delaware State Bar, the Bar of the Commonwealth of Pennsylvania, the New York State Bar, and is admitted to practice before the United States Courts for the District of Delaware, the Eastern District of Pennsylvania and the Southern District of New York.

As a member of the Firm's lead plaintiff practice group, Mr. Amjed has represented clients serving as lead plaintiffs in several notable securities class action lawsuits including: *In re Bank of America Corp. Securities, Derivative, and Employee Retirement Income Security Act (ERISA) Litigation*, No. 09MDL2058 (S.D.N.Y.) (settled -- \$2.425 billion); *In re Wachovia Preferred Securities and Bond/Notes Litigation*, No. 09-cv-6351 (RJS) (S.D.N.Y.) (\$627 million recovery); *In re Lehman Bros. Equity/Debt Securities Litigation*, No. 08-cv-5523 (LAK) (S.D.N.Y.) (\$615 million recovery) and *In re JPMorgan Chase & Co. Securities Litigation*, No. 12-3852-GBD ("London Whale Litigation") (\$150 million recovery). Additionally, Mr. Amjed served on the national Executive Committee representing financial institutions suffering losses from Target Corporation's 2013 data breach – one of the largest data breaches in history. The Target litigation team was responsible for a landmark data breach opinion that substantially denied Target's motion to dismiss and was also responsible for obtaining certification of a class of financial institutions. *See In re Target Corp. Customer Data Sec. Breach Litig.*, 64 F. Supp. 3d 1304 (D. Minn. 2014); *In re Target Corp. Customer Data Sec. Breach Litig.*, No. MDL 14-2522 PAM/JJK, 2015 WL 5432115 (D. Minn. Sept. 15, 2015). At the time of its issuance, the class certification order in Target was the first of its kind in data breach litigation by financial institutions.

Mr. Amjed also has significant experience conducting complex litigation in state and federal courts including federal securities class actions, shareholder derivative actions, suits by third-party insurers and other actions concerning corporate and alternative business entity disputes. Mr. Amjed has litigated in numerous state and federal courts across the country, including the Delaware Court of Chancery, and has represented shareholders in several high profile lawsuits, including: *LAMPERS v. CBOT Holdings, Inc. et al.*, C.A. No. 2803-VCN (Del. Ch.); *In re Alstom SA Sec. Litig.*, 454 F. Supp. 2d 187 (S.D.N.Y. 2006); *In re Global Crossing Sec. Litig.*, 02— Civ. — 910 (S.D.N.Y.); *In re Enron Corp. Sec. Litig.*, 465 F. Supp. 2d 687 (S.D. Tex. 2006); and *In re Marsh McLennan Cos., Inc. Sec. Litig.* 501 F. Supp. 2d 452 (S.D.N.Y. 2006).

**ETHAN J. BARLIEB**, a partner of the Firm, concentrates his practice in the areas of ERISA, consumer protection and antitrust litigation. Mr. Barlieb received his law degree, *magna cum laude*, from the University of Miami School of Law in 2007 and his undergraduate degree from Cornell University in 2003. Mr. Barlieb is licensed to practice in Pennsylvania and New Jersey.

Prior to joining Kessler Topaz, Mr. Barlieb was an associate with Pietragallo Gordon Alfano Bosick & Raspanti, LLP, where he worked on various commercial, securities and employment matters. Before that, Mr. Barlieb served as a law clerk for the Honorable Mitchell S. Goldberg in the U.S. District Court for the Eastern District of Pennsylvania.

**STUART L. BERMAN**, a partner of the Firm, concentrates his practice on securities class action litigation in federal courts throughout the country, with a particular emphasis on representing institutional investors active in litigation. Mr. Berman received his law degree from George Washington University National Law Center, and is an honors graduate from Brandeis University. Mr. Berman is licensed to practice in Pennsylvania and New Jersey.

Mr. Berman regularly counsels and educates institutional investors located around the world on emerging legal trends, new case ideas and the rights and obligations of institutional investors as they relate to securities fraud class actions and individual actions. In this respect, Mr. Berman has been instrumental in

courts appointing the Firm's institutional clients as lead plaintiffs in class actions as well as in representing institutions individually in direct actions. Mr. Berman is currently representing institutional investors in direct actions against Vivendi and Merck, and took a very active role in the precedent setting Shell settlement on behalf of many of the Firm's European institutional clients.

Mr. Berman is a frequent speaker on securities issues, especially as they relate to institutional investors, at events such as The European Pension Symposium in Florence, Italy; the Public Funds Symposium in Washington, D.C.; the Pennsylvania Public Employees Retirement (PAPERS) Summit in Harrisburg, Pennsylvania; the New England Pension Summit in Newport, Rhode Island; the Rights and Responsibilities for Institutional Investors in Amsterdam, Netherlands; and the European Investment Roundtable in Barcelona, Spain.

**DAVID A. BOCIAN**, a partner of the Firm, focuses his practice on whistleblower representation and False Claims Act litigation. Mr. Bocian received his law degree from the University of Virginia School of Law and graduated *cum laude* from Princeton University. He is licensed to practice law in the Commonwealth of Pennsylvania, New Jersey, New York and the District of Columbia.

Mr. Bocian began his legal career in Washington, D.C., as a litigation associate at Patton Boggs LLP, where his practice included internal corporate investigations, government contracts litigation and securities fraud matters. He spent more than ten years as a federal prosecutor in the U.S. Attorney's Office for the District of New Jersey, where he was appointed Senior Litigation Counsel and managed the Trenton U.S. Attorney's office. During his tenure, Mr. Bocian oversaw multifaceted investigations and prosecutions pertaining to government corruption and federal program fraud, commercial and public sector kickbacks, tax fraud, and other white collar and financial crimes. He tried numerous cases before federal juries, and was a recipient of the Justice Department's Director's Award for superior performance by an Assistant U.S. Attorney, as well as commendations from federal law enforcement agencies including the FBI and IRS.

Mr. Bocian has extensive experience in the health care field. As an adjunct professor of law, he has taught Healthcare Fraud and Abuse at Rutgers School of Law – Camden, and previously was employed in the health care industry, where he was responsible for implementing and overseeing a system-wide compliance program for a complex health system.

**GREGORY M. CASTALDO**, a partner of the Firm, concentrates his practice in the area of securities litigation. Mr. Castaldo received his law degree from Loyola Law School, where he received the American Jurisprudence award in legal writing. He received his undergraduate degree from the Wharton School of Business at the University of Pennsylvania. He is licensed to practice law in Pennsylvania and New Jersey.

Mr. Castaldo served as one of Kessler Topaz's lead litigation partners in *In re Bank of America Corp. Securities, Derivative, and Employee Retirement Income Security Act (ERISA) Litigation*, No. 09 MDL 2058 (S.D.N.Y.) (settled -- \$2.425 billion). Mr. Castaldo also served as the lead litigation partner in *In re Tenet Healthcare Corp.*, No. 02-CV-8462 (C.D. Cal. 2002), securing an aggregate recovery of \$281.5 million for the class, including \$65 million from Tenet's auditor. Mr. Castaldo also played a primary litigation role in the following cases: *In re Liberate Technologies Sec. Litig.*, No. C-02-5017 (MJJ) (N.D. Cal. 2005) (settled — \$13.8 million); *In re Sodexo Marriott Shareholders Litig.*, Consol. C.A. No. 18640-NC (Del. Ch. 1999) (settled — \$166 million benefit); *In re Motive, Inc. Sec. Litig.*, 05-CV-923 (W.D.Tex. 2005) (settled — \$7 million cash, 2.5 million shares); and *In re Wireless Facilities, Inc., Sec. Litig.*, 04-CV-1589 (S.D. Cal. 2004) (settled — \$16.5 million). In addition, Mr. Castaldo served as one of the lead trial attorneys for shareholders in the historic *In re Longtop Financial Technologies Ltd. Securities Litigation*, No. 11-cv-3658 (S.D.N.Y.) trial, which resulted in a verdict in favor of investors on liability and damages.

**DARREN J. CHECK**, a partner of the Firm, concentrates his practice in the area of shareholder litigation and client relations. Mr. Check manages the Firm's Portfolio Monitoring Department and works closely with the Firm's Case Evaluation Department. Mr. Check received his law degree from Temple University School of Law and is a graduate of Franklin & Marshall College. Mr. Check is admitted to practice in numerous state and federal courts across the United States.

Currently, Mr. Check consults with institutional investors from around the world with regard to their investment rights and responsibilities. He currently works with clients in the United States, Canada, the Netherlands, Sweden, Denmark, Norway, Finland, United Kingdom, Italy, Germany, Austria, Switzerland, France, Australia and throughout Asia and the Middle East.

Mr. Check assists Firm clients in evaluating and analyzing opportunities to take an active role in shareholder litigation, arbitration, and other loss recovery methods. This includes U.S. based litigation and arbitration, as well as an increasing number of cases from jurisdictions around the globe. With an increasingly complex investment and legal landscape, Mr. Check has experience advising on traditional class actions, direct actions, non-U.S. opt-in actions, fiduciary actions, appraisal actions and arbitrations to name a few. Mr. Check is frequently called upon by his clients to help ensure they are taking an active role when their involvement can make a difference, and that they are not leaving money on the table.

Mr. Check regularly speaks on the subjects of shareholder litigation, corporate governance, investor activism, and recovery of investment losses at conferences around the world.

Mr. Check has also been actively involved in the precedent setting Shell and Fortis settlements in the Netherlands, the Olympus shareholder case in Japan, direct actions against Petrobras, BP, Vivendi, and Merck, and securities class actions against Bank of America, Lehman Brothers, Royal Bank of Scotland (U.K.), and Hewlett-Packard. Currently Mr. Check represents investors in numerous high profile actions in the United States, the Netherlands, Germany, Canada, France, Japan, and the United Kingdom.

**EMILY N. CHRISTIANSEN**, a partner of the Firm, focuses her practice in securities litigation and international actions, in particular. Ms. Christiansen received her Juris Doctor and Global Law certificate, *cum laude*, from Lewis and Clark Law School in 2012. Ms. Christiansen is a graduate of the University of Portland, where she received her Bachelor of Arts, *cum laude*, in Political Science and German Studies. Ms. Christiansen is currently licensed to practice law in New York and Pennsylvania.

While in law school, Ms. Christiansen worked as an intern in Trial Chambers III at the International Criminal Tribunal for the Former Yugoslavia. Ms. Christiansen also spent two months in India as foreign legal trainee with the corporate law firm of Fox Mandal. Ms. Christiansen is a 2007 recipient of a Fulbright Fellowship and is fluent in German.

Ms. Christiansen devotes her time to advising clients on the challenges and benefits of pursuing particular litigation opportunities in jurisdictions outside the U.S. In those non-US actions where Kessler Topaz is actively involved, Emily liaises with local counsel, helps develop case strategy, reviews pleadings, and helps clients understand and successfully navigate the legal process. Her experience includes non-US opt-in actions, international law, and portfolio monitoring and claims administration. In her role, Ms. Christiansen has helped secure recoveries for institutional investors in litigation in Japan against *Olympus Corporation* (settled - ¥11 billion) and in the Netherlands against *Fortis Bank N.V.* (settled - €1.2 billion).

**JOSHUA E. D'ANCONA**, a partner of the Firm, concentrates his practice in the securities litigation and lead plaintiff departments of the Firm. Mr. D'Ancona received his J.D., *magna cum laude*, from the Temple University Beasley School of Law in 2007, where he served on the Temple Law Review and as president

of the Moot Court Honors Society, and graduated with honors from Wesleyan University. He is licensed to practice in Pennsylvania and New Jersey.

Before joining the Firm in 2009, he served as a law clerk to the Honorable Cynthia M. Rufe of the United States District Court for the Eastern District of Pennsylvania.

**JONATHAN R. DAVIDSON**, a partner of the Firm, concentrates his practice in the area of shareholder litigation. Mr. Davidson currently consults with institutional investors from around the world, including public pension funds at the state, county and municipal level, as well as Taft-Hartley funds across all trades, with regard to their investment rights and responsibilities. Mr. Davidson assists Firm clients in evaluating and analyzing opportunities to take an active role in shareholder litigation. With an increasingly complex shareholder litigation landscape that includes traditional securities class actions, shareholder derivative actions and takeover actions, non-U.S. opt-in actions, and fiduciary actions to name a few, Mr. Davidson is frequently called upon by his clients to help ensure they are taking an active role when their involvement can make a difference, and to ensure they are not leaving money on the table.

Mr. Davidson has been involved in the following successfully concluded shareholder litigation matters: *City of Daytona Beach Police and Fire Pension Fund v. ExamWorks Group, Inc.*, C.A. No. 12481-VCL (Del. Ch.) (\$86.5 million settlement, including \$46.5 million funded by outside legal advisor); *In re MGM Mirage Securities Litigation*, Case No. 2:09-cv-01558-GMN-VCF (D. Nev.) (\$75 million settlement); *In re Weatherford Int'l Securities Litigation*, No. 11-cv-01646-LAK-JCF (S.D.N.Y.) (settled -- \$52.5 million); *Beaver County Employees' Retirement Fund, et al. v. Tile Shop Holdings, Inc., et al.*, No. 0:14-CV-00786-ADM/TNL (D. Minn.) (\$9.5 million settlement); *Bucks County Employees Retirement Fund vs. Hillshire Brands Co*, No. 24-C-14-003492 (Md. Cir. Ct.) (Alternative deal struck paying a 71% premium to stockholders); and *City of Sunrise Firefighters' Retirement Fund v. Schaeffer*, No. 8703 (Del. Ch. Ct.) (Invalid bylaws repealed; board disclosed that it unlawfully adopted the bylaws).

Mr. Davidson is a frequent lecturer on shareholder litigation, corporate governance, fiduciary issues facing institutional investors, investor activism and the recovery of investment losses -- speaking on these subjects at conferences around the world each year, including the National Conference on Public Employee Retirement Systems' Annual Conference & Exhibition, the International Foundation of Employee Benefit Plans Annual Conference, the California Association of Public Retirement Systems Administrators Roundtable, the Florida Public Pension Trustees Association Trustee Schools and Wall Street Program, the Pennsylvania Association of Public Employees Retirement Systems Spring Forum, the Fiduciary Investors Symposium, the U.S. Markets' Institutional Investor Forum, and The Evolving Fiduciary Obligations of Pension Plans. Mr. Davidson is also a member of numerous professional and educational organizations, including the National Association of Public Pension Attorneys.

Mr. Davidson is a graduate of The George Washington University where he received his Bachelor of Arts, *summa cum laude*, in Political Communication. Mr. Davidson received his Juris Doctor and Dispute Resolution Certificate from Pepperdine University School of Law and is licensed to practice law in Pennsylvania and California.

**RYAN T. DEGNAN**, a partner of the Firm, concentrates his practice on new matter development with a specific focus on analyzing securities class action lawsuits, antitrust actions, and complex consumer actions. Mr. Degnan received his law degree from Temple University Beasley School of Law, where he was a Notes and Comments Editor for the Temple Journal of Science, Technology & Environmental Law, and earned his undergraduate degree in Biology from The Johns Hopkins University. While a law student, Mr. Degnan served as a Judicial Intern to the Honorable Gene E.K. Pratter of the United States District Court for the Eastern District of Pennsylvania. Mr. Degnan is licensed to practice in Pennsylvania and New Jersey.



As a member of the Firm's lead plaintiff litigation practice group, Mr. Degnan has helped secure the Firm's clients' appointments as lead plaintiffs in: *In re HP Sec. Litig.*, No. 12-cv-5090, 2013 WL 792642 (N.D. Cal. Mar. 4, 2013); *In re JPMorgan Chase & Co. Securities Litigation*, No. 12-3852-GBD ("London Whale Litigation") (\$150 million recovery); *Freedman v. St. Jude Medical, Inc., et al.*, No. 12-cv-3070 (D. Minn.); *United Union of Roofers, Waterproofers & Allied Workers Local Union No. 8 v. Ocwen Fin. Corp.*, No. 14 Civ. 81057 (WPD), 2014 WL 7236985 (S.D. Fla. Nov. 7, 2014); *Louisiana Municipal Police Employees' Ret. Sys. v. Green Mountain Coffee Roasters, Inc., et al.*, No. 11-cv-289, 2012 U.S. Dist. LEXIS 89192 (D. Vt. Apr. 27, 2012); and *In re Longtop Fin. Techs. Ltd. Sec. Litig.*, No. 11-cv-3658, 2011 U.S. Dist. LEXIS 112970 (S.D.N.Y. Oct. 4, 2011). Additional representative matters include: *In re Bank of New York Mellon Corp. Foreign Exchange Transactions Litig.*, No. 12-md-02335 (S.D.N.Y.) (\$335 million settlement); and *Policemen's Annuity and Benefit Fund of the City of Chicago, et al. v. Bank of America, NA, et al.*, No. 12-cv-02865 (S.D.N.Y.) (\$69 million settlement).

**ELI R. GREENSTEIN** is managing partner of the Firm's San Francisco office and a member of the Firm's federal securities litigation practice group. Mr. Greenstein concentrates his practice on federal securities law violations and white collar fraud, including violations of the Securities Act of 1933 and the Securities Exchange Act of 1934. Mr. Greenstein received his J.D. from Santa Clara University School of Law in 2001, and his M.B.A. from Santa Clara's Leavey School of Business in 2002. Mr. Greenstein received his B.A. in Business Administration from the University of San Diego in 1997 where he was awarded the Presidential Scholarship. He is licensed to practice in California.

Mr. Greenstein also was a judicial extern for the Honorable James Ware (Ret.), Chief Judge of the United States District Court for the Northern District of California. Prior to joining the Firm, Mr. Greenstein was a partner at Robbins Geller Rudman & Dowd LLP in its federal securities litigation practice group. His relevant background also includes consulting for PricewaterhouseCoopers LLP's International Tax and Legal Services division, and work on the trading floor of the Chicago Mercantile Exchange, S&P 500 futures and options division.

Mr. Greenstein has been involved in dozens of high-profile securities fraud actions resulting in more than \$1 billion in recoveries for clients and investors, including: *Nieman v. Duke Energy Corp.*, 2013 U.S. Dist. LEXIS 110693 (W.D.N.C.) (\$146 million recovery); *In re HP Secs. Litig.*, 2013 U.S. Dist. LEXIS 168292 (N.D. Cal.) (\$100 million recovery); *In re VeriFone Holdings, Inc. Sec. Litig.*, 704 F.3d 694 (N.D. Cal.) (\$95 million recovery); *In re AOL Time Warner Sec. Litig. State Opt-Out Actions (Regents of the Univ. of Cal. v. Parsons* (Cal. Super. Ct.), *Ohio Pub. Emps. Ret. Sys. v. Parsons* (Franklin County Ct. of Common Pleas) (\$618 million in total recoveries); *Minneapolis Firefighters' Relief Association v. Medtronic, Inc.*, No. 08-cv-06324-PAM-AJB (D. Minn.) (settled -- \$85 million); *In re MGM Mirage Securities Litigation*, Case No. 2:09-cv-01558-GMN-VCF (D. Nev.) (\$75 million settlement); *In re Weatherford Int'l Securities Litigation*, No. 11-cv-01646-LAK-JCF (S.D.N.Y.) (settled -- \$52.5 million); *In re Sunpower Secs. Litig.*, 2011 U.S. Dist. LEXIS 152920 (N.D. Cal.) (\$19.7 million recovery); *In re Am. Serv. Group, Inc.*, 2009 U.S. Dist. LEXIS 28237 (M.D. Tenn.) (\$15.1 million recovery); *In re Terayon Communs. Sys. Sec. Litig.*, 2002 U.S. Dist. LEXIS 5502 (N.D. Cal.) (\$15 million recovery); *In re Nuvelo, Inc. Sec. Litig.*, 668 F. Supp. 2d 1217 (N.D. Cal.) (\$8.9 million recovery); *In re Endocare, Inc. Sec. Litig.*, No. CV02-8429 DT (CTX) (C.D. Cal.) (\$8.95 million recovery); *Greater Pa. Carpenters Pension Fund v. Whitehall Jewellers, Inc.*, 2005 U.S. Dist. LEXIS 12971 (N.D. Ill.) (\$7.5 million recovery); *In re Am. Apparel, Inc. S'holder Litig.*, 2013 U.S. Dist. LEXIS 6977 (C.D. Cal.) (\$4.8 million recovery); *In re Purus Sec. Litig.* No. C-98-20449-JF(RS) (N.D. Cal.) (\$9.95 million recovery).

**SEAN M. HANDLER**, a partner of the Firm and member of Kessler Topaz's Management Committee, currently concentrates his practice on all aspects of new matter development for the Firm including securities, consumer and intellectual property. Mr. Handler earned his Juris Doctor, *cum laude*, from



Temple University School of Law, and received his Bachelor of Arts degree from Colby College, graduating *with distinction* in American Studies. Mr. Handler is licensed to practice in Pennsylvania, New Jersey and New York.

As part of his responsibilities, Mr. Handler also oversees the lead plaintiff appointment process in securities class actions for the Firm's clients. In this role, Mr. Handler has achieved numerous noteworthy appointments for clients in reported decisions including *Foley v. Transocean*, 272 F.R.D. 126 (S.D.N.Y. 2011); *In re Bank of America Corp. Sec., Derivative & Employment Ret. Income Sec. Act (ERISA) Litig.*, 258 F.R.D. 260 (S.D.N.Y. 2009) and *Tanne v. Autobytel, Inc.*, 226 F.R.D. 659 (C.D. Cal. 2005) and has argued before federal courts throughout the country.

Mr. Handler was also one of the principal attorneys in *In re Brocade Securities Litigation* (N.D. Cal. 2008), where the team achieved a \$160 million settlement on behalf of the class and two public pension fund class representatives. This settlement is believed to be one of the largest settlements in a securities fraud case in terms of the ratio of settlement amount to actual investor damages.

Mr. Handler also lectures and serves on discussion panels concerning securities litigation matters, most recently appearing at American Conference Institute's National Summit on the Future of Fiduciary Responsibility and Institutional Investor's The Rights & Responsibilities of Institutional Investors.

**GEOFFREY C. JARVIS**, a partner of the Firm, focuses on securities litigation for institutional investors. Mr. Jarvis graduated from Harvard Law School in 1984, and received his undergraduate degree from Cornell University in 1980. He is licensed to practice in Pennsylvania, Delaware, New York and Washington, D.C.

Following law school, Mr. Jarvis served as a staff attorney with the Federal Communications Commission, participating in the development of new regulatory policies for the telecommunications industry.

Mr. Jarvis had a major role in *Oxford Health Plans Securities Litigation*, *DaimlerChrysler Securities Litigation*, and *Tyco Securities Litigation* all of which were among the top ten securities settlements in U.S. history at the time they were resolved, as well as a large number of other securities cases over the past 16 years. He has also been involved in a number of actions before the Delaware Chancery Court, including a Delaware appraisal case that resulted in a favorable decision for the firm's client after trial, and a Delaware appraisal case that was tried in October, argued in 2016, which is still awaiting a final decision.

Mr. Jarvis then became an associate in the Washington office of Rogers & Wells (subsequently merged into Clifford Chance), principally devoted to complex commercial litigation in the fields of antitrust and trade regulations, insurance, intellectual property, contracts and defamation issues, as well as counseling corporate clients in diverse industries on general legal and regulatory compliance matters. He was previously associated with a prominent Philadelphia litigation boutique and had first-chair assignments in cases commenced under the Pennsylvania Whistleblower Act and in major antitrust, First Amendment, civil rights, and complex commercial litigation, including several successful arguments before the U.S. Court of Appeals for the Third Circuit. From 2000 until early 2016, Mr. Jarvis was a Director (Senior Counsel through 2001) at Grant & Eisenhofer, P.A., where he engaged in a number of federal securities, and state fiduciary cases (primarily in Delaware), including several of the largest settlements of the past 15 years. He also was lead trial counsel and/or associate counsel in a number of cases that were tried to a verdict (or are pending final decision).

**JENNIFER L. JOOST**, a partner in the Firm's San Francisco office, focuses her practice on securities litigation. Ms. Joost received her law degree, *cum laude*, from Temple University Beasley School of Law,

where she was the Special Projects Editor for the *Temple International and Comparative Law Journal*. Ms. Joost earned her undergraduate degree with honors from Washington University in St. Louis. She is licensed to practice in Pennsylvania and California and is admitted to practice before the United States Courts of Appeals for the Second, Fourth, Ninth, and Eleventh Circuits, and the United States District Courts for the Eastern District of Pennsylvania, the Northern District of California and the Southern District of California.

Ms. Joost has represented institutional investors in numerous securities fraud class actions including *In re Bank of America Corp. Securities, Derivative, and Employee Retirement Income Security Act (ERISA) Litigation*, No. 09 MDL 2058 (S.D.N.Y.) (settled -- \$2.425 billion); *In re Citigroup Bond Litigation*, No. 08-cv-09522-SHS (S.D.N.Y.) (\$730 million recovery); *David H. Luther, et al., v. Countrywide Financial Corp., et al.*, 2:12-cv-05125 (C.D.Cal. 2012) (settled -- \$500 million); *In re JPMorgan Chase & Co. Securities Litigation*, No. 12-3852-GBD (“London Whale *Litigation*”) (\$150 million recovery); *Minneapolis Firefighters’ Relief Association v. Medtronic, Inc.*, No. 08-cv-06324-PAM-AJB (D. Minn.) (settled -- \$85 million); *In re MGM Mirage Securities Litigation*, Case No. 2:09-cv-01558-GMN-VCF (D. Nev.) (\$75 million settlement); and *In re Weatherford Int’l Securities Litigation*, No. 11-cv-01646-LAK-JCF (S.D.N.Y.) (settled -- \$52.5 million).

**STACEY KAPLAN**, a partner in the Firm’s San Francisco office, concentrates her practice on prosecuting securities class actions. Ms. Kaplan received her J.D. from the University of California at Los Angeles School of Law in 2005, and received her Bachelor of Business Administration from the University of Notre Dame in 2002, with majors in Finance and Philosophy. Ms. Kaplan is admitted to the California Bar and is licensed to practice in all California state courts, as well as the United States District Courts for the Northern and Central Districts of California.

During law school, Ms. Kaplan served as a Judicial Extern to the Honorable Terry J. Hatter, Jr., United States District Court, Central District of California. Prior to joining the Firm, Ms. Kaplan was an associate with Robbins Geller Rudman & Dowd LLP in San Diego, California.

**DAVID KESSLER**, a partner of the Firm, manages the Firm’s internationally recognized securities department. Mr. Kessler graduated with distinction from the Emory School of Law, after receiving his undergraduate B.S.B.A. degree from American University. Mr. Kessler is licensed to practice law in Pennsylvania, New Jersey and New York, and has been admitted to practice before numerous United States District Courts. Prior to practicing law, Mr. Kessler was a Certified Public Accountant in Pennsylvania.

Mr. Kessler has achieved or assisted in obtaining Court approval for the following outstanding results in federal securities class action cases: *In re Bank of America Corp. Securities, Derivative, and Employee Retirement Income Security Act (ERISA) Litigation*, No. 09 MDL 2058 (S.D.N.Y.) (settled -- \$2.425 billion); *In re Tyco International, Ltd. Sec. Lit.*, No. 02-1335-B (D.N.H. 2002) (\$3.2 billion settlement); *In re Wachovia Preferred Securities and Bond/Notes Litigation*, No. 09-cv-6351 (RJS) (S.D.N.Y.) (\$627 million recovery); *In re: Lehman Brothers Securities and ERISA Litigation*, Master File No. 09 MD 2017 (LAK) (S.D.N.Y.) (settled - \$516,218,000); *In re Satyam Computer Services Ltd. Sec. Litig.*, Master File No. 09 MD 02027 (BSJ) (\$150.5 million settlement); *In re Tenet Healthcare Corp.*, 02-CV-8462 (C.D. Cal. 2002) (settled — \$281.5 million); *In re Initial Public Offering Sec. Litig.*, Master File No. 21 MC 92(SAS) (\$586 million settlement).

Mr. Kessler is also currently serving as one of the Firm’s primary litigation partners in the Citigroup, JPMorgan, Hewlett Packard, Pfizer and Morgan Stanley securities litigation matters.

In addition, Mr. Kessler often lectures and writes on securities litigation related topics and has been recognized as “Litigator of the Week” by the American Lawyer magazine for his work in connection with the Lehman Brothers securities litigation matter in December of 2011 and was honored by Benchmark as

one of the preeminent plaintiffs practitioners in securities litigation throughout the country. Most recently Mr. Kessler co-authored *The FindWhat.com Case: Acknowledging Policy Considerations When Deciding Issues of Causation in Securities Class Actions* published in Securities Litigation Report.

**JAMES A. MARO, JR.**, a partner of the Firm, concentrates his practice in the Firm's case development department. He also has experience in the areas of consumer protection, ERISA, mergers and acquisitions, and shareholder derivative actions. Mr. Maro received his law degree from the Villanova University School of Law, and received a B.A. in Political Science from the Johns Hopkins University. Mr. Maro is licensed to practice law in Commonwealth of Pennsylvania and New Jersey. He is admitted to practice in the United States Court of Appeals for the Third Circuit and the United States District Courts for the Eastern District of Pennsylvania and the District of New Jersey.

**JOSHUA A. MATERESE**, a partner of the Firm, concentrates his practice at Kessler Topaz in the areas of securities and consumer protection litigation. Mr. Materese received his Juris Doctor from Temple University Beasley School of Law in 2012, graduating with honors. He received his undergraduate degree from the Syracuse University Newhouse School of Communications. Mr. Materese is licensed to practice in Pennsylvania and admitted to practice before the United States Courts of Appeals for the Second and Third Circuits, and the United States District Courts for the Eastern District of Pennsylvania, the District of New Jersey, the District of Colorado, and the Northern District of Illinois.

**MARGARET E. MAZZEO**, a partner of the Firm, focuses her practice on securities litigation. Ms. Mazzeo received her law degree, *cum laude*, from Temple University Beasley School of Law, where she was a Beasley Scholar and a staff editor for the Temple Journal of Science, Technology, and Environmental Law. Ms. Mazzeo graduated with honors from Franklin and Marshall College. She is licensed to practice in Pennsylvania and New Jersey.

Ms. Mazzeo has been involved in several nationwide securities cases on behalf of investors, including *In re Lehman Brothers Securities Litigation*, No. 1:09-md-02017-LAK (S.D.N.Y.) (\$616 million recovery); and *David H. Luther, et al., v. Countrywide Financial Corp., et al.*, 2:12-cv-05125 (C.D. Cal. 2012) (settled -- \$500 million). Ms. Mazzeo also was a member of the trial team who won a jury verdict in favor of investors in the *In re Longtop Financial Technologies Ltd. Securities Litigation*, No. 11-cv-3658 (S.D.N.Y.) action.

**JOSEPH H. MELTZER**, a partner of the Firm, concentrates his practice in the areas of ERISA, fiduciary and antitrust complex litigation. Mr. Meltzer received his law degree with honors from Temple University School of Law and is an honors graduate of the University of Maryland. Honors include being named a Pennsylvania Super Lawyer. Mr. Meltzer is licensed to practice in Pennsylvania, New Jersey, New York, the Supreme Court of the United States, and the U.S. Court of Federal Claims.

Mr. Meltzer leads the Firm's Fiduciary Litigation Group which has excelled in the highly specialized area of prosecuting cases involving breach of fiduciary duty claims. Mr. Meltzer has served as lead or co-lead counsel in numerous nationwide class actions brought under ERISA. Since founding the Fiduciary Litigation Group, Mr. Meltzer has helped recover hundreds of millions of dollars for clients and class members including some of the largest settlements in ERISA fiduciary breach actions. Mr. Meltzer represented the Board of Trustees of the Buffalo Laborers Security Fund in its action against J.P. Jeanneret Associates which involved a massive, fraudulent scheme orchestrated by Bernard L. Madoff, No. 09-3907 (S.D.N.Y.). Mr. Meltzer also represented an institutional client in a fiduciary breach action against Wells Fargo for large losses sustained while Wachovia Bank and its subsidiaries, including Evergreen Investments, were managing the client's investment portfolio.

As part of his fiduciary litigation practice, Mr. Meltzer was actively involved in actions related to losses sustained in securities lending programs, including *Bd. of Trustees of the AFTRA Ret. Fund v. JPMorgan Chase Bank*, No. 09-00686 (S.D.N.Y.) (\$150 million settlement) and *CompSource Okla. v. BNY Mellon*, No. 08-469 (E.D. OK) (\$280 million settlement). In addition, Mr. Meltzer represented a publicly traded company in a large arbitration against AIG, Inc. related to securities lending losses, *Transatlantic Holdings, Inc. v. AIG*, No. 50-148T0037610 (AAA) (\$75million settlement).

A frequent lecturer on ERISA litigation, Mr. Meltzer is a member of the ABA and has been recognized by numerous courts for his ability and expertise in this complex area of the law. Mr. Meltzer is also a patron member of Public Justice and a member of the Class Action Preservation Committee.

Mr. Meltzer also manages the Firm's Antitrust and Pharmaceutical Pricing Groups. Here, Mr. Meltzer focuses on helping clients that have been injured by anticompetitive and unlawful business practices, including with respect to overcharges related to prescription drug and other health care expenditures. Mr. Meltzer served as co-lead counsel for direct purchasers in the *Flonase Antitrust Litigation*, No.08-3149 (E.D. PA) (\$150 million settlement) and has served as lead or co-lead counsel in numerous nationwide actions. Mr. Meltzer also serves as a special assistant attorney general for the states of Montana, Utah and Alaska. Mr. Meltzer also lectures on issues related to antitrust litigation.

**MATTHEW L. MUSTOKOFF**, a partner of the Firm, is an experienced securities and corporate governance litigator. He has represented clients at the trial and appellate level in numerous high-profile shareholder class actions and other litigations involving a wide array of matters, including financial fraud, market manipulation, mergers and acquisitions, fiduciary mismanagement of investment portfolios, and patent infringement. Mr. Mustokoff received his law degree from the Temple University School of Law, and is a Phi Beta Kappa honors graduate of Wesleyan University. At law school, Mr. Mustokoff was the articles and commentary editor of the *Temple Political and Civil Rights Law Review* and the recipient of the Raynes, McCarty, Binder, Ross and Mundy Graduation Prize for scholarly achievement in the law. He is admitted to practice before the state courts of New York and Pennsylvania, the United States District Courts for the Southern and Eastern Districts of New York, the Eastern District of Pennsylvania and the District of Colorado, and the United States Courts of Appeals for the Eleventh and Federal Circuits.

Mr. Mustokoff is currently prosecuting several nationwide securities cases on behalf of U.S. and overseas institutional investors, including *In re JPMorgan Chase Securities Litigation* (S.D.N.Y.), arising out of the "London Whale" derivatives trading scandal which led to over \$6 billion in losses in the bank's proprietary trading portfolio. He serves as lead counsel for six public pension funds in the multi-district securities litigation against BP in Texas federal court stemming from the 2010 Deepwater Horizon disaster in the Gulf of Mexico. He successfully argued the opposition to BP's motion to dismiss, resulting in a landmark decision sustaining fraud claims under English law for purchasers of BP shares on the London Stock Exchange.

Mr. Mustokoff also played a major role in prosecuting *In re Citigroup Bond Litigation* (S.D.N.Y.), involving allegations that Citigroup concealed its exposure to subprime mortgage debt on the eve of the 2008 financial crisis. The \$730 million settlement marks the second largest recovery under Section 11 of the Securities Act in the history of the statute. Mr. Mustokoff's significant courtroom experience includes serving as one of the lead trial lawyers for shareholders in the only securities fraud class action arising out of the financial crisis to be tried to jury verdict. In addition to his trial practice in federal courts, he has successfully tried cases before the Financial Industry Regulatory Authority (FINRA).

Prior to joining the Firm, Mr. Mustokoff practiced at Weil, Gotshal & Manges LLP in New York, where he represented public companies and financial institutions in SEC enforcement and white collar criminal matters, shareholder litigation and contested bankruptcy proceedings.



**SHARAN NIRMUL**, a partner of the Firm, concentrates his practice in the area of securities, consumer and fiduciary class litigation, principally representing the interests of plaintiffs in class action and complex commercial litigation. Mr. Nirmul has represented clients in federal and state courts and in alternative dispute resolution forums. Mr. Nirmul received his law degree from The George Washington University Law School (J.D. 2001) where he served as an articles editor for the *Environmental Lawyer Journal* and was a member of the Moot Court Board. He was awarded the school's Lewis Memorial Award for excellence in clinical practice. He received his undergraduate degree from Cornell University (B.S. 1996). Mr. Nirmul is admitted to practice law in the Second and Seventh Circuit Court of Appeals, in the state courts of New York, New Jersey, Pennsylvania and Delaware, and in the U.S. District Courts for the Southern District of New York, District of New Jersey, and District of Delaware.

Mr. Nirmul has represented institutional investors in a number of notable securities class action cases. These include *In re Bank of America Securities Litigation*, a case which represents the sixth largest recovery for shareholders under the federal securities laws (\$2.45 billion settlement) and which included significant corporate governance enhancements at Bank of America; *In re Global Crossing Securities Litigation* (recovery of over \$450 million); *In re Delphi Securities Litigation* (\$284 million settlement with Delphi, its former officers and directors and underwriters, and a separate \$38.25 million settlement with the auditors); and *Satyam Computer Services Securities Litigation*, (\$150.5 million settlement).

Mr. Nirmul has also been at the forefront of litigation on behalf of investors who suffered losses through fraud, breach of fiduciary and breach of contract by their custodians and investment fiduciaries. In a matter before the American Arbitration Association, Mr. Nirmul represented a publicly traded reinsurance company in a breach of contract and breach of fiduciary suit against its former controlling shareholder and fiduciary investment manager, arising out of its participation and losses through a securities lending program and securing a \$70 million recovery. Mr. Nirmul is also presently litigating breach of contract and Trust Indenture Act claims against the trustees of mortgage backed securities issued by Washington Mutual (Washington State Investments Board et al v. Bank of America National Association et al) on behalf of several state public pension funds. In connection with a scheme to manipulate foreign exchange rates assigned to its custodial clients, Mr. Nirmul is a member of the team litigating a consumer class action asserting contractual and fiduciary duty claims against BNY Mellon in the Southern District of New York (In re BNY Mellon Forex Litigation).

Mr. Nirmul regularly speaks on matters affecting institutional investors at conferences and symposiums. He has been a speaker and/or panelist at the annual Rights and Responsibilities of Institutional Investors in Amsterdam, The Netherlands and annual Evolving Fiduciary Obligations of Pension Plans in Washington, D.C.

**JUSTIN O. RELIFORD**, a partner of the Firm, concentrates his practice on mergers and acquisition litigation and shareholder derivative litigation. Mr. Reliford graduated from the University of Pennsylvania Law School in 2007 and received his B.A. from Williams College in 2003, majoring in Psychology with a concentration in Leadership Studies. Mr. Reliford is a member of the Pennsylvania and New Jersey bars, and he is admitted to practice in the Third Circuit Court of Appeals, the Eastern District of Pennsylvania, and the District of New Jersey.

Mr. Reliford has extensive experience representing clients in connection with nationwide class and collective actions. Most notably, Mr. Reliford, was part of the trial team *In re Dole Food Co., Inc. Stockholder Litig.*, C.A. No. 8703-VCL, that won a trial verdict in favor of Dole stockholders for \$148 million. Mr. Reliford also obtained a favorable recovery for an institutional investor in a securities class action *In re Allergan, Inc. Proxy Violation Securities Litigation*, No. 8:14-cv-02004 (C.D. Cal. 2018), which challenged a brazen insider trading scheme by Valeant Pharmaceuticals to tip Bill Ackman's hedge fund



Pershing Square Capital that it intended to launch a hostile takeover attempt to buy rival pharma company Allergan. After three years, the case settled weeks before trial for \$250 million. He also litigated *In re GFI Group, Inc. Stockholder Litig.* Consol. C.A. No. 10136-VCL (Del. Ch.) (\$10.75 million cash settlement); *In re Globe Specialty Metals, Inc. Stockholders Litig.*, Consol. C.A. No. 10865-VCG (Del. Ch.) (\$32.5 million settlement); and *In re Harleysville Mutual* (CCP, Phila. Cnty. 2012) (an expedited merger litigation case challenging Harleysville's agreement to sell the company to Nationwide Insurance Company, which lead to a \$26 million cash payment to policyholders). Prior to joining the Firm, Mr. Reliford was an associate in the labor and employment practice group of Morgan Lewis & Bockius, LLP. There, Mr. Reliford concentrated his practice on employee benefits, fiduciary, and workplace discrimination litigation.

**LEE D. RUDY**, a partner of the Firm, manages the Firm's mergers and acquisition and shareholder derivative litigation. Mr. Rudy received his law degree from Fordham University, and his undergraduate degree, *cum laude*, from the University of Pennsylvania. Mr. Rudy is licensed to practice in Pennsylvania and New York.

Representing both institutional and individual shareholders in these actions, he has helped cause significant monetary and corporate governance improvements for those companies and their shareholders. Mr. Rudy also co-chairs the Firm's qui tam and whistleblower practices, where he represents whistleblowers before administrative agencies and in court. Mr. Rudy regularly practices in the Delaware Court of Chancery, where he served as co-lead trial counsel in the landmark case of *In re S. Peru Copper Corp. S'holder Derivative Litig.*, C.A. No. 961-CS, a \$2 billion trial verdict against Southern Peru's majority shareholder. He previously served as lead counsel in dozens of high profile derivative actions relating to the "backdating" of stock options. Mr. Rudy also obtained a favorable recovery for an institutional investor in a securities class action *In re Allergan, Inc. Proxy Violation Securities Litigation*, No. 8:14-cv-02004 (C.D. Cal. 2018), which challenged a brazen insider trading scheme by Valeant Pharmaceuticals to tip Bill Ackman's hedge fund Pershing Square Capital that it intended to launch a hostile takeover attempt to buy rival pharma company Allergan. After three years, the case settled weeks before trial for \$250 million. In addition, Mr. Rudy represented stockholders in obtaining substantial recoveries in numerous shareholder derivative and class actions, many of which resulted in significant monetary relief, including: *In re Facebook, Inc. Class C Reclassification Litigation*, C.A. No. 12286-VCL (Del. Ch. Sept. 25, 2017) (KTMC challenged a proposed reclassification of Facebook's stock structure as harming the company's public stockholders. Facebook abandoned the proposal just one business day before trial was to commence; granting Plaintiffs complete victory); *City of Daytona Beach Police and Fire Pension Fund v. ExamWorks Group, Inc., et al.*, C.A. No. 12481-VCL (Del. Ch. Sept. 12, 2017) (\$86.5 million settlement relating to the acquisition of ExamWorks Group, Inc. by private equity firm Leonard Green & Partners, LP.); *Quinn v. Knight*, No. 3:16-cv-610 (E.D. Va. Mar. 16, 2017) (class action settling just ten days before trial, with stockholders receiving an additional \$32 million in merger consideration); *In re MPG Office Trust, Inc. Preferred Shareholder Litigation*, Cons. Case No. 24-C-13-004097 (Md. Cir. Oct. 20, 2015) (Kessler Topaz negotiated a settlement where MPG preferred stockholders received a dividend of \$2.25 per share, worth approximately \$21 million); *In re Harleysville Mutual* (CCP, Phila. Cnty. 2012) (an expedited merger litigation case challenging Harleysville's agreement to sell the company to Nationwide Insurance Company, which lead to a \$26 million cash payment to policyholders); and *In re Amicas, Inc. Shareholder Litigation*, 10-0174-BLS2 (Suffolk County, MA 2010) (Kessler Topaz prevailed in securing a preliminary injunction against the deal, which allowed a superior bidder to purchase the Company for an additional \$0.70 per share (\$26 million)).

Prior to civil practice, Mr. Rudy served for several years as an Assistant District Attorney in the Manhattan (NY) District Attorney's Office, and as an Assistant United States Attorney in the US Attorney's Office (DNJ).

**RICHARD A. RUSSO, JR.**, a partner of the Firm, focuses his practice on securities litigation. Mr. Russo received his law degree from the Temple University Beasley School of Law, where he graduated *cum laude* and was a member of the Temple Law Review, and graduated *cum laude* from Villanova University, where he received a Bachelor of Science degree in Business Administration. Mr. Russo is licensed to practice in Pennsylvania and New Jersey.

Mr. Russo has represented individual and institutional investors in obtaining significant recoveries in numerous class actions arising under the federal securities laws, including *In re Bank of America Corp. Securities, Derivative, and Employee Retirement Income Security Act (ERISA) Litigation*, No. 09 MDL 2058 (S.D.N.Y.) (settled -- \$2.425 billion), *In re Citigroup Bond Litigation*, No. 08-cv-09522-SHS (S.D.N.Y.) (\$730 million recovery), *In re Lehman Brothers Securities Litigation*, No. 1:09-md-02017-LAK (S.D.N.Y.) (\$616 million recovery).

**MARC A. TOPAZ**, a partner of the Firm, oversees the Firm's derivative, transactional and case development departments. Mr. Topaz received his law degree from Temple University School of Law, where he was an editor of the *Temple Law Review* and a member of the Moot Court Honor Society. He also received his Master of Law (L.L.M.) in taxation from the New York University School of Law, where he served as an editor of the *New York University Tax Law Review*. He is licensed to practice law in Pennsylvania and New Jersey, and has been admitted to practice before the United States District Court for the Eastern District of Pennsylvania.

Mr. Topaz has been heavily involved in all of the Firm's cases related to the subprime mortgage crisis, including cases seeking recovery on behalf of shareholders in companies affected by the subprime crisis, as well as cases seeking recovery for 401K plan participants that have suffered losses in their retirement plans. Mr. Topaz has also played an instrumental role in the Firm's option backdating litigation. These cases, which are pled mainly as derivative claims or as securities law violations, have served as an important vehicle both for re-pricing erroneously issued options and providing for meaningful corporate governance changes. In his capacity as the Firm's department leader of case initiation and development, Mr. Topaz has been involved in many of the Firm's most prominent cases, including *In re Initial Public Offering Sec. Litig.*, Master File No. 21 MC 92(SAS) (S.D.N.Y. Dec. 12, 2002); *Wanstrath v. Doctor R. Crants, et al.*, No. 99-1719-111 (Tenn. Chan. Ct., 20th Judicial District, 1999); *In re Tyco International, Ltd. Sec. Lit.*, No. 02-1335-B (D.N.H. 2002) (settled — \$3.2 billion); and virtually all of the 80 options backdating cases in which the Firm is serving as Lead or Co-Lead Counsel. Mr. Topaz has played an important role in the Firm's focus on remedying breaches of fiduciary duties by corporate officers and directors and improving corporate governance practices of corporate defendants.

**MELISSA L. TROUTNER**, a partner of the Firm, concentrates her practice on new matter development with a specific focus on analyzing securities class action lawsuits, antitrust actions, and complex consumer actions. Ms. Troutner is also a member of the Firm's Consumer Protection group. Ms. Troutner received her law degree, Order of the Coif, *cum laude*, from the University of Pennsylvania Law School in 2002 and her Bachelor of Arts, Phi Beta Kappa, *magna cum laude*, from Syracuse University in 1999. Ms. Troutner is licensed to practice law in Pennsylvania, New York and Delaware.

Prior to joining Kessler Topaz, Ms. Troutner practiced as a litigator with several large defense firms, focusing on complex commercial, products liability and patent litigation, and clerked for the Honorable Stanley S. Brotman, United States District Judge for the District of New Jersey.

**MICHAEL C. WAGNER**, a partner of the Firm, handles class-action merger litigation and shareholder derivative litigation for the Firm's individual and institutional clients. A graduate of the University of Pittsburgh School of Law and Franklin and Marshall College, Mr. Wagner has clerked for two appellate court judges and began his career at a Philadelphia-based commercial litigation firm, representing clients

in business and corporate disputes across the United States. Mr. Wagner is admitted to practice in the courts of Pennsylvania, the United States Court of Appeals for the Third Circuit, and the United States District Courts for the Eastern and Western Districts of Pennsylvania, the Eastern District of Michigan, and the District of Colorado.

Frequently appearing in the Delaware Court of Chancery, Mr. Wagner has helped to achieve substantial monetary recoveries for stockholders of public companies in cases arising from corporate mergers and acquisitions. Notably, Mr. Wagner served as co-lead trial counsel in *In re Dole Food Co., Inc. Stockholder Litig.*, C.A. No. 8703-VCL (Del. Ch. Aug. 27, 2015), which won a trial verdict in favor of Dole stockholders for \$148 million. In addition, Mr. Wagner served co-lead counsel in *In re Ebix, Inc. S'holder Litig.*, Consol. C.A. No. 8526-VCS (Del. Ch. Apr. 5, 2019), a case that challenged an improper executive bonus worth \$825 million for the company's CEO. After five years of hard fought litigation and a trial the case settled for corporate governance measures and an amendment to the CEO's stock appreciation rights agreement. He has also achieved significant monetary results in other cases such as: *In re GFI Group, Inc. Stockholder Litig.*, Consol. C.A. No. 10136-VCL (Del. Ch. Feb. 26, 2016) (\$10.75 million settlement to resolve the claims surrounding the takeover broker-dealer GFI by CME Group); *In re Globe Specialty Metals, Inc. Stockholders Litig.*, Consol. C.A. No. 10865-VCG (Del. Ch. Feb. 15, 2016) (\$32.5 million settlement and various corporate governance reforms to protect Globe stockholders' rights in Ferroglobe); *In re MPG Office Trust, Inc. Preferred Shareholder Litig.*, Cons. Case No. 24-C-13-004097 (Md. Cir. Oct. 20, 2015) (Kessler Topaz negotiated a settlement where MPG preferred stockholders received a dividend of \$2.25 per share, worth approximately \$21 million); *In re GSI Commerce, Inc. S'holders Litig.*, C.A. No. 6346-VCN (Del. Ch. Nov. 15, 2011) (settlement required additional \$23.9 million to be paid to public stockholders as a part of the company's merger with eBay, Inc.); and *In re Genentech, Inc. S'holders Litig.*, Consol. C.A. No. 3911-VCS (Del. Ch. July 9, 2009) (litigation helped Genentech's stockholders to receive \$3.9 billion in additional merger consideration from Roche). Mr. Wagner was also a part of the team that prosecuted *In re S. Peru Copper Corp. S'holder Derivative Litig.*, C.A. No. 961-CS, which resulted in a \$2 billion post-trial judgment.

**JOHNSTON de F. WHITMAN, JR.**, a partner of the Firm, focuses his practice on securities litigation, primarily in federal court. Mr. Whitman received his law degree from Fordham University School of Law, where he was a member of the Fordham International Law Journal, and graduated *cum laude* from Colgate University. He is licensed to practice in Pennsylvania and New York., and is admitted to practice in courts around the country, including the United States Courts of Appeal for the Second, Third, and Fourth Circuits.

Mr. Whitman has represented institutional investors in obtaining substantial recoveries in numerous securities fraud class actions, including: (i) *In re Bank of America Securities Litigation*, a case which represents the sixth largest recovery for shareholders under the federal securities laws (settled --\$2.425 billion); (ii) *In re Royal Ahold Sec. Litig.*, No. 03-md-01539 (D. Md. 2003) (\$1.1 billion settlement); (iii) *In re DaimlerChrysler AG Sec. Litig.*, No. 00-0993 (D. Del. 2000) (\$300 million settlement); (iv) *In re Dollar General, Inc. Sec. Litig.*, No. 01-cv-0388 (M.D. Tenn. 2001) ( \$162 million settlement); and (v) *In re JPMorgan Chase & Co. Securities Litigation*, No. 12-3852-GBD ("London Whale Litigation") (\$150 million recovery). Mr. Whitman has also obtained favorable recoveries for institutional investors pursuing direct securities fraud claims, including cases against Merck & Co., Inc., Qwest Communications International, Inc. and Merrill Lynch & Co., Inc. In addition, Mr. Whitman represented a publicly traded company in a large arbitration against AIG, Inc. related to securities lending losses, *Transatlantic Holdings, Inc. v. AIG*, No. 50-148T0037610 (AAA) (\$75million settlement).

**ROBIN WINCHESTER**, a partner of the Firm, concentrated her practice in the areas of securities litigation and lead plaintiff litigation, when she joined the Firm. Presently, Ms. Winchester concentrates her practice in the area of shareholder derivative actions. Ms. Winchester earned her Juris Doctor degree from

Villanova University School of Law, and received her Bachelor of Science degree in Finance from St. Joseph's University. Ms. Winchester is licensed to practice law in Pennsylvania and New Jersey.

Prior to joining Kessler Topaz, Ms. Winchester served as a law clerk to the Honorable Robert F. Kelly in the United States District Court for the Eastern District of Pennsylvania.

Ms. Winchester has served as lead counsel in numerous high-profile derivative actions relating to the backdating of stock options, including *In re Eclipsys Corp. Derivative Litigation*, Case No. 07-80611-Civ-MIDDLEBROOKS (S.D. Fla.); *In re Juniper Derivative Actions*, Case No. 5:06-cv-3396-JW (N.D. Cal.); *In re McAfee Derivative Litigation*, Master File No. 5:06-cv-03484-JF (N.D. Cal.); *In re Quest Software, Inc. Derivative Litigation*, Consolidated Case No. 06CC00115 (Cal. Super. Ct., Orange County); and *In re Sigma Designs, Inc. Derivative Litigation*, Master File No. C-06-4460-RMW (N.D. Cal.). Settlements of these, and similar, actions have resulted in significant monetary returns and corporate governance improvements for those companies, which, in turn, greatly benefits their public shareholders.

**ERIC L. ZAGAR**, a partner of the Firm, concentrates his practice in the area of shareholder derivative litigation. Mr. Zagar received his law degree from the University of Michigan Law School, *cum laude*, where he was an Associate Editor of the *Michigan Law Review*, and his undergraduate degree from Washington University in St. Louis. He is admitted to practice in Pennsylvania, California and New York. Mr. Zagar previously served as a law clerk to Justice Sandra Schultz Newman of the Pennsylvania Supreme Court.

Since 2001 Mr. Zagar has served as Lead or Co-Lead counsel in hundreds of derivative actions in courts throughout the nation. He was a member of the trial team in the landmark case of *In re S. Peru Copper Corp. S'holder Derivative Litig.*, C.A. No. 961-CS, a \$2 billion trial verdict against Southern Peru's majority shareholder. Mr. Zagar has successfully achieved significant monetary and corporate governance relief for the benefit of shareholders, and has extensive experience litigating matters involving Special Litigation Committees.

**TERENCE S. ZIEGLER**, a partner of the Firm, concentrates a significant percentage of his practice to the investigation and prosecution of pharmaceutical antitrust actions, medical device litigation, and related anticompetitive and unfair business practice claims. Mr. Ziegler received his law degree from the Tulane University School of Law and received his undergraduate degree from Loyola University. Mr. Ziegler is licensed to practice law in Pennsylvania and the State of Louisiana, and has been admitted to practice before several courts including the United States Court of Appeals for the Third Circuit.

Mr. Ziegler has represented investors, consumers and other clients in obtaining substantial recoveries, including: *In re Flonase Antitrust Litigation*; *In re Wellbutrin SR Antitrust Litigation*; *In re Modafinil Antitrust Litigation*; *In re Guidant Corp. Implantable Defibrillators Products Liability Litigation* (against manufacturers of defective medical devices — pacemakers/implantable defibrillators — seeking costs of removal and replacement); and *In re Actiq Sales and Marketing Practices Litigation* (regarding drug manufacturer's unlawful marketing, sales and promotional activities for non-indicated and unapproved uses).

**ANDREW L. ZIVITZ**, a partner of the Firm, received his law degree from Duke University School of Law, and received a Bachelor of Arts degree, with distinction, from the University of Michigan, Ann Arbor. Mr. Zivitz is licensed to practice in Pennsylvania and New Jersey.

Drawing on two decades of litigation experience, Mr. Zivitz concentrates his practice in the area of securities litigation and is currently litigating several of the largest federal securities fraud class actions in the U.S. Andy is skilled in all aspects of complex litigation, from developing and implementing strategies,



to conducting merits and expert discovery, to negotiating resolutions. He has represented dozens of major institutional investors in securities class actions and has helped the firm recover more than \$1 billion for damaged clients and class members in numerous securities fraud matters in which Kessler Topaz was Lead or Co-Lead Counsel, including *David H. Luther, et al., v. Countrywide Financial Corp., et al.*, 2:12-cv-05125 (C.D.Cal. 2012) (settled -- \$500 million); *In re Pfizer Sec. Litig.*, 1:04-cv-09866 (S.D.N.Y. 2004) (settled -- \$486 million); *In re Tenet Healthcare Corp.*, 02-CV-8462 (C.D. Cal. 2002) (settled — \$281.5 million); *In re JPMorgan Chase & Co. Securities Litigation*, No. 12-3852-GBD (“London Whale Litigation”) (\$150 million recovery); *In re Computer Associates Sec. Litig.*, No. 02-CV-122 6 (E.D.N.Y. 2002) (settled — \$150 million); *In re Hewlett-Packard Sec. Litig.*, 12-cv-05980 (N.D.Cal. 2012) (settled - \$100 million); and *In re Minneapolis Firefighters’ Relief Association v. Medtronic, Inc.*, No. 08-cv-06324-PAM-AJB (D. Minn.) (settled -- \$ 85 million).

Andy’s extensive courtroom experience serves his clients well in trial situations, as well as pre-trial proceedings and settlement negotiations. He served as one of the lead plaintiffs’ attorneys in the only securities fraud class action arising out of the financial crisis to be tried to a jury verdict, has handled a Daubert trial in the U.S. District Court for the Southern District of New York, and successfully argued back-to-back appeals before the Ninth Circuit Court of Appeals. Before joining Kessler Topaz, Andy worked at the international law firm Drinker Biddle and Reath, primarily representing defendants in large, complex litigation. His experience on the defense side of the bar provides a unique perspective in prosecuting complex plaintiffs’ litigation.

## COUNSEL

**JENNIFER L. ENCK**, Counsel to the Firm, concentrates her practice in the area of securities litigation and settlement matters. Ms. Enck received her law degree, *cum laude*, from Syracuse University College of Law, where she was a member of the Syracuse Journal of International Law and Commerce, and her undergraduate degree in International Politics/International Studies from The Pennsylvania State University. Ms. Enck also received a Master’s degree in International Relations from Syracuse University’s Maxwell School of Citizenship and Public Affairs. She is licensed to practice in Pennsylvania and has been admitted to practice before the United States Court of Appeals for the Third and Eleventh Circuits and the United States District Court for the Eastern District of Pennsylvania.

Ms. Enck has been involved in documenting and obtaining the required court approval for many of the firm’s largest and most complex securities class action settlements, including *In re Bank of America Corp. Securities, Derivative, and Employee Retirement Income Security Act (ERISA) Litigation*, No. 09 MDL 2058 (S.D.N.Y.) (settled -- \$2.425 billion); *David H. Luther, et al., v. Countrywide Financial Corp., et al.*, 2:12-cv-05125 (C.D. Cal. 2012) (settled -- \$500 million); *In re: Lehman Brothers Securities and ERISA Litigation*, Master File No. 09 MD 2017 (LAK) (S.D.N.Y) (settled - \$516,218,000); and *In re Satyam Computer Services Ltd. Sec. Litig.*, Master File No. 09 MD 02027 (BSJ) (\$150.5 million settlement).

**ERIC K. GERARD**, counsel to the Firm, is a former federal prosecutor and experienced trial lawyer whose practice focuses on securities fraud, antitrust, and consumer protection litigation. Eric received his law degree from the University of Virginia School of Law, earning Order of the Coif honors while completing a master’s degree in international economics at the Johns Hopkins University.

Before joining Kessler Topaz, Eric served an Assistant District Attorney at the Manhattan District Attorney’s Office, as a civil litigator at an international law firm in Houston and a prominent boutique in New Orleans, and as an Assistant U.S. Attorney in Florida. He has tried a range of complex cases to verdict, including international money laundering, wire fraud conspiracy, securities counterfeiting, identity theft,



obstruction of justice, extraterritorial child exploitation, civil healthcare liability claims, and murder-for-hire.

**LISA LAMB PORT**, Counsel to the Firm, concentrates her practice on consumer, antitrust, and securities fraud class actions. Ms. Lamb Port received her law degree, Order of the Coif, summa cum laude, from the Villanova University School of Law in 2003 and her Bachelor of Arts, cum laude, from Princeton University in 2000. Ms. Lamb Port is licensed to practice law in the Commonwealth Pennsylvania.

Prior to joining Kessler Topaz, Ms. Lamb Port was a partner at another class action firm, where she represented institutional and individual investors in securities fraud, breach of fiduciary duty, and shareholder derivative cases, as well as in litigation resulting from mergers and acquisitions.

**DONNA SIEGEL MOFFA**, Counsel to the Firm, concentrates her practice in the area of consumer protection litigation. Ms. Siegel Moffa received her law degree, with honors, from Georgetown University Law Center in May 1982 and a master's degree in Public Administration from Rutgers, the State University of New Jersey, Graduate School-Camden in January 2017. She received her undergraduate degree, *cum laude*, from Mount Holyoke College in Massachusetts. Ms. Siegel Moffa is admitted to practice before the Third Circuit Court of Appeals, the United States Courts for the District of New Jersey and the District of Columbia, as well as the Supreme Court of New Jersey and the District of Columbia Court of Appeals.

Prior to joining the Firm, Ms. Siegel Moffa was a member of the law firm of Trujillo, Rodriguez & Richards, LLC, where she litigated, and served as co-lead counsel, in complex class actions arising under federal and state consumer protection statutes, lending laws and laws governing contracts and employee compensation. Prior to entering private practice, Ms. Siegel Moffa worked at both the Federal Energy Regulatory Commission (FERC) and the Federal Trade Commission (FTC). At the FTC, she prosecuted cases involving allegations of deceptive and unsubstantiated advertising. In addition, both at FERC and the FTC, Ms. Siegel Moffa was involved in a wide range of administrative and regulatory issues including labeling and marketing claims, compliance, FOIA and disclosure obligations, employment matters, licensing and rulemaking proceedings.

Ms. Siegel Moffa served as co-lead counsel for the class in *Robinson v. Thorn Americas, Inc.*, L-03697-94 (Law Div. 1995), a case that resulted in a significant monetary recovery for consumers and changes to rent-to-own contracts in New Jersey. Ms. Siegel Moffa was also counsel in *Muhammad v. County Bank of Rehoboth Beach, Delaware*, 189 N.J. 1 (2006), U.S. Sup. Ct. cert. denied, 127 S. Ct. 2032(2007), in which the New Jersey Supreme Court struck a class action ban in a consumer arbitration contract. She has served as class counsel representing consumers pressing TILA claims, e.g. *Cannon v. Cherry Hill Toyota, Inc.*, 184 F.R.D. 540 (D.N.J. 1999), and *Dal Ponte v. Am. Mortg. Express Corp.*, CV- 04-2152 (D.N.J. 2006), and has pursued a wide variety of claims that impact consumers and individuals including those involving predatory and sub-prime lending, mandatory arbitration clauses, price fixing, improper medical billing practices, the marketing of light cigarettes and employee compensation. Ms. Siegel Moffa's practice has involved significant appellate work representing individuals, classes, and non-profit organizations participating as amicus curiae, such as the National Consumer Law Center and the AARP. In addition, Ms. Siegel Moffa has regularly addressed consumer protection and litigation issues in presentations to organizations and professional associations.

**MICHELLE M. NEWCOMER**, Counsel to the Firm, concentrates her practice in the area of securities litigation. Ms. Newcomer earned her law degree from Villanova University School of Law in 2005, and earned her B.B.A. in Finance and Art History from Loyola University Maryland in 2002. Ms. Newcomer is licensed to practice law in the Commonwealth of Pennsylvania and the State of New Jersey and has been admitted to practice before the United States Supreme Court, the United States Court of Appeals for the

Second, Ninth and Tenth Circuits, and the United States District Court for the Districts of New Jersey and Colorado.

Ms. Newcomer has represented shareholders in numerous securities class actions in which the Firm has served as Lead or Co-Lead Counsel, through all aspects of pre-trial proceedings, including complaint drafting, litigating motions to dismiss and for summary judgment, conducting document, deposition and expert discovery, and appeal. Ms. Newcomer also has been involved in the Firm's securities class action trials, including most recently serving as part of the trial team in the Longtop Financial Technologies securities class action trial that resulted in a jury verdict on liability and damages in favor of investors. Ms. Newcomer began her legal career with the Firm in 2005. Prior to joining the Firm, she was a summer law clerk for the Hon. John T.J. Kelly, Jr. of the Pennsylvania Superior Court.

Ms. Newcomer's representative cases include: *In re Longtop Financial Technologies Ltd. Sec. Litig.* No. 11-cv-3658 (SAS) (S.D.N.Y.) – obtained on behalf of investors a jury verdict on liability and damages against the company's former CFO; *re Lehman Brothers Securities Litigation*, No. 1:09-md-02017-LAK (S.D.N.Y.) (\$616 million recovery); *In re Pfizer, Inc. Sec. Litig.*, No. 04-9866-LTS (S.D.N.Y.) – represents three of the court-appointed class representatives, and serves as additional counsel for the class in securities fraud class action based on alleged misrepresentations and omissions concerning cardiovascular risks associated with Celebrex® and Bextra®, which survived Defendants' motion for summary judgment; *Connecticut Retirement Plans & Trust Funds et al. v. BP p.l.c. et al.* (S.D. Tex.) – represents several public pension funds in direct action asserting claims under Section 10(b) and Rule 10b-5, for purchases of BP ADRs on the NYSE, and under English law for purchasers of BP ordinary shares on the London Stock Exchange, which recently survived Defendants' motion to dismiss; litigation is ongoing.

## ASSOCIATES & STAFF ATTORNEYS

**ASHER S. ALAVI**, an associate of the Firm, concentrates his practice in the area of qui tam litigation. Mr. Alavi received his law degree, cum laude, from Boston College Law School in 2011 where he served as Note Editor for the Boston College Journal of Law & Social Justice. He received his undergraduate degree in Communication Studies and Political Science from Northwestern University in 2007. Mr. Alavi is licensed to practice law in Pennsylvania and Maryland. Prior to joining Kessler Topaz, Mr. Alavi was an associate with Pietragallo Gordon Alfano Bosick & Raspanti LLP in Philadelphia, where he worked on a variety of whistleblower and healthcare matters.

**SARA A. ALSALEH**, a staff attorney of the Firm, concentrates her practice in the area of securities litigation. Ms. Alsaleh earned her Juris Doctor degree from Widener University School of Law in Wilmington, Delaware, and her undergraduate degree from Pennsylvania State University. Ms. Alsaleh is admitted to practice in Pennsylvania and New Jersey.

During law school, Ms. Alsaleh interned at the U.S. Food and Drug Administration and the Delaware Department of Justice in the Consumer Protection & Fraud Division where she was heavily involved in protecting consumers within a wide variety of subject areas. Prior to joining the Firm, Ms. Alsaleh practiced in the areas of pharmaceutical & health law litigation, and was an Associate at a general practice firm in Bensalem, Pennsylvania.

**DANIEL M. BAKER**, an associate of the Firm, concentrates his practice in the areas of merger and acquisition litigation and shareholder derivative actions. Through his practice, Mr. Baker helps institutional and individual shareholders obtain significant financial recoveries and corporate governance reforms.

While in law school, Mr. Baker interned at the Securities Exchange Commission and the Financial Industry Regulatory Authority. Mr. Baker was also a member of the Villanova Law Review, and served as Online Articles Editor.

**LaMARLON R. BARKSDALE**, a staff attorney of the Firm, concentrates his practice in the area of securities litigation. Mr. Barksdale received his law degree from Temple University, James E. Beasley School of Law in 2005 and his undergraduate degree, cum laude, from the University of Delaware in 2001. He is licensed to practice law in Pennsylvania and has been admitted to practice before the United States District Court for the Eastern District of Pennsylvania.

Prior to joining Kessler Topaz, Mr. Barksdale worked in complex pharmaceutical litigation, commercial litigation, criminal law and bankruptcy law.

**ADRIENNE BELL**, an associate of the Firm, focuses her practice on case development and client relations. Ms. Bell received her law degree from Brooklyn Law School and her undergraduate degree in Music Theory and Composition from New York University, where she graduated *magna cum laude*. Ms. Bell is licensed to practice in Pennsylvania. Prior to joining the Firm, Ms. Bell practiced in the areas of entertainment law and commercial litigation.

**MATTHEW BENEDICT**, an associate of the Firm, concentrates his practice in the area of mergers and acquisitions litigation and shareholder derivative litigation. Mr. Benedict earned his law degree from Villanova University School of Law and his undergraduate degree from Haverford College. He is licensed to practice law in Pennsylvania and New Jersey.

**ELIZABETH WATSON CALHOUN**, a staff attorney of the Firm, focuses on securities litigation. She has represented investors in major securities fraud and has also represented shareholders in derivative and direct shareholder litigation. Ms. Calhoun received her law degree from Georgetown University Law Center (*cum laude*), where she served as Executive Editor of the Georgetown Journal of Gender and the Law. She received her undergraduate degree in Political Science from the University of Maine, Orono (*with high distinction*). Ms. Calhoun is admitted to practice before the state court of Pennsylvania and the U.S. District Court for the Eastern District of Pennsylvania. Prior to joining the Firm, Ms. Calhoun was employed with the Wilmington, Delaware law firm of Grant & Eisenhofer, P.A.

**QUIANA CHAPMAN-SMITH**, a staff attorney of the Firm, concentrates her practice in the area of securities litigation. She received her law degree from Temple University Beasley School of Law in Pennsylvania and her Bachelor of Science in Management and Organizations from The Pennsylvania State University. Ms. Chapman-Smith is licensed to practice law in the Commonwealth of Pennsylvania. Prior to joining Kessler Topaz, she worked in pharmaceutical litigation.

**THERESA M. DEANGELIS**, an associate of the Firm, concentrates her practice in Whistleblower Litigation. Ms. DeAngelis received her law degree from Penn State Law in 2018 and her undergraduate degree from Penn State University in 2014. Ms. DeAngelis is licensed to practice in Pennsylvania.

**ELIZABETH DRAGOVICH**, a staff attorney of the Firm, concentrates her practice in the area of securities litigation. Ms. Dragovich received her law degree from the University of Pennsylvania Law School in 2002, and her undergraduate degree from Carnegie Mellon University in 1999. Ms. Dragovich is licensed to practice law in Pennsylvania. Prior to joining Kessler Topaz, Elizabeth was a staff attorney with the Wilmington, Delaware law firm of Grant & Eisenhofer, P.A.

**STEPHEN J. DUSKIN**, a staff attorney of the Firm, concentrates his practice in the area of antitrust litigation. Mr. Duskin received his law degree from Rutgers School of Law at Camden in 1985, and his

undergraduate degree in Mathematics from the University of Rochester in 1976. Mr. Duskin is licensed to practice law in Pennsylvania.

Prior to joining Kessler Topaz, Mr. Duskin practiced corporate and securities law in private practice and in corporate legal departments, and also worked for the U.S. Securities and Exchange Commission and the Resolution Trust Corporation.

**DONNA EAGLESON**, a staff attorney of the Firm, concentrates her practice in the area of securities litigation discovery matters. She received her law degree from the University of Dayton School of Law in Dayton, Ohio. Ms. Eagleson is licensed to practice law in Pennsylvania.

Prior to joining Kessler Topaz, Ms. Eagleson worked as an attorney in the law enforcement field, and practiced insurance defense law with the Philadelphia firm Margolis Edelstein.

**PATRICK J. EDDIS**, a staff attorney of the Firm, concentrates his practice in the area of corporate governance litigation. Mr. Eddis received his law degree from Temple University School of Law in 2002 and his undergraduate degree from the University of Vermont in 1995. Mr. Eddis is licensed to practice in Pennsylvania.

Prior to joining Kessler Topaz, Mr. Eddis was a Deputy Public Defender with the Bucks County Office of the Public Defender. Before that, Mr. Eddis was an attorney with Pepper Hamilton LLP, where he worked on various pharmaceutical and commercial matters.

**MARK FRANEK**, an associate of the Firm, concentrates his practice on securities fraud, antitrust, and unfair business practices litigation. Mr. Franek received his law degree from Temple University Beasley School of Law, and graduated *with honors* from Duke University. He is licensed to practice in Pennsylvania and New Jersey.

Before joining the Firm, Mr. Franek was a Judicial Officer to the Honorable Annette M. Rizzo, Philadelphia Court of Common Pleas, and a Judicial Intern to the Honorable Gene E.K. Pratter, U.S. District Court for the Eastern District of Pennsylvania. In law school, Mr. Franek served on Temple's Law Review and was a member of Temple's Moot Court Honor Society.

Prior to law school, Mr. Franek worked for over 15 years in a variety of educational settings, including K-12 and higher education environments. Mr. Franek was the Dean of Students at the William Penn Charter School, a Quaker K-12 independent school in Philadelphia, and also taught at the University of Pennsylvania, in its Masters in School Leadership Program, and at Cabrini College and Philadelphia University, in their English departments.

**KIMBERLY V. GAMBLE**, a staff attorney of the Firm, concentrates her practice in the area of securities litigation. She received her law degree from Widener University, School of Law in Wilmington, DE. While in law school, she was a CASA/Youth Advocates volunteer and had internships with the Delaware County Public Defender's Office as well as The Honorable Judge Ann Osborne in Media, Pennsylvania. She received her Bachelor of Arts degree in Sociology from The Pennsylvania State University. Ms. Gamble is licensed to practice law in the Commonwealth of Pennsylvania. Prior to joining Kessler Topaz, she worked in pharmaceutical litigation.

**GRANT D. GOODHART**, an associate of the Firm, concentrates his practice in the areas of mergers and acquisitions litigation and stockholder derivative actions. Mr. Goodhart received his law degree, cum laude, from Temple University Beasley School of Law and his undergraduate degree, magna cum laude, from the University of Pittsburgh. He is licensed to practice law in Pennsylvania and New Jersey.

**TYLER S. GRADEN**, an associate of the Firm, focuses his practice on consumer protection and whistleblower litigation. Mr. Graden received his Juris Doctor degree from Temple Law School and his undergraduate degrees in Economics and International Relations from American University. Mr. Graden is licensed to practice law in Pennsylvania and New Jersey and has been admitted to practice before numerous United States District Courts.

Prior to joining Kessler Topaz, Mr. Graden practiced with a Philadelphia law firm where he litigated various complex commercial matters, and also served as an investigator with the Chicago District Office of the Equal Employment Opportunity Commission.

Mr. Graden has represented individuals and institutional investors in obtaining substantial recoveries in numerous class actions, including *Board of Trustees of the Buffalo Laborers Security Fund v. J.P. Jeanneret Associates, Inc.*, Case No. 09 Civ. 8362 (S.D.N.Y.) (settled - \$219 million); *Board of Trustees of the AFTRA Retirement Fund v. JPMorgan Chase Bank, NA.*, Case No. 09 Civ. 0686 (S.D.N.Y.) (settled - \$150 million); *In re Merck & Co., Inc. Vytarin ERISA Litig.*, Case No. 09 Civ. 1974 (D.N.J.) (settled - \$10.4 million); and *In re 2008 Fannie Mae ERISA Litigation*, Case No. 09-cv-1350 (S.D.N.Y.) (settled - \$9 million). Mr. Graden has also obtained favorable recoveries on behalf of multiple, nationwide classes of borrowers whose insurance was force-placed by their mortgage servicers.

**STACEY A. GREENSPAN**, an associate of the Firm, concentrates her practice in the areas of merger and acquisition litigation and shareholder derivative actions. Ms. Greenspan received her law degree from Temple University in 2007 and her undergraduate degree from the University of Michigan in 2001, with honors. Ms. Greenspan is licensed to practice in Pennsylvania.

Prior to joining Kessler Topaz, Ms. Greenspan served as an Assistant Public Defender in Philadelphia for almost a decade, litigating hundreds of trials to verdict. Ms. Greenspan also worked at the Trial and Capital Habeas Units of the Federal Community Defender Office of the Eastern District of Pennsylvania throughout law school. At Kessler Topaz, she has assisted the Firm in obtaining a substantial recovery in a large class action on behalf of an institutional client in *City of Daytona Beach Police and Fire Pension Fund v. ExamWorks Group, Inc., et al.*, C.A. No. 12481-VCL (Del. Ch. Sept. 12, 2017) (\$86.5 million settlement relating to the acquisition of ExamWorks Group, Inc. by private equity firm Leonard Green & Partners, LP.). In addition, Ms. Greenspan served as co-lead counsel in *In re Ebix, Inc. S'holder Litig.*, Consol. C.A. No. 8526-VCS (Del. Ch. Apr. 5, 2019), a case that challenged an improper executive bonus worth \$825 million for the company's CEO. After five years of hard fought litigation and a trial the case settled for corporate governance measures and an amendment to the CEO's stock appreciation rights agreement.

**KEITH S. GREENWALD**, a staff attorney of the Firm, concentrates his practice in the area of securities litigation. Mr. Greenwald received his law degree from Temple University, Beasley School of Law in 2013 and his undergraduate degree in History, summa cum laude, from Temple University in 2004. Mr. Greenwald is licensed to practice law in Pennsylvania.

Prior to joining Kessler Topaz, Mr. Greenwald was a contract attorney on various projects in Philadelphia and was at the International Criminal Tribunal for the Former Yugoslavia, at The Hague in The Netherlands, working in international criminal law.

**JOHN J. GROSSI**, a staff attorney at the Firm, focuses his practice on securities litigation. Mr. Grossi received his law degree from Widener University Delaware School of Law and graduated *cum laude* from Curry College. He is licensed to practice law in Pennsylvania. Prior to joining the Firm as a Staff Attorney, Mr. Grossi was employed in the Firm's internship program as a Summer Law Clerk, where he was also a member of the securities fraud department.



During his time as a Summer Law Clerk, Mr. Grossi conducted legal research for several securities fraud class actions on behalf of shareholders, including Bank of America related to its acquisition of Merrill Lynch, Lehman Brothers, St. Jude Medical and NII Holdings.

**NATHAN A. HASIUK**, an associate of the Firm, concentrates his practice on securities litigation. Mr. Hasiuk received his law degree from Temple University Beasley School of Law, and graduated *summa cum laude* from Temple University. He is licensed to practice in Pennsylvania and New Jersey and has been admitted to practice before the United States District Court for the District of New Jersey. Prior to joining the Firm, Mr. Hasiuk was an Assistant Public Defender in Philadelphia.

**EVAN R. HOEY**, an associate of the Firm, focuses his practice on securities litigation. Mr. Hoey received his law degree from Temple University Beasley School of Law, where he graduated *cum laude*, and graduated *summa cum laude* from Arizona State University. He is licensed to practice in Pennsylvania and is admitted to practice before the United States District Court for the Eastern District of Pennsylvania.

**SUFEI HU**, a staff attorney of the Firm, concentrates her practice in the area of securities litigation. She received her J.D. from Villanova University School of Law, where she was a member of the Moot Court Board. Ms. Hu received her undergraduate degree from Haverford College in Political Science, with honors. She is licensed to practice law in Pennsylvania and New Jersey, and is admitted to the United States District Court of the Eastern District of Pennsylvania. Prior to joining the Firm, Ms. Hu worked in pharmaceutical, anti-trust, and securities law.

**FARZANA ISLAM**, an associate of the Firm, concentrates her practice in securities litigation. Ms. Islam received her Juris Doctorate from Villanova University Charles Widger School of Law in 2016, and is a graduate of Drexel University's LeBow College of Business, where she received a B.S. in Business Administration. Ms. Islam is licensed to practice in Pennsylvania and New Jersey.

Following law school, Ms. Islam served as a judicial law clerk to the Hon. Robert Lougy, J.S.C, of the New Jersey Superior Court. Prior to joining the firm in 2019, Ms. Islam was an Assistant District Attorney for the Philadelphia District Attorney's office, where she represented the Commonwealth in over fifty felony appeals before the Pennsylvania Superior Court and Pennsylvania Supreme Court.

**JORDAN JACOBSON**, an associate of the Firm, concentrates her practice in securities litigation. Ms. Jacobson received her law degree from Georgetown University in 2014 and her undergraduate degrees in history and political science from Arizona State University in 2011. Prior to joining the Firm, Ms. Jacobson clerked for the honorable Deborah J. Saltzman, United States Bankruptcy Judge, in the Central District of California. Ms. Jacobson was also previously an associate at O'Melveny & Myers LLP, and an attorney in the General Counsel's office of the Pension Benefit Guaranty Corporation in Washington, D.C. Ms. Jacobson is licensed to practice law in California and Virginia and will sit for the July 2020 Pennsylvania bar exam.

**RAPHAEL JANOVE**, an associate of the Firm represents investors and consumers in securities litigation and class actions. Mr. Janove started his career at Sullivan & Cromwell LLP in New York City, where he defended large financial institutions in antitrust class-actions, FINRA arbitrations, and government investigations. Most recently, he worked at a litigation boutique in Chicago, representing a major fossil-fuel refiner in nationwide global-warming nuisance lawsuits, defending one of the country's largest agricultural cooperatives in a billion dollar class action, and pursuing multimillion dollar claims on behalf of his clients in arbitrations before the International Chamber of Commerce and the London Maritime Arbitration Association.

In addition, Mr. Janove clerked for the Honorable Paul S. Diamond of the U.S. District Court of the Eastern District of Pennsylvania in Philadelphia, and for the Honorable Thomas L. Ambro of the U.S. Court of Appeals for the Third Circuit in Wilmington, Delaware.

During law school, Mr. Janove served as an Articles Editor on The University of Chicago Law Review and was a Kirkland & Ellis Scholar. At graduation, he received the Douglas Baird Prize in Commercial Law for his academic achievement in commercial and corporate law. Prior to law school, Mr. Janove taught English at a private school in Uijeongbu, South Korea.

**MARGARET E. JULIANO**, a staff attorney at the Firm, concentrates her practice in consumer fraud protection. She has a JD from Emory University School of Law, where she was Editor-in-Chief of the Emory Bankruptcy Developments Journal and a BA from Oberlin College. She is licensed to practice in Pennsylvania and New York, and previously practiced in the state and federal courts in Delaware.

Maggie has experience representing plaintiffs in consumer fraud cases concerning mold and other building envelop issues. She also represented manufacturers and distributors in mass tort and product liability cases. She clerked for Judge Walrath of the US Bankruptcy Court for the District of Delaware.

**NATALIE LESSER**, an associate of the Firm, concentrates her practice in the area of consumer protection. Ms. Lesser received her law degree from the University of Pittsburgh School of Law in 2010 and her undergraduate degree in English from the State University of New York at Albany in 2007. While attending Pitt Law, Ms. Lesser served as Editor in Chief of the University of Pittsburgh Law Review. Ms. Lesser is licensed to practice law in Pennsylvania and New Jersey.

Prior to Joining Kessler Topaz, Ms. Lesser was an associate with Akin Gump Strauss Hauer & Feld LLP, where she worked on a number of complex commercial litigation cases, including defending allegations of securities fraud and violations of ERISA for improper calculation and processing of insurance benefits.

**JOSHUA A. LEVIN**, a staff attorney of the Firm, concentrates his practice in the area of securities litigation. Mr. Levin received his law degree from Widener University School of Law, and earned his undergraduate degree from The Pennsylvania State University. Mr. Levin is licensed to practice in Pennsylvania and New Jersey. Prior to joining Kessler Topaz, he worked in pharmaceutical litigation.

**JOHN J. McCULLOUGH**, a staff attorney of the Firm, concentrates his practice in the area of securities litigation. In 2012, Mr. McCullough passed the CPA Exam. Mr. McCullough earned his Juris Doctor degree from Temple University School of Law, and his undergraduate degree from Temple University. Mr. McCullough is licensed to practice in Pennsylvania.

**LAUREN M. McGINLEY**, an associate of the Firm, concentrates her practice in the areas of securities and consumer protection. Ms. McGinley received her undergraduate degree from Temple University in 2013 and her law degree from Drexel University, Thomas R. Kline School of Law in 2017. While at Drexel, Ms. McGinley received the Dean's Scholar for Excellence in Civil Procedure in 2015.

Prior to joining the Firm, Ms. McGinley clerked for the honorable Judge Alia Moses in the Western District of Texas from September 2017-August 2019.

**STEVEN D. McLAIN**, a staff attorney of the Firm, concentrates his practice in mergers and acquisition litigation and stockholder derivative litigation. He received his law degree from George Mason University School of Law, and his undergraduate degree from the University of Virginia. Mr. McLain is licensed to practice in Virginia. Prior to joining Kessler, Topaz, he practiced with an insurance defense firm in Virginia.

**STEFANIE J. MENZANO**, a staff attorney of the Firm, concentrates her practice in the area of securities litigation. Ms. Menzano received her law degree from Drexel University School of Law in 2012 and her undergraduate degree in Political Science from Loyola University Maryland. Ms. Menzano is licensed to practice law in Pennsylvania and New Jersey.

Prior to joining Kessler Topaz, Ms. Menzano was a fact witness for the Institute for Justice. During law school, Ms. Menzano served as a case worker for the Pennsylvania Innocence Project and as a judicial intern under the Honorable Judge Mark Sandson in the Superior Court of New Jersey, Atlantic County.

**JONATHAN F. NEUMANN**, an associate of the Firm, concentrates his practice in the area of securities litigation and fiduciary matters. Mr. Neumann earned his Juris Doctor degree from Temple University Beasley School of Law, where he was an editor for the Temple International and Comparative Law Journal and a member of the Moot Court Honor Society. Mr. Neumann earned his undergraduate degree from the University of Delaware. Mr. Neumann is licensed to practice in Pennsylvania and New York. Prior to joining the Firm, Mr. Neumann served as a law clerk to the Honorable Douglas E. Arpert of the United States District Court for the District of New Jersey.

Mr. Neumann has represented institutional investors in obtaining substantial recoveries in numerous cases, including *In re Bank of New York Mellon Corp. Foreign Exchange Transactions Litig.*, No. 12-md-02335 (S.D.N.Y.) (\$335 million settlement); *Policemen's Annuity and Benefit Fund of the City of Chicago, et al. v. Bank of America, NA, et al.*, No. 12-cv-02865 (S.D.N.Y.) (\$69 million settlement); *In re NII Holdings Sec. Litig.*, No. 14-cv-227 (E.D. Va.) (settled \$41.5 million).

**ELAINE M. OLDENETTEL**, a staff attorney of the Firm, concentrates her practice in consumer and ERISA litigation. She received her law degree from the University of Maryland School of Law and her undergraduate degree in International Studies from the University of Oregon. While attending law school, Ms. Oldenettel served as a law clerk for the Honorable Robert H. Hodges of the United States Court of Federal Claims and the Honorable Marcus Z. Shar of the Baltimore City Circuit Court. Ms. Oldenettel is licensed to practice in Pennsylvania and Virginia.

**MELANIE A. RADER**, an associate of the Firm, focuses her practice in securities litigation and consumer protection.

Prior to joining the Firm, Ms. Rader served as a judicial law clerk to the Hon. Linda K. Caracappa, United States Magistrate Judge for the Eastern District of Pennsylvania. Ms. Rader received her Juris Doctorate from Temple University Beasley School of Law in 2018, and is a graduate of Gettysburg College, where she received her Bachelor of Arts in Economics. While in law school, Ms. Rader was a judicial intern to the Hon. Petrese B. Tucker, United States District Court Judge for the Eastern District of Pennsylvania.

**ALLYSON M. ROSSEEL**, a staff attorney of the Firm, concentrates her practice at Kessler Topaz in the area of securities litigation. She received her law degree from Widener University School of Law, and earned her B.A. in Political Science from Widener University. Ms. Rosseel is licensed to practice law in Pennsylvania and New Jersey. Prior to joining the Firm, Ms. Rosseel was employed as general counsel for a boutique insurance consultancy/brokerage focused on life insurance sales, premium finance and structured settlements.

**KARRISA J. SAUDER**, an associate of the Firm, concentrates her practice on new matter development with a focus on analyzing securities, consumer, and antitrust class action lawsuits, as well as direct (or opt-out) actions. Prior to joining the firm, Karissa was an associate with Berger Montague, where she litigated complex antitrust class action lawsuits, and served as a judicial law clerk to the Honorable Eduardo C.

Robreno, United States District Judge for the Eastern District of Pennsylvania. Karissa received her law degree from Harvard Law School in 2014 and her undergraduate degree from Eastern Mennonite University in 2010. While in law school, Karissa served as Managing Editor of the Harvard Law Review.

**MICHAEL J. SECHRIST**, a staff attorney at the Firm, concentrates his practice in the area of securities litigation. Mr. Sechrist received his law degree from Widener University School of Law in 2005 and his undergraduate degree in Biology from Lycoming College in 1998. Mr. Sechrist is licensed to practice law in Pennsylvania. Prior to joining Kessler Topaz, Mr. Sechrist worked in pharmaceutical litigation.

**PENG SHAO**, an associate of the Firm, focuses his practice in complex securities litigation and consumer protection. Peng is a graduate of UC Davis School of Law. During law school, Mr. Shao served various leadership roles for UC Davis School of Law's Business Law Journal, Intellectual Property Law Association, and Immigration Law Clinic. Mr. Shao also represented UC Davis in various Moot Court competitions and brought a case before the Ninth Circuit Court of Appeals. Mr. Shao received his B.S. in Biology with honors from University of Kentucky, and is published in The Journal of BioChemistry.

**IGOR SIKAVICA**, a staff attorney of the Firm, practices in the area of corporate governance litigation, with a focus on transactional and derivative cases. Mr. Sikavica received his J.D. from the Loyola University Chicago School of Law and his LL.B. from the University of Belgrade Faculty Of Law. Mr. Sikavica is licensed to practice in Pennsylvania. Mr. Sikavica's licenses to practice law in Illinois and the former Yugoslavia are no longer active.

Prior to joining Kessler Topaz, Mr. Sikavica has represented clients in complex commercial, civil and criminal matters before trial and appellate courts in the United States and the former Yugoslavia. Also, Mr. Sikavica has represented clients before international courts and tribunals, including – the International Criminal Tribunal for the Former Yugoslavia (ICTY), European Court of Human Rights and the UN Committee Against Torture.

**MELISSA J. STARKS**, a staff attorney of the Firm, concentrates her practice in the area of securities litigation. Ms. Starks earned her Juris Doctor degree from Temple University--Beasley School of Law, her LLM from Temple University--Beasley School of Law, and her undergraduate degree from Lincoln University. Ms. Starks is licensed to practice in Pennsylvania.

**MICHAEL P. STEINBRECHER**, a staff attorney of the Firm, concentrates his practice in the area of securities litigation. Mr. Steinbrecher earned his Juris Doctor from Temple University James E. Beasley School of Law, and received his Bachelors of Arts in Marketing from Temple University. Mr. Steinbrecher is licensed to practice in Pennsylvania and New Jersey. Prior to joining Kessler Topaz, he worked in pharmaceutical litigation.

**JULIE SWERDLOFF**, a staff attorney of the Firm, concentrates her practice in the areas of consumer protection, antitrust, and whistleblower litigation. She received her law degree from Widener University School of Law, and her undergraduate degree in Real Estate and Business Law from The Pennsylvania State University. She is licensed to practice law in Pennsylvania and New Jersey and has been admitted to practice before the United States District Courts for the Eastern District of Pennsylvania and the District of New Jersey.

While attending law school, Ms. Swerdloff interned as a judicial clerk for the Honorable James R. Melinson of the United States District Court for the Eastern District of Pennsylvania. Prior to joining Kessler Topaz, Ms. Swerdloff managed major environmental claims litigation for a Philadelphia-based insurance company, and was an associate at a general practice firm in Montgomery County, PA. At Kessler Topaz, she has assisted the Firm in obtaining meaningful recoveries on behalf of clients in securities fraud litigation,

including the historic Tyco case (*In re Tyco International, Ltd. Sec. Litig.*, No. 02-1335-B (D.N.H. 2002) (settled -- \$3.2 billion)), federal and state wage and hour litigation (*In re FootLocker Inc. Fair Labor Standards Act (FLSA) and Wage and Hour Litig.*, No. 11-mdl-02235 (E.D. Pa. 2007) (settled -- \$7.15 million)), and numerous shareholder derivative actions relating to the backdating of stock options.

**BRIAN W. THOMER**, a staff attorney of the Firm, concentrates his practice in the area of securities litigation. Mr. Thomer received his Juris Doctor degree from Temple University Beasley School of Law, and his undergraduate degree from Widener University. Mr. Thomer is licensed to practice in Pennsylvania.

**ALEXANDRA H. TOMICH**, a staff attorney of the Firm, concentrates her practice in the area of securities litigation. She received her law degree from Temple Law School and her undergraduate degree from Columbia University with a B.A. in English. She is licensed to practice law in Pennsylvania.

Prior to joining Kessler Topaz, she worked as an associate at Trujillo, Rodriguez, and Richards, LLC in Philadelphia. Ms. Tomich volunteers as an advocate for children through the Support Center for Child Advocates in Philadelphia and at Philadelphia VIP.

**JACQUELINE A. TRIEBL**, a staff attorney of the Firm, concentrates her practice in the area of securities litigation. Ms. Triebel received her law degree, cum laude, from Widener University School of Law in 2007 and her undergraduate degree in English from The Pennsylvania State University in 1990. Ms. Triebel is licensed to practice law in Pennsylvania and New Jersey.

**KURT WEILER**, a staff attorney of the Firm, concentrates his practice in the area of securities litigation. He received his law degree from Duquesne University School of Law, where he was a member of the Moot Court Board and McArdle Wall Honoree, and received his undergraduate degree from the University of Pennsylvania. Mr. Weiler is licensed to practice law in Pennsylvania.

Prior to joining Kessler Topaz, Mr. Weiler was associate corporate counsel for a Philadelphia-based mortgage company, where he specialized in the area of foreclosures and bankruptcy.

**CHRISTOPHER M. WINDOVER**, an associate of the Firm, concentrates his practice in the areas of shareholder derivative actions and mergers and acquisitions litigation. Mr. Windover received his law degree from Rutgers University School of Law, cum laude, and received his undergraduate degree from Villanova University. He is licensed to practice in the Commonwealth of Pennsylvania and New Jersey. Prior to joining the Firm, Mr. Windover practiced litigation at a mid-sized law firm in Philadelphia.

**ANNE M. ZANESKI\***, a staff attorney of the Firm, concentrates her practice in the area of securities litigation. Ms. Zaneski received her J.D. from Brooklyn Law School where she was a recipient of the CALI Award of Excellence, and her B.A. from Wellesley College. She is licensed to practice law in New York and Pennsylvania.

Prior to joining the Firm, she was an associate with a boutique securities litigation law firm in New York City and served as a legal counsel with the New York City Economic Development Corporation in the areas of bond financing and complex litigation.

\* Admitted as Anne M. Zaniewski in Pennsylvania.



## PROFESSIONALS

**WILLIAM MONKS**, CPA, CFF, CVA, Director of Investigative Services at Kessler Topaz Meltzer & Check, LLP (“Kessler Topaz”), brings nearly 30 years of white collar investigative experience as a Special Agent of the Federal Bureau of Investigation (FBI) and “Big Four” Forensic Accountant. As the Director, he leads the Firm’s Investigative Services Department, a group of highly trained professionals dedicated to investigating fraud, misrepresentation and other acts of malfeasance resulting in harm to institutional and individual investors, as well as other stakeholders.

William’s recent experience includes being the corporate investigations practice leader for a global forensic accounting firm, which involved widespread investigations into procurement fraud, asset misappropriation, financial statement misrepresentation, and violations of the Foreign Corrupt Practices Act (FCPA).

While at the FBI, William worked on sophisticated white collar forensic matters involving securities and other frauds, bribery, and corruption. He also initiated and managed fraud investigations of entities in the manufacturing, transportation, energy, and sanitation industries. During his 25 year FBI career, William also conducted dozens of construction company procurement fraud and commercial bribery investigations, which were recognized as a “Best Practice” to be modeled by FBI offices nationwide.

William also served as an Undercover Agent for the FBI on long term successful operations targeting organizations and individuals such as the KGB, Russian Organized Crime, Italian Organized Crime, and numerous federal, state and local politicians. Each matter ended successfully and resulted in commendations from the FBI and related agencies.

William has also been recognized by the FBI, DOJ, and IRS on numerous occasions for leading multi-agency teams charged with investigating high level fraud, bribery, and corruption investigations. His considerable experience includes the performance of over 10,000 interviews incident to white collar criminal and civil matters. His skills in interviewing and detecting deception in sensitive financial investigations have been a featured part of training for numerous law enforcement agencies (including the FBI), private sector companies, law firms and accounting firms.

Among the numerous government awards William has received over his distinguished career is a personal commendation from FBI Director Louis Freeh for outstanding work in the prosecution of the West New York Police Department, the largest police corruption investigation in New Jersey history.

William regards his work at Kessler Topaz as an opportunity to continue the public service that has been the focus of his professional life. Experience has shown and William believes, one person with conviction can make all the difference. William looks forward to providing assistance to any aggrieved party, investor, consumer, whistleblower, or other witness with information relative to a securities fraud, consumer protection, corporate governance, qui-tam, anti-trust, shareholder derivative, merger & acquisition or other matter.

### Education

Pace University: Bachelor of Business Administration (cum laude)

Florida Atlantic University: Master’s in Forensic Accounting (cum laude)

**BRAM HENDRIKS**, European Client Relations Manager at Kessler Topaz Meltzer & Check, LLP (“Kessler Topaz”), guides European institutional investors through the intricacies of U.S. class action litigation as well as securities litigation in Europe and Asia. His experience with securities litigation allows him to translate complex document and discovery requirements into straightforward, practical action. For

shareholders who want to effect change without litigation, Bram advises on corporate governance issues and strategies for active investment.

Bram has been involved in some of the highest-profile U.S. securities class actions of the last 20 years. Before joining Kessler Topaz, he handled securities litigation and policy development for NN Group N.V., a publicly-traded financial services company with approximately EUR 197 billion in assets under management. He previously oversaw corporate governance activities for a leading Amsterdam pension fund manager with a portfolio of more than 4,000 corporate holdings.

A globally-respected investor advocate, Bram has co-chaired the International Corporate Governance Network Shareholder Rights Committee since 2009. In that capacity, he works with investors from more than 50 countries to advance public policies that give institutional investors a voice in decision-making. He is a sought-after speaker, panelist and author on corporate governance and responsible investment policies. Based in the Netherlands, Bram is available to meet with clients personally and provide hands-on-assistance when needed.

#### Education

University of Amsterdam, MSc International Finance, specialization Law & Finance, 2010

Maastricht Graduate School of Governance, MSc in Public Policy and Human Development, specialization WTO law, 2006

Tilburg University, Public Administration and administrative law B.A., 2004

# **EXHIBIT 5**

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

LOU BAKER, individually and on  
behalf of all others similarly situated,

Plaintiff,

vs.

SEAWORLD ENTERTAINMENT,  
INC., et al.,

Defendants.

No. 3:14-cv-02129-MMA-AGS

**CLASS ACTION**

**DECLARATION OF JEFFREY J.  
ANGELOVICH IN SUPPORT OF  
CLASS COUNSEL'S MOTION FOR  
ATTORNEYS' FEES AND  
LITIGATION EXPENSES FILED ON  
BEHALF OF NIX PATTERSON, LLP**

1 I, Jeffrey J. Angelovich, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

2 1. I am a partner in the law firm of Nix Patterson, LLP (“Nix Patterson”),  
3 one of the Court-appointed Class Counsel firms in the above-captioned securities class  
4 action (“Action”).<sup>1</sup> I submit this declaration in support of Class Counsel’s application  
5 for an award of attorneys’ fees in connection with services rendered by Plaintiffs’  
6 Counsel in the Action, as well as for reimbursement of Litigation Expenses incurred in  
7 connection with the Action. Unless otherwise stated herein, I have personal knowledge  
8 of the facts set forth herein and, if called upon, could and would testify thereto.

9 2. My firm, as one of the Court-appointed Class Counsel firms, was involved  
10 in all aspects of the litigation of the Action and its resolution, as set forth in the  
11 accompanying Joint Declaration of Joshua E. D’Ancona and Jeffrey J. Angelovich in  
12 Support of (A) Class Representatives’ Motion for Final Approval of Settlement and  
13 Plan of Allocation; and (B) Class Counsel’s Motion for an Award of Attorneys’ Fees  
14 and Litigation Expenses.

15 3. Based on my work in the Action as well as the review of time records  
16 reflecting work performed by other attorneys and professional support staff employees  
17 at or on behalf of Nix Patterson in the Action (“Timekeepers”) as reported by the  
18 Timekeepers, I directed the preparation of the chart set forth as Exhibit 1 hereto. The  
19 chart in Exhibit 1: (i) identifies the names and employment positions (*i.e.*, titles) of the  
20 Timekeepers who devoted ten (10) or more hours to the Action; (ii) provides the total  
21 number of hours that each Timekeeper expended in connection with work on the  
22 Action, from the time when potential claims were being investigated through May 31,  
23 2020; (iii) provides each Timekeeper’s hourly rate; and (iv) provides the total lodestar  
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25 <sup>1</sup> All capitalized terms that are not otherwise defined herein shall have the  
26 meanings set forth in the Stipulation and Agreement of Settlement dated February 10,  
2020 (ECF No. 516-3).



1 of each Timekeeper and the entire firm. For Timekeepers who are no longer employed  
2 by Nix Patterson, the hourly rate used is the hourly rate for such employee in his or her  
3 final year of employment by my firm. This chart was prepared from time records  
4 regularly prepared and maintained by my firm in the ordinary course of business, which  
5 are available at the request of the Court. All time expended in preparing Class  
6 Counsel’s application for attorneys’ fees and expenses has been excluded.

7 4. The hourly rates for the Timekeepers, as set forth in Exhibit 1, are the  
8 same rates adopted by resolution of the firm’s partners for their services in other  
9 contingent matters and have been accepted by other federal courts in other class action  
10 cases prosecuted by Nix Patterson. My firm’s hourly rates are largely based upon a  
11 combination of the title, cost to the firm, and the specific years of experience for each  
12 attorney and professional support staff employee, as well as market rates for  
13 practitioners in the field. These hourly rates are the same as, or comparable to, rates  
14 submitted by Nix Patterson and accepted by courts in other complex class actions for  
15 purposes of lodestar “cross-checking” against a proposed fee based on the percentage  
16 of the fund method, as well as determining a reasonable fee under the lodestar method.

17 5. I believe that the number of hours expended and the services performed  
18 by the attorneys and professional support staff employees at or on behalf of Nix  
19 Patterson were reasonable and necessary for the effective and efficient prosecution and  
20 resolution of the Action. The total number of hours expended by Nix Patterson in the  
21 Action, from inception through May 31, 2020, as reflected in Exhibit 1, is 19,354.42.  
22 The total lodestar for my firm, as reflected in Exhibit 1, is \$8,492,310.50, consisting of  
23 \$8,167,813.00 for attorneys’ time and \$324,497.50 for professional support staff time.

24 6. Expense items are being submitted separately and are not duplicated in  
25 my firm’s hourly rates. As set forth in Exhibit 2 hereto, Nix Patterson is seeking  
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1 reimbursement for a total of \$1,213,931.84 in expenses incurred in connection with the  
2 prosecution and resolution of the Action. My firm has applied “caps” to certain travel  
3 expenses (*i.e.*, airfare, meals, and lodging). In my judgment, these expenses were  
4 reasonable, necessary, and expended for the benefit of the Class in this Action.

5 7. The expenses incurred by Nix Patterson in the Action are reflected on the  
6 books and records of my firm. These books and records are prepared from expense  
7 vouchers, check records, and other source materials and are an accurate record of the  
8 expenses incurred. I believe these expenses were reasonable, necessary, and expended  
9 for the benefit of the Class in the Action.

10 8. In connection with the prosecution of this Action, one of the Court-  
11 appointed Class Counsel firms, Kessler Topaz Meltzer & Check, LLP, maintained a  
12 Litigation Expense Fund to facilitate payment of certain common expenses in  
13 connection with the prosecution and resolution of the Action. Nix Patterson contributed  
14 funds to the Litigation Expense Fund as necessary throughout the litigation, in the total  
15 amount reflected on Exhibit 2 hereto (Expense Report). The expenses paid from the  
16 Litigation Expense Fund included, *inter alia*, the costs of experts and mediation. A  
17 complete, detailed account of the expenses paid from the Litigation Expense Fund is  
18 set forth in full in the Declaration of Joshua E. D’Ancona in Support of Class Counsel’s  
19 Motion for Attorneys’ Fees and Litigation Expenses Filed on Behalf of Kessler Topaz  
20 Meltzer & Check, LLP submitted herewith.

21 9. With respect to the standing of my firm, attached hereto as Exhibit 3 is a  
22 firm résumé, which includes information about my firm and biographical information  
23 concerning the firm’s attorneys.  
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I declare, under penalty of perjury, that the foregoing facts are true and correct.

Executed on June 16, 2020.



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Jeffrey J. Angelovich

**EXHIBIT 1**

*Baker v. SeaWorld Entertainment, Inc., et al.*

No. 3:14-cv-02129-MMA-AGS

**NIX PATTERSON, LLP**

**TIME REPORT**

**From Inception Through May 31, 2020**

NAME	HOURLY RATE <sup>2</sup>	HOURS	LODESTAR
<b>Partners</b>			
Jeffrey J. Angelovich	\$850.00	3,034.00	\$2,578,900.00
Bradley E. Beckworth	\$850.00	192.51	\$163,633.50
Susan Whatley	\$700.00	1,157.75	\$810,425.00
Trey Duck	\$700.00	98.00	\$68,600.00
<b>Associates</b>			
Cody Hill	\$450.00	3,807.65	\$1,713,442.50
Nathan Hall	\$400.00	304.00	\$121,600.00
Brooke Churchman <sup>3</sup>	\$400.00	267.00	\$106,800.00
Britt Glass <sup>4</sup>	\$400.00	170.78	\$68,312.00
<b>Contract Attorneys</b>			
Mindy Medford (Project Manager)	\$300.00	1,916.00	\$574,800.00
Noreen Cabrera	\$275.00	2,082.00	\$572,550.00
Deirdre Grant	\$275.00	1,901.00	\$522,775.00
Stuart Keplar	\$275.00	1,606.00	\$441,650.00
Alex Kirwan	\$275.00	1,543.00	\$424,325.00

<sup>2</sup> Although my firm adopted new hourly rates by resolution of the firm’s partners effective January 1, 2020, we are utilizing our 2019 hourly rates for this submission.

<sup>3</sup> Ms. Churchman is no longer employed by my firm.

<sup>4</sup> Ms. Glass is no longer employed by my firm.

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<b>Paralegals</b>			
Nikki Cameron	\$250.00	82.78	\$20,695.00
Maria Gomez	\$250.00	91.70	\$22,925.00
Shelley Prince	\$250.00	721.00	\$180,250.00
Amanda Thompson	\$250.00	18.90	\$4,725.00
Brittany Kellogg	\$250.00	127.75	\$31,937.50
Andrea Brunson <sup>5</sup>	\$275.00	232.60	\$63,965.00
<b>TOTALS</b>		<b>19,354.42</b>	<b>\$8,492,310.50</b>

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<sup>5</sup> Ms. Brunson is no longer employed by my firm.



**EXHIBIT 2**

*Baker v. SeaWorld Entertainment, Inc., et al.*

No. 3:14-cv-02129-MMA-AGS

**NIX PATTERSON, LLP  
EXPENSE REPORT**

CATEGORY	AMOUNT
<b>Administrative Expenses</b>	
AT Conference	\$1,334.56
FedEx/Postage	\$1,266.65
Court Fees/ Court Reporting/ Service of Process	\$78,470.01
Office Supplies	\$397.96
<b>Litigation Expense Fund Contributions<sup>6</sup></b>	<b>\$822,500.00</b>
<b>Litigation Support</b>	
L.R. Hodges	\$10,993.80
Elevated Trial Services	\$99,741.25
ProLegal Discovery Solutions	\$8,395.93
Res Ipsa Litigation Support	\$6,319.16
Trial Exhibits, Inc.	\$3,673.06
<b>Research &amp; Investigation (Lexis Nexis)</b>	<b>\$46,955.93</b>
<b>Travel Expenses (Lodging, Meals and Transportation)</b>	<b>\$133,883.53</b>
<b>TOTAL EXPENSES:</b>	<b>\$1,213,931.84</b>

<sup>6</sup> A complete, detailed account of the expenses paid from the Litigation Expense Fund is set forth in full in the Declaration of Joshua E. D’Ancona in Support of Class Counsel’s Motion for Attorneys’ Fees and Litigation Expenses submitted herewith.

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**EXHIBIT 3**

*Baker v. SeaWorld Entertainment, Inc., et al.*

No. 3:14-cv-02129-MMA-AGS

**NIX PATTERSON, LLP  
SUMMARY RÉSUMÉ**

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DECLARATION OF JEFFREY J. ANGELOVICH IN SUPPORT OF CLASS COUNSEL’S MOTION FOR ATTORNEYS’ FEES AND LITIGATION EXPENSES FILED ON BEHALF OF NIX PATTERSON, LLP  
CASE NO. 3:14-CV-02129-MMA-AGS



NIX  
PATTERSON, LLP

**SUMMARY RESUME**

Detailed information regarding Nix Patterson, LLP (“Nix Patterson” or “NP”) may be found on the firm’s website: [www.nixlaw.com](http://www.nixlaw.com). The firm’s website contains a wide variety of information, including the history of the firm, highlights of current and previous successes, photographs of facilities, and biographies of each attorney.

For convenience, a *concise* overview of the firm is as follows:

Nix Patterson is a national contingency fee law firm providing litigation strategies and solutions for individuals, companies, investors, whistleblowers, and sovereigns. We have extensive experience handling large-scale, complex cases that require creative and bold action. Nix Patterson’s skilled, innovative and hardworking attorneys have achieved record-breaking litigation success. Because Nix Patterson only works on a contingency fee basis, our clients pay us nothing unless we win.

Although Nix Patterson may be best known as one of the firms who obtained a \$17.2 billion settlement for the State of Texas in the historic tobacco litigation, we have also recovered billions more in jury verdicts and settlements in diverse and complex cases across a wide range of practice areas. These practice areas include an active securities fraud and corporate governance practice representing public and private investors in securities fraud class actions and individual litigation. Across the United States, we handle almost every type of complex and critical litigation and arbitration for consumers, investors, whistleblowers, governmental entities and business entities. Our successful and uniquely diverse litigation practice has been driven by one constant: our talented attorneys achieve extraordinary results through hard work and innovation. Our clients choose us because they know we devote all resources necessary to achieve their goals.

Born in Texas over 40 years ago, Nix Patterson has long been at the forefront of the small group of firms with nationwide contingency practices. We have a well-deserved reputation for excellence and innovation in groundbreaking litigation. Every day, each attorney at Nix Patterson strives to be second to none. We believe there is no better place to achieve justice for our clients than the courtroom—and no better lawyers to pursue those claims and maximize recovery than Nix Patterson.

Below is a representative sample of some of the more recent matters and results Nix Patterson has achieved on behalf of its clients:

***In re MGM Mirage Securities Litigation***

Nix Patterson, led by partners, Brad Beckworth, Jeff Angelovich, Susan Whatley, and Lisa Baldwin, served as Co-Lead Counsel in this action, representing a class of investors in MGM securities in the United States District Court for the District of Nevada. The class alleged MGM falsely misled the market regarding MGM’s ability to survive and thrive during the U.S. financial crisis and obtain adequate capital to finance its unprecedented CityCenter project. After zealously litigating this action for almost six years, NP obtained a settlement of \$75 million on behalf of the class. The settlement was the largest securities class action recovery in the history of the District of Nevada at the time—exceeding the combined amount of the next three largest class action recoveries. On March 1, 2016, the United States District Court for the District of Nevada granted final approval of the settlement. On September 15, 2017, the United States Court of Appeals for the Ninth Circuit affirmed the district court’s order granting final approval of the settlement.

***Brocade Securities Litigation***

Nix Patterson represented Arkansas Public Employees Retirement System (“APERS”) and the Erie County (Pennsylvania) Employees Retirement System (“Erie”) as Class Counsel in this matter, filed in the United States District Court for the Northern District of California (San Francisco). This was the first major case regarding “stock options backdating.” NP settled this case for \$160.1 million. The settlement marks one of, if not the, largest settlements ever in terms of the percentage of the class’ damages recovered. Indeed, depending on which damage model was accepted by the court and/or jury, the settlement marks close to a 100% recovery for the class. Further, at the time of settlement, it was the second largest backdating settlement in history in terms of the total dollar amount of the settlement. This case arose out of Brocade’s restatement of all of its financial statements over a five-year period. At the time we began prosecuting this case, the media headlines and outrage regarding options backdating had not yet begun. The complaint we filed against Brocade, and its officers and directors, set forth in precise, painstaking detail Brocade’s scheme to defraud investors by backdating option grants. It also formed the paradigm for subsequent backdating cases. This case has been featured in a Pulitzer Prize winning series by the Wall Street Journal, as well as in articles in Bloomberg, the New York Times, the Washington Post and BusinessWeek.

***CompSource et al. v. BNY Mellon, N.A. et al.***

Nix Patterson, led by partners, Jeff Angelovich, Brad Beckworth, Susan Whatley and Lisa Baldwin, filed suit in the Eastern District of Oklahoma on behalf of CompSource Oklahoma—a statutorily-created state workers compensation insurance company—and other participants in BNY Mellon’s securities lending program, alleging that BNY Mellon breached its fiduciary duties (under both common law and ERISA), breached its securities lending agreements, and was negligent in connection with its investment of its clients’ funds in medium-term notes of Sigma Finance, Inc. After three and a half years of hard-fought, intense litigation, which included nearly five million pages of documents produced and reviewed; a total of 59 depositions taken or defended (which took place in seven different states and resulted in 16,483 pages of recorded testimony and the inclusion of 1,738 exhibits), the parties reached a settlement in this matter for \$280,000,000. The

Court granted final approval of this settlement.

***AFTRA v. JPMorgan***

Nix Patterson, led by partners, Jeff Angelovich, Brad Beckworth, Susan Whatley and Lisa Baldwin, filed suit in the Southern District of New York on behalf of AFTRA and other participants in JPMorgan’s securities lending program alleging that JPMorgan violated its fiduciary duties (under both common law and ERISA) to AFTRA and the class in connection with the same investments in Sigma as those at issue in *CompSource*. On the eve of trial, and after the Court granted class certification, the parties reached a settlement in the amount of \$150,000,000. The Court granted final approval of this settlement.

***MoneyGram Securities Litigation***

Nix Patterson, led by partners, Jeff Angelovich, Brad Beckworth, and Susan Whatley, served as Lead Counsel for Lead Plaintiff, Oklahoma Teachers Retirement System, in this matter filed in the United States District Court for the District of Minnesota. This litigation involved alleged false and misleading statements surrounding the quality and nature of asset-backed securities held in MoneyGram’s investment portfolio. This case was unique in the fact that it is only one of a few “subprime” cases brought against an entity that is neither a bank, Wall Street investment bank, nor originator of asset backed securities. Indeed, this is one of the few cases brought—and we believe the first case successfully resolved—based upon a company’s failure to properly disclose the quality and nature of the asset-backed securities it purchased. NP reached an \$80 million settlement with MoneyGram and the individual defendants, which was granted final approval by the Court. The settlement ranks as one of the top settlements in all “subprime” cases.

***State of Oklahoma v. Purdue Pharma, L.P., et al.***

On June 30, 2017, Nix Patterson, led by lead trial attorney, Brad Beckworth, and co-counsel, filed a lawsuit in Cleveland County, Oklahoma on behalf of the State of Oklahoma and Oklahoma Attorney General Mike Hunter against several major pharmaceutical companies that manufacture highly addictive and often deadly opioid painkillers. The lawsuit alleged that the defendants—including Purdue Pharma, Johnson & Johnson, Janssen, and Cephalon—intentionally misled Oklahoma healthcare providers and residents about the addictive and harmful nature of opioid medications in order to increase sales of their drugs in the State. These companies advertised opioids as being essentially non-addictive and harmless, which caused massive volumes of unnecessary drugs to be prescribed to Oklahomans, creating a severe public health nuisance.

On January 11, 2018, Cleveland County District Court Judge Thad Balkman ordered that the trial in this matter would begin on May 28, 2019, marking the first state lawsuit against opioid manufacturers to go to trial in the Nation.

On March 26, 2019, the State of Oklahoma announced that Purdue Pharma had agreed to pay \$270 million to settle the claims brought against it in this matter. Under the terms of the settlement, Purdue immediately contributed \$102.5 million to establish a world class foundation for addiction treatment and research at Oklahoma State University, with additional payments of \$15 million each year for the next five years beginning in 2020. The company will also provide \$20 million of addiction treatment and opioid rescue medications to the center over the same five-year time frame.



And, \$12.5 million from the settlement will be used directly to help cities and counties struggling with the opioid crisis. The Sackler family, who founded and own Purdue Pharma, will also contribute \$75 million over the next five years to the treatment and research center.

On May 26, 2019, and on the eve of trial, it was announced that Defendant Teva Pharmaceuticals had agreed to pay \$85 million to settle the claims brought against it in this matter.

On May 28, 2019, this case proceeded to a bench trial against Defendants on the sole equitable claim of public nuisance. The trial spanned approximately seven weeks, and included testimony from 43 witnesses, 935 exhibits admitted into evidence, and numerous hearings.

Following trial, the trial court found Johnson & Johnson had created a public nuisance and ordered it to pay \$465,026,711.00 to abate the nuisance. Coupled with the aforementioned settlements reached in the litigation, Nix Patterson recovered nearly **\$1 billion** on behalf of the state.

### ***British Petroleum/Deepwater Horizon Oil Spill Litigation***

In 2015, Nix Patterson obtained a historic settlement for the State of Florida against British Petroleum arising out of the Deepwater Horizon oil spill. Nix Patterson represented the State of Florida in its effort to recover economic losses as a result of this disaster. Ultimately, the firm recovered \$2 billion for the State of Florida.

In addition, Nix Patterson represented more than 20 other governmental entities in litigation against BP, and more than 1,000 businesses, ranging from small restaurants to publicly traded corporations, in their claims against BP related to the Deepwater Horizon oil spill. To date, the total settlements obtained by Nix Patterson in this matter exceed \$3 billion.

### ***Pummill, et al. v. Cimarex Energy Co., et al.***

Nix Patterson, led by lead trial attorney, Brad Beckworth, served as co-counsel in this declaratory judgment action requesting the court declare the rights of royalty owners and the obligations of lessees on four key issues of Oklahoma royalty law relating to oil and gas lease interpretation, payment of royalty on gas used as fuel off the lease, payment of royalty under different form gas marketing agreements and payment of statutory interest on late royalty payments. In 2012, NP and its co-counsel achieved favorable declaratory summary judgment rulings for the plaintiffs on all four issues. The court's declaratory summary judgment ruling on the payment of statutory interest was affirmed by the Oklahoma Court of Appeals, Division 1, and the Oklahoma Supreme Court. In October 2015, NP and its co-counsel successfully tried the remaining three declaratory judgments and the defendants' counterclaim to the court in a full bench trial and achieved a favorable judgment for the plaintiffs on all four issues. The Oklahoma Court of Civil Appeals, Division 4, issued a 31-page published decision affirming the trial court's judgment on January 5, 2018. The Oklahoma Supreme Court denied the oil company's petition for certiorari on May 21, 2018. NP is one of the only firms to try a case to judgment concerning these critical issues of Oklahoma royalty law—a judgment that will benefit over a million Oklahoma royalty owners.

### ***Chieftain Royalty Co. v. SM Energy Co., et al.***

Nix Patterson, led by partners, Brad Beckworth, Jeff Angelovich, Susan Whatley, and Lisa Baldwin,

represented a class of underpaid royalty owners in this action against SM Energy Co. and its successors, EnerVest and FourPoint. After vigorously prosecuting this action as class co-counsel for over four years, NP obtained a partial settlement with respect to the claims against EnerVest and FourPoint totaling nearly \$55 million on behalf of the class. This settlement consisted of a \$52 million cash payment (which alone represents approximately 100% of the class' principal claim for royalty underpayment) and contractually guaranteed future benefits that ensure EnerVest and FourPoint will not deduct certain specific costs from royalty payments for a period of 36 months. These binding changes to the Settling Parties' royalty payment methodology have a present value of at least \$2.9 million. On December 23, 2015, the United States District Court for the Western District of Oklahoma granted final approval of the settlement. NP continues to prosecute the remaining claims against SM Energy Co.

***Chieftain Royalty Co. v. QEP Energy Co.***

Nix Patterson, led by partners, Brad Beckworth, Jeff Angelovich, Susan Whatley, and Lisa Baldwin, served as co-class counsel in this action alleging QEP, an energy company with oil and gas operations in Oklahoma, secretly and systematically made unlawful deductions from a class of royalty owners' monthly royalty payments. After more than two years of litigation, NP and its co-counsel obtained a \$155 million settlement for the class. This settlement consisted of a \$115 million cash payment (which alone represents more than 100% of the class' principal claim for royalty underpayment) and contractually guaranteed future benefits that ensure QEP will not resume its previous practice of improper cost deductions. On May 31, 2013, the United States District Court for the Western District of Oklahoma granted final approval of the settlement.

***Drummond et al. v. Range Resources-Midcontinent, LLC, et al.***

Nix Patterson, led by partners, Brad Beckworth, Jeff Angelovich, Susan Whatley, and Lisa Baldwin, represented a class of royalty owners in this action against Range Resources, an energy company with substantial interests in Oklahoma oil and gas wells. As in *QEP*, the class members in this case alleged Range unlawfully deducted certain pre-marketing costs from the class members' royalty payments. NP prosecuted this action for over two years, overcoming Range's initial dispositive motions, conducting comprehensive fact and expert discovery—such as analyzing the thousands of oil and gas leases involved—and obtaining class certification. As Range was preparing to appeal the court's class certification order, the parties began settlement negotiations and a mediation process with highly respected mediator and former federal judge, Layn Phillips. After multiple mediation sessions in Oklahoma City and New York City, NP and its co-counsel achieved an \$87.5 million cash settlement for the class, was finally approved by the Court.

***Johnny Football Trademark***

Nix Patterson's aggressive approach had never been tried before in defending a student- athlete against NCAA allegations. We worked zealously for our client, beginning our strategy planning and execution long before the press or outside world knew of the investigation or enforcement action. By the time the news broke, we were prepared to handle all aspects of the situation, from public relations issues to NCAA administrative proceedings. After months of relentless work and negotiations, we successfully resolved the action with no admission of wrongdoing. Mr. Manziel agreed to sit out the first half of the season opening game.

And when Johnny took the field for the first time during the second half of the Aggie's 52- 31 victory over Rice, we were in the stands to cheer him on. Our client went on to have a stellar second season, breaking many of the records he set during his 2012 Heisman season.

After the season, Mr. Manziel asked us to assist him in devising and implementing his strategy for entering the NFL draft and putting together his business team. We used our reach and strategy to put together a unique, best-in-brand collaboration between the Boston Red Sox marketing arm, Fenway Sports Marketing, LeBron James (LRMR), and Select Sports Group—an effort that helped lead to him becoming the first quarterback under 6 feet tall to be drafted in the first round in the modern area of the NFL. We also represented Mr. Manziel in his successful efforts to trademark the name Johnny Football, a name that will forever be associated with Texas A&M's first season in the SEC and historic 29-24 win over Alabama.

Below is biographical information of the current Nix Patterson attorneys who were involved in litigating this matter:

### **Jeffrey J. Angelovich**

Jeffrey J. Angelovich, Partner, graduated *magna cum laude* from Baylor Law School (J.D. 1993). Jeff is the Co-Head of Nix Patterson's Complex Litigation Group. He concentrates his practice on securities fraud, derivative and complex litigation, but has successfully tried lawsuits in a variety of cases, including a \$15.6 million antitrust verdict, which was featured by the *New York Times*, and a \$7 million verdict in a sexual molestation case. Jeff also was a key team member in Nix Patterson's representation of the State of Texas in its \$17 billion-plus recovery in the *Texas Tobacco Litigation*. Prior to joining Nix Patterson, Jeff served as judicial law clerk to Justice Hightower of the Texas Supreme Court and has served several terms as an adjunct professor for Baylor Law School, teaching trial advocacy. Areas of Concentration: Securities Fraud; Derivative and Corporate Governance Litigation; Antitrust Litigation; Business Litigation; Oil & Gas Litigation; Intellectual Property Litigation; Strategic Planning and Crisis Management. Professional Activities and Memberships: State Bar of Texas; Oklahoma Bar Association; Arkansas Bar Association; American Bar Association; American Association for Justice. Professional Honors: Briefing Attorney to Justice Jack Hightower, Justice of the Supreme Court of Texas; Texas Young Lawyers Association (Director); *Adjunct* Professor, Baylor University School of Law; Texas Super Lawyer, Securities Litigation (numerous years). Bar Admissions: Arkansas; Oklahoma; Texas; Montana; United States Supreme Court; U.S. Court of Appeals for the Fifth, Eighth, Ninth and Tenth Circuits; USDC Eastern District of Texas; USDC Western District of Arkansas; USDC Western District of Oklahoma.

### **Bradley E. Beckworth**

Bradley E. Beckworth, Partner, graduated *magna cum laude* from Texas A&M University (B.A. 1994) and *cum laude* from Baylor Law School (J.D. 1997). Brad is the Co-Head of Nix Patterson's Complex Litigation Group. He focuses primarily on securities fraud and other complex litigation, but also has successfully tried lawsuits in a diverse range of cases, including the opioid litigation, oil and gas litigation, commercial disputes and intellectual property infringement. For example, Brad just recently completed a seven- week trial as the lead trial attorney in Cleveland County, Oklahoma against pharmaceutical giant, Johnson & Johnson, regarding the opioid crisis. In 2015, Brad was the lead trial attorney in *Pummill v. Cimarex*, where Nix Patterson won a

judgment for the plaintiff in one of the most significant oil and gas cases ever tried in the State of Oklahoma; and, in 2012, Brad was lead counsel in successfully defending the 2012 Heisman Trophy winner against the NCAA Enforcement Division. Brad has given presentations to numerous boards of trustees of public funds and has been quoted in news articles by several publications, including *The Wall Street Journal*, *New York Times*, and *Bloomberg*. He has served as a member of the Rules Committee of the United States District Court for the Eastern District of Texas and served several terms as an adjunct trial advocacy professor for Baylor Law School. An article written by Steve Stecklow, *Setting the Date: How One Tech Company Played With the Timing of Stock Options*, WALL ST. J, July 20, 2006 at A1, featured one of Nix Patterson's securities litigation cases (referencing Brad's and Nix Patterson's role in the case) and received the Pulitzer Prize for Public Service Journalism. Prior to joining Nix Patterson, Brad served as judicial law clerk to Judge Richard Schell, Chief Judge for the United States District Court for the Eastern District of Texas. Areas of Concentration: Securities Fraud Litigation; Commercial Class Action Litigation; Business Litigation, Intellectual Property Litigation; Oil & Gas Litigation; Strategic Planning and Crisis Management. Professional Activities and Memberships: State Bar of Texas; Oklahoma Bar Association; Arkansas Bar Association; New York Bar Association; American Association for Justice; American Bar Association. Professional Honors: Law Clerk to the Hon. Richard A. Schell, Chief Justice, USDC Eastern District of Texas; *Adjunct* Professor, Baylor University School of Law. Bar Admissions: Texas; Oklahoma; Arkansas; New York; U.S Court of Appeals for the Fifth, Ninth and the Tenth Circuits, USDC Eastern District of Texas; USDC Eastern District of Arkansas; USDC Western District of Arkansas; USDC Western District of Oklahoma; USDC Eastern District of Oklahoma; USDC Northern District of Illinois.

### **Susan Whatley**

Susan Whatley, Partner, graduated with academic distinction from Texas A&M University at Commerce (B.S. 2000). Susan graduated *cum laude* from Baylor Law School (J.D. 2004). While at Baylor, Susan was a member of the Baylor Law Review, serving as both an Associate Editor and an Editor of the Texas Practice and Procedure Edition. Susan also was a member of the winning team in the Bob and Karen Wortham Practice Court Competition. Susan has a broad range of experience representing the firm's public and private investor clients. She is admitted to practice in all state courts in the State of Texas, the State of Oklahoma, and the U.S. District Courts for the Eastern District of Texas, Western District of Oklahoma, Northern District of Oklahoma, and Eastern District of Oklahoma.

### **Lisa P. Baldwin**

Lisa P. Baldwin, Partner, graduated with distinction from the University of Michigan, Ann Arbor (B.A. 2004). Lisa graduated from the University of Texas School of Law (J.D. 2009). While at UT Law, she was a member of the Texas International Law Journal. During law school, Lisa studied abroad in Santiago, Chile through American University Washington College of Law and in Buenos Aires, Argentina at the University of Torquato Di Tella. Lisa is admitted to practice in all state courts in the State of Texas, the State of New York and the State of Oklahoma, and is a member of the Austin Bar Association and the New York State Bar Association. She provides volunteer attorney services to low-income clients through Volunteer Legal Services of Central Texas. Ms. Baldwin's practice focuses on a broad range of complex financial and commercial class actions, including fiduciary liability, securities fraud litigation and oil and gas royalty underpayment litigation.

### **Trey Duck**

Trey Duck, Partner, graduated from Baylor University (B.A. 2008), and from Baylor Law School (J.D. 2012). While at Baylor Law School, Trey was an active member in the school's trial and appellate advocacy programs, serving on winning teams in both moot court and mock trial competitions for Baylor. He is admitted to practice in all state courts in the State of Texas and the Eastern District of Texas and is a member of the Texas Trial Lawyers Association. Mr. Duck's practice focuses on complex commercial class actions and civil disputes, including securities fraud litigation and oil and gas royalties class actions, as well as *qui tam* whistleblower litigation. Mr. Duck was also heavily involved in the Firm's successful prosecution of claims against large pharmaceutical companies on behalf of the States of Utah, Montana, and Alaska.

### **Cody L. Hill**

Cody L. Hill, Associate, graduated from the University of Texas (B.S. 2011), and from Baylor Law School (J.D. 2015). While at Baylor, Cody competed as an active member of the school's mock trial and moot court teams in a number of national trial and appellate advocacy competitions. Cody also served as an Associate Editor of the Baylor Law Review, was named the Bracewell & Giuliani LLP 3L Baylor Law Review Student of the Year, and co-authored an article, along with Professor Jim Wren, published as *Resolving the Quandary of Conflicting Mandatory Venue Statutes in Texas*, 68 Baylor L. Rev. 85 (2016). Cody was named to the National Order of the Barristers and received a scholarship to be 1 of 8 U.S. Law students to attend The Advanced School of the Trial at the Academy of the Advocate at the University of St. Andrews in Scotland, where he received the Top Advocate award. He is admitted to practice in all state courts in the State of Texas and the U.S. District Courts for the Eastern District of Texas, Western District of Oklahoma, Northern District of Oklahoma, Eastern District of Oklahoma, and District of Colorado. Cody also is a member of the Austin Bar Association, Austin Young Lawyers Association, Texas Trial Lawyers Association, Capital Area Trial Lawyers Association, American Association for Justice and the American Association for Justice's Securities Litigation Group, Class Action Litigation Group and *Qui Tam* Litigation Group, and he has been named a Senior Fellow with full faculty standing by the National Association of Legal Fee Analysis due to his work and study in the fields of reasonable attorney fees and proper legal billing practices.

### **Nathan Hall**

Nathan Hall, Associate, joined the firm's complex litigation group in 2018 after clerking for the Honorable Justice Patrick R. Wyrick of the Oklahoma Supreme Court. Before that, Nathan served as Assistant Solicitor General for the State of Oklahoma, where he litigated on behalf of the State in its most high-profile disputes, including cases in front of the Oklahoma Supreme Court, the United States Courts of Appeals, and the United States Supreme Court. Nathan graduated first in his class from the University of Oklahoma College of Law, where he served as editor of the school's flagship law review and distinguished himself as an exceptional moot-court advocate. His skills for both written and oral advocacy in school culminated in his induction into the national Orders of Scribes and Barristers.



# **EXHIBIT 6**

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

LOU BAKER, individually and on  
behalf of all others similarly situated,

Plaintiff,

vs.

SEAWORLD ENTERTAINMENT,  
INC., et al.,

Defendants.

No. 3:14-cv-02129-MMA-AGS

**CLASS ACTION**

**DECLARATION OF ETHAN T.  
BOYER IN SUPPORT OF CLASS  
COUNSEL’S MOTION FOR  
ATTORNEYS’ FEES AND  
LITIGATION EXPENSES FILED ON  
BEHALF OF NOONAN LANCE  
BOYER & BANACH LLP**

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I, Ethan T. Boyer, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am a partner in the law firm of Noonan Lance Boyer & Banach LLP (“Noonan Lance”). I submit this declaration in support of Class Counsel’s application for an award of attorneys’ fees in connection with services rendered by Plaintiffs’ Counsel in the above-captioned securities class action (“Action”), as well as for payment of Litigation Expenses incurred in connection with the Action.<sup>1</sup> Unless otherwise stated herein, I have personal knowledge of the facts set forth herein and, if called upon, could and would testify thereto.

2. My firm served as Court-appointed liaison counsel for Class Representatives and the Class in the Action. In addition, prior to July 1, 2016, the law firm of Kirby Noonan Lance & Hoge LLP (“Kirby Noonan”) served as Court-appointed liaison counsel for Class Representatives and the Class in the Action. I was a partner in Kirby Noonan, which dissolved as of July 1, 2016 and Noonan Lance transitioned into the case as liaison counsel. The same attorneys and other timekeepers worked on this matter at both Kirby Noonan and Noonan Lance.

3. The tasks undertaken by Noonan Lance and Kirby Noonan in the Action can be summarized as follows: preparing *pro hac vice* applications for out-of-state counsel; preparing the second amended complaint for service and effecting service of the same; reviewing and editing pleadings filed with the Court, particularly with respect to local rules and practice; consulting with Class Counsel regarding local rules and practice; attending the hearing on the motion for class certification and consulting with Class Counsel regarding the same; and consulting with Class Counsel regarding litigation strategy.

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<sup>1</sup> All capitalized terms that are not otherwise defined herein shall have the meanings set forth in the Stipulation and Agreement of Settlement dated February 10, 2020 (ECF No. 516-3).

1           4.       Based on my work in the Action as well as the review of time records  
2 reflecting work performed by other attorneys and professional support staff employees  
3 at Noonan Lance and Kirby Noonan in the Action (“Timekeepers”) as reported by the  
4 Timekeepers, I directed the preparation of the chart set forth as Exhibit 1 hereto. The  
5 chart in Exhibit 1: (i) identifies the names and employment positions (*i.e.*, titles) of the  
6 Timekeepers who devoted five (5) or more hours to the Action; (ii) provides the total  
7 number of hours that each Timekeeper expended in connection with work on the  
8 Action, from the time when potential claims were being investigated through May 31,  
9 2020; (iii) provides each Timekeeper’s hourly rate; and (iv) provides the total lodestar  
10 of each Timekeeper and the entire firm. For Timekeepers who are no longer employed  
11 by Noonan Lance, the hourly rate used is the hourly rate for such employee in his or  
12 her final year of employment by my firm. This chart was prepared from daily time  
13 records regularly prepared and maintained by my firm in the ordinary course of  
14 business, which are available at the request of the Court. All time expended in  
15 preparing this application for attorneys’ fees and expenses has been excluded.

16           5.       The hourly rates for the attorneys and professional support staff in my  
17 firm included in Exhibit 1 are the same or, in some cases, lower than the current regular  
18 rates that are charged for their services in non-contingent matters. The hourly rates for  
19 the Timekeepers, as set forth in Exhibit 1, were their standard rates at the time Kirby  
20 Noonan began work on this matter. The rates for the Timekeepers did not change when  
21 the case transitioned to Noonan Lance and have stayed the same throughout their work  
22 on the case. Noonan Lance’s hourly rates are (and Kirby Noonan’s rates were) largely  
23 based upon a combination of the title, cost to the firm, and the specific years of  
24 experience for each attorney and professional support staff employee, as well as market  
25 rates for practitioners in the field. These hourly rates are the same as, or comparable  
26 to, rates submitted by Noonan Lance and accepted by courts in other complex class

1 actions for purposes of “cross-checking” lodestar against a proposed fee based on the  
2 percentage of the fund method, as well as determining a reasonable fee under the  
3 lodestar method.

4 6. I believe that the number of hours expended and the services performed  
5 by the attorneys and professional support staff employees at Noonan Lance and Kirby  
6 Noonan were reasonable and necessary for the effective and efficient prosecution and  
7 resolution of the Action. The total number of hours expended by Noonan Lance and  
8 Kirby Noonan in the Action, from inception through May 31, 2020, as reflected in  
9 Exhibit 1, is 137.8. The total lodestar for my firm, as reflected in Exhibit 1, is  
10 \$53,690.50, consisting of \$52,150.50 for attorneys’ time and \$1,540.00 for  
11 professional support staff time.

12 7. Expense items are being submitted separately and are not duplicated in  
13 my firm’s hourly rates. As set forth in Exhibit 2 hereto, we are seeking payment for a  
14 total of \$1,663.39 in expenses incurred in connection with the prosecution and  
15 resolution of the Action by both the Kirby Noonan and Noonan Lance firms. Internal  
16 reproduction costs at both firms were capped at \$0.10 per page. In my judgment, these  
17 expenses were reasonable and expended for the benefit of the Class in this Action.


18 8. The expenses incurred by Noonan Lance in the Action are reflected on the  
19 books and records of my firm. Similarly, the expenses incurred by Kirby Noonan in  
20 the Action are reflected on the books and records of that firm, copies of which I  
21 maintain at Noonan Lance. These books and records are prepared (and in the case of  
22 Kirby Noonan, were prepared) from expense vouchers, check records, and other source  
23 materials and are an accurate record of the expenses incurred. I believe these expenses  
24 were reasonable and expended for the benefit of the Class in the Action.  
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9. With respect to the standing of my firm, attached hereto as Exhibit 3 is a firm résumé, which includes information about my firm and biographical information concerning the firm’s attorneys.

I declare, under penalty of perjury, that the foregoing facts are true and correct.  
Executed on June 16, 2020.

  
\_\_\_\_\_  
Ethan T. Boyer

**EXHIBIT 1**

*Baker v. SeaWorld Entertainment, Inc., et al.*

No. 3:14-cv-02129-MMA-AGS

**NOONAN LANCE BOYER & BANACH LLP**

**TIME REPORT**

**From Inception Through May 31, 2020**

<b>NAME</b>	<b>HOURLY RATE</b>	<b>HOURS</b>	<b>LODESTAR</b>
<b>Partners</b>			
David J. Noonan	\$550	5.3	\$2,915.00
Ethan T. Boyer	\$415	109.7	\$45,525.50
<b>Counsel / Associates</b>			
Genevieve M. Ruch	\$265	14.0	\$3,710.00
<b>Paralegals / Law Clerks</b>			
Laurel E. Scott	\$175	8.8	\$1,540.00
<b>TOTALS</b>		<b>137.8</b>	<b>\$53,690.50</b>

**EXHIBIT 2**

*Baker v. SeaWorld Entertainment, Inc., et al.*

No. 3:14-cv-02129-MMA-AGS

**NOONAN LANCE BOYER & BANACH LLP**

**EXPENSE REPORT**

CATEGORY	AMOUNT
Messenger Services	\$539.16
Internal Printing & Copying	\$34.60
Local Transportation	\$9.59
On-Line Legal & Factual Research*	\$36.64
Service of Process	\$1,043.40
<b>TOTAL EXPENSES:</b>	<b>\$1,663.39</b>

\* On-line research is billed to each case based on actual time usage at a set charge by the vendor. There are no administrative charges included in these figures.

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**EXHIBIT 3**

*Baker v. SeaWorld Entertainment, Inc., et al.*

No. 3:14-cv-02129-MMA-AGS

**NOONAN LANCE BOYER & BANACH LLP**

**FIRM RÉSUMÉ**

# NoonanLance

Noonan Lance Boyer & Banach LLP

## About Us

### A singular focus to achieve the best for our clients

The law firm Noonan Lance Boyer & Banach, LLP's (NoonanLance) mission: a singular focus on achieving the best results for its clients in the most efficient manner possible. NoonanLance is led by partners David J. Noonan, James R. Lance, Ethan T. Boyer and Micaela P. Banach and is supported by a team of attorneys, paralegals and long-time support staff.

NoonanLance represents clients on both the plaintiff and defense side of civil litigation and handles matters in state and federal court and arbitration. The firm's attorneys have experience in and serve a wide variety of practice areas, such as "Bet the Company" cases (when a company's solvency is at stake), complex civil and commercial litigation, business disputes, professional and legal malpractice defense, employment law, product liability and intellectual property matters.

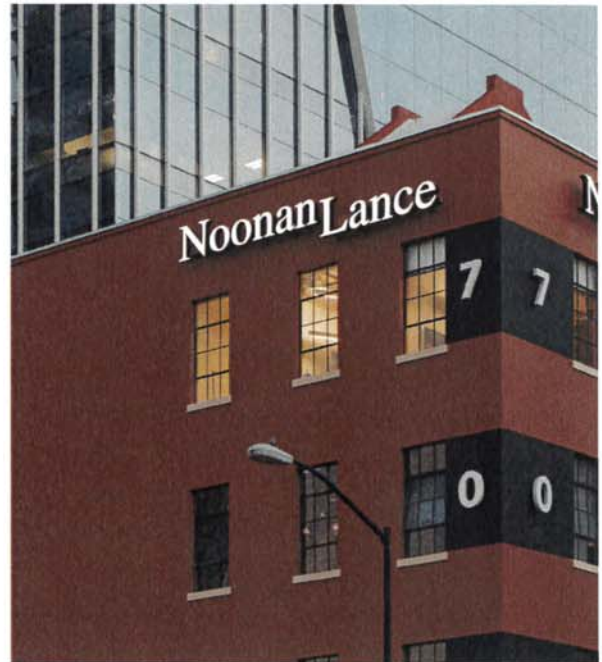
### Clients

The firm takes on some of the most complex and complicated cases in Southern California, representing companies and individuals – from Fortune 500 companies to small businesses – based both in San Diego and around the country.

Past and present clients include real estate developers, consumer goods manufacturers, construction contractors, other law firms/lawyers, boutique technology firms, software and computer companies, biotechnology companies, investment organizations, as well as individuals in employment, personal injury and class action lawsuits. NoonanLance's attorneys have represented many of San Diego County's most well-known and established businesses, organizations and individuals in high stakes litigation.

### Origins

From the 40-year tradition of the award-winning former law firm Kirby Noonan Lance & Hoge (previously Post Kirby Noonan & Sweat), NoonanLance was formed in 2016. The firm continues to work on cases with some of its former partners from KNL&H, as applicable.





# NoonanLance

Noonan Lance Boyer & Banach LLP

## Practice Areas

Working with Fortune 500 companies to small businesses to individuals.

### ANTITRUST / UNFAIR COMPETITION

Our attorneys have handled many unfair competition and antitrust matters which have included cases based on allegations of violations of the California Cartwright Act, The Federal Sherman and Clayton Acts, and California Unfair Completion Act (Business and Professions Code §17200 et seq.), and false advertising (Business and Professions Code § 17500 et seq.) We have tried a number of such cases to verdict and have also served as local counsel for regional and national law firms who require our assistance in local litigation.

### APPELLATE

The Firm has extensive experience in state and federal appellate courts manifest in over 50 appellate opinions in a variety of areas of law including:

- A landmark decision relating to the standard applicable in the state courts to motions for summary judgment (*Aguilar v. Atlantic Richfield Co.*, 25 Cal. 4th 826 (2001))
- The leading decision regarding the finality of stipulated judgments for purposes of triggering the statute of limitations under California Civil Procedure Code Section 337.5 (*The Cadle Company II, Inc. v. Sundance Financial, Inc.*, 154 Cal. App. 4th 622 (2007))
- A leading decision expanding the protections afforded under the anti-SLAPP statute (*Tuscher Development Enterprises, Inc. v. San Diego Unified Port District*, 106 Cal. App. 4th 1219 (2003))
- A leading decision in trademark litigation (*Playboy Enterprises v. Welles*, 279 F.3d 796 (9th Cir. 2002))
- A decision outlining the requirement of a "favorable determination on the merits" as a prerequisite to a malicious prosecution action (*Ferreira v. Gray Cary Ware & Freidenrich*, 87 Cal. App. 4th 409 (2001))
- A decision on the scope of discovery in trade secret litigation in federal courts (*Computer Economics v. Gartner Group, Inc.*, 50 F. Supp. 2d 980 (C.D. Cal. 1999))
- A leading decision in attorney malpractice litigation relating to the statute of limitations and the availability of equitable indemnity (*Crouse v. Brobeck Phleger & Harrison*, 67 Cal. App. 4th 1509 (1998))

### CLASS ACTIONS

The Firm is among the most experienced class action litigation firms in San Diego. We have handled many state and federal class action matters, Business and Professions Code section 17200 matters, and multi-district litigation. Our experience in this area covers almost the entire spectrum of our practice areas including antitrust/unfair competition, false advertising, banking, securities fraud, product liability, and employment wage and hour litigation.

### COMMERCIAL LITIGATION

Our attorneys are among the most experienced commercial litigators in San Diego, have handled a wide range of cases in state and federal court, as well as in arbitration. No matter the business, we can help resolve your case.

### CONTRACT DISPUTES

A large portion of the Firm's litigation experience involves contract disputes, in a diverse range of business contexts, including the banking industry, real estate transactions, commercial disputes, franchise disputes and securities and investment disputes. We also have the expertise to formulate advantageous business solutions to contract litigation disputes.

### EMPLOYMENT LAW / WRONGFUL TERMINATION

The Firm's experience in wrongful termination litigation has followed the proliferation of such cases in our court system (at one point nearly half of the new case filings in San Diego Superior Court were employment disputes). The Firm has handled virtually all areas of employment litigation including discrimination cases involving race, gender, sexual orientation, religion and national origin, "public policy" wrongful termination cases involving a wide variety of issues of public importance in many industries, and wage and hour class action litigation. Many of our Firm members have tried employment cases to verdict.

### INTELLECTUAL PROPERTY

We have handled intellectual property, trademark and trade secret litigation and trials for over 25 years, and we are thoroughly familiar with the substantive and procedural issues involved in such litigation. As a result, substantial clients, including Fortune 500 companies, hire us to pursue their positions in intellectual property, patent, trademark and trade secret litigation.

### LIBEL/DEFAMATION

As an experienced litigation firm, we frequently handle a variety of business tort litigation, including defamation, libel and slander matters and have tried such cases many times.

### PERSONAL INJURY/WRONGFUL DEATH

Our attorneys have extensive experience in catastrophic personal injury and wrongful death litigation. Many of those cases have arisen in the product liability context. We have tried many cases to verdict and obtained substantial judgments and settlements for our clients.

### PRODUCTS LIABILITY

We have handled product liability litigation in many industries and contexts. We understand the unique issues of law present in product liability litigation, and equally significantly, the strategic concerns in dealing with expert witnesses, proprietary and trade secret issues of our clients, and the important considerations for handling and structuring resolution of these cases if they are not tried.

### PROFESSIONAL NEGLIGENCE

We have frequently been called upon to represent our clients in professional negligence and errors and omissions litigation. We have represented a great number of local, regional and national accounting firms, law firms, real estate brokers and other professionals in such litigation. We understand the unique considerations that need to be analyzed to determine whether such actions should proceed to trial, including juror attitudes toward professionals and the professional and personal impact of such costs on our clients.

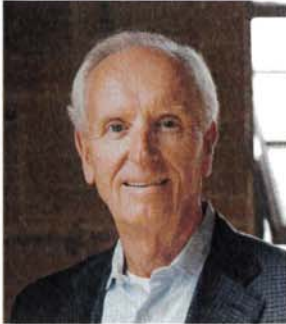
### REAL ESTATE

The real estate industry has been an important component of the San Diego economy for many years and certainly since the Firm's inception. A large portion of our litigation experience has been or included real property litigation and disputes. The Firm draws from its extensive experience in real property law issues in handling such matters, and the Firm's members are extensively involved in Bar activities and write articles on real property matters frequently. In addition, our knowledge of local real property issues is often invaluable for our clients. We represent developers, contractors, real estate brokers, land speculators, banks, mortgage companies, landlords and commercial tenants.



# NoonanLance

Noonan Lance Boyer & Banach LLP



**David J. Noonan**

A leader in the field, David J. Noonan has amassed an impressive career over four decades, successfully representing high profile clients, receiving numerous recognitions from distinguished organizations and serving in leadership positions in San Diego's major legal organizations.

Before becoming one of the founding partners of Noonan Lance Boyer & Banach, he was a founding partner at the award-winning law firm of Kirby Noonan Lance & Hoge, where he managed a diverse client roster that included America's Cup yacht races, professional athletes, Fortune 500 companies and a former Playmate of the Year. He has an impressive trial record, having represented corporations in defense of major antitrust, securities, banking and product liability actions. Noonan has played a vital role in securing multimillion dollar judgments for plaintiffs in complex cases involving consumer class actions, antitrust claims and professional misconduct charges.

He has served as president of the San Diego County Bar Association, the San Diego Volunteer Lawyer Program, the San Diego County Bar Foundation and the American Board of Trial Advocates (ABOTA), San Diego Chapter. Noonan is a member of the prestigious American College of Trial Lawyers and a Fellow of the American Bar Foundation.

He is a past recipient of the Daniel T. Broderick Award for trial experience and professionalism, as recognized by the four major trial organizations in San Diego. Noonan has been named one of the "Best Lawyers in America" for commercial litigation for the past 20 years and is now also listed for legal malpractice defense and Bet-the-Company Litigation. He was twice named as San Diego Lawyer of the Year for Bet-the-Company Litigation and once as San Diego Lawyer of the Year for Legal Malpractice Defense. Super Lawyers also listed Noonan as one of the Top 10 Lawyers in San Diego in five editions.

## CONTACT INFO

Email: [dnoonan@noonanlance.com](mailto:dnoonan@noonanlance.com)

Phone: 619-780-0880

Fax: 619-780-0877

## EDUCATION

Syracuse University, J.D., (cum laude), 1972

Colby College, B.A., 1969

## INDUSTRY & COMMUNITY INVOLVEMENT

- San Diego County Bar Association (President: 1993, Board Member: 1990-1993)
- American Bar Association
- State Bar of California
- San Diego County Bar Foundation (President: 1995, Board Member: 1990-1995)
- American Board of Trial Advocates (Inducted: 1992, President of San Diego Chapter: 2006)
- Fellow, American College of Trial Lawyers (Inducted: 1998)
- American Inns of Court – Louis Welsh Chapter (Executive Committee Member: 1998-2009)
- Fellow, American Bar Foundation
- San Diego Volunteer Lawyer Program (President: 2005-2008, Board Member: 1996-present)

## LITIGATION PRACTICE AREAS

- ANTITRUST
- PROFESSIONAL LIABILITY
- SECURITIES
- BUSINESS
- BET-THE-COMPANY

# NoonanLance

Noonan Lance Boyer & Banach LLP



**James R. Lance**

A founding partner of NoonanLance, James (Jim) Lance is an experienced trial attorney who represents both plaintiffs and defendants. Lance has tried cases in federal and state court for both plaintiffs and defendants, and has obtained several verdicts, judgments and settlements in excess of \$1 million for his clients. In 2013, Lance accepted admission in the American Board of Trial Advocates (ABOTA), an organization which required the equivalent of 20 jury trials to verdict before he could be considered for membership.

The focus of Lance's practice is complex commercial litigation, with an emphasis in real estate disputes. However, he also has represented a number of individuals asserting serious personal injury and wrongful death claims. Below are brief summaries of some of the trial results and settlements Lance has been able to achieve for his clients.

Lance is married, has three sons and lives in the Kensington area of San Diego. He is an active member of the community. Lance is on the ABOTA membership committee, and is an active member of the William B. Enright American Inn of Court. He also has coached youth football and baseball for more than 15 years.

## CONTACT INFO

NoonanLance  
701 Island Avenue, Suite 400  
San Diego, CA 92101

Email: [jlance@noonanlance.com](mailto:jlance@noonanlance.com)  
Phone: 619-557-4416  
Fax: 619-780-0877

## EDUCATION

Washington & Lee University, J.D., (magna cum laude, 4th in graduating class), 1986  
Missouri State University, B.S., (summa cum laude), 1983

## INDUSTRY & COMMUNITY INVOLVEMENT

- American Board of Trial Advocates (ABOTA)
- American Inns of Court – Louis M. Welsh and William B. Enright Chapters
- Association of Business Trial Lawyers (Former Board Member)

## LITIGATION PRACTICE AREAS

- COMPLEX COMMERCIAL
- REAL ESTATE
- SERIOUS PERSONAL INJURY/  
WRONGFUL DEATH
- CLASS ACTION

# NoonanLance

Noonan Lance Boyer & Banach LLP



**Ethan T. Boyer**

As one of the founding partners at Noonan Lance Boyer & Banach, and most recently a partner at Kirby Noonan Lance & Hoge, Ethan T. Boyer dedicates his practice to resolving complex business and commercial disputes, including intellectual property matters, real estate and product liability cases. Boyer has successfully handled all aspects of commercial and business litigation, in trials, arbitrations and appeals.

Boyer has been named one of the Best Lawyers in America® by his peers since 2015 for commercial litigation. Best Lawyers has published its list for more than three decades, earning the respect of the profession, the media and the public as the most reliable, unbiased source of legal referrals.

Boyer also received an AV® Peer Review rating from the Martindale Hubbell International Law Directory, indicating he has reached the height of professional excellence by demonstrating the highest level of ethical standards and professional ability.

Outside the courtroom, Boyer is active in the legal community and is a member of the Association of Business Trial Lawyers of San Diego; the San Diego Intellectual Property Law Association; Federal Bar Association, San Diego Chapter; and previously served on the board of directors for the San Diego County Bar Foundation and San Diego Barristers Club.

Boyer earned his bachelor's degree from Yale University, magna cum laude with great distinction, and graduated from the University of California, Berkeley, Boalt Hall School of Law in 1994, where he was a member of the moot court board. He also externed for Justice Ronald M. George of the California Supreme Court.

In his free time, Boyer enjoys golf, fishing and spending time with his wife and two daughters.

## CONTACT INFO

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701 Island Avenue, Suite 400  
San Diego, CA 92101

Email: [eboyer@noonanlance.com](mailto:eboyer@noonanlance.com)

Phone: (619) 780-0880

Fax: (619) 780-0877

## EDUCATION

University of California, Berkeley, J.D., 1994

Yale University, B.A., (magna cum laude, with distinction), 1990

## INDUSTRY & COMMUNITY INVOLVEMENT

- San Diego County Bar Association
- State Bar of California
- San Diego County Bar Foundation, Board of Directors (2005–2012)
- Association of Business Trial Lawyers of San Diego
- San Diego Intellectual Property Law Association
- Federal Bar Association, San Diego Chapter
- San Diego Barristers Club, Board of Directors (1997–1998)

## LITIGATION PRACTICE AREAS

- COMMERCIAL LITIGATION
- INTELLECTUAL PROPERTY LITIGATION
- PROFESSIONAL RESPONSIBILITY
- REAL ESTATE LITIGATION



# NoonanLance

Noonan Lance Boyer & Banach LLP



## Micaela P. Banach

Experienced in all aspects of case handling, Micaela P. Banach has amassed an impressive track record over the course of her career – skillfully representing both plaintiffs and defendants in practice areas that include matters of real estate, employment, products liability, professional liability and business disputes, such as contract issues and fraud. Results driven, she has secured successful results for numerous clients – most notably obtaining a multi-million dollar judgment in a fraud and securities action.

Prior to becoming one of the founding partners of Noonan Lance Boyer & Banach, she was a partner at the highly regarded law firm of Kirby Noonan Lance & Hoge. Her achievements include several successful bench trials; a defense arbitration award in favor of a client sued for more than \$12 million; successfully writing and arguing an appeal before the 4th District Court of Appeals; and many negotiated settlements.

When not in the courtroom, Banach serves as president for the San Diego County Bar Foundation, the charitable arm of the San Diego County Bar Association. Overseeing all development activities and the annual “Evening in La Jolla” fundraiser, Banach helps lead the nonprofit as it supports underprivileged communities in the region, by providing them with access to support, funding and public service programs offering legal services. Banach also enjoys traveling, sports and spending time at the beach with her husband and two sons.

### CONTACT INFO

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Phone: 619-780-0880

Fax: 619-780-0877

### EDUCATION

University of the Pacific, McGeorge School of Law,  
J.D., (with great distinction), 2003

Washington State University, B.A.,  
(cum laude) 2000

### INDUSTRY & COMMUNITY INVOLVEMENT

- State Bar of California
- San Diego County Bar Association
- President, San Diego County Bar Foundation
- Barrister, American Inns of Court – Louis M. Welsh Chapter
- Member, The Lawyers Club of San Diego

### LITIGATION PRACTICE AREAS

- GENERAL BUSINESS DISPUTES
- REAL ESTATE
- EMPLOYMENT
- PROFESSIONAL LIABILITY
- PERSONAL INJURY



# NoonanLance

Noonan Lance Boyer & Banach LLP



## Genevieve M. Ruch

With an impressive track record and strong background in business, civil and major securities litigation, Genevieve M. Ruch is a skilled attorney who brings considerable value to Noonan Lance Boyer & Banach.

Previously, Ruch worked at the esteemed law firm of Kirby Noonan Lance & Hoge, where she drafted and argued motions, managed discovery, and performed legal research on behalf of plaintiffs and defendants in practice areas that included general civil litigation, business litigation, financial services litigation, and intellectual property litigation.

Ruch formerly worked for a national law firm, concentrating on legal issues related to nationwide mortgage-backed securities class actions. She also worked as a legal intern for NBC Universal in Los Angeles.

A member of the Enright Inn of Court, Association of Business Trial Lawyers, San Diego County Bar Association, and Lawyers Club of San Diego, Ruch was admitted to the State Bar of California in 2012.

Ruch earned her Bachelor of Arts degree in political science with a minor in business management from San Diego State University. She received her J.D., cum laude, from the University of San Diego School of Law, where she earned many high-grade honors and was made a member of Order of the Coif. While at law school, Ruch was also a member of the San Diego Law Review and served as its comments editor.

When she's not working, Ruch enjoys traveling, running and cooking.

### CONTACT INFO

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Phone: 619-780-0880  
Fax: 619-780-0877

### EDUCATION

University of San Diego School of Law, J.D.,  
(cum laude), 2012

San Diego State University, B.A., 2008

### INDUSTRY & COMMUNITY INVOLVEMENT

- Enright Inn of Court
- Association of Business Trial Lawyers
- San Diego County Bar Association
- Lawyers Club of San Diego
- State Bar of California
- U.S. District Court, Southern District of California
- U.S. District Court, Central District of California

### LITIGATION PRACTICE AREAS

- BUSINESS LITIGATION
- GENERAL CIVIL LITIGATION
- SECURITIES
- INTELLECTUAL PROPERTY LITIGATION
- PROFESSIONAL LIABILITY

# **EXHIBIT 7**

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

LOU BAKER, individually and on  
behalf of all others similarly situated,

Plaintiff,

vs.

SEAWORLD ENTERTAINMENT,  
INC., et al.,

Defendants.

No. 3:14-cv-02129-MMA-AGS

**CLASS ACTION**

**DECLARATION OF MATT KEIL IN  
SUPPORT OF CLASS COUNSEL'S  
MOTION FOR ATTORNEYS' FEES  
AND LITIGATION EXPENSES  
FILED ON BEHALF OF KEIL &  
GOODSON P.A.**

1 I, Matt Keil, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

2 1. I am a partner in the law firm of Keil & Goodson P.A. (“Keil &  
3 Goodson”). I submit this declaration in support of Class Counsel’s application for an  
4 award of attorneys’ fees in connection with services rendered by Plaintiffs’ Counsel in  
5 the above-captioned securities class action (“Action”), as well as for payment of  
6 Litigation Expenses incurred in connection with the Action.<sup>1</sup> Unless otherwise stated  
7 herein, I have personal knowledge of the facts set forth herein and, if called upon, could  
8 and would testify thereto.

9 2. My firm served as additional counsel for Class Representatives and the  
10 Class in the Action. The tasks undertaken by my firm in the Action can be summarized  
11 as follows: My firm served as additional counsel and in such capacity we have acted  
12 as liaison with KTMC in the preparation, review of documents and pleadings,  
13 compilation and coordination and production of discovery and attended mediation.

14 3. Based on my work in the Action as well as the review of time records  
15 reflecting work performed by other attorneys at Keil & Goodson in the Action  
16 (“Timekeepers”) as reported by the Timekeepers, I directed the preparation of the chart  
17 set forth as Exhibit 1 hereto. The chart in Exhibit 1: (i) identifies the names and  
18 employment positions (*i.e.*, titles) of the Timekeepers who devoted ten (10) or more  
19 hours to the Action; (ii) provides the total number of hours that each Timekeeper  
20 expended in connection with work on the Action, from the time when potential claims  
21 were being investigated through May 31, 2020; (iii) provides each Timekeeper’s  
22 current hourly rate; and (iv) provides the total lodestar of each Timekeeper and the  
23 entire firm. This chart was prepared from daily time records regularly prepared and  
24 maintained by my firm in the ordinary course of business, which are available at the

25 \_\_\_\_\_  
26 <sup>1</sup> All capitalized terms that are not otherwise defined herein shall have the  
27 meanings set forth in the Stipulation and Agreement of Settlement dated February 10,  
28 2020 (ECF No. 516-3).



1 request of the Court. All time expended in preparing this application for attorneys' fees  
2 and expenses has been excluded.

3 4. The hourly rates for the attorneys and professional support staff in my  
4 firm included in Exhibit 1 are the same as the regular rates that are charged for their  
5 services in non-contingent complex litigation matters.

6 5. I believe that the number of hours expended and the services performed  
7 by the attorneys and professional support staff employees at Keil & Goodson were  
8 reasonable and necessary for the effective and efficient prosecution and resolution of  
9 the Action. The total number of hours expended by Keil & Goodson in the Action,  
10 from inception through May 31, 2020, as reflected in Exhibit 1, is 415. The total  
11 lodestar for my firm, as reflected in Exhibit 1, is \$321,625.00.

12 6. Expense items are being submitted separately and are not duplicated in  
13 my firm's hourly rates. As set forth in Exhibit 2 hereto, Keil & Goodson is seeking  
14 payment for a total of \$2,537.75 in expenses incurred in connection with the  
15 prosecution and resolution of the Action. My firm has applied "caps" to certain travel  
16 expenses (i.e., airfare, meals, and lodging). In my judgment, these expenses were  
17 reasonable and expended for the benefit of the Class in this Action.

18 7. The expenses incurred by Keil & Goodson in the Action are reflected on  
19 the books and records of my firm. These books and records are prepared from expense  
20 vouchers, check records, and other source materials and are an accurate record of the  
21 expenses incurred. I believe these expenses were reasonable and expended for the  
22 benefit of the Class in the Action.

23 8. With respect to the standing of my firm, attached hereto as Exhibit 3 is a  
24 firm résumé, which includes information about my firm and biographical information  
25 concerning the firm's attorneys.  
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I declare, under penalty of perjury, that the foregoing facts are true and correct.

Executed on June 11, 2020.



MATT KEIL

**EXHIBIT 1**

*Baker v. SeaWorld Entertainment, Inc., et al.*

No. 3:14-cv-02129-MMA-AGS

**KEIL & GOODSON P.A.**

**TIME REPORT**

**From Inception Through May 31, 2020**

NAME	HOURLY RATE	HOURS	LODESTAR
<b>Partners</b>			
John C. Goodson	\$775	305	\$236,375.00
Matt Keil	\$775	110	\$85,250.00
<b>TOTALS</b>		<b>415</b>	<b>\$321,625.00</b>

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DECLARATION OF MATT KEIL IN SUPPORT OF CLASS COUNSEL'S MOTION FOR ATTORNEYS' FEES AND LITIGATION EXPENSES FILED ON BEHALF OF KEIL & GOODSON P.A. CASE No. 3:14-cv-02129-MMA-AGS

**EXHIBIT 2**

*Baker v. SeaWorld Entertainment, Inc., et al.*

No. 3:14-cv-02129-MMA-AGS

**KEIL & GOODSON P.A.**

**EXPENSE REPORT**

<b>CATEGORY</b>	<b>AMOUNT</b>
Court Fees	206.00
Out of Town Travel (Meals, Hotels & Transportation)	2,331.75
<b>TOTAL EXPENSES:</b>	<b>2,537.75</b>

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**EXHIBIT 3**

*Baker v. SeaWorld Entertainment, Inc., et al.*

No. 3:14-cv-02129-MMA-AGS

**KEIL & GOODSON P.A.**

**FIRM RÉSUMÉ**



## KEIL & GOODSON P.A. FIRM RESUME

In 1990 Matt Keil and John C. Goodson formed the firm of Keil & Goodson P.A. in their hometown of Texarkana, Arkansas. The firm's initial focus was on both civil and criminal trial work. The firm initially worked extensively in civil and criminal trial practice where they enjoyed a successful trial practice including several multi-million dollar settlements. Over the past fifteen years the firm has shifted its focus to complex civil litigation. These areas include consumer class actions, anti-trust litigation, patent litigation, securities fraud litigation and states attorney general actions. The firm still prides itself in being composed of a couple of small town street lawyers from Southwest Arkansas.

### Attorneys:

**Matt Keil**, born in Anchorage, Alaska, is a named partner in the firm, Matt is admitted to practice in all state courts in Arkansas and Texas, the United States District Courts for the Western and Eastern Districts of Arkansas, the Eastern District of Texas and the U.S. Ct. of Appeals for the Eighth Circuit. Mr. Keil is a graduate of the University of Arkansas (B.A. 1981) and University of Arkansas School of Law (J.D. 1986). Mr. Keil is a member of the Texas, Arkansas and Texarkana Bar Associations. He is also a member of the American Board of Trial Advocates, East Texas Chapter. **Email:** [mkeil@kglawfirm.com](mailto:mkeil@kglawfirm.com)

**John C. Goodson**, born in Texarkana, Arkansas, is a named partner in the firm, John is admitted to practice in all state courts in Arkansas, the United States District Courts for the Western and Eastern Districts of Arkansas and the U.S. Court of Appeals for the Eighth Circuit. Mr. Goodson is a graduate of the University of Arkansas (B.A. 1987) and University of Arkansas School of Law (J.D. 1989). Mr. Goodson is a member of the Texarkana Southwest Arkansas and Arkansas Bar Associations. **Email:** [jcgoodson@kglawfirm.com](mailto:jcgoodson@kglawfirm.com)

**Amy C. Martin** has been a licensed attorney for over twenty years representing clients in civil, criminal and complex business and class action litigation. She has previously been involved in representing corporations in complex litigation matters and in class action cases as in-house counsel with two Fortune 100 companies. She also has experience representing plaintiffs in class action cases in private practice. Ms. Martin graduated from the University of Arkansas School of Law, with Honors, in 1996 and before entering private practice served as a law clerk for the Honorable Jimm Larry Hendren and the Honorable H. Franklin Waters, former United States District Judges for the Western District of Arkansas. She is licensed to practice law in Arkansas and Washington D.C.

### Case History:

Keil & Goodson P.A. was involved as co-lead counsel in representing a nationwide class action on behalf of clients of certain accounting firms in Arkansas State Court styled *Warmack-Muskogee vs Pricewaterhouse Cooper, et al* Civil Action No. CV-01-504-3. Through that litigation, the class alleged that these accounting firms overcharged their clients for costs and expenses paid to travel vendors by billing their clients the full face amounts of these costs while,



at the same time, receiving back-end rebates, incentives, commissions, and other compensations. As a result of the litigation, class counsel obtained settlements in the total amount of \$108,000,000. These settlements further implemented significant corporate governance changes, which prohibited these accounting firms from engaging in this offensive conduct in the future and from coordinating their travel program with that of any other accounting firm. These settlements have received final approval.

Keil & Goodson P.A. was also co-lead counsel which successfully represented a nationwide class against Google, Inc. in the State Court of Miller County, Arkansas. The case gained national recognition in its successful efforts to protect advertising clients from “click fraud” from their internet provider Google, Inc. As a result of this litigation a settlement which received final approval in the amount of \$90,000,000 was obtained.

Keil & Goodson P.A. as co lead counsel also helped resolve the following class action cases: *Beasley, et al vs Reliable Insurance, et al*, CV-05-058, *Larry Berry, et al vs Titeflex Corporation, et al*, CV-04-211(Clark County Arkansas), *Anthony Hunsucker, et al vs American Standard Insurance Company of Wisconsin, et al*, CV-07-155, *Glenn Gross, et al vs Atlantic Lloyds Insurance Company of Texas, et al* CV-07-374, *Tom Simental vs California State Automobile Association, et al*, CV-07-359, *Bonnie Johnson, et al vs Clarendon American Insurance Company, et al*, CV-07-138, *Gary White, et al vs American Casualty Company of Reading PA, et al* CV-07-419, *Martha Hogue, et al vs Federated Mutual Insurance Company, et al*, CV-07-267, *Lorene Atkinson, et al vs General Casualty Company of Wisconsin, et al*, CV-07-126, *Martha Sweeten, et al vs American Empire Insurance Company, et al*, CV-07-154, *George Zarebski, et al vs Hartford Insurance Company of the Midwest, et al*, CV-06-409-3, *Phyllis Gibson, et al vs Hanover Insurance Company, et al*, CV-07-429, *Kathern Pizarro, et al vs Horace Mann Insurance Company, et al*, CV-07-428, *Glenn Gross vs Insurance Company of the West, et al*, CV-07-358, *Erlinda Soto, et al vs AAA Mid-Atlantic Insurance Company of New Jersey, et al* CV-07-368, *Sylvia Webb, et al vs The First Liberty Insurance Corporation, et al*, CV-07-418, *Craig Gooding, et al vs Grange Indemnity Insurance Company, et al* CV-07-456, *Victoria Jones vs American Hardware Mutual Insurance Company, et al* CV- 07-470, *Sheila Frugia, et al vs Allied P&C Insurance Company, et al*, CV-07-417, *Dusty Easley, et al vs Ohio Casualty Insurance Company, et al*, CV-07-139, *Jessica Parker, et al vs Mountain Laurel Assurance Company, et al*, CV-07-415, *Glenn Gross, et al vs W.R. Berkley Corporation, et al*, CV-07-264, *Chad Hunter, et al vs American Central Insurance Company, et al*, CV-07-071, *Glenn Gross, et al, vs Graphic Arts Mutual Insurance Company, et al*, CV-07-086, which have resulted in class benefits which have exceeded 1.5 billion dollars.

Keil & Goodson P.A. as co-lead counsel helped resolve the following class action depreciation of labor cases against certain insurance carriers: *Larey, et al vs. Allstate Property & Casualty Insurance Company*, 14-cv-4008, *Green and Edwards, et al vs. American Modern Home Insurance Company*, 14-cv-1474 *Braden and Brown, et al vs. Foremost Insurance Company Grand Rapids Michigan*, 15-cv-4114, *Brown, et al vs. Homesite Group Incorporated d/b/a Homesite Home Insurance*, 14-cv-4026, *Raffaelli and Simpson, et al vs. Certain Underwriters at Lloyd’s London*, 46CV-14-213, *Cherry and Keener, et al vs. Shelter Mutual Insurance Company*, 46CV-15-69, *Goodner, et al vs Shelter Mutual Insurance Company*, 14-cv-

4013, *Adams, et al vs United Services Automivle Association*, USAA Casualty Insurance Company, USAA General Indemnity Company, and Garrison Property and Casualty Insurance Company, CV-2015-105, which resulted in class benefits which exceeded 42.6 million dollars.

Keil & Goodson continues to represent clients in complex litigation cases in both Federal and State Courts.

# **EXHIBIT 8**

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

LOU BAKER, individually and on  
behalf of all others similarly situated,

Plaintiff,

vs.

SEAWORLD ENTERTAINMENT,  
INC., et al.,

Defendants.

No. 3:14-cv-02129-MMA-AGS

**CLASS ACTION**

**DECLARATION OF DANIEL L.  
BERGER IN SUPPORT OF CLASS  
COUNSEL’S MOTION FOR  
ATTORNEYS’ FEES AND  
LITIGATION EXPENSES FILED ON  
BEHALF OF GRANT &  
EISENHOFER P.A.**

1 I, DANIEL L. BERGER, pursuant to 28 U.S.C. § 1746, hereby declare as  
2 follows:

3 1. I am a Director in the law firm of Grant & Eisenhofer P.A. (“G&E”). I  
4 submit this declaration in support of Class Counsel’s application for an award of  
5 attorneys’ fees in connection with services rendered by Plaintiffs’ Counsel in the  
6 above-captioned securities class action (“Action”), as well as for payment of Litigation  
7 Expenses incurred in connection with the Action.<sup>1</sup> Unless otherwise stated herein, I  
8 have personal knowledge of the facts set forth herein and, if called upon, could and  
9 would testify thereto.

10 2. My firm served as additional counsel for Class Representatives and the  
11 Class in the Action. The tasks undertaken by my firm in the Action can be summarized  
12 as follows: work on investigation for and drafting of amended complaint; participation  
13 in review of documents produced by defendants during discovery.

14 3. Based on my work in the Action as well as the review of time records  
15 reflecting work performed by other attorneys and professional support staff employees  
16 at G&E in the Action (“Timekeepers”) as reported by the Timekeepers, I directed the  
17 preparation of the chart set forth as Exhibit 1 hereto. The chart in Exhibit 1: (i) identifies  
18 the names and employment positions (*i.e.*, titles) of the Timekeepers who devoted ten  
19 (10) or more hours to the Action; (ii) provides the total number of hours that each  
20 Timekeeper expended in connection with work on the Action, from the time when  
21 potential claims were being investigated through May 31, 2020; (iii) provides each  
22 Timekeeper’s current hourly rate; and (iv) provides the total lodestar of each  
23 Timekeeper and the entire firm. For Timekeepers who are no longer employed by  
24 G&E, the hourly rate used is the hourly rate for such employee in his or her final year

25 \_\_\_\_\_  
26 <sup>1</sup> All capitalized terms that are not otherwise defined herein shall have the  
27 meanings set forth in the Stipulation and Agreement of Settlement dated February 10,  
28 2020 (ECF No. 516-3).



1 of employment by my firm. This chart was prepared from daily time records regularly  
2 prepared and maintained by my firm in the ordinary course of business, which are  
3 available at the request of the Court. All time expended in preparing this application  
4 for attorneys' fees and expenses has been excluded.

5 4. The hourly rates for the Timekeepers, as set forth in Exhibit 1, are their  
6 standard rates. My firm's hourly rates are largely based upon a combination of the title,  
7 cost to the firm, and the specific years of experience for each attorney and professional  
8 support staff employee, as well as market rates for practitioners in the field. These  
9 hourly rates are the same as, or comparable to, rates submitted by G&E and accepted  
10 by courts in other complex class actions for purposes of "cross-checking" lodestar  
11 against a proposed fee based on the percentage of the fund method, as well as  
12 determining a reasonable fee under the lodestar method.

13 5. I believe that the number of hours expended and the services performed  
14 by the attorneys and professional support staff employees at G&E were reasonable and  
15 necessary for the effective and efficient prosecution and resolution of the Action. The  
16 total number of hours expended by G&E in the Action, from inception through May  
17 31, 2020, as reflected in Exhibit 1, is 146.10. The total lodestar for my firm, as reflected  
18 in Exhibit 1, is \$90,356.50, consisting of \$83,492.50 for attorneys' time and \$6,864.00  
19 for professional support staff time.

20 6. Expense items are being submitted separately and are not duplicated in  
21 my firm's hourly rates. As set forth in Exhibit 2 hereto, G&E is seeking payment for a  
22 total of \$1,556.35 in expenses incurred in connection with the prosecution and  
23 resolution of the Action. In my judgment, these expenses were reasonable and  
24 expended for the benefit of the Class in this Action.

25 7. The expenses incurred by G&E in the Action are reflected on the books  
26 and records of my firm. These books and records are prepared from expense vouchers,

1 check records, and other source materials and are an accurate record of the expenses  
2 incurred. I believe these expenses were reasonable and expended for the benefit of the  
3 Class in the Action.

4 8. With respect to the standing of my firm, attached hereto as Exhibit 3 is a  
5 firm résumé, which includes information about my firm and biographical information  
6 concerning the firm's attorneys.

7 I declare, under penalty of perjury, that the foregoing facts are true and correct.

8 Executed on June 15, 2020.

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11 DANIEL L. BERGER  
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**EXHIBIT 1**

*Baker v. SeaWorld Entertainment, Inc., et al.*

No. 3:14-cv-02129-MMA-AGS

**GRANT & EISENHOFER P.A.**

**TIME REPORT**

**From Inception Through May 31, 2020**

<b>NAME</b>	<b>HOURLY RATE</b>	<b>HOURS</b>	<b>LODESTAR</b>
<b>Partners</b>			
Jeff Almeida	\$800	43.80	\$35,040.00
Daniel Berger	\$1,000	15.00	\$15,000.00
Megan D. McIntyre	\$925	10.00	\$9,250.00
<b>Counsel / Associates</b>			
David Haendler	\$525	46.10	\$24,202.50
<b>Paralegals / Law Clerks</b>			
Trineka Schuster	\$220	31.20	\$6,864.00
<b>TOTALS</b>		<b>146.10</b>	<b>\$90,356.50</b>

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DECLARATION OF DANIEL L. BERGER IN SUPPORT OF CLASS COUNSEL’S MOTION FOR ATTORNEYS’ FEES AND LITIGATION EXPENSES FILED ON BEHALF OF GRANT & EISENHOFER P.A. CASE No. 3:14-cv-02129-MMA-AGS

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**EXHIBIT 2**

*Baker v. SeaWorld Entertainment, Inc., et al.*

No. 3:14-cv-02129-MMA-AGS

**GRANT & EISENHOFER P.A.  
EXPENSE REPORT**

CATEGORY	AMOUNT
Filing Fee	\$206.00
Meeting Expense	\$561.20
Duplication Services	\$372.40
Case-Related Research	\$416.75
<b>TOTAL EXPENSE:</b>	<b>\$1,556.35</b>

\* On-line research is billed to each case based on actual time usage at a set charge by the vendor. There are no administrative charges included in these figures.

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**EXHIBIT 3**

*Baker v. SeaWorld Entertainment, Inc., et al.*

No. 3:14-cv-02129-MMA-AGS

**GRANT & EISENHOFER P.A.**

**FIRM RÉSUMÉ**



**GRANT & EISENHOFER P.A.  
FIRM BIOGRAPHY**

Grant & Eisenhofer P.A. (“G&E”) concentrates on federal securities and corporate governance litigation and other complex class litigation. With over 60 attorneys, G&E primarily represents domestic and foreign institutional investors, both public and private, who have been damaged by corporate fraud, greed and mismanagement. The Firm was named to The National Law Journal’s “Plaintiffs’ Hot List” for more than a decade and is listed as one of America’s Leading Business Law Firms by Chambers & Partners, who reported that G&E “commanded respect for its representation of institutional investors in shareholder and derivative actions, and in federal securities fraud litigation.” Based in Delaware, New York, Chicago, Birmingham, and San Francisco, G&E routinely represents clients in federal and state courts throughout the country. G&E’s clients include the California Public Employees’ Retirement System, New York State Common Retirement Fund, Ohio Public Employees’ Retirement System, State of Wisconsin Investment Board, Teachers’ Retirement System of Louisiana, PIMCO, Trust Company of the West, The Capital Guardian Group and many other public and private U.S. and international institutions.

G&E was founded in 1997 by Jay W. Eisenhofer and Stuart M. Grant, former litigators in the Wilmington office of the nationally prominent firm of Skadden, Arps, Slate, Meagher & Flom LLP. Over the years, the Firm’s directors have gained national reputations in securities and corporate litigation. In fact, G&E was the first law firm in the country to argue the provisions of the Private Securities Litigation Reform Act (“PSLRA”) allowing an institutional investor to be appointed as lead plaintiff in a securities class action. The Firm has gone on to build a national and international reputation as a leader in securities litigation. In both class action and “opt-out” cases, G&E has attracted widespread recognition for protecting investors’ rights and recovering their damages. RiskMetrics Group has twice recognized G&E for securing the highest average investor recovery in securities class actions.

**G&E has served as lead counsel in many of the largest securities class action and derivative recoveries, including:**

- \$3.2 billion settlement from Tyco International Ltd. and related defendants
- \$922 million from UnitedHealth Group
- \$486 million settlement from Pfizer
- \$448 million settlement in Global Crossing Ltd. securities litigation
- \$422 million total class recovery for investors in the stock and bonds of Refco
- \$400 million recovery from Marsh & McLennan
- \$325 million from Delphi Corp.
- \$303 million settlement from General Motors
- \$300 million settlement from DaimlerChrysler Corporation
- \$300 million recovery from Oxford Health Plans
- \$276 million judgment & settlement for Safety-Kleen bond investors

G&E has also achieved landmark results in corporate governance litigation, including:

*In re UnitedHealth Group Inc. Shareholder Derivative Litigation:* G&E represented the Ohio Public Employees Retirement System, State

Teachers Retirement System of Ohio, and Connecticut Retirement Plans and Trust Funds as lead plaintiffs in a derivative and class action suit in which G&E successfully challenged \$1.2 billion in back-dated options granted to William McGuire, then-CEO of health care provider UnitedHealth Group (“UHG”). This was among the first – and most egregious – examples of options backdating. G&E’s case against UHG produced a settlement of \$922 million, the largest settlement in the history of derivative litigation in any jurisdiction.

*In re Digex, Inc. Shareholders Litigation* – G&E initiated litigation alleging that the directors and majority stockholder of Digex, Inc. breached fiduciary duties to the company and its public shareholders by permitting the majority shareholder to usurp a corporate opportunity that belonged to Digex. G&E’s efforts in this litigation resulted in an unprecedented settlement of \$420 million, the largest settlement in the history of the Delaware Chancery Court.

*Caremark / CVS Merger* - G&E represented two institutional shareholders in this derivative litigation challenging the conduct of the board of directors of Caremark Rx Inc. in connection with the negotiation and execution of a merger agreement with CVS, Inc., as well as the board’s decision to reject a competing proposal from a different suitor. Through the litigation, Caremark’s board was forced to renegotiate the terms of the merger agreement with CVS. The settlement ensured statutory rights of Caremark shareholders, providing an additional \$3.19 billion in cash consideration.

*Teachers’ Retirement System of Louisiana v. Greenberg, et al. and American International Group, Inc.*: In what was, at the time, the largest settlement of shareholder derivative litigation in the history of the Delaware Chancery Court, G&E reached a \$115 million settlement in a lawsuit against former executives of AIG for breach of fiduciary duty. The case challenged hundreds of millions of dollars in commissions paid by AIG to C.V. Starr & Co., a privately held affiliate controlled by former AIG Chairman Maurice “Hank” Greenberg and other AIG directors. The suit alleged that AIG could have done the work for which it paid Starr, and that the commissions were simply a mechanism for Greenberg and other Starr directors to line their pockets.

*AFSCME v. AIG* – This historic federal appeals court ruling in favor of G&E’s client established the right, under the then-existing proxy rules, for shareholders to place the names of director candidates nominated by shareholders on corporate proxy materials – reversing over 20 years of adverse rulings from the SEC’s Division of Corporate Finance and achieving what had long been considered the “holy grail” for investor activists. Although the SEC took nearly immediate action to reverse the decision, the ruling renewed and intensified the dialogue regarding proxy access before the SEC, ultimately resulting in a new rule currently being

considered by the SEC that, if implemented, will make proxy access mandatory for every publicly traded corporation.

*Unisuper Ltd. v. News Corp., et al.* – G&E forced News Corp. to rescind the extension of its poison pill on the grounds that it was obtained without proper shareholder approval.

*Teachers' Retirement System of Louisiana v. HealthSouth* – G&E negotiated a settlement which ousted holdover board members loyal to indicted CEO Richard Scrushy and created mechanisms whereby shareholders would nominate their replacements.

*Carmody v. Toll Brothers* – This action initiated by G&E resulted in the seminal ruling that “dead-hand” poison pills are illegal.

In addition, the Firm’s lawyers are often called upon to testify on behalf of institutional investors before the SEC and various judicial commissions, and they frequently write and speak on securities and corporate governance issues. G&E managing director Jay Eisenhofer and director Michael Barry are co-authors of the *Shareholder Activism Handbook*, and in 2008, Jay Eisenhofer was named by *Directorship Magazine* as one of the “100 Most Influential People in Corporate Governance and the Boardroom.”

G&E is proud of its success in fighting for institutional investors in courts and other forums across the country and throughout the world.

## G&E's ATTORNEYS

### Jay W. Eisenhofer

Jay Eisenhofer, co-founder and managing director of Grant & Eisenhofer P.A., has been counsel in more multi-hundred million dollar cases than any other securities litigator, including the \$3.2 billion settlement in the Tyco case, the \$922 million UnitedHealth Group settlement, the \$486 million settlement with Pfizer, the \$450 million settlement in the Global Crossing case, a \$400 million settlement with Marsh & McLennan, a \$303 million settlement with General Motors and a \$300 million settlement with DaimlerChrysler. Internationally, Mr. Eisenhofer has organized cases on behalf of investors leading to substantial recoveries, including the \$1.5 billion settlement with Fortis in the Netherlands, the \$1 billion recovery against Royal Bank of Scotland in the United Kingdom, and the historic \$450 million pan-European settlement in the Royal Dutch Shell case in the Netherlands. Mr. Eisenhofer was also the lead attorney in the seminal cases of *American Federation of State, County & Municipal Employees, Employees Pension Plan v. American International Group, Inc.*, where the U.S. Court of Appeals required shareholder proxy access reversing years of SEC no-action letters, and *Carmody v. Toll Brothers*, wherein the Delaware Court of Chancery first ruled that so-called “dead-hand” poison pills violated Delaware law.

Mr. Eisenhofer has served as litigation counsel to many public and private institutional investors, including, among others, Amalgamated Bank, APG Asset Management, California Public Employees Retirement System, California State Teachers Retirement System, Colorado Public Employees Retirement Association, the Florida State Board of Administration, John Hancock, Louisiana State Employees Retirement System, New York City Retirement Funds, Inc., and Service Employees International Union.

Mr. Eisenhofer is consistently ranked as a leading securities and corporate governance litigator and he has been named by Lawdragon to its annual list of the top 500 lawyers in America for several consecutive years. He is also recognized by Benchmark Litigation as one of the Top 100 Trial Lawyers. *The National Law Journal* has selected Grant & Eisenhofer to its “Plaintiffs’ Hot List” as one of the top plaintiffs’ law firms in the country since the List’s inception, earning the firm a place in *The National Law Journal’s* “Plaintiffs’ Hot List Hall Of Fame” in 2008, as well as to its list of “Elite Trial Lawyers: The 50 Leading Plaintiffs Firms in America” since commencement of the list. The firm has been selected as a “Most Feared Plaintiffs Firm” by *Law360* as “one of the most high-profile shareholder and whistleblower advocates in the country, securing record-high cash settlements.” *U.S. News & World Report* has also repeatedly named Grant & Eisenhofer to its list of “Best Law Firms” in the fields of Securities Litigation, Commercial Litigation, and Corporate Law. Mr. Eisenhofer is rated AV by Martindale-Hubbell.

Mr. Eisenhofer has written and lectured widely on securities fraud and insurance coverage litigation, business and employment torts, directors' and officers' liability coverage, and the Delaware law of shareholder rights and directorial responsibilities. Among the publications he has authored: “The Shareholders Activism Handbook” Aspen Publishers; “Proxy Access Takes Center Stage – The Second Circuit’s Decision in *AFSCME Employees Pension Plan v. American International Group, Inc.*” *Bloomberg Law Reports*, Vol. 1, No. 5; “Investor Litigation in the U.S. - The System is Working” *Securities Reform Act Litigation Reporter*, Vol. 22, #5; “*In re Walt Disney Co. Deriv. Litig.* and the Duty of Good Faith Under Delaware Corporate Law” *Bank*

& *Corporate Governance Law Reporter*, Vol. 37, #1; “Institutional Investors As Trend-Setters In Post-PSLRA Securities Litigation” *Practising Law Institute*; “*In re Cox Communications, Inc.: A Suggested Step in the Wrong Direction*,” *Bank and Corporate Governance Law Reporter*, Vol. 35, #1; “Does Corporate Governance Matter to Investment Returns?” *Corporate Accountability Report*, Vol. 3, No. 37; “Loss Causation in Light of Dura: Who is Getting it Wrong?” *Securities Reform Act Litigation Reporter*, Vol. 20, #1; “Giving Substance to the Right to Vote: An Initiative to Amend Delaware Law to Require a Majority Vote in Director Elections,” *Corporate Governance Advisor*, Vol. 13, #1; “An Invaluable Tool in Corporate Reform: Pension Fund Leadership Improves Securities Litigation Process,” *Pensions & Investments*; and “Securities Fraud, Stock Price Valuation, and Loss Causation: Toward a Corporate Finance-Based Theory of Loss Causation,” *Business Lawyer*. Mr. Eisenhofer has also authored a number of articles on illiquid and rouge hedge funds, including “Time for Hedge Funds to Become Accountable to Fiduciary Investors,” *Pensions & Investments*; and “Hedge Funds of the Living Dead,” *New York Times Dealbook*.

Mr. Eisenhofer serves as a member of the NYU Law School Advisory Board for the Center on Civil Justice. He is a graduate of the University of Pittsburgh, and a 1986 *magna cum laude* graduate of Villanova University School of Law, Order of the Coif. He was a law clerk to the Honorable Vincent A. Cirillo, President Judge of the Pennsylvania Superior Court and thereafter joined the Wilmington office of Skadden Arps Slate Meagher & Flom. Mr. Eisenhofer was a partner in the Wilmington office of Blank Rome Comisky & McCauley until forming Grant & Eisenhofer P.A. in 1997.

#### **Jeff A. Almeida**

Jeff Almeida is a director at Grant & Eisenhofer practicing in the areas of Delaware corporate litigation and both domestic and international securities litigation.

Mr. Almeida has a wide breadth of complex commercial litigation experience, with over 22 years of practice. He has primarily represented domestic and foreign institutional investors in prominent securities fraud class actions and opt-out cases, including *In re JPMorgan Chase & Co. Securities Litigation (London Whale)* (S.D.N.Y.); *In re Medtronic Securities Litigation* (D. Minn.); *In re Refco Inc. Securities Litigation* (S.D.N.Y.); *In re Merck & Co., Inc. Vytarin/Zetia Securities Litigation* (D.N.J.); *In re Bank of America/Merrill Lynch Securities Litigation* (S.D.N.Y.); *In re Pfizer Inc. Securities Litigation* (S.D.N.Y.); *In re Global Cash Access Holdings Securities Litigation* (D. Nev.); and *In re Career Education Corp. Securities Litigation* (S.D. Ill.). In addition, Mr. Almeida has played prominent roles in international securities cases involving RBS (U.K.), Volkswagen (Germany), and Danske Bank (Denmark).

Mr. Almeida has also been actively engaged in derivative, class, and appraisal litigation in the Delaware Court of Chancery, including the matters *In re Tyson Foods, Inc. Consolidated Shareholder Litigation*, which resulted in historic rulings clarifying the fiduciary duties of corporate directors in connection with the administration of stock option plans; *Louisiana Municipal Police Employees’ Retirement System v. Crawford (Caremark)*, a well-publicized derivative action challenging the terms of the Caremark and CVS merger that resulted in a \$3.2 billion settlement; and *In re Genentech Inc. Shareholder Litigation*, where he successfully represented Genentech minority stockholders in controlling stockholder Roche’s attempt to squeeze out the minority to seize full control of Genentech.



Grant & Eisenhofer currently leverages Mr. Almeida's broad experience and success in stockholder litigation to manage the firm's investigation and development of new cases. In this role, Mr. Almeida conducts in-depth investigations into dozens of potential securities fraud claims, and other derivative and corporate governance matters, in order to develop the legal theories that support Grant & Eisenhofer's litigation efforts.

Prior to joining Grant & Eisenhofer in August 2004, Mr. Almeida was affiliated for six years as an attorney with a major Philadelphia defense firm, where he practiced in the areas of complex commercial litigation and class action defense.

Mr. Almeida is a 1994 graduate of Trinity College in Hartford, Connecticut, where he captained the varsity basketball team and achieved election to Phi Beta Kappa, and a 1997 graduate of William and Mary Law School in Williamsburg, Virginia. Mr. Almeida is admitted to practice in Delaware, Pennsylvania, and New Jersey, along with several federal courts.

### **Thomas V. Ayala**

Thomas Ayala is a director at Grant & Eisenhofer, focusing on complex pharmaceutical and medical device litigation. Mr. Ayala has handled all phases of mass tort, personal injury, environmental and commercial litigation from commencement through trial and appeals. He has also assembled and worked with numerous interdisciplinary teams of expert witnesses to support clients' legal claims, and he has served as first-chair cross-examiner of adversarial experts and other witnesses.

Mr. Ayala is actively in litigation against major pharmaceutical companies, medical device manufacturers, and manufacturers in other industries. Mr. Ayala serves on the Law and Briefing Committee for the Plaintiff's Steering Committee in *In re Xarelto Products Liability Litigation*, MDL No. 2592, serves as Co-Chair of the Science and Expert Committee and as a member of the Law and Briefing Committee for the Plaintiff's Steering Committee in *In re Zofran (ondansetron) Products Liability Litigation*, MDL No. 2657 (where G&E is co-lead), and power morcellators (where G&E is a member of the Plaintiffs' Steering Committee in *In re Power Morcellator Products Liability Litigation*, MDL No. 2652). Mr. Ayala is also representing individuals adversely affected by defective metal-on-metal hips and Essure®.

Prior to his representation of individuals and victims of consumer fraud, Mr. Ayala worked for an international firm serving as national counsel in numerous mass tort proceedings, including pharmaceutical, medical device, environmental exposure, commercial and other complex litigation, including multidistrict litigation proceedings.

Immediately following law school, Mr. Ayala was a law clerk to Judge Eduardo C. Robreno of the U.S. District Court for the Eastern District of Pennsylvania, where he assisted the judge in presiding over seven jury trials and contributed to the administration of justice in matters arising under federal and state law.

Mr. Ayala was selected as a Product Liability "Rising Star" in Law360's 2016 list of Top Attorneys Under 40 and co-authored "Overcoming the Clear Evidence Defense," published in the July 2016 issue of *Trial* magazine.

Mr. Ayala earned his J.D., *summa cum laude*, from Villanova University School of Law in 2004, where he served as editor-in-chief of the *Villanova Law Review* and was named to the Order of the Coif. At Villanova, Mr. Ayala served as an intern to the late Judge Charles R. Weiner.

### **Michael J. Barry**

Michael Barry is a director at Grant & Eisenhofer focusing on corporate governance and securities litigation. For over thirteen years, he has represented institutional investors in litigation relating to securities fraud, corporate fiduciary responsibilities, shareholder proposals under SEC Rule 14a-8, and corporate governance generally. As a foremost practitioner in these areas, Mr. Barry has been significantly involved in groundbreaking class action recoveries, corporate governance reforms and shareholders rights litigation.

He has been instrumental in landmark corporate governance cases, including *AFSCME v. AIG*, which recognized shareholders' right to introduce proxy access proposals; *Bebchuk v. CA, Inc.*, which allowed shareholders to introduce proposals restricting a board's ability to enact poison pills; and *CA, Inc. v. AFSCME*, a historic decision of the Delaware Supreme Court regarding the authority of shareholders to adopt corporate bylaws. His casework includes the Genentech Shareholder Litigation, resulting in an increase of \$3 billion in value for shareholders arising from a corporate merger; a \$922 million settlement in the UnitedHealth Group derivative litigation, resolving one of the most egregious examples of options backdating; an \$89.4 million recovery for stockholders of Del Monte Foods Co. in a case that exposed significant conflicts of interest in staple financing in corporate mergers; and a \$153.75 million recovery in a derivative action on behalf of Freeport-McMoRan Corporation shareholders, which included, for the first time in derivative litigation, a provision that the entire cash portion of the recovery—\$147.5 million—be distributed to shareholders in the form of a special dividend.

Mr. Barry has spoken widely on corporate governance and related matters. In addition to having served as a guest lecturer at Harvard Law School, he speaks at numerous conferences each year. Mr. Barry has authored several published writings, including the *Shareholder Activism Handbook*, a comprehensive guide for shareholders regarding their legal rights as owners of corporations, which he co-authored. In 2015, Mr. Barry was selected to the Markets Advisory Council for the Council of Institutional Investors.

Prior to joining Grant & Eisenhofer, Mr. Barry practiced at a large Philadelphia-based firm, where he defended the Supreme Court of Pennsylvania, the Pennsylvania Senate and Pennsylvania state court judges in a variety of trial and appellate matters. He is a 1990 graduate of Carnegie Mellon University and graduated *summa cum laude* in 1993 from the University of Pittsburgh School of Law, where he was an Executive Editor of the *University of Pittsburgh Law Review* and a member of the Order of the Coif.

### **Daniel L. Berger**

Daniel Berger is a director at Grant & Eisenhofer. Prior to joining the firm, Mr. Berger was a partner at two major plaintiffs' class action firms in New York, where he litigated complex securities and discrimination class actions for twenty-two years.

Mr. Berger's experience includes trying three 10b-5 securities class actions to jury verdicts, which are among very few such cases ever tried, as well as trials in Delaware Chancery Court. He served as principal lead counsel in many of the largest securities litigation cases in history, achieving successful recoveries for classes of investors in cases including *In re JPMorgan Chase & Co. Securities Litigation* (\$150 million); *In re Merck Vytarin/Zetia Securities Litigation* (\$215 million); *In re Cendant Corp. Securities Litigation* (\$3.3 billion); *In re Lucent Technologies, Inc. Securities Litigation* (\$675 million); *In re Bristol-Myers Squibb Securities Litigation* (\$300 million); *In re Daimler Chrysler A.G. Securities Litigation* (\$300 million); *In re Conseco, Inc. Securities Litigation* (\$120 million); *In re Symbol Technologies Securities Litigation* (\$139 million); and *In re OM Group Securities Litigation* (\$92 million).

Mr. Berger has successfully argued several appeals that made new law favorable to investors, including *In re Suprema Specialties, Inc. Securities Litigation*, 438 F.3d 256 (3d Cir. 2005); *McCall v. Scott*, 250 F.3d 997 (6th Cir. 2001) and *Fine v. American Solar King Corp.*, 919 F.2d 290 (5th Cir. 1990.) In addition, Mr. Berger was lead class counsel in many important discrimination class actions, in particular *Roberts v. Texaco, Inc.*, where he represented African-American employees of Texaco and achieved the then largest settlement (\$175 million) of a race discrimination class action.

Mr. Berger is a member of the faculty of Columbia University School of Law, where he is a Lecturer in Law. He also serves on the Board of Visitors of the Law School. Previously, Mr. Berger was a member of the Board of Managers of Haverford College from 2000-2003. He is a member of the Board of Directors (and was Board co-Chair) of the GO Project, a not-for profit organization that provides academic support for New York City public school students. He also serves on the Board of the Madison Square Park Conservancy, a public-private partnership that operates and preserves one of New York City's great parks.

Mr. Berger is a 1976 graduate of Haverford College, and graduated in 1979 from Columbia University School of Law.

### **Nathan A. Cook**

Nathan Cook is a director at Grant & Eisenhofer and focuses his practice on trial and appellate litigation relating to Delaware corporation and alternative entity law. Mr. Cook has litigated a variety of Delaware law matters, including numerous matters relating to the fiduciary duties of directors, officers and controlling stockholders, appraisal rights, and stockholder inspections of corporate books and records, as well as disputes relating to corporate contests for control, the post-merger treatment of options and merger earn-outs.

Mr. Cook has litigated multiple complex matters before the Delaware Court of Chancery and the Delaware Supreme Court including *In re Dole Food Co. Stockholder Litigation* and *In re Dole Food Co. Appraisal Litigation*, stockholder class and appraisal litigation resulting in a damages award of \$148 million, plus interest, following a nine-day trial; *In re News Corporation Shareholder Derivative Litigation*, a stockholder lawsuit resulting in a \$139 million settlement; *In re Clear Channel Outdoor Holdings, Inc. Derivative Litigation*, resulting in a settlement which returned \$200 million to Clear Channel Outdoor Holdings' stockholders; *In re Delphi Financial Group Shareholder Litigation*, a stockholder class action resulting in a \$49 million settlement; and *Indiana Electrical Workers Pension Trust Fund IBEW v. Wal-Mart Stores, Inc.*, a

stockholder books and records lawsuit that resulted in a landmark Delaware Supreme Court ruling recognizing the “Garner doctrine” as Delaware law.

Prior to joining Grant & Eisenhofer, Mr. Cook served as lead trial counsel for a stockholder seeking to replace incumbent directors in a hostile takeover, successfully representing the stockholder in stock-list litigation, litigation to compel a stockholders meeting, defeat of the incumbent directors’ request for temporary restraining order concerning compliance with advance notice bylaws, and a highly-contested stockholders meeting. Mr. Cook’s prior experience also includes *Lillis, et al. v. AT&T and AT&T Wireless*, a successful action to recover the value of out-of-the-money stock options, which were cancelled in the AT&T-Cingular Wireless merger, on behalf of former directors and executive officers of MediaOne.

Mr. Cook also has significant experience providing corporate advisory services on a variety of matters relating to Delaware law—*e.g.*, advising directors (including special committees) and officers in connection with mergers and other strategic transactions; charters, bylaws, and stockholder rights plans; and dividends and distributions.

In October 2019, Mr. Cook led a roundtable discussion on “D&O Fiduciary Duties during Insolvency” sponsored by the Institutional Investor Educational Foundation. In May 2019, Mr. Cook served as a litigation panelist for the Delaware State Bar Association’s conference “Hot Topics in Delaware Corporate Law: Updates That Transactional Lawyers and Litigators Need to Know — A View from the Bench and Bar.” Mr. Cook also spoke on the Securities Litigation Panel at the May 2017 Perrin Class Action Litigation Conference; the Council of Institutional Investor’s June 2018 teleconference on Recent Developments in Delaware Case Law and Changes to the Delaware General Corporation Law; the “M&A and Advising the Board” panel at the Delaware Law Issues Update Conference hosted by the John L. Weinberg Center and the Society of Corporate Secretaries & Governance Professionals in November 2015; and the “Section 220 Litigation” panel at the Practising Law Institute’s seminar “Delaware Law Developments 2015: What All Business Lawyers Need to Know.”

Mr. Cook co-authored *Delaware Supreme Court Okays One-Way Fee-Shifting Bylaws*, AAJ (Summer 2014), *The Delaware Supreme Court Weighs in on Fiduciary Duties to Creditors*, Insights (June 2007), and *Frequently Asked Questions, Answers and More Questions about the Business Strategy Immunity*, PLI (2011).

Mr. Cook was listed in the 2019 Lawdragon 500 Leading Plaintiff Financial Lawyers guide, which showcases the best of the U.S. plaintiff bar who specialize in representing individual investors and shareholders. In both 2015 and 2019, he was selected to The National Trial Lawyers: Top 40 Under 40. Mr. Cook is a member of the Richard S. Rodney Inn of Court, the Delaware State Bar Association, and the Delaware Trial Lawyers Association.

Mr. Cook received his B.A., with distinction, from the University of Virginia in 2002, where he majored in economics and history and was a Jefferson Scholar and an Echols Scholar. He received his J.D. from the University of Virginia in 2005, where he served on the Editorial Board for the *Virginia Environmental Law Journal*. Following graduation from law school, Mr. Cook served as a law clerk to the Honorable John W. Noble of the Delaware Court of Chancery.

### **Diandra “Fu” Debrosse Zimmermann**

Diandra (“Fu”) Debrosse Zimmermann is a director at Grant & Eisenhofer focusing her practice on the representation of public entities and on complex litigation, including pharmaceutical, medical device, data breach, environmental contamination and civil rights litigation.

Prior to joining G&E, Ms. Debrosse was a principal at an Alabama-based law firm where she represented over fifty cities and counties against pharmaceutical manufacturers and distributors in the Opiate MDL. Over her career, she has successfully litigated mass tort, class action, product liability, discrimination, and civil sexual assault claims. Ms. Debrosse currently works with a number of public entity clients across the country. She is also serving on the Plaintiffs' Steering Committee for the *In re Smith & Nephew Birmingham Hip Resurfacing (BHR) Hip Implant Liability Litigation* (MDL No. 2775).

Among her many accolades, Ms. Debrosse, was selected by the National Trial Lawyers in the “Top 40 Under 40,” as well as the “Top 10 Under 40” for the State of Alabama by the National Academy of Personal Injury Attorneys, Inc. She was named to The National Trial Lawyers: Top 100, recognized in the list of America's Top 100 High Stakes Litigators®, selected for inclusion to *Alabama Super Lawyers* for several years, and named as a Top Woman Attorney by *B-Metro* magazine. Ms. Debrosse is AV-rated by Martindale-Hubbell.

Ms. Debrosse serves on the Board of Governors for the American Association for Justice, the Board of Governors of the Southern Trial Lawyer Association, and is a current member of the Board of Bar Commissioners for the Alabama State Bar. Ms. Debrosse has the distinction of serving as a Disciplinary Hearing Officer for the Alabama State Bar General Counsel’s Office. Ms. Debrosse served two terms as a member of the Executive Committee of the Birmingham Bar Association, is a former President of the Magic City Bar Association, and is a past Vice President of the Alabama State Bar.

Ms. Debrosse earned her B.A., *summa cum laude*, in English Literature from the City College of the City University of New York, where she was an Isaacs Fellow. She received her J.D. from the Case Western Reserve University School of Law, where she received a leadership grant and many other awards. She is fluent in French, Haitin Creole, and Spanish.

### **Robert G. Eisler**

Robert Eisler is a director at Grant & Eisenhofer and leads the firm’s antitrust practice. Mr. Eisler has been involved in many significant antitrust class action cases in recent years. He is experienced in numerous industries, including pharmaceuticals, paper products, construction materials, industrial chemicals, processed foods, municipal securities, and consumer goods.

Mr. Eisler is currently serving as co-lead counsel in several cases, including *Gordon et al. v. Amadeus et al.*, *In re London Silver Fixing, Ltd. Antitrust Litigation* and *In re Keurig Green Mountain Single-Serve Coffee Antitrust Litigation*. He has served as lead or co-lead counsel in many other significant antitrust cases, including *In re Buspirone Antitrust Litigation* (which led to a \$90 million settlement in which presiding Judge Koeltl stated that the plaintiffs’ attorneys had done “a stupendous job”), *In re Ciprofloxacin Hydrochloride Antitrust Litigation*, *In re Flat Glass Antitrust Litigation*, and *In re Municipal Derivatives Antitrust Litigation*.



Mr. Eisler has played major roles in a number of other significant antitrust cases, including *In re Polyurethane Foam Antitrust Litigation*, *In re Blue Cross/Blue Shield Antitrust Litigation*, and *In re Linerboard Antitrust Litigation*. He also has significant experience litigating antitrust matters in the UK, including cases concerning cartels in a number of industries, such as air cargo services, air passenger services, automotive glass, and pharmaceuticals, among others.

In addition to his antitrust work, Mr. Eisler has extensive experience in securities, derivative, complex commercial and class action litigation at the trial and appellate levels. He has been involved in numerous securities and derivative litigation matters on behalf of public pension funds, municipalities, mutual fund companies and individual investors in state and federal courts.

Mr. Eisler graduated from LaSalle University in 1986, and in 1989, from Villanova University School of Law.

### **Deborah A. Elman**

Deborah Elman is a director at Grant & Eisenhofer, where she has nearly two decades experience representing both plaintiffs and defendants in high-profile antitrust and securities litigation, with a particular focus litigating claims in the pharmaceutical, financial services, and commodities industries. She has represented institutional clients and individuals in an array of complex civil litigation cases, including class actions, opt-outs, derivative actions, and arbitrations. Ms. Elman is also Co-Director of the Grant & Eisenhofer ESG Institute.

Currently, Ms. Elman serves as co-lead counsel in several cases, including *In re Payment Card Interchange Fee & Merchant Discount Antitrust Litigation*, *In re London Silver Fixing, Ltd. Antitrust Litigation*, and *In re Keurig Green Mountain Single-Serve Coffee Antitrust Litigation*. She is a member of the Executive Committee in *In Re: Humira (Adalimumab) Antitrust Litigation*, and class counsel in *In re Generic Pharmaceuticals Pricing Antitrust Litigation*, *In re Novartis and Par Antitrust Litigation (Exforge)*, *In re Restasis (Cyclosporine Ophthalmic Emulsion) Antitrust Litigation*, *In re Foreign Exchange Benchmark Rates Antitrust Litigation ("FOREX")*, *In re Broiler Chicken Antitrust Litigation*, *In re Pork Antitrust Litigation*, and *In re Diisocyanates Antitrust Litigation*, among others.

Ms. Elman litigated and settled numerous cases related to the financial crisis, including more than fifteen actions arising out of wrongdoing involving the issuance of residential mortgage-backed securities ("RMBS") and other complex financial products, and was class counsel in *Alaska Electrical Pension Fund v. Bank of America Corporation et al. ("ISDAFix")*. Additionally, Ms. Elman was a member of the litigation teams that successfully represented the lead plaintiff in a case dubbed "The Enron of India," *In re Satyam Computer Services Ltd. Securities Litigation*, which settled for \$150.5 million, and *In re Kinder Morgan Energy Partners, L.P. Derivative Litigation*, which settled for \$27.5 million. She represented institutional investors in *In re Merck and Co., Inc. Securities, Derivative & ERISA Litigation* and *In re Petrobras Securities Litigation*, resulting in substantial investor recoveries.

Prior to joining Grant & Eisenhofer, Ms. Elman represented clients before the SEC, DOJ, and state regulators, and participated in numerous appearances before federal and state courts as an associate at a leading New York law firm.

Ms. Elman served as a law clerk for the Honorable William L. Standish, United States District Judge, in the United States District Court for the Western District of Pennsylvania, participating in all aspects of federal trial court practice.

Ms. Elman graduated *cum laude* in 2001 from the University of Pittsburgh School of Law, where she was Lead Executive Editor of the *Journal of Law and Commerce*. She received a Masters of Public Health degree in 1997 from Columbia University, where she also graduated *cum laude* with a Bachelor of Arts degree in 1995.

### **Kimberly A. Evans**

Kimberly Evans is a director within the firm's civil rights practice group and a dynamic advocate for victims of wrongful incarceration, sexual assault, and other forms of harassment. Her current representations include, among others:

- *Aguirre-Jarquín v. Hemmert et al.* (M.D. Fla.), an action alleging Section 1983 and related claims against defendants relating to the investigation leading to plaintiff's death row sentence and 14 years of wrongful incarceration for two murders that he did not commit.
- *Sterling et al. v. Evanston Township High School District 202 et al.* (N.D. Ill.), an action alleging Section 1983, Title IX, and related claims in connection with the sexual assault and inappropriate grooming of plaintiff and other female students by the school's safety officers.
- *Pambakian v. Blatt et al.* (C.D. Cal.), an action alleging that the plaintiff, a former senior executive of the dating app Tinder, was sexually assaulted by her boss, that her employer attempted to cover up the incident by offering her compensation, and that she was later terminated for reporting the incident. This case is currently on appeal before the Ninth Circuit, where the court is being asked to consider the important issue of forced arbitration in sexual assault cases.

Ms. Evans is an experienced trial lawyer who has litigated a number of complex corporate matters, including *In re Dole Food Co. Stockholder Litigation* and *In re Dole Food Co. Appraisal Litigation*, a stockholder class and appraisal litigation resulting in a damages award of \$148 million, plus interest, following a nine-day trial in Delaware Chancery Court. The *Dole* litigation represents one of the largest recoveries in a non-derivative action in the history of the Delaware Chancery Court. Ms. Evans has tried a number of cases before the Delaware Court of Chancery, including *In re Appraisal of DFC Global, Corp.*, *In re Appraisal of PetSmart, Inc.*, and *In re Appraisal of Jarden Corporation*; and litigated foreign appraisal actions in the Cayman Islands, including *In the matter of Nord Anglia Education*.

Prior to joining Grant & Eisenhofer, Ms. Evans worked as a paralegal in the Juvenile Division of the Philadelphia District Attorney's Office. Ms. Evans is a member of the Delaware State Bar Association and the Delaware Chapter of the Rodney Inn of Court. In 2017, Ms. Evans was selected as one of the Legal 500 Next Generation Lawyers in the area of Plaintiff M&A Litigation. In 2019, she was again selected by Legal 500 as a Rising Star.

### **Elizabeth (Beth) Graham**

Elizabeth (“Beth”) Graham is a director at Grant & Eisenhofer. She leads the firm’s complex pharmaceutical and medical device litigation practice and serves as a member of the firm’s Executive Committee. Ms. Graham has spent most of her career as a plaintiffs’ lawyer advocating for the rights of individuals and families harmed by large corporations. Ms. Graham also represents survivors of sexual assault and sexual harassment that occurred in the workplace or by a trusted professional.

Ms. Graham’s expertise spans the practice areas of mass tort, consumer fraud, product liability, environmental, business torts and gender rights claims. She has served as Lead Counsel in multi-million dollar cases, has acted as a member of various Plaintiffs’ Executive Committees in complex actions, and has prior experience as national defense coordination counsel in product liability and environmental litigation.

Ms. Graham is actively representing thousands of injured victims in various cases against corporations, including pharmaceutical companies, medical device manufacturers, public utility and tech companies. Currently, she serves as Co-Lead on the Plaintiffs’ Executive Committee and as Chair of the Law & Briefing Committee in *In re Zofran (Ondansetron) Products Liability Litigation* (MDL No. 2657); as Liaison Counsel, a member of the Executive Committee and as Chair of the Law & Briefing Committee in *In re Essure Product Cases* (JCCP 4887); and as Co-Lead counsel in the *In re Columbia Gas Explosion Cases* (Mass. Sup. Ct.) in which she was a principal negotiator of the recent \$143 million class action settlement.

Ms. Graham serves in leadership in *Gilead Tenofovir Cases and Coordinated Actions, Judicial Council Coordination Proceeding No. 5043* representing hundreds of people harmed by certain HIV drugs manufactured by California biotech giant Gilead Sciences. She has served on the Plaintiffs’ Steering Committee in *In re Power Morcellator Products Liability Litigation* (MDL No. 2652); and is serving as a member of the Plaintiffs’ Steering Committee in *In re Stryker LFIT V40 Femoral Head Products Liability Litigation* (MDL No. 2768); and in *In re Smith & Nephew Birmingham Hip Resurfacing (BHR) Hip Implant Products Liability Litigation* (MDL No. 2775). Ms. Graham also served as co-chair of the Law & Briefing Committee for *In re Xarelto Products Liability Litigation* (MDL No. 2592). Additionally, Ms. Graham represents victims of the Paradise, California Wildfires (2018).

Prior to joining G&E, Ms. Graham served on the Plaintiffs’ Executive Committee and represented victims in the *In re Sulzer Hip Prosthesis and Knee Prosthesis Liability Litigation* (California JCCP 4165). She has served as Lead Counsel on the Plaintiffs’ Executive Committee in high profile class actions such as *Borman Automotive v. American Honda Motor Corp.* (MDL No. 1069), which resulted in a \$435 million settlement; and litigation against Chrysler based on its Minivan Doorlatch failures and ABS brake defects. She has also represented hundreds of families injured by environmental contaminants, including radon, arsenic and rocket fuel, resulting in confidential settlements in excess of \$25 million. Ms. Graham also has vast experience as a consultant to other mass tort firms that seek her advice in structuring their cases.

Ms. Graham is an accomplished speaker, often presenting at educational programs sponsored by the American Association for Justice (AAJ); Mass Torts Made Perfect; Harris Martin; and Masters of Mass Tort. Additionally, Ms. Graham is Co-Chair of the AAJ Zofran Litigation

Group, and is a member of AAJ's Publications Committee. She is a co-author of "Overcoming the Clear Evidence Defense," published in the July 2016 issue of *Trial* magazine, as well as "Medical Monitoring," published in the July 2018 issue of *Trial*.

In 2018, Ms. Graham was selected to receive the Lifetime Achievement award by America's Top 100 Attorneys®.

Prior to her representation of injured individuals, Ms. Graham worked for large product liability defense firms as national defense counsel and was a partner at prominent San Francisco Bay area law firms.

### **Olav A. Haazen**

Olav Haazen, PhD, is a director at Grant & Eisenhofer. His areas of practice include cross-border securities fraud and antitrust litigation.

Mr. Haazen has significant experience representing foreign and domestic plaintiffs in a variety of antitrust and fraud actions. Most recently, he successfully represented a class of Fortis investors for whom he helped negotiate a record-high \$1.5 billion settlement of all investment fraud claims in the Netherlands and Belgium. Other representations, past and present, include:

- nearly 300 institutional investors from around the world seeking recovery from Volkswagen in German court in connection with its well-publicized manipulation of emissions controls;
- a large group of Laiki and Bank of Cyprus bondholders and depositors with ICSID arbitration claims against Cyprus, whose interests were wiped as part of the 2013 Cyprus bank bail-out;
- foreign Madoff investors on fraud and negligence claims against feeder fund defendants and their auditors, custodians, and administrators;
- a French *qui tam* plaintiff in litigation arising out of the sale of Executive Life Insurance Company; and
- a large regional bakery in its successful monopolization suit against a competitor.

Mr. Haazen has also represented two classes of professional fashion models in price-fixing and consumer fraud actions, which resulted in a virtually unprecedented 100% recovery of all claimants' losses, as well as substantial injunctive relief, which Justice Ramos of the New York Supreme Court lauded as a model for legislative reform.

Prior to joining G&E, Mr. Haazen was counsel at a prominent national law firm, where he successfully represented major corporate clients and individuals in several high-profile RICO, securities, and government investigation matters and commercial disputes, including a well-known playwright against a civil forfeiture claim arising out of Kenneth Starr's "Ponzi" scheme; a utilities company in a significant contract dispute with Enron; and one of the largest franchisors in professional sports in a \$1.2 billion monopolization suit. He has also represented several government entities and officials, including a Westchester County municipality in a \$600 million lawsuit by Donald Trump's Seven Springs LLC, as well as the City and Mayor of Amsterdam, and a foreign country's former Secretary of State.

From 2010-2011, Mr. Haazen served on the American Bar Association's seven-member Standing Committee for Amicus Curiae briefs and the Third-Party Litigation Funding Study Group. From 1996-2001, he served as a Country Reporter for the Netherlands for the European Restatement of Torts, and recently as a Netherlands Reporter to the 17<sup>th</sup> International Congress of Comparative Law. Mr. Haazen teaches comparative civil procedure and cross-border litigation at Leiden University in the Netherlands, and previously taught at Harvard, Stanford, and Oxford. He has written several books and over 40 articles and case notes. He is admitted as solicitor in England and Wales, and as arbitrator at the Netherlands Arbitration Institute and at the Center for Dispute Resolution (CEDIRES) in Belgium.

### **Christine M. Mackintosh**

Christine Mackintosh is a director at Grant & Eisenhofer, practicing in the areas of corporate and securities litigation. She has represented institutional investors, both public and private, in corporate cases in the Delaware Court of Chancery and in securities fraud class actions in federal courts throughout the country.

Ms. Mackintosh's practice primarily focuses on litigation in the Delaware Court of Chancery, where she has played significant roles in several landmark actions challenging mergers and acquisitions (including *In re Del Monte Foods Company Shareholder Litigation*, which resulted in an \$89.4 million recovery for the class, and *In re El Paso Corporation Shareholder Litigation*, which resulted in a \$110 million recovery for the class) and in several successful shareholder derivative actions (including *In re American International Group, Inc. Consolidated Derivative Litigation*, which resulted in a \$90 million recovery, one of the largest recoveries in a shareholder derivative action in the history of the Delaware Court of Chancery). Ms. Mackintosh is currently prosecuting a derivative action on behalf of McKesson Corporation relating to the company's failure to adequately oversee its sales of opioid drugs, which resulted in the company agreeing to pay a record \$150 million civil penalty for its violations of DEA requirements relating to the reporting of suspicious orders; a class action on behalf of unitholders of Regency Energy Partners LP challenging a conflicted transaction in which Regency was merged into Energy Transfer Partners L.P. at an unfair price; and a derivative and class action challenging the acquisition of SolarCity Corporation by Tesla Motors, Inc.

Ms. Mackintosh is a leading member of G&E's appraisal litigation practice and has tried numerous appraisal cases in the Court of Chancery, including *In re Appraisal of Dell, Inc.*, *In re Appraisal of Solera Holdings, Inc.*, and *Verition Partners Master Fund Ltd. v. Aruba Networks, Inc.* Following a closely watched Delaware Supreme Court argument in the *Aruba* appraisal, Ms. Mackintosh obtained a reversal of the Chancery Court's decision that Aruba's fair value equaled its unaffected stock price. Ms. Mackintosh is currently representing clients pursuing their appraisal rights against Nord Anglia Education in the Grand Court of the Cayman Islands.

In addition to her Chancery Court practice, Ms. Mackintosh has played a significant role in a number of securities fraud class actions that have achieved substantial recoveries for classes of investors, including *In re JP Morgan Chase & Co. Securities Litigation* (\$150 million recovery), *In re Refco Securities Litigation* (\$400 million recovery), and *In re Merck & Co., Inc. Vytorin/Zetia Securities Litigation* (\$215 million recovery), and on behalf of individual and institutional investors who have opted out of class actions to pursue individual suits, including representation of investors who opted out of *In re Bank of America Corporation Securities*,



*Derivative & ERISA Litigation.* Outside of the United States, Ms. Mackintosh was a member of the team that secured the historic \$450 million pan-European settlement in the *Royal Dutch Shell* case in the Netherlands and the \$1 billion settlement in the *Royal Bank of Scotland* case in the United Kingdom. She is currently representing institutional investors in connection with litigation against Volkswagen AG in Germany.

A *magna cum laude* graduate of St. Joseph's University, Ms. Mackintosh earned her law degree at the University of Pennsylvania Law School. She is the co-author of two articles published by the Practising Law Institute's *Corporate Law & Practice Course Handbook Series*. "Ethical Issues and Their Impact on Securities Litigation," published in September-October, 2003, was co-authored with Marc J. Sonnenfeld, Viveca D. Parker and Marisel Acosta. "Lessons From Sarbanes-Oxley: The Importance of Independence In Internal Corporate Investigations," published in July, 2003, was co-authored with Alfred J. Lechner, Jr.

### **Kyle J. McGee**

Kyle McGee is a director at Grant & Eisenhofer. Mr. McGee's practice focuses on sovereign and public entity representation in the areas of environmental and consumer protection, as well as whistleblower/*qui tam* representation. Mr. McGee also has expertise in securities, commodities, and ERISA litigation.

Mr. McGee currently serves as special counsel to several state Attorneys General and municipalities in environmental and consumer protection litigation. Mr. McGee is prosecuting environmental claims against Monsanto Co. arising out of that company's production, marketing, and sale of toxic PCBs, which now contaminate natural resources and municipal stormwater systems throughout the nation, and against 3M Co. and other manufacturers of toxic firefighting foam laced with toxic PFAS chemicals, which now contaminate groundwater, drinking water, and other public resources. Mr. McGee was named to the Environmental Trial Lawyers Association Top 10 for Delaware, and serves on the Executive Committee for the ETLA.

Mr. McGee partners with additional state Attorneys General and municipalities, including public employee health plans, pursuing consumer protection litigation against pharmaceutical manufacturers, pharmacy benefit managers (PBMs), and others in the healthcare industry.

He is a court-appointed member of the international liaison committee in the global consumer class action against Apple, Inc., arising out of its alleged throttling of iPhone/iPad device performance in 2017. Additionally, Mr. McGee is a member of teams prosecuting consumer protection claims against Volkswagen, Audi, and Porsche in relation to the "Dieselgate" scandal, and against General Motors in relation to its allegedly faulty ignition switches.

Mr. McGee also represents numerous relators in confidential whistleblower actions under the federal and various state False Claims Acts, pursuing misconduct in diverse fields including medical and mental health, residential mortgage lending, retail, and finance, as well as the whistleblower programs managed by the Securities & Exchange Commission and Commodity Futures Trading Commission.

Representative actions in which Mr. McGee played a principal role include:

- *State of Mississippi ex rel. Jim Hood, Attorney General v. GlaxoSmithKline LLC* (Miss. Ch.), a consumer protection action on behalf of Mississippi against pharmaceutical company GSK for allegedly unfair and deceptive marketing practices, resulting in a \$25 million recovery.
- *In re Merck & Co., Inc. Vytarin/Zetia Securities Litigation* (D.N.J.), a major securities fraud action against pharmaceutical industry titan Merck & Co., Inc. that settled for \$215 million, jointly prosecuted with a related action, *In re Schering-Plough Corp. ENHANCE Securities Litigation* (D.N.J.), resulting in a \$688 million total recovery—together, the largest securities class action recovery against a pharmaceutical company at the time, and among the top securities settlements with any issuer.
- *In re JP Morgan Chase & Co. Securities Litigation* (S.D.N.Y.), a securities fraud action against investment bank JP Morgan and its leadership arising out of the “London Whale” scandal, resulting in a \$150 million settlement.
- *Champs Sports Bar & Grill Co. v. Mercury Payment Systems, LLC, et al.* (N.D. Ga.), a class action on behalf of small merchants against card processing companies Mercury Payment Systems and Global Payments Direct, which resulted in a settlement worth over \$70 million.
- *In re MyFord Touch Consumer Litigation* (N.D. Cal.), a consumer class action on behalf of owners of Ford vehicles equipped with allegedly defective infotainment units, which resulted in monetary and other relief valued at over \$33 million.
- *T.S. Kao, Inc. v. North American Bancard, LLC, et al.* (N.D. Ga.), a class action on behalf of small merchants against card processing companies North American Bancard and Global Payments Direct, which resulted in a settlement worth \$15 million.
- *Des Roches, et al. v. Blue Shield of California, Inc., et al.* (N.D. Cal.), an ERISA class action brought by three parents of minors denied coverage for mental health and/or substance use disorder treatment by Blue Shield of California and its mental health services administrator, Human Affairs International of California (a subsidiary of Magellan Health, Inc.), based on allegedly faulty criteria, which resulted in the defendants’ inability to resume use of the challenged criteria and other significant injunctive relief, as well as a \$7 million fund for payment of allegedly improperly denied claims.
- *In, re New Oriental Education & Technology Group Securities Litigation* (S.D.N.Y.), a securities fraud action against China-based New Oriental Education & Technology Group relating to alleged accounting manipulations, which settled for \$4.5 million.
- *In re Miller Energy Resources, Inc. Securities Litigation* (E.D. Tenn.), a securities fraud action against oil and gas firm Miller Energy regarding alleged accounting manipulations, which settled for approximately \$3 million.
- *In re Volkswagen “Clean Diesel” Marketing, Sales Practices, and Products Liability Litigation* (N.D. Cal.), a consumer class action against Volkswagen, Audi, Porsche, and Robert Bosch LLC, arising out of the “Dieselgate” scandal, which resulted in an unprecedented vehicle buyback program and other relief valued at approximately \$15 billion.
- *British Coal Staff Superannuation Scheme, et al. v. American International Group, Inc.* (S.D.N.Y.), a securities fraud action brought by a number of public pension and retirement funds and other institutional investors against AIG in relation to its alleged concealment of toxic assets during the 2008 financial crisis, which resulted in a substantial investor recovery.

- *Stichting Pensioenfonds ABP, et al. v. Merck & Co., Inc., et al.* (D.N.J.), a securities fraud action brought by a number of public pension and retirement funds and other institutional investors against Merck & Co., Inc., and its former leadership, in relation to the company's allegedly false statements concerning Vioxx, which resulted in a substantial investor recovery.

Mr. McGee earned a postgraduate research degree, with honors, in the history and philosophy of law from the University of Edinburgh. In 2009, he received his J.D., *cum laude*, from Villanova University, where he was a Dean's Merit scholar. In 2005, he received a B.A. in philosophy as well as media technologies from the University of Scranton.

### **Gordon Z. Novod**

Gordon Novod is a director at Grant & Eisenhofer, focusing his practice on corporate restructuring and creditors' rights. He has seventeen years of experience representing *ad hoc* and official committees, distressed investors, lenders, litigation trustees, indenture trustees, trade creditors, and other parties in some of the most complex landmark restructurings and in litigation matters.

Mr. Novod's industry experience spans the automotive, chemical, construction, energy, entertainment, gaming, manufacturing, media, mining, and retail sectors. He has negotiated, drafted, and litigated all aspects of Chapter 11 plans of reorganization, valuation, and plan confirmation proceedings, contested debtor-in-possession financing and cash collateral use, the pursuit of fraudulent conveyance actions, and other matters involving bankruptcy-related and distressed litigation. He also has extensive experience reviewing, advising clients on, and litigating issues related to corporate debt securities in default and distressed situations, including exchange transactions, redemptions and the Trust Indenture Act.

Mr. Novod prides himself on providing high quality advocacy to clients, keeping their business objectives in mind, thereby enabling him to build lasting relationships. He is also able to grasp complex legal and business issues in order to craft and implement innovative, yet practical solutions to maximize value for clients.

On numerous occasions, Mr. Novod has been acknowledged for his work as a restructuring attorney. In 2011, Law360 called him one of the "Rising Stars" in restructuring and "one of the five bankruptcy attorneys under 40 to watch." He was also named a finalist in the M&A Advisor's "40 under 40." The following year, he was recognized as a "Winner of the 2012 40 Under 40 East M&A Advisor Recognition Awards" and New York *Super Lawyers* – Bankruptcy, "Rising Stars." From 2013 to 2019, he was selected to New York Metro *Super Lawyers* in Bankruptcy. In addition, he has served on the New York City Bar Association's Committee on Bankruptcy and Corporate Reorganization.

Prior to joining G&E, Mr. Novod was a partner in the bankruptcy & corporate restructuring group at Brown Rudnick in New York. He also formerly practiced in the corporate restructuring and bankruptcy group at Kramer Levin Naftalis & Frankel LLP.

Mr. Novod's prominent engagements include:

- The Appvion Liquidating Trust
- Caesars Entertainment Operating Company, Inc. (unsecured noteholder and proposed class representative)
- The Synergy Pharmaceuticals Litigation Trust
- CoBank, ACB (ad hoc noteholder committee)
- AgriBank, FCB (unsecured noteholders)
- The Refco Litigation Trust
- Exco Resources, Inc. (secured lender)
- ShengdaTech, Inc. (ad hoc noteholder committee)
- Chesapeake Energy Corp. (unsecured noteholders and proposed class representatives)
- Cliffs Natural Resources (unsecured noteholders and proposed class representatives)
- Vanguard Natural Resources (unsecured noteholders and proposed class representatives)
- Alpha Natural Resources, Inc. (state court litigant)
- CJ Holding, Co. (state court litigant)
- SunEdison, Inc. (state court litigant)
- Erin Energy Corp. (state court litigant and special counsel to a Chapter 7 trustee)
- Tribune Company (indenture trustee and member of the creditors' committee)
- Central European Distribution Corporation (ad hoc committee of convertible noteholders)
- Lyondell Chemical Company (creditors' committee)
- Herbst Gaming, Inc. (creditors' committee)
- Lehman Brothers (ad hoc consortium of claimholders of Lehman Brothers Special Financing, Inc.)
- Green Valley Ranch Gaming, LLC (ad hoc committee of second lien lenders)
- Palm Harbor Homes, Inc. (indenture trustee and member of the creditors' committee)
- Equisearch Services, Inc. (trade creditor)
- General Motors Corporation (n/k/a Motors Liquidation Company) (creditors' committee)
- Charter Communications, Inc. (ad hoc first lien lenders)
- Bridgeport Holdings, Inc. (Micro Warehouse, Inc.) (debtors)
- Midway Games, Inc. (secured lender)
- Bethlehem Steel Corp. (creditors' committee)
- WCI Steel, Inc. (ad hoc noteholders' committee and indenture trustee)
- Delphi Corp. (trade creditor and member of the creditors' committee)
- Grace Industries, Inc. (creditors' committee)
- Wave Wireless Corp. (secured lender)
- Diomed, Inc. (licensor and chairman of the creditors' committee)
- TransCare Corp. (creditors' committee)

- Buffets Holdings, Inc. (ad hoc noteholders' committee)
- ASARCO LLC (majority noteholders)
- WestPoint Stevens, Inc. (second lien agent)

Mr. Novod has been a featured panelist and/or moderator on topics involving distressed situations, indenture litigation, indenture analysis, and fraudulent conveyance litigation, including:

- Moderator, "Director Duties in Restructurings," Institutional Investor Educational Foundation – Bankruptcy Litigation Roundtable (November 30, 2018)
- Moderator, "Current Issues in Bankruptcy & Antitrust," Institutional Investor Educational Foundation – 17us Global Shareholder Activism Conference (November 30 - December 1, 2017)
- Speaker, "Out-of-Court Restructuring and the Trust Indenture Act," Institutional Investor Legal Forum Fall 2016 Roundtable (October 28, 2016)
- Moderator, "E&P Restructurings - A Landscape Unlike Traditional Restructurings," Institutional Investor Educational Foundation - Bankruptcy Litigation Roundtable (October 6, 2016)
- Moderator, "Fraudulent Conveyance Actions, the Trust Indenture Act and No Action Clauses - New Rights for Bondholders?" Institutional Investor Educational Foundation - Bankruptcy Litigation Roundtable (October 21, 2015)

Mr. Novod received his J.D. from the Benjamin N. Cardozo School of Law at Yeshiva University, and his B.A. from Emory University.

### **Lisa B. Weinstein**

Lisa Weinstein is a director at Grant & Eisenhofer and leads the firm's birth injury litigation division. Her practice primarily focuses on representing women and children in birth injury and birth trauma litigation.

Prior to joining G&E, Ms. Weinstein founded The Weinstein Law Group, where she represented children who were victims of medical malpractice and birth injuries. In her practice as a plaintiffs' trial lawyer, Ms. Weinstein has successfully litigated personal injury, medical malpractice and birth injury matters resulting in over \$300 million in settlements and verdicts. Representative of Ms. Weinstein's work is a \$12.5 million settlement in which her client's child suffered brain damage due to lack of oxygen during the labor and delivery process, and over 20 other seven-figure settlements.

Ms. Weinstein was a speaker at the 2015 New Jersey Association for Justice seminar covering "When Medical Malpractice and Mass Tort Overlap," and at the 2016 North American Brain Injury Society's annual conference, speaking about "Representing Children with Acquired TBI." In July 2018, Ms. Weinstein spoke at the American Association for Justice 2018 Annual Convention covering "The Initial Intake and Investigation of Birth Injury Cases - An Approach to Managing Risk," and presented at the American Conference Institute Obstetric Malpractice



Claims forum in June 2018 speaking on “Induced Labor Malpractice: Exploring Pitocin Complications and Injuries.”

In 2018, Ms. Weinstein was recognized as one of Law360’s Personal Injury & Medical Malpractice Rising Stars. Also in 2018, Ms. Weinstein was selected to receive the Lifetime Achievement award by America’s Top 100 Attorneys®. In 2020, Ms. Weinstein was selected for inclusion to the Illinois *Super Lawyers* list, and for eight years prior, she was selected to Illinois *Super Lawyers*’ list of Rising Stars. She has also been honored by The National Trial Lawyers in the “Top 40 Under 40” for the past seven years. She is a member of the Million Dollar Advocates Forum as well as the Multi-Million Dollar Advocates Forum, recognized for her work in obtaining several notable settlements and verdicts. Additionally, she is the co-chair of the American Association for Justice Birth Trauma Litigation Group. She is also an Arbitrator for the Circuit Court of Cook County and is a Board Member of the Illinois Trial Lawyers Association.

Ms. Weinstein authored “Understanding Newborn Strokes,” published in the May 2017 issue of *Trial* magazine.

Ms. Weinstein earned an undergraduate degree from the University of Michigan and graduated *cum laude* from DePaul University College of Law.

### **Cynthia A. Calder**

Cynthia Calder is of counsel at Grant & Eisenhofer. She concentrates her practice in the areas of corporate governance and securities litigation. She has represented shareholders in such seminal cases in the Delaware Court of Chancery as *UniSuper Ltd. v. News Corp.*, vindicating the shareholders’ right to vote; *Carmody v. Toll Brothers*, finding the dead-hand poison pill defensive measure was illegal under Delaware law, *Jackson National Life Insurance Co. v. Kennedy*, breaking new ground in the interpretation of fiduciary duties owed to preferred shareholders; *Haft v. Dart Group Corp.*, resolving a contest for control of a significant public corporation; and *Paramount Communications Inc. v. QVC Network*, obtaining an injunction preventing the closing of a merger to force the board of directors to appropriately consider a competing bid for the corporation. More recently, Ms. Calder prosecuted a derivative suit on behalf of American International Group, Inc. shareholders against the company’s former CEO, Maurice Greenberg, and other former AIG executives. The action was concluded for a settlement of \$115 million – one of the largest such settlements in the history of the Delaware Court of Chancery. Ms. Calder was also the Court-appointed representative on the shareholder counsel’s committee in the *UnitedHealth Group* derivative litigation, which was settled for more than \$900 million – the largest known derivative settlement in any court system. Ms. Calder also prosecuted a shareholder class action, *In re ACS Shareholder Litigation*, which resulted in one of the largest class recoveries in the history of the Court of Chancery.

Ms. Calder has co-authored numerous articles on corporate governance and securities litigation, including “Options Backdating from the Shareholders’ Perspective” *Wall Street Lawyer*, Vol. 11, No. 3; “Securities Litigation Against Third Parties: Pre-Central Bank Aiders and Abettors Become Targeted Primary Defendants” *Securities Reform Act Litigation Reporter*, Vol. 16, No. 2; and “Pleading Scierter After Enron: Has the World Really Changed?” *Securities Regulation & Law*, Vol. 35, No. 45.

Ms. Calder graduated *cum laude* from the University of Delaware in 1987 and graduated from the Villanova University School of Law in 1991. Upon graduating from law school, Ms. Calder served as a Judicial Law Clerk in the Delaware Court of Chancery to the Honorable Maurice A. Hartnett, III. Prior to joining Grant & Eisenhofer, Ms. Calder was an associate at Blank, Rome, Comisky & McCauley.

### **John C. Kairis**

John Kairis is of counsel at Grant & Eisenhofer, where he represents institutional investors in class action litigation, individual “opt-out” securities litigation, and derivative, corporate governance, and appraisal litigation in the Delaware Chancery Court and other courts throughout the country. He has been a leader of G&E teams that have achieved some of the largest recoveries in securities class action history, and played major roles in the *Tyco*, *Parmalat*, *Marsh & McLennan*, *Hollinger International* and *Dollar General* securities class actions, and opt-out actions in *AOL Time Warner* and *Telxon Corporation*.

Among his Delaware Chancery Court litigation experience is a landmark case against HealthSouth, involving a books and records trial under Section 220 of the Delaware General Corporations Law, to obtain certain documents that the corporation refused to produce, which led to a settlement implementing corporate governance improvements, such as HealthSouth’s agreement to replace its conflicted directors with independent directors approved by a committee which included the institutional investor plaintiff; and a settlement of litigation against Oracle Corporation, Larry Ellison and the other members of Oracle’s board, whereby plaintiffs alleged that Ellison’s control over Oracle and Pillar Data Systems led to an unfair process resulting in Oracle’s agreement to pay a grossly excessive and unfair price for Pillar in the form of a novel “earn out.” The settlement provided a monetary benefit of approximately \$440 million resulting from a required reduction in the purchase price for Pillar. More recently, Mr. Kairis represented the class of shareholders of Starz against cable mogul John Malone and other Starz directors alleging their breaches of fiduciary duty in negotiating and approving the sale of Starz to Lions Gate Entertainment Corp. for an unfair price. That case resolved with a \$92.5 million cash payment to the shareholder class.

Mr. Kairis has also been instrumental in prosecuting consumer class actions involving unfair competition and false marketing claims against various companies for misrepresentations relating to cosmetics and against both Johnson & Johnson and Bausch & Lomb for misrepresentations relating to contact lenses and solutions. He has represented the lead plaintiffs and the class in a securities fraud suit against Merck & Co. and certain of its officers and directors relating to the defendants’ alleged suppression of test results of Merck’s cholesterol medication Vytarin.

Mr. Kairis also represents the petitioners in several appraisal actions and the lead plaintiffs in various breach of fiduciary duty cases pending in the Delaware Chancery Court.

Mr. Kairis has authored articles including “Shareholder Proposals For Reimbursement Of Expenses Incurred In Proxy Contests: Recent Guidance from The Delaware Supreme Court,” *PLI*, What All Business Lawyers Must Know About Delaware Law Developments 2009 (New York, NY May 21, 2009) (co-authored with Stuart Grant); “Challenging Misrepresentations in Mergers: You May Have More Time Than You Think,” *Andrews Litigation Reporter*, Vol. 12, Issue 3, June 14, 2006; “Disgorgement Of Compensation Paid To Directors During The Time

They Were Grossly Negligent: An Available But Seldom Used Remedy,” *Delaware Law Review*, Vol. 13, #1, 2011; and was the principle writer of an *amicus* brief to the United States Supreme Court on behalf of various public pension funds in the *Merck* case involving the standard for finding that a plaintiff is on “inquiry notice” of potential claims such that the limitations period for pleading securities fraud has commenced.

Mr. Kairis has served on the boards of several nonprofit organizations, including the West-End Neighborhood House, Inc., the Cornerstone West Development Corporation, and the board of the Westover Hills Civic Association. He has also served on the Delaware Corporation Law Committee, where he evaluated proposals to amend the Delaware General Corporation Law.

Mr. Kairis is a 1984 graduate of the University of Notre Dame and a 1987 graduate of the Ohio State University Moritz College of Law, where he was Articles Editor of the *Ohio State Law Journal* and recipient of the American Jurisprudence and John E. Fallon Memorial Awards for scholastic excellence. He is a member of the Delaware and American Bar Associations and the Delaware Trial Lawyers Association.

### **Nadia Klein**

Nadia Klein is of counsel at Grant & Eisenhofer. Her practice focuses on representing investors and other plaintiffs in high-stakes commercial, complex financial products and securities litigation in state and federal court, as well as claimants in U.S. domestic and international arbitration. Based in London, England, she works with G&E’s institutional investor clients in the U.K. and Europe.

Prior to joining Grant & Eisenhofer, Ms. Klein was of counsel at a U.S. litigation boutique. Prior to that, she was a senior associate at a leading New York litigation firm, where she spent almost seven years representing various plaintiffs in multiple residential mortgage-backed securities actions together seeking more than \$6 billion.

Ms. Klein received her B.A. from Cornell University in 2003 and her J.D. from Fordham University School of Law in 2011. She also attended the London School of Economics & Political Science and the International Academy for Arbitration Law in Paris, France.

### **Richard S. Schiffrin**

Richard S. Schiffrin is of counsel at Grant & Eisenhofer. He has represented institutional investors and consumers in securities and consumer class actions worldwide. In 2008, Mr. Schiffrin retired as a founding partner of Schiffrin Barroway Topaz & Kessler, LLP.

Mr. Schiffrin has been recognized for his expertise in many prominent cases, including *In re Tyco International Ltd. Securities Litigation*, the most complex securities class action in history, which resulted in a record \$3.2 billion settlement. The \$2.975 billion payment by Tyco represents the single largest securities class action recovery from a single corporate defendant in history, while the \$225 million settlement with PricewaterhouseCoopers (PwC) represents the largest payment PwC has ever paid to resolve a securities class action and is the second-largest auditor settlement in securities class action history; *In re AremisSoft Corp. Securities Litigation*, a complex case involving litigation in four countries, resulting in a \$250 million settlement

providing shareholders with a majority of the equity in the reorganized company after embezzlement by former officers; *In re Tenet Healthcare Corp.*, resulting in a \$216.5 million settlement and which led to several important corporate governance improvements; *Henry v. Sears, et al.*, one of the largest consumer class actions in history which resulted in a \$156 million settlement distributed without the filing of a single proof of claim form by any class member; *Wanstrath v. Doctor R. Crants, et al.*, a derivative action filed against the officers and directors of Prison Realty Trust, Inc., challenging the transfer of assets to a private entity owned by company insiders, resulting in corporate governance reform in addition to the issuance of over 46 million shares to class members; *Jordan v. State Farm Insurance Company*, resulting in a \$225 million settlement and other monetary benefits for current and former State Farm policy-holders; and *In re Sotheby's Holdings, Inc. Derivative Litigation*, resulting in a multi-million dollar settlement and significant governance changes.

Mr. Schiffrin is an internationally renowned speaker and lectures frequently on corporate governance and securities litigation. His lectures include: the MultiPensions Conference in Amsterdam, Netherlands; the Public Funds Symposium in Washington, D.C.; the European Pension

Symposium in Florence, Italy; and the Pennsylvania Public Employees Retirement Summit (PAPERS) in Harrisburg, Pennsylvania. Mr. Schiffrin has also taught legal writing and appellate advocacy at John Marshall Law School and served as a faculty member at legal seminars, including the Annual Institute on Securities Regulation, NERA: Finance, Law & Economics - Securities Litigation Seminar, the Tulane Corporate Law Institute, and the CityBar Center for CLE (NYC): Ethical Issues in the Practice of Securities Law.

Mr. Schiffrin is a graduate of DePaul Law School and received a Master's degree in Political Science from the University of Chicago. After protecting the civil rights of clients for seven years as an Assistant Public Defender with the Office of the Public Defender of Cook County, where he tried hundreds of cases, Mr. Schiffrin founded Schiffrin & Craig, Ltd., representing consumers and individual investors in actions brought against public companies. He is licensed to practice law in Pennsylvania and Illinois and has been admitted to practice before numerous United States District Courts.

### **Edward J. Aucoin**

Edward Aucoin is senior counsel at Grant & Eisenhofer, where his primary area of practice is representing families and children in birth injury and birth trauma litigation. Prior to joining G&E, Mr. Aucoin worked at several medical negligence defense firms in the Chicago area, focusing on medical malpractice and professional liability as well as commercial litigation. He also was a senior trial attorney at a national insurance company.

Mr. Aucoin has successfully litigated hundreds of cases and has served as first and second chair trial attorney. He has handled every aspect of medical negligence cases, from pleadings and discovery to experts and trial.

Mr. Aucoin received his J.D. from Loyola University New Orleans School of Law and his B.A. in Broadcast Journalism and Political Science from Loyola University of New Orleans.

**Karyn L. Bass Ehler**

Karyn Bass Ehler is senior counsel at Grant & Eisenhofer, where she leads the Civil Rights Practice Group. Prior to joining G&E, Ms. Bass Ehler was the Chief of the Civil Rights Bureau for the Illinois Attorney General where she oversaw the department that investigates and litigates cases under both state and federal law involving patterns and practices of discrimination in Illinois. While working for the Illinois Attorney General, Ms. Bass Ehler served as one of the lead counsel in the *State of Illinois v. City of Chicago* (N.D. Ill.) litigation and negotiation, which resulted in a historic consent decree addressing comprehensive and systemic reform of the Chicago Police Department. In addition, Ms. Bass Ehler successfully led the legislative initiatives on campus sexual assault in 2015 and the effort to expand Illinois' hate crimes law in 2017. Ms. Bass Ehler also was previously a partner at a Chicago-area law firm focusing her practice on civil rights litigation.

Ms. Bass Ehler clerked for Judge William J. Bauer on the United States Court of Appeals for the Seventh Circuit and Judge Matthew F. Kennelly on the United States District Court for the Northern District of Illinois.

Ms. Bass Ehler is a Leadership Greater Chicago Fellow, Co-Founder and Board Member for the Center on Public Interest Law for the DePaul University College of Law, and the Vice President of the Board of Directors for the Jewish Council on Urban Affairs. She also serves on the Quality Jobs Council for Women Employed. In 2020, Ms. Bass Ehler was selected for inclusion on the 2020 Illinois Super Lawyers list.

Ms. Bass Ehler co-authored "Stepping into the Shoes of the Department of Justice: The Unusual, Necessary, and Hopeful Path the Illinois Attorney General Took to Require Police Reform in Chicago" published in the *Northwestern Journal of Law & Social Policy*.

Ms. Bass Ehler earned her J.D. from DePaul University College of Law, where she was the Editor-in-Chief for the *DePaul Law Review* and a Dean's Merit Scholar and earned her B.A., with honors, from Northwestern University.

**Samantha R. Mertz**

Samantha Mertz is senior counsel at Grant & Eisenhofer, where her primary area of practice is complex pharmaceutical and medical device litigation. She handles all phases of mass tort and personal injury litigation from commencement through trial. Ms. Mertz is actively in litigation against major pharmaceutical companies and medical device manufacturers and serves on the Law and Briefing Committee and Discovery Committee for the Plaintiffs' Steering Committee in the Essure product cases coordinated proceeding in California.

Ms. Mertz earned her J.D. from Temple University Beasley School of Law in 2010. Upon graduation, Ms. Mertz served as the mass tort law clerk for the Complex Litigation Center under the Honorable Judge Arnold New and the Honorable Judge Sandra Mazer Moss for the First Judicial District of Pennsylvania from 2010-2013. Prior to joining Grant & Eisenhofer, Ms. Mertz worked at a Philadelphia law firm as a pharmaceutical mass tort litigation attorney, and



was selected for inclusion in the Pennsylvania *Super Lawyers* “Rising Star” list for 2014 and 2015.

Previously, Ms. Mertz volunteered for the Philadelphia District Attorney’s Family Violence and Sexual Assault unit where she worked closely with survivors of sexual assault and helped to prosecute offenders of intrafamilial violence, sexual assaults, crimes against children, and violations of Pennsylvania’s sex offender registration law. Ms. Mertz also volunteered with the HIAS Refugee Resettlement Program, working with refugees who have been forced to flee from persecution to help them rebuild their lives in the United States.

Ms. Mertz has focused much of her product liability practice on manufacturers of pharmaceuticals and medical devices that have harmed women and children, including Risperdal, Zofran, Transvaginal Mesh, and Essure. Throughout her career, Ms. Mertz has advocated for individuals at their most vulnerable, helping to bring them justice and accountability.

Ms. Mertz is a member of and serves on the Executive Committees for the Temple American Inn of Court and the Louis D. Brandeis Law Society.

### **Caitlin M. Moyna**

Caitlin Moyna is senior counsel at Grant & Eisenhofer with over 15 years of experience in US and foreign securities fraud class action and opt-out litigation, shareholder derivative actions, merger litigation, and international arbitration. Ms. Moyna is also Co-Director of the Grant & Eisenhofer ESG Institute.

Currently, Ms. Moyna represents lead plaintiffs in securities actions against General Electric, Santander Consumer USA, Camping World and Weight Watchers. She previously helped achieve significant recoveries against Career Education Corp. and Miller Energy Resources, Inc., and prior to her time at G&E, against The Blackstone Group. She has also represented investors who opt out of securities class actions, including those against Valeant, Merck and Citigroup.

Ms. Moyna’s securities fraud experience extends beyond US borders, where she represents investors seeking recovery from Volkswagen and Porsche (Germany), Steinhoff (the Netherlands), BHP Biliton (Australia) and Danske Bank (Denmark).

Ms. Moyna also has international arbitration experience, including representing hundreds of Greek investors against the Republic of Cyprus before the International Centre for Settlement of Investment Disputes, and investors proceeding against Petrobras and Brazil before the Market Arbitration Chamber.

Finally, Ms. Moyna represents investors challenging an early redemption of bonds issued by AgriBank and CoBank, and she has previously represented investors challenging mergers, including in an action against Regency Energy Partners pending in the Delaware Court of Chancery.

With Managing Director Jay W. Eisenhofer, Ms. Moyna co-authored two articles concerning alternative entities: “What is the State of Delaware Law as It Relates to the Scope of Fiduciary

Duties Owed to Investors in So-Called Alternative Entities?”, *Bloomberg BNA*, Corporate Accountability Report (Dec. 5, 12, and 19, 2014); and “What Is the Current State of Delaware Law on the Scope of Fiduciary Duties Owed by Hedge Fund Managers to Their Funds and Investors?”, *The Hedge Fund Law Report*, Vol. 6, Nos. 26 and 27 (Sept. 19 and 26, 2013).

Prior to joining G&E, Ms. Moyna was associated with Cravath, Swaine & Moore and Ropes and Gray, where she represented corporations in securities fraud class actions and government investigations, as well as a boutique litigation firm specializing in investor representation.

Ms. Moyna is a *cum laude graduate* of Northwestern University School of Law, where she was elected to the Order of the Coif and served on the *Journal of Criminal Law and Criminology*. Ms. Moyna received her A.B. from Dartmouth College.

### **Rebecca A. Musarra**

Rebecca Musarra is senior counsel at Grant & Eisenhofer. Ms. Musarra’s practice includes securities, corporate governance, and consumer protection litigation, and other complex class actions.

Ms. Musarra has helped achieve significant shareholder recoveries in a variety of cases. She has participated in a number of appraisal actions in the Delaware Chancery Court, including as a member of the trial team in *In re Appraisal of Dell Inc.* Ms. Musarra has considerable experience pursuing successful books-and-records investigations on behalf of stockholders pursuant to 8 *Del C.* § 220. As a member of the Co-Lead Counsel team representing a class of insurance beneficiaries, Ms. Musarra litigated claims against health insurers in federal court for ERISA violations relating to coverage for treatments for mental health and substance use disorders, which resulted in defendants’ inability to resume use of challenged medical necessity criteria and other significant injunctive relief, as well as a \$7 million fund for payment of allegedly improperly denied claims. She plays a principal role in pursuing a derivative breach of fiduciary duty case against entities and individuals associated with Cantor Fitzgerald, L.P. and assists the international liaison committee in a global consumer class action against Apple, Inc., arising out of its alleged throttling of iPhone/iPad device performance in 2017. As part of her *pro bono* activities, Ms. Musarra represents juvenile immigrants in state court and immigration court, and before federal agencies.

Prior to joining G&E, Ms. Musarra worked as an appellate law clerk to the Chief Justice of the Supreme Court of the Virgin Islands in St. Thomas, Virgin Islands.

Ms. Musarra received her J.D. degree from American University Washington College of Law in 2009, where she served as a member of the *American University Law Review*, was elected to Order of the Coif, and graduated *summa cum laude*. She obtained a B.A. in international relations from the College of William and Mary in 2003. Between college and law school, Ms. Musarra served as a Peace Corps Volunteer in Chad, Central Africa.

### **Kelly L. Tucker**

Kelly Tucker is senior counsel at Grant & Eisenhofer, where she focuses her practice on securities litigation, corporate governance, and appraisal rights. Prior to joining G&E, Ms.

Tucker worked at a Philadelphia area law firm practicing antitrust, consumer protection, and products liability litigation.

Ms. Tucker received her J.D. from Fordham University School of Law in 2010, where she was the Executive Notes and Articles Editor of the *Fordham Journal of Corporate and Financial Law* and a member of the Executive Board of Fordham Law Moot Court. She received her B.A. in international politics from American University in 2003.

### **Carrie L. Vine**

Carrie Vine is senior counsel at Grant & Eisenhofer, where her primary area of practice is representing families and children in birth injury and birth trauma litigation.

Prior to joining G&E, Ms. Vine worked at a well-known medical negligence firm. She has successfully litigated over a hundred cases from inception through conclusion, including both settlement and trial. A recent representative case resulted in a \$12.5 million settlement for a child who suffered permanent brain damage after experiencing a lack of oxygen to the brain during labor and delivery.

Ms. Vine's genetic training and scientific background provide insight into the medical nuances that arise in medical malpractice cases. She has been identified as an *Emerging Lawyer* by *Leading Lawyers*, a designation granted to the top two percent of lawyers in the early stage of their career. She is a member of the Illinois State Bar Association, the Women's Bar Association of Illinois, and the Wisconsin State Bar.

Ms. Vine graduated from Northern Illinois University College of Law *magna cum laude*, where she was also the Notes & Comments Editor for the *Northern Illinois Law Review*. She earned her Ph.D. from Pennsylvania State University where she studied human genetics and human variation. She earned her B.S. from the University of Notre Dame studying biological sciences.

### **Paige J. Alderson**

Paige Alderson is an associate at Grant & Eisenhofer where she focuses her practice on complex pharmaceutical and medical device litigation. Prior to joining Grant & Eisenhofer, Ms. Alderson was an associate at a regional litigation firm where she practiced toxic tort and products liability litigation. Before entering private practice, Ms. Alderson served as a judicial law clerk to The Honorable William C. Carpenter, Jr. of the Complex Commercial Litigation Division in the Superior Court of Delaware.

Ms. Alderson earned her J.D. from Villanova University Charles Widger School of Law in 2014 and her B.S. from the University of Delaware in 2009. During her time at Villanova, Ms. Alderson participated in the Health Law Clinic assisting clients with Social Security, Medicare/Medicaid, and insurance matters.

### **Michael D. Bell**

Michael Bell is an associate at Grant & Eisenhofer and focuses his practice on corporate governance, securities and consumer fraud litigation. Prior to joining Grant & Eisenhofer, Mr.

Bell was an associate at a New York firm defending class-action consumer fraud claims. Mr. Bell was previously an associate at the New York office of an international law firm where he represented clients in securities, bankruptcy, M&A, and other commercial litigation matters.

Mr. Bell earned his J.D., *magna cum laude*, from Brooklyn Law School in 2007 where he was a Notes and Comments Editor for the *Brooklyn Law Review* and a member of the 2006 National Team of the Moot Court Honor Society. He earned his M.A. in English Literature from Columbia University in 2001 and his B.A., *magna cum laude*, also in English Literature, from Columbia College in 1999.

### **Charles C. Bletsas**

Charles Bletsas is an associate at Grant & Eisenhofer, where his primary area of practice is representing families and children in birth injury and birth trauma litigation.

Prior to joining G&E, Mr. Bletsas was a partner at a Chicago firm focusing on medical malpractice defense and general civil litigation. With a record of trial success spanning over 20 years, Mr. Bletsas' entire career has been heavily focused on birth trauma cases, having litigated traumatic birth injury claims such as hypoxic ischemic injuries, brachial plexus injuries, and neonatal complications.

Mr. Bletsas is also skilled in attorney malpractice claims involving fiduciary issues, litigating complex financial fraud claims, commercial contracts, and construction negligence disputes.

Mr. Bletsas received his J.D., *cum laude*, from Wayne State University, where he served as a Senior Articles Editor of the *Wayne Law Review*. He received his B.A. in economics from the University of Michigan.

### **Simona L. Bonifacic**

Simona Bonifacic is an associate at Grant & Eisenhofer, where her focus is on complex pharmaceutical and medical device litigation. Prior to joining Grant & Eisenhofer, Ms. Bonifacic worked as corporate counsel on commercial real estate and contracts.

Ms. Bonifacic received her J.D. from Syracuse University College of Law in 1998. She is also a 1998 *magna cum laude* graduate of Maxwell School of Citizenship and Public Affairs where she obtained her M.S. in international relations. She received a bachelor's degree in 1994 from East Stroudsburg University in political science and philosophy.

### **Kimberly M. Brancato**

Kim Brancato is an associate at Grant & Eisenhofer, where her primary area of practice is representing families and children in birth injury and birth trauma litigation.

Prior to joining G&E, Ms. Brancato worked at a Chicago firm focusing on personal injury and medical malpractice cases. She has a winning trial record and has handled every aspect of complex negligence cases, from pleadings and expert discovery, to mediation and trial.

Ms. Brancato was selected for inclusion to *Super Lawyers*' list of Rising Stars from 2017-2019.

Ms. Brancato received her J.D. from DePaul University and her B.S. from Illinois State - University in Political Science and Philosophy.

### **Leanne P. Brown-Pasquarello**

Leanne Brown-Pasquarello is an associate at Grant & Eisenhofer where she focuses on sovereign and public entity representation, primarily in matters to redress systemic environmental contamination. She currently represents several state Attorneys General and municipalities in environmental litigation. In that role, she is prosecuting claims against Monsanto Co. arising out of that company's production, marketing, and sale of toxic PCBs, which now contaminate natural resources and municipal storm water systems throughout the nation; and against 3M Co. and other manufacturers of toxic firefighting foam laced with toxic PFAS chemicals, which now contaminate groundwater, drinking water, and other public resources. Mrs. Brown-Pasquarello also has experience in securities class actions, shareholder derivative actions, antitrust actions, and appraisal rights.

During her time with Grant & Eisenhofer, she has worked on litigation teams whose efforts resulted in significant awards for their clients, including the following:

- *In re Pfizer, Inc. Securities Litigation*, class action securities litigation, wherein it was alleged that Pfizer misrepresented the cardiovascular safety of its multi-billion-dollar arthritis drugs, and resulted in a \$486 million recovery.
- *In re Merck & Co., Inc. Vytarin/Zetia Securities Litigation*, a major securities fraud action against pharmaceutical industry titan, Merck & Co., Inc., that settled for \$215 million.
- *In re MyFord Touch Consumer Litigation*, a consumer class action on behalf of owners of Ford vehicles equipped with allegedly defective infotainment units, which resulted in relief valued at over \$33 million.

Prior to joining Grant & Eisenhofer, Ms. Brown-Pasquarello worked at a Philadelphia law firm on mass tort and complex civil litigation matters. She received her law degree from Widener University School of Law, where she wrote on The Law Forum, and was a member of ATLA. She received her B.A. degree in Political Science from University of Delaware, where she was a member of *Phi Sigma Pi* National Honor Society, and *Pi Sigma Alpha* National Political Science Honor Society. She served as Vice President of a political organization on campus.

### **Alice Cho Lee**

Alice Cho Lee is an associate at Grant & Eisenhofer, where she works on securities fraud class actions and international litigation and arbitration cases.

Ms. Cho Lee is part of G&E's litigation team that represents institutional investor plaintiffs in U.S. and international securities actions and investment arbitrations. Current cases include actions against:



- Danske Bank, in a securities litigation in Denmark based on Danske Bank's massive money-laundering scheme and subsequent cover-up
- Republic of Cyprus, in an international investment arbitration before the Worldbank on behalf of almost one thousand Greek investors
- Petróleo Brasileiro ("Petrobras") , in an international securities litigation before Brazil's leading arbitration chamber
- Volkswagen and Porsche, in securities actions in Germany
- Banco Espirito Santo/Novo Banco, in several proceedings in Portugal
- Mitsubishi, in a securities litigation in Japan
- Postbank, in a securities action in Germany
- Steinhoff, in a securities damages action before the Amsterdam District Court and an Inquiry proceeding before the Netherlands' Enterprise Chamber
- BHP, in an Australian class action in which our class/group includes the class representative
- Toshiba, in a securities litigation in Japan

At G&E, Ms. Cho Lee served as a member of the co-lead counsel litigation team for several of the largest securities class actions in the United States including:

- Marsh & McLennan, a U.S. securities class action, settled for \$400M
- Merck (Vytarin), a U.S. securities class action that settled for \$215M
- JP Morgan Chase & Co., a U.S. securities class action that settled for \$150M

Ms. Cho Lee served on the board of the Korean American Lawyers Association of Greater New York (KALAGNY) for seven years and is an active member of the National Asian Pacific American Bar Association (NAPABA) and the Asian American Bar Association of New York (AABANY). During law school, Ms. Cho Lee interned as a law clerk for the Honorable Frederic Block, U.S. District Court, Eastern District of New York. She has also worked at the New York City Human Rights Commission and the Asian American Legal Defense and Education Fund.

Ms. Cho Lee graduated from Brooklyn Law School in 2004 and received a B.A. in English from the University at Albany.

### **Andrew N. Dodemaide**

Andrew Dodemaide is an associate at Grant & Eisenhofer. Prior to joining G&E, Mr. Dodemaide worked at a law firm in Philadelphia where he practiced domestic and international securities litigation. Mr. Dodemaide also worked for a large complex litigation firm as an associate on the new matter development team.

Mr. Dodemaide received his B.A. from Rutgers University and earned his J.D. from Rutgers University School of Law, where he was the Editor-in-Chief of the *Rutgers Journal of Law and Public Policy*. While a law student, Mr. Dodemaide taught Constitutional Law at a high school in Camden, New Jersey through the Marshall Brennan Constitutional Literacy Project. Upon graduation, Mr. Dodemaide clerked for the Honorable Jack M. Sabatino at the New Jersey Superior Court, Appellate Division.

### **Kerry A. Dustin**

Kerry Dustin is an associate at Grant & Eisenhofer, focusing on corporate securities, corporate governance, appraisal, antitrust, and consumer litigation.

Prior to joining Grant & Eisenhofer, Ms. Dustin focused her practice on intellectual property and patent and employment law. Ms. Dustin served as a law clerk for Onondaga County Resource Recovery Agency (OCRRA). She also did an internship at the Ontario County Attorney's Office where she was involved in drafting labor contracts and research.

Ms. Dustin is a Certified Mediator and holds a certificate in Conflict Management Strategies for the Workplace. Ms. Dustin received her law degree from Syracuse University College of Law where she was a member of the Community Law Development Clinic and Corporate Law Society. She received her B.S. in business administration with a marketing concentration from Le Moyne College in 2000.

### **Cheron D. Everett**

Cheron Everett focuses on securities, antitrust, and complex pharmaceutical and medical device litigation as an associate at Grant & Eisenhofer. Ms. Everett is a 2007 graduate of the Widener University School of Law and a 2001 *magna cum laude* graduate from Temple University with a degree in journalism and public relations. She was a recipient of the Chadwick Memorial Scholarship and a Fred G. Dibona Moot Court participant.

Prior to joining Grant & Eisenhofer, Ms. Everett's focus was on pharmaceutical and securities litigation as well as workmen's compensation.

### **Tudor I. Farcas**

Tudor Farcas is an associate at Grant & Eisenhofer where he focuses his practice on complex pharmaceutical and medical device litigation. Prior to joining Grant & Eisenhofer, Mr. Farcas was an associate at the Philadelphia office of a national defense litigation law firm defending general liability claims including mass tort, products liability, and personal injury. He also was a law clerk to the Honorable Mark I. Bernstein, assisting with complex proceedings in national mass tort cases regarding pharmaceutical products and medical devices.

Mr. Farcas earned his J.D. from Drexel University Thomas R. Kline School of Law in 2013, where he was a member of the Drexel Transactional Law Team. Mr. Farcas received his B.A. from Pennsylvania State University in 2008.

### **R. Alexander Gartman**

Alexander Gartman is an associate at Grant & Eisenhofer where he concentrates on securities litigation, antitrust litigation, and appraisal matters. Representative of Mr. Gartman's casework is securities class action *In re Marsh & McLennan Securities Litigation* and antitrust action *Castro, et al. v. Sanofi Pasteur, Inc.*

Mr. Gartman received a B.B.A. in Finance in 1998 from The College of William and Mary, where he double majored in Economics. He graduated cum laude from Temple University School of Law in 2005.

### **Adam J. Gomez**

Adam Gomez is an associate at Grant & Eisenhofer where he focuses on complex pharmaceutical, medical device litigation and environmental litigation. Prior to joining G&E, Mr. Gomez was an associate at a national defense litigation firm where he defended clients in catastrophic personal injury, products liability, professional liability, and civil rights litigation.

Mr. Gomez currently serves as Chair of the Insurance Committee representing residents and businesses harmed by the catastrophic gas explosions in Merrimack Valley of Massachusetts caused by the negligence of Columbia Gas and NiSource. He also serves as a Chair of the Discovery Committee in the *Gilead Tenofovir* Cases, California Judicial Council Coordinated Proceeding (JCCP) No. 5043, representing members of the HIV community injured by Gilead Sciences, Inc.'s negligent design of tenofovir-based antiretroviral medications. He is the Co-Chair of the American Association for Justice Tenofovir Litigation Group. Additionally, Mr. Gomez represents victims of the Paradise, California Camp Fire—the deadliest in the state's history—where plaintiffs allege that fires were sparked by aging, unsafe electrical infrastructure maintained by Pacific Gas & Electric.

Mr. Gomez earned his J.D. from Temple University James E. Beasley School of Law in 2013, where he was a Beasley Scholar and received awards for excellence in Constitutional Law and Outstanding Oral Advocacy in the Integrated Trial Advocacy Program. He received his B.A. in Government from Wesleyan University in 2010 where he served as Chair of the Student Judicial Board and President of Delta Kappa Epsilon.

Mr. Gomez is a member of the American Association for Justice, Hispanic Bar Association of Pennsylvania and Philadelphia Trial Lawyers Association. He was selected for inclusion in the 2018 list of “Rising Stars” in Pennsylvania *Super Lawyers*.

### **Lisa K. Grumbine**

Lisa Grumbine is an associate at Grant & Eisenhofer, where she focuses her practice on consumer class action, appraisal rights and antitrust litigation. Ms. Grumbine also handles a wide range of securities and commercial litigation actions on behalf of institutional investors and consumers. Most recently, Ms. Grumbine was part of a team prosecuting state consumer claims against Volkswagen relating to its illegal “clean diesel” vehicles.

Prior to her legal career, Ms. Grumbine worked in the banking industry with a primary focus in ERISA and Defined Contribution Plan compliance and administration. Ms. Grumbine is a graduate of ABA National Employee Benefit Trust School.

Ms. Grumbine earned her J.D. from Temple University, Beasley School of Law in 1997 and her B.S. in Consumer Economics, *cum laude*, from University of Delaware in 1990.

### **Laina M. Herbert**

Laina Herbert is an associate Grant & Eisenhofer focusing her practice on whistleblower/*qui tam* representation and corporate and commercial litigation. Ms. Herbert represents numerous relators in confidential whistleblower actions under the federal and various state False Claims Acts, pursuing misconduct in diverse fields including medical and mental healthcare, residential mortgage lending, defense contracting, retail and other industries. Prior to joining G&E, Ms. Herbert was senior counsel practicing complex litigation at a Delaware law firm. Ms. Herbert also has extensive experience representing corporations, their directors and stockholders in corporate and commercial litigation relating to fiduciary duties, mergers and acquisitions, corporate governance and other issues concerning Delaware law. Her experience also includes federal patent infringement and intellectual property litigation in the U.S. District Court for the District of Delaware.

Ms. Herbert is vice president of the board of directors of the Delaware 4-H Foundation and a member of the board of directors of the ACLU of Delaware. She is Content Editor of *The Journal of The Delaware State Bar Association*.

Ms. Herbert earned her J.D. *with honors* from the University of Maryland Francis King Carey School of Law in December 2004 where she served as an Associates Articles Editor of *The Business Lawyer*. She earned a B.S. in Biology, B.A. in Leadership Studies and minor in Women's Studies from the University of Richmond in 2000.

### **Chad B. Holtzman**

Chad Holtzman is an associate at Grant & Eisenhofer, focusing his practice on recovering damages for businesses and consumers harmed by violations of the federal and state antitrust laws, including price-fixing and monopolization.

Currently, Chad is a member of leadership teams representing clients in high-profile antitrust cases in the pharmaceutical, financial services, and commodities industries, including: *In re Blue Cross Blue Shield Antitrust Litigation*, *In re London Silver Fixing, Ltd. Antitrust Litigation*, *In re Generic Pharmaceuticals Pricing Antitrust Litigation*, *In re Novartis and Par Antitrust Litigation (Exforge)*, *In re: Humira (Adalimumab) Antitrust Litigation*, and *In re: Lipitor Antitrust Litigation*, among others.

Prior to joining Grant & Eisenhofer, Mr. Holtzman worked as an associate at the Philadelphia office of a national Am Law 100 law firm where he defended corporate defendants in antitrust and other complex commercial litigation.

Mr. Holtzman is a member of the Committee to Support the Antitrust laws (COSAL), established to preserve and enhance the private enforcement of strong antitrust laws. He is a member of the American Antitrust Institute and the American Bar Association's Antitrust Division. Finally, Chad serves on the National Board for the Jewish National Fund Young Professionals Division as its Vice President. He is also a Board Member of the International Alliance for Child Literacy, a non-profit charity that empowers children by establishing libraries at orphanages.

Mr. Holtzman earned his J.D., *cum laude*, from Villanova University School of Law in 2009 where he was the Associate Editor for the *Villanova Environmental Law Journal*. Mr. Holtzman earned his B.S. in economics from Hamilton College in 2006.



**Jonathan A. Ibarra**

John Ibarra is an associate at Grant & Eisenhofer, where his primary area of practice is representing families and children in birth injury and birth trauma litigation. Prior to joining G&E, Mr. Ibarra worked at a Chicago law firm focusing on medical malpractice litigation, including obstetrics/gynecology and fetal demise, cardiology, neurology, radiology, general surgery, neurosurgery and internal/family medicine and trauma. He also previously worked at two other Chicago law firms practicing healthcare litigation and various types of other civil litigation.

Mr. Ibarra received his J.D. from University of Illinois in 2005 and his B.S. in business with an emphasis on legal studies from Indiana University in 2002. He is a member of the American Association for Justice, Illinois Trial Lawyers Association, and the Chicago Bar Association.

**Lawrence P. Kempner**

Lawrence Kempner is an associate at Grant & Eisenhofer, focusing on complex securities, regulatory and corporate governance cases. Prior to joining Grant & Eisenhofer, Mr. Kempner was engaged in private practice with a concentration in civil litigation.

Mr. Kempner graduated from Lehigh University in 1988 with a B.S. in marketing. He received his J.D. from the George Washington University National Law Center in 1991.

**Edward M. Lilly**

Edward Lilly focuses on intellectual property litigation, securities fraud and anti-trust class action litigation, Chancery litigation, and corporate governance matters as an associate at Grant & Eisenhofer. He has additional experience in consumer mass tort litigation, product liability litigation, and derivative class actions.

Mr. Lilly graduated in 1996 from Cornell Law School and served as an editor for the *LII Bulletin-NY* and *Cornell Journal of Law & Public Policy*. He received his M.S. in social psychology in 1993 from Purdue University and graduated *magna cum laude* from DePauw University with a B.A. in economics.

Mr. Lilly served as a clerk for the Honorable Thomas J. McAvoy of the U.S. District Court in Binghamton, New York.

**Ken S. Massey**

Ken Massey is an associate at Grant & Eisenhofer. Prior to joining G&E, Mr. Massey practiced consumer financial services, complex antitrust and commercial litigation at a leading financial services defense boutique and the Philadelphia office of a national law firm.

Mr. Massey is the immediate past president of the Asian Pacific American Bar Association of Pennsylvania and has previously served on the executive board of the Temple Law Alumni

Association. He has been selected three times by *Super Lawyers* as a Pennsylvania “Rising Star” and listed on the Pro Bono Roll of Honor for the First Judicial District of Pennsylvania.

Mr. Massey earned his J.D. from Temple University Beasley School of Law in 2004 and his B.A. in History from the University of Pennsylvania in 1999.

**Julia R. McGrath**

Julia McGrath is an associate at Grant & Eisenhofer, focusing her practice on antitrust litigation. Prior to joining G&E, Ms. McGrath was an associate at a Philadelphia-area law firm practicing antitrust class action litigation with a focus on cartels, commodities manipulation, benchmark price-fixing, and pharmaceutical pay-for-delay and price-fixing cases.

Prior to law school, Ms. McGrath had a successful career in government and politics. She worked on political campaigns at the local, state, and federal level. She’s advised top-tier congressional, gubernatorial, and U.S. Senate candidates in Pennsylvania and New Jersey, and served as the Finance Director for U.S. Senator Bob Casey. In 2013, she was appointed by President Obama to serve under the Mid-Atlantic Regional Administrator of the U.S. General Services Administration.

Ms. McGrath earned her J.D., *cum laude*, from Temple University Beasley School of Law, and her B.A. in History from Boston University.

**Kevin M. Nadolny**

Kevin Nadolny is an associate at Grant & Eisenhofer, focusing on securities litigation, antitrust matters, and consumer litigation.

Mr. Nadolny’s casework includes representing shareholders in such actions as: *In re Pfizer Inc. Securities Litigation* (\$486 million settlement); *In re News Corporation Shareholder Derivative Litigation* (\$139 million settlement); *In re Kinder Morgan Energy Partners, L.P. Derivative Litigation* (\$27.5 million settlement). He has also represented plaintiffs in antitrust matters such as: *In re Aggrenox Antitrust Litigation*; and *Alaska Electrical Pension Fund v. Bank of America* (concerning ISDA-fix price-fixing). Mr. Nadolny’s consumer litigation experience includes working as a member of the team prosecuting consumer protection claims against General Motors in relation to its allegedly faulty ignition switches.

He currently represents plaintiffs in *In re Blue Cross Blue Shield Antitrust Litigation* and *In re Generic Pharmaceuticals Pricing Antitrust Litigation*.

Mr. Nadolny is a 1998 graduate of the University of Minnesota. He received his J.D. and LL.M. (Transnational Law) from Temple University, Beasley School of Law.

**Joseph P. Nearey**

Joseph Nearey focuses on appraisal rights, complex securities, consumer, and antitrust litigation as an associate at Grant & Eisenhofer. He received his law degree in 2001 from Temple University School of Law, where he was a member of the Temple International and Comparative Law Journal. He attended the Temple University School of Law Semester in Japan and interned at a prominent Tokyo firm. He served as a summer intern for the Honorable James R. Cavanaugh of the Superior Court of Pennsylvania.

Mr. Nearey graduated *cum laude* from Hamilton College in 1997 with dual B.A.'s in English Literature and Government.

### **Jonathan D. Park**

Jonathan Park is an associate at Grant & Eisenhofer, where he represents investors in complex litigation, including securities, stockholder derivative, and bondholder actions. In 2017, 2018, and 2019, Mr. Park was recognized by *Super Lawyers* as a "Rising Star" in the New York Metro area.

Mr. Park was a member of the teams that recovered \$150 million for stockholders in *In re JPMorgan Chase & Co. Securities Litigation* (S.D.N.Y.) in connection with the "London Whale" scandal, and that achieved substantial recoveries for opt-out plaintiffs in *In re Petrobras Securities Litigation* (S.D.N.Y.). He is currently representing investors in securities litigation against General Electric, Teva Pharmaceuticals, and Valeant Pharmaceuticals.

Mr. Park helped secure recovery on bondholder class claims against Caesars Entertainment, and is currently representing bondholders challenging the early redemption of bonds by CoBank and AgriBank. He also has experience advising on issues related to out-of-court restructuring of debt securities, including exchange transactions and redemptions, and bankruptcy-related and distressed litigation.

At the New York City Bar Association, Mr. Park serves on the Task Force on Puerto Rico and the New Lawyers Council, and he previously served on the International Human Rights Committee. He also serves on the board of his non-profit running club, the Dashing Whippets Running Team.

Mr. Park earned his J.D. in 2013 from Fordham University School of Law, where he served on the school's Moot Court Board as the Editor of the Jessup International Law Competition Team. During law school, he was a Crowley Scholar in International Human Rights, received the Archibald R. Murray Public Service Award, and interned with a refugee law project in Cairo, Egypt. Mr. Park received a B.A. in 2006 from Vassar College, where he majored in Africana Studies.

### **Minoti Patel**

Minoti Patel is an associate at Grant & Eisenhofer where she focuses on securities litigation. With 17 years of legal experience, Ms. Patel practiced securities, pharmaceutical, and FCPA litigation prior to joining G&E. She also handled white collar, commercial litigation, employment, and intellectual property matters.

As an associate at a Washington, DC firm, Ms. Patel litigated a nationwide racial discrimination class action on behalf of African American managers, which settled for \$80 million plus injunctive relief.

Ms. Patel graduated from Harvard Law School in 2002 and received a B.A. from Duke University in 1998.

### **Leighanne E. Root**

Leighanne Root is an associate at Grant & Eisenhofer, where her primary area of practice is representing families and children in birth injury and birth trauma litigation.

Prior to joining G&E, Ms. Root was an associate at a Chicago firm focusing on medical malpractice and complex litigation, where she was actively involved in numerous mediations and jury trials.

Ms. Root received her J.D. from Loyola University Chicago School of Law, where she received CALI awards for obtaining the highest grades in Legal Writing and Advocacy. She was also the recipient of the award for Best Advocate at the American Bar Association National Appellate Advocacy Competition. Ms. Root earned a B.A. in Classics with a minor in Philosophy from the University of Kentucky.

### **Raymond F. Schuenemann III**

Raymond Schuenemann III is an associate at Grant & Eisenhofer.

Representative of Mr. Schuenemann's casework includes participation in securities class action *In re Pfizer Inc. Securities Litigation*, alleging Pfizer misrepresented the cardiovascular safety of its multi-billion-dollar arthritis drugs, resulting in a \$486 million settlement; and securities class action *In re Marsh & McLennan Consolidated Securities Litigation*, alleging that Marsh & McLennan and its officers, directors, auditors, and underwriters participated in a fraudulent scheme involving bid-rigging and secret agreements to steer business to certain insurance companies in exchange for kick-back commissions, resulting in a \$400 million settlement. Mr. Schuenemann was also involved in antitrust class action *In re Titanium Dioxide Antitrust Litigation*, where direct purchasers of Titanium Dioxide alleged that E.I. DuPont de Nemours and Company, Huntsman International and other defendants conspired to fix prices at which the chemical powder was sold in the United States, resulting in a series of settlements with defendants totaling \$163 million.

After graduating from law school, Mr. Schuenemann was an associate attorney at a central Pennsylvania law firm where he worked on matters related to employment, real estate, tax, and healthcare law. Prior to his legal career, Mr. Schuenemann was an investment accountant in the mutual fund sector where he provided accounting services for numerous bond and equity funds. Mr. Schuenemann was also employed as an internal auditor in both the finance and banking sectors.

Mr. Schuenemann is active in his community and spent many years as a volunteer pro-bono attorney at Mid Penn Legal Services where he defended low-income clients from debt collection

actions. Additionally, Mr. Schuenemann spent four years as the Chairman of the Board of the Reading Area Water Authority, two years as an Executive Board Member of the Reading Redevelopment Corporation, and two years as the Vice President of The City of Reading Charter Board.

Mr. Schuenemann received his J.D. from Widener University School of Law in 2005 and is a 1999 graduate of West Chester University where he earned a B.S. in Finance.

**Kimberly B. Schwarz**

Kimberly Schwarz is an associate at Grant & Eisenhofer. She focuses her practice on complex pharmaceutical and medical device litigation. Ms. Schwarz earned her law degree from Rutgers School of Law in 2010. She graduated with high honors from Rutgers University School of Business in 2002 where she received her B.S. in Business Management.

**Tracy L. Sepehriazar**

Tracy Sepehriazar is an associate at Grant & Eisenhofer who focuses on complex securities fraud litigation in class action cases, as well as appraisal actions. She also has experience handling cases asserting claims under the False Claims Acts. Ms. Sepehriazar received her law degree from the University of Houston Law Center in 2003, where she completed an externship at the Methodist Health Care System. Before joining Grant & Eisenhofer, Ms. Sepehriazar focused her practice on the area of health law. Upon graduating from law school, she worked at a mid-sized firm in Houston where she concentrated primarily on asbestos litigation. She also worked for a small transactional health law firm in San Antonio, Texas.

Ms. Sepehriazar received her B.S. in Business Administration with a Concentration in International Business Management from Goldey-Beacom College in 1997, where she graduated *magna cum laude*. Prior to entering law school, Ms. Sepehriazar gained business experience as an analyst at JP Morgan. Upon relocating to Texas, she continued to pursue a career in the financial industry while obtaining her law degree. Ms. Sepehriazar is a member of the Delaware Bar Association.

**Shannon T. Somma**

Shannon Somma is an associate at Grant & Eisenhofer. Her focus is on antitrust, and she has experience in appraisals and securities fraud class actions. She has also worked on cases in intellectual property, pharmaceutical, and environmental litigation.

Ms. Somma graduated in 1999 from the University of Delaware with a B.A. degree in psychology, and thereafter received her J.D. degree from Widener University School of Law in 2005.

**Charles C. Sweedler**

Charles Sweedler is an associate at Grant & Eisenhofer, focusing on securities fraud and shareholder litigation. Mr. Sweedler received his J.D. from William & Mary Law School, where he was Publication Editor of the *William & Mary Law Review*.



Before joining Grant & Eisenhofer, Mr. Sweedler was General Counsel for a Philadelphia-based non-profit organization. Previously, he was an associate attorney at two Philadelphia law firms, where he focused on antitrust, consumer protection, and other complex class action litigation.

Mr. Sweedler received his B.A. from Cornell University, where he was a history major. After receiving his M.Ed. from the University of Maryland and before entering law school, Mr. Sweedler was a teacher in the Washington, D.C. area.

### **Vivek Upadhyia**

Vivek Upadhyia is an associate at Grant & Eisenhofer, focusing on securities, appraisal, whistleblower/*qui tam* and complex pharmaceutical and medical device litigation.

Mr. Upadhyia is currently representing clients in a derivative suit against Tesla's board of directors and has previously represented investors challenging mergers, including an action against Regency Energy Partners pending in the Delaware Court of Chancery. Mr. Upadhyia was also involved in *In re JPMorgan Chase & Co Securities Litigation* (S.D.N.Y.), which resulted in a \$150 million settlement. His other recent work includes Delaware Chancery Appraisal cases *In re Appraisal of Jarden Corporation* and *In re Appraisal of Solera Holdings, Inc.* Additionally, Mr. Upadhyia worked on multi-district litigation involving prescription drugs such as Xarelto and Zofran.

Mr. Upadhyia received his J.D. from Emory University School of Law, where he served as a managing editor for the *Emory Law Journal*. He received his B.A. in law and political science from the University of Utrecht in the Netherlands, and was born and raised in India.

### **Viola Vetter**

Viola Vetter is an associate at Grant & Eisenhofer where she focuses on sovereign and public entity representation, primarily in matters seeking to redress environmental contamination. Ms. Vetter currently represents several state Attorneys General and municipalities in environmental litigation. In that role, she is prosecuting claims against Monsanto Co. arising out of that company's production, marketing, and sale of toxic PCBs, which now contaminate natural resources and municipal stormwater systems throughout the nation, and against 3M Co. and other manufacturers of toxic firefighting foam laced with toxic PFAS chemicals, which now contaminate groundwater, drinking water, and other public resources. Ms. Vetter also represents investors in corporate governance and securities litigation, including in cross-border disputes.

Prior to joining Grant & Eisenhofer, Ms. Vetter was an associate at an international law firm, resident in Philadelphia, representing corporate clients in complex commercial, consumer and *qui tam* matters in state and federal courts.

Ms. Vetter earned her J.D. from Temple University Beasley School of Law in 2007, where she was a member of the *Temple Political & Civil Rights Law Review*. She received her B.S. in International Business and Political Philosophy, *magna cum laude*, from Elizabethtown College in 2004.

Ms. Vetter was selected to the 2015-2016 *Pennsylvania Super Lawyers* Rising Stars list for Business Litigation. She is fluent in English and German.

### **Jason H. Wilson**

Jason Wilson is an associate at Grant & Eisenhofer where he focuses on sovereign and public entity representation, primarily in matters to address the systemic environmental contamination of public resources. Currently, Mr. Wilson is prosecuting claims against Monsanto Co. arising out of that company's production, marketing, and sale of toxic PCBs, which now contaminate natural resources and municipal stormwater systems throughout the nation, and against 3M Co. and other manufacturers of toxic PFAS chemicals, which contaminate groundwater, drinking water, and other public resources. Mr. Wilson also represents investors and whistleblowers in corporate governance and securities litigation.

Prior to joining Grant & Eisenhofer, Mr. Wilson was an associate at an international law firm, resident in Philadelphia, defending shareholder disputes, consumer class actions, antitrust, bankruptcy, environmental litigation, and government investigations related to the False Claims Act, Anti-Kickback Act and Foreign Corrupt Practices Act. Regarding his experience in shareholder disputes, Mr. Wilson defended numerous securities class actions, derivative suits and various shareholder requests for books and records. Before that, he spent three years in the litigation department of a large New York law firm. Mr. Wilson also served as a law clerk to Judge William H. Walls of the US District Court for the District of New Jersey.

Mr. Wilson earned his J.D. from Columbia Law School in 2004 where he was a Harlan Fisk Stone Scholar, was awarded the Alfred S. Forsyth Prize for dedication to the advancement of environmental law, and served as Editor-in-Chief of the *Columbia Environmental Law Journal*. He received his B.A. in History and a concentration in Environmental Science from Williams College in 1999.

### **Ivan B. Woods**

Ivan Woods is an associate at Grant & Eisenhofer, focusing on securities, appraisal and environmental litigation. He was part of G&E teams whose efforts resulted in significant awards for their clients, including *In re JP Morgan Chase & Co. Securities Litigation* (\$150 million recovery) and the \$1 billion settlement in the *Royal Bank of Scotland* case in the United Kingdom.

Prior to joining Grant & Eisenhofer, Mr. Woods worked as a consultant for several national law firms and was on the claim management and legal staff of several New Jersey insurance companies where he supervised fraud and training divisions as well as focused on corporate law and regulatory compliance.

Mr. Woods earned his J.D. from Rutgers School of Law, Newark in 1997 and his B.S. in education from Auburn University in 1976. Mr. Woods is a member of the New Jersey State Bar Association.

## **Selected Institutional Client Representations**

G&E has represented or is currently representing a number of institutional investors in major securities fraud actions, shareholder derivative suits, other breach-of-fiduciary-duty cases and related ancillary proceedings around the country. Some of the Firm's cases include:

### **(A) In Securities Fraud Litigation:**

#### **(1) CellStar**

In one of the earliest cases filed after the enactment of PSLRA, the State of Wisconsin Investment Board ("SWIB") was designated lead plaintiff and G&E was appointed lead counsel in *Gluck v. CellStar Corp.*, 976 F.Supp. 542 (N.D.Tex. 1997). The cited opinion is widely considered the landmark on standards applicable to the lead plaintiff/lead counsel practice under PSLRA. (See, especially, *In re Cendant Corp. Litig.*, 2001 WL 980469, at \*40, \*43 (3d Cir. Aug. 28, 2001), citing the CellStar case.) After the CellStar defendants' motion to dismiss failed and a round of discovery was completed, the parties negotiated a \$14.6 million settlement, coupled with undertakings on CellStar's part for significant corporate governance changes as well. With SWIB's active lead in the case, the class recovery, gross before fees and expenses, was approximated to be 56% of the class' actual loss claims, about 4 times the historical 14% average gross recovery in securities fraud litigation. Because of the competitive process that SWIB had undertaken in the selection of counsel, resulting in a contingent fee percentage significantly less than the average 31% seen historically, the net recovery to the class after all claims were submitted came to almost 50% of actual losses, or almost 5 times the average net recovery.

#### **(2) Pfizer**

G&E was class counsel in a certified federal securities class action against Pfizer and certain of its former officers and directors. Plaintiffs alleged that Pfizer affirmatively misrepresented the cardiovascular safety of its multi-billion-dollar arthritis drugs, Celebrex and Bextra, and actively concealed adverse safety information concerning the products in order to win market share from Merck's competing Cox-2 drug, Vioxx. In 2004 and 2005, when the truth about the cardiovascular risks of Celebrex and Bextra was finally revealed, Pfizer shareholders collectively lost billions of dollars. Plaintiffs also alleged that certain former officers and directors of Pfizer illegally sold shares of Pfizer stock during the class period while in possession of material, non-public information concerning the drugs.

The case was extensively litigated for nearly 10 years, with millions of pages of documents produced and more than 50 depositions taken. Prior to the beginning of merits discovery, the parties engaged in a Daubert proceeding in which Pfizer argued that there was no scientific basis for a claim that Celebrex and Bextra were associated with adverse cardiovascular effects. Both sides submitted extensive

expert reports and, after a 5 day trial, the Court completely rejected Pfizer's challenges to Plaintiffs' expert testimony. Defendants' motion for summary judgment was denied in most respects, although the Court held that Pfizer could not be held liable for a few statements made by its co-promoters concerning the drugs. In 2014, however, the Court granted Defendants' motion to exclude the testimony of Plaintiffs' expert concerning damages and causation, Professor Daniel Fischel, and thereafter granted summary judgment for Defendants because without Fischel's testimony, Plaintiffs could not prove damages or loss causation. Plaintiffs appealed to the United States Court of Appeals for the Second Circuit, and on April 12, 2016, the Court of Appeals reversed. The Court of Appeals held that the District Court abused its discretion in excluding Fischel's testimony and further held that the District Court's erred in granting summary judgment to Defendants concerning the statements made by Pfizer's co-promoter. Defendants moved in the Court of Appeals for rehearing *en banc*. While that motion was pending, the parties agreed on a settlement of the litigation providing for a cash payment by Pfizer of \$486 million. The parties then jointly moved, and the Court of Appeals agreed, to hold the rehearing petition in abeyance pending the District Court's consideration of the proposed settlement. The District Court held a conference on September 13, 2016 to consider whether to grant preliminary approval to the settlement and authorize the transmission of notice of the settlement to class members. The settlement was preliminarily approved on September 16, 2016, and on December 21, 2016, final approval was obtained. *In re Pfizer Inc. Securities Litigation*, SD-NY, No. 04-9866.

(3) **DaimlerChrysler**

Florida State Board of Administration was appointed lead plaintiff and G&E co-lead counsel in the PSLRA class action on behalf of shareholders of the former Chrysler Corporation who exchanged their shares for stock in DaimlerChrysler in Chrysler's 1998 business combination with Daimler-Benz AG which was represented at the time as a "merger of equals." Shortly before trial, the defendants agree to a \$300 million cash settlement, among the largest securities class action settlements since the enactment of the PSLRA. *In re DaimlerChrysler Securities Litigation*, D. Del., C.A. No. 00-0993.

(4) **Oxford Health Plans**

Public Employees' Retirement Association of Colorado ("ColPERA") engaged G&E to represent it to seek the lead plaintiff designation in the numerous securities fraud actions that were consolidated into *In re Oxford Health Plans, Inc., Securities Litig.*, S.D.N.Y., MDL Docket No. 1222 (CLB). The court ordered the appointment of ColPERA as a co-lead plaintiff and G&E as a co-lead counsel. G&E and its co-leads filed the Consolidated Amended Complaint. Memorandum opinions and orders were entered denying defendants' motions to dismiss (see 51 F.Supp. 2d 290 (May 28, 1999) (denying KPMG motion) and 187 F.R.D. 133 (June 8, 1999) (denying motion of Oxford and individual director

defendants)). The case settled for \$300 million, another settlement negotiated by G&E that is among the largest settlements since the enactment of the PSLRA.

(5) **Dollar General**

The U.S. District Court for the Middle District of Tennessee ordered the appointment of Florida State Board of Administration and the Teachers' Retirement System of Louisiana as lead plaintiffs and G&E as co-lead counsel in a PSLRA and Rule 10b-5 case against the defendant company, its accountants, and individual insiders who allegedly issued false and misleading statements over an alleged 3-year Class Period and failed to disclose adverse facts about the company's financial results. Settlements were approved involving a cash payment of \$162 million from the company and the individual defendants, an additional \$10.5 million from Deloitte & Touche, LLP (Dollar General's accountants), and beneficial governance reforms for Dollar General. *In re Dollar General Securities Litigation*, M.D. Tenn., No. 3:01-0388, orders dated July 19, 2001 and September 29, 2003.

(6) **Just For Feet**

G&E represented the State of Wisconsin Investment Board ("SWIB") in a federal securities class action against certain officers and directors of Just For Feet, Inc., and against Just For Feet's auditors, in the Northern District of Alabama. That action arose out of the defendants' manipulation of the company's accounting practices to materially misstate the company's financial results. Having been appointed co-lead plaintiff, SWIB, with G&E as its counsel, took primary responsibility for the case. (*SWIB v. Ruttenberg, et al.*, N.D. Ala., CV 99-BU-3097-S and 99-BU-3129-S, 102 F. Supp. 2d 1280 (N.D. Ala. 2000)). SWIB obtained a policy limits settlement with the individual defendants' D&O carrier and an additional \$7.4 million from Just For Feet's auditor, for a recovery totaling approximately \$32 million.

(7) **Waste Management**

G&E filed a non-class federal securities action against Waste Management, Inc., its former and current directors, and the company's accountants in the Northern District of Florida, on behalf of Lens Investment Management, LLC and Ram Trust Services, Inc. The complaint alleged that Waste Management had, over a five-year period, issued financial statements and other public statements that were materially false and misleading due to the defendants' fraudulent and improper accounting manipulations. G&E also filed non-class actions in Illinois state court, asserting similar claims on behalf of the Florida State Board of Administration ("FSBA") and the Teachers' Retirement System of Louisiana. After G&E successfully defeated the defendants' motions to dismiss FSBA's complaint in state court, FSBA's cause of action was transferred to the Northern District of Florida. At the point where there were competing motions for summary judgment pending, G&E successfully negotiated a settlement pursuant to which each plaintiff received several times what it would have received in the class action.



*Florida State Board of Administration, Ram Trust Services, Inc. and Lens Investment Management, LLC v. Waste Management, Inc., et al.*, N.D.Fla., No. 4:99CV66-WS, amended complaint filed June 21, 1999; and *Teachers' Retirement System of Louisiana v. Waste Management, Inc., et al.*, Circuit Ct., Cook Co. [Ill.], No. 98 L 06034, complaint filed May 18, 1999.

(8) **Total Renal Care**

In June 1999, the Louisiana State Employees' Retirement System and Teachers' Retirement System of Louisiana were appointed as Lead Plaintiffs in a federal securities class action against Total Renal Care ("TRC") and certain of its officers and directors, in the U.S. District Court for the Central District of California. G&E served as Plaintiffs' Lead Counsel. Plaintiffs filed their Corrected Consolidated Amended Complaint against the defendants, alleging, *inter alia*, that the defendants manipulated TRC's financial statements so as to materially overstate TRC's revenues, income and assets and to artificially inflate TRC's stock price. G&E negotiated a settlement requiring TRC's payment of \$25 million into a settlement fund for the class and the company's adoption of certain internal corporate governance policies and procedures designed to promote the future accountability of TRC's management to its stockholders. At the time of the settlement, this amount represented 33% of the value of the Company's shares. *In re Total Renal Care Securities Litigation*, C.D. Cal., Master File No. CV-99-01745 CBM.

(9) **Safety-Kleen**

G&E was sole lead counsel for the plaintiffs in a federal securities class action and a series of related individual actions against former officers, directors, auditors and underwriters of Safety-Kleen Corporation, who are alleged to have made false and misleading statements in connection with the sale and issuance of Safety-Kleen bonds. *In re Safety-Kleen Corp. Bondholders Litig.*, D.S.C., No. 3:00-CV-1145-17, consolidated complaint filed January 23, 2001. In March of 2005, after a jury had been selected for trial, the auditor defendant settled with the class and individual claimants for \$48 million. The trial then proceeded against the director and officer defendants. After seven weeks of trial, the director defendants settled for \$36 million, and the court entered judgment as a matter of law in favor of the class and against the company's CEO and CFO, awarding damages of \$192 million.

(10) **Styling Technology Corporation**

G&E represented funds managed by Conseco Capital Management, Inc., Credit Suisse Asset Management, Pilgrim American Funds and Oppenheimer Funds, Inc. in a securities action brought in May 2001, asserting both federal (1933 Act) and state claims brought in the Superior Court of California. The suit alleged that certain former officers, as well as the independent auditors, of Styling Technology Corporation made false and misleading statements in connection with the sale and issuance of Styling Technology bonds. Styling Technology filed for bankruptcy

protection under Chapter 11 in August 1999. In October 2000, discovery of accounting irregularities and improperly recognized revenue forced the Company to restate its financial statements for the years 1997 and 1998. Plaintiffs, owning \$66.5 million of the total \$100 million in bonds sold in the offering, settled the case for a recovery representing approximately 46% of the losses suffered by the client funds that they manage. *Franklin High Income Trust, et al. v. Richard R. Ross, et al.*, Cal. Super., San Mateo Co. [Calif.], Case No: 415057, complaint filed November 28, 2000.

**(11) Tyco**

G&E served as co-lead counsel representing co-lead plaintiffs Teachers' Retirement System of Louisiana and Louisiana State Employees' Retirement System in a securities class action against Tyco International Ltd. and PricewaterhouseCoopers LLP. The complaint alleged that the defendants, including Tyco International, Dennis Kozlowski, and other former executives and directors of Tyco and PricewaterhouseCoopers, made false and misleading public statements and omitted material information about Tyco's finances in violation of Sections 10(b), 14, 20A and 20(a) of the Securities Exchange Act of 1934. Tyco agreed to fund \$2.975 billion in cash to settle these claims, representing the single largest payment from any corporate defendant in the history of securities class action litigation. PricewaterhouseCoopers also agreed to pay \$225 million to settle these claims, resulting in a total settlement fund in excess of \$3.2 billion.

**(12) Global Crossing**

Ohio Public Employees' Retirement System and the Ohio Teachers' Retirement System were appointed lead plaintiff and G&E was appointed sole lead counsel in a securities class action against Global Crossing, Ltd. and Asia Global Crossing, Ltd. *In re Global Crossing, Ltd. Securities & "ERISA" Litig.*, MDL Docket No. 1472. In November 2004, the Court approved a partial settlement with the Company's former officers and directors, and former outside counsel, valued at approximately \$245 million. In July 2005, the Court approved a \$75 million settlement with the Citigroup-related defendants (Salomon Smith Barney and Jack Grubman). In October 2005, the Court approved a settlement with Arthur Andersen LLP and all Andersen-related defendants for \$25 million. In October 2006, the Court approved a \$99 million settlement with various financial institutions. In total, G&E recovered \$448 million for investors in Global Crossing.

**(13) Telxon Corporation**

G&E filed a federal securities and common law action against Telxon Corporation, its former officers and directors and its accountants in the Northern District of Ohio on behalf of Wyser-Pratte Management Co., Inc., an investment management firm. Following mediation, G&E negotiated a settlement of all claims. *Wyser-Pratte Management Co., Inc. v. Telxon Corp., et al.*, N.D. Ohio, Case No. 5:02CV1105.

(14) **Hayes Lemmerz**

G&E served as lead counsel to plaintiffs and class members who purchased or acquired over \$1 billion in bonds issued by Hayes Lemmerz International, Inc. G&E negotiated a settlement worth \$51 million. *Pacholder High Yield Fund, Inc. et al. v. Ranko Cucoz et al.*, E.D. Mich., C.A. No. 02-71778.

(15) **Asia Pulp and Paper**

On behalf of bondholders of various subsidiaries of Indonesian paper-making giant Asia Pulp and Paper (“APP”), G&E filed an action alleging that the bondholders were defrauded by APP’s financial statements which were inflated by nearly \$1 billion in fictitious sales. Defendants’ motions to dismiss were denied. *Franklin High Income Trust, et al. v. APP Global Ltd., et al.*, N.Y. Sup. Ct., Trial Div., Index No. 02-602567. The matter was resolved through a confidential settlement.

(16) **Alstom**

Louisiana State Employees’ Retirement System was appointed as co-lead plaintiff and G&E was appointed co-lead counsel in a class action against Alstom SA, a French corporation engaged in power generation, transmission and distribution in France. The suit alleges that Alstom and other defendants made false and misleading statements concerning the growth and financial performance of its transportation subsidiary. G&E achieved a settlement in the amount of \$6.95 million. *In re Alstom SA Sec. Litig.*, S.D.N.Y. 03-cv-6595.

(17) **Parmalat**

G&E was co-lead counsel in this securities class action arising out of a multi-billion dollar fraud at Parmalat, which the SEC described as “one of the largest and most brazen corporate financial frauds in history.” Settlements exceeding \$110 million were reached. *In re Parmalat Sec. Litig.*, S.D.N.Y. 04-MDL-1653.

(18) **Marsh & McLennan**

G&E was co-lead counsel for the class of former Marsh & McLennan shareholders in this federal securities class action alleging that the company, its officers, directors, auditors, and underwriters participated in a fraudulent scheme involving, among other things, bid-rigging and secret agreements to steer business to certain insurance companies in exchange for “kick-back” commissions. After five years of litigation, G&E achieved a \$400 million settlement on behalf of the class. *In re Marsh & McLennan Companies, Inc. Sec. Litig.*, S.D.N.Y. 04-cv-8144.

(19) **Hollinger International**

G&E was co-lead counsel in this securities class action arising out of a company scandal at Hollinger International, Inc. which involves payment of millions of dollars to certain executives, including the company's former CEO, Lord Conrad Black, relating to sales of company assets. G&E negotiated a settlement with Hollinger in the amount of \$37.5 million. *In re Hollinger International Inc. Securities Litigation*, N.D. Ill. 04-C-0834.

(20) **General Motors**

G&E served as co-lead counsel in a securities class action against GM, arising from alleged false statements in GM's financial reports. After about two and a half years of litigation, a settlement was reached with GM for \$277 million, with GM's auditor, Deloitte & Touche contributing an additional \$26 million. The combined \$303 million settlement ranked among the largest shareholder recoveries of 2008. *In re General Motors Corp. Sec. Litig.*, E.D. Mich., MDL No. 1749.

(21) **Delphi**

Delphi is an automotive company that was spun off of General Motors. The company failed as a stand-alone entity, but concealed its failure from investors. G&E's client, one of the largest pension funds in the world, served as a lead plaintiff, and G&E served as co-lead counsel in this securities class action, which produced settlements totaling \$325 million from Delphi, its auditor and its director and officers liability insurer. *In re Delphi Corporation Securities Derivative & ERISA Litigation*, E.D. Mich., MDL No. 1725.

(22) **Refco**

A mere two months after going public, Refco admitted that its financials were unreliable because the company had concealed that hundreds of millions of dollars of uncollectible receivables were owed to the company by an off-balance sheet entity owned by the company's CEO. G&E served as a co-lead counsel and G&E's client, PIMCO, was a co-lead plaintiff. The case resulted in recoveries totaling \$422 million for investors in Refco's stock and bonds (including \$140 million from the company's private equity sponsor, over \$50 million from the underwriters, and \$25 million from the auditor). *In re Refco, Inc. Securities Litigation*, S.D.N.Y., No. 05 Civ. 8626.

(23) **Sprint**

G&E represented lead plaintiff institutional investor Carlson Capital, L.P. in this class action suit against Sprint Corporation and its former CEO and directors for breach of fiduciary duty in the consolidation of two separate tracking stocks. In December 2007, a \$57.5 million settlement was approved. *In re Sprint Corporation Shareholder Litigation*, D. Kan., No. 04 CV 01714.

**(B) In Derivative and Other Corporate Litigation:**

**(1) Digex**

This case resulted in a settlement of over \$400 million, the largest reported settlement in the history of Delaware corporate litigation. G&E represented the lead plaintiff, TCW Technology Limited Partnership, in alleging that Digex, Inc.'s directors and majority stockholder (Intermedia, Inc.) breached their fiduciary duties in connection with WorldCom's proposed \$6 billion acquisition of Intermedia. Among other issues, WorldCom was charged with attempting to usurp a corporate opportunity that belonged to Digex and improperly waiving on Digex's behalf the protections of Delaware's business combination statute. Following G&E's argument on a motion to preliminarily enjoin the merger, the Court issued an opinion declining to enjoin the transaction but acknowledging plaintiffs' likelihood of success on the merits. *In re Digex, Inc. Shareholders Litigation*, C.A. No. 18336, 2000 WL 1847679 (Del. Ch. Dec. 13, 2000). The case settled soon thereafter.

**(2) UnitedHealth Group**

G&E represented the Ohio Public Employees Retirement System, State Teachers Retirement System of Ohio, and Connecticut Retirement Plans and Trust Funds as lead plaintiffs in a derivative and class action suit in which G&E successfully challenged \$1.2 billion in back-dated options granted to William McGuire, then-CEO of health care provider UnitedHealth Group. This was among the first – and most egregious – examples of options backdating. G&E's case produced a settlement of \$922 million, the largest settlement in the history of derivative litigation in any jurisdiction. *In re UnitedHealth Group Inc. Shareholder Derivative Litig.*, C.A. No. 06-cv-1216 (D. Minn.)

**(3) AIG**

In what was, at the time, the largest settlement of derivative shareholder litigation in the history of the Delaware Chancery Court, G&E reached a \$115 million settlement in a suit against former executives of AIG for breach of fiduciary duty. The case challenged hundreds of millions of dollars in commissions paid by AIG to C.V. Starr & Co., a privately held affiliate controlled by former AIG Chairman Maurice "Hank" Greenberg and other AIG directors. The suit alleged that AIG could have done the work for which it paid Starr, and that the commissions were simply a mechanism for Greenberg and other Starr directors to line their pockets. *Teachers' Retirement System of Louisiana v. Greenberg, et al.*, C. A. No. 20106-VCS (Del. Ch.).



(4) **Genentech**

When Swiss healthcare company Roche offered to buy out biotech leader Genentech Inc. for \$43.7 billion, or \$89 per share, G&E filed a derivative claim on behalf of institutional investors opposed to the buyout. With the pressure of the pending litigation, G&E was able to reach a settlement that provided for Roche to pay \$95 per share, representing an increase of approximately \$3 billion for minority shareholders. *In re Genentech, Inc. Shareholders Litig.*, C.A. No. 3911-VCS (Del. Ch.).

(5) **Willamette**

In January 2002, at the request of Wyser-Pratte Management Co., Inc. and others, G&E filed a shareholder derivative action in Oregon state court claiming that the board of Willamette Industries, Inc. breached its fiduciary duties by attempting to cause Willamette to acquire the asbestos-ridden building products division of Georgia-Pacific Company as part of a scorched-earth effort to defeat a hostile takeover of Willamette by its chief competitor, Weyerhaeuser Company. G&E obtained an expedited hearing on its motion for a preliminary injunction and obtained an agreement from Willamette at the hearing not to consummate any deal with Georgia-Pacific without providing prior notice to G&E. Almost immediately thereafter, and after years of fighting against Weyerhaeuser's takeover attempts, the Willamette board relented and agreed to sell the company to Weyerhaeuser. *Wyser-Pratte Management Co., Inc. & Franklin Mutual Advisors v. Swindells, et al.*, No. 0201-0085 (Ore. Cir. Ct.).

(6) **Medco Research**

In January 2000, G&E filed a shareholder derivative action on behalf of State of Wisconsin Investment Board against the directors of Medco Research, Inc. in Delaware Chancery Court. The suit alleged breach of fiduciary duty in connection with the directors' approval of a proposed merger between Medco and King Pharmaceuticals, Inc. G&E was successful in obtaining a preliminary injunction requiring Medco to make supplemental and corrective disclosures. Because of G&E's efforts, the consideration to Medco's stockholders increased by \$4.08 per share, or \$48,061,755 on a class-wide basis. *State of Wisconsin Investment Board v. Bartlett, et al.*, C.A. No. 17727, 2000 WL 193115 (Del. Ch. Feb. 9, 2000).

(7) **Occidental Petroleum**

G&E represented Teachers' Retirement System of Louisiana and served as co-counsel in a shareholders' derivative suit against the directors of Occidental Petroleum Corporation, challenging as corporate waste the company's excessive compensation arrangements with its top executives. Filed in California state court, the case settled when the company agreed to adopt California Public Employees' Retirement System's model principles of corporate governance and undertook to reconstitute its key committees so as to meet the tests of

independence under those principles. *Teachers' Retirement System of Louisiana v. Irani et al.*, No. BC1850009 (Cal. Super.).

**(8) Staples, Inc.**

On behalf of Teachers' Retirement System of Louisiana, G&E challenged Staples, Inc.'s proposed "recapitalization" plan to unwind a tracking stock, Staples.com, which it created in 1998. G&E obtained a preliminary injunction against the deal and the deal terms were ultimately altered resulting in a \$15-\$20 million gain for shareholders. Additional disclosures were also required so that shareholders voted on the challenged transaction based on a new proxy statement with substantial additional disclosures. *In re Staples, Inc. Shareholders Litigation*, C.A. No. 18784, 2001 WL 640377 (Del. Ch. June 5, 2001).

**(9) SFX/Clear Channel Merger**

G&E filed a class action on behalf of stockholders of SFX, challenging the merger between SFX and Clear Channel. While the SFX charter required that in any acquisition of SFX all classes of common stockholders be treated equally, the merger, as planned, provided for approximately \$68 million more in consideration to the two Class B stockholders (who happened to be the senior executives of SFX) than to the public stockholders. The merger was structured so that stockholders who voted for the merger also had to vote to amend the Charter to remove the non-discrimination provisions as a condition to the merger. G&E negotiated a settlement whereby \$34.5 million more was paid to the public stockholders upon closing of the merger. This was more than half the damages alleged in the Complaint. *Franklin Advisers, Inc., et al. v. Sillerman, et al.*, C.A. No. 17878 (Del. Ch.).

**(10) Lone Star Steakhouse & Saloon**

G&E filed a derivative lawsuit on behalf of California Public Employees' Retirement System ("CALPERS") against Lone Star's former CEO, Jamie Coulter, and six other Lone Star directors. The suit alleged that the defendants violated their fiduciary duties in connection with their approval of the company's acquisition of CEI, one of Lone Star's service providers, from Coulter, as well as their approvals of certain employment and compensation arrangements and option repricing programs. Before filing the suit, G&E had assisted in CALPERS in filing a demand for books and records pursuant to Section 220 of the Delaware General Corporation Law. The company's response to that demand revealed the absence of any documentation that the board ever scrutinized transactions between Lone Star and CEI, that the board negotiated the purchase price for CEI, or that the board analyzed or discussed the repricing programs. In August 2005, the Court approved a settlement negotiated by G&E whereby Lone Star agreed to a repricing of options granted to certain of its officers and directors, payments from certain of the officers and directors related to option grants, and a \$3 million payment from Lone Star's director and officer insurance policy. Lone Star further acknowledged that the lawsuit was one of the significant factors considered in its

adoption of certain corporate governance reforms. *California Public Employees' Retirement System v. Coulter, et al.*, C.A. No. 19191 (Del. Ch.).

(11) **Siebel**

The issue of excessive executive compensation has been of significant concern for investors, yet their concerns have remained largely unaddressed due to the wide discretion afforded corporate boards in establishing management's compensation. G&E effected a sea change in the compensation policies of Siebel Systems, a leading Silicon Valley-based software developer long considered to be an egregious example of executive compensation run amok, and caused Thomas Siebel, the company's founder and CEO, to cancel 26 million options with a potential value of \$54 million. Since the company's founding in 1996, Siebel Systems had paid Mr. Siebel nearly \$1 billion in compensation, largely in the form of lavish stock options that violated the shareholder-approved stock option plan. In addition, the company had paid its directors millions of dollars for their service on the board, also in the form of stock options, at levels exponentially higher than that paid to directors on the boards of similar companies. G&E, on behalf of Teachers' Retirement System of Louisiana, commenced a derivative action challenging the company's compensation practices in September of 2002 even though a prior, similar lawsuit had been dismissed. Following a hard-fought and acrimonious litigation, G&E successfully negotiated a settlement that, in addition to the options cancellation, included numerous corporate governance reforms. The company agreed to, *inter alia*, restructure its compensation committee, disclose more information regarding its compensation policies and decisions, cause its outside auditor to audit its option plans as part of the company's annual audit, and limit the compensation that can be paid to directors. The Siebel Systems settlement generated considerable favorable press in the industry, as investors and compensation experts anticipated that the reforms adopted by Siebel Systems could affect how other companies deal with compensation issues. *Teachers' Retirement System of Louisiana v. Thomas M. Siebel, et al.*, C. A. No. 425796 (Cal. Super.).

(12) **HealthSouth Corporation**

G&E filed a derivative and class action lawsuit on behalf of Teachers' Retirement System of Louisiana against HealthSouth Corporation, its auditors, certain individual defendants, and certain third parties seeking, *inter alia*, an order forcing the HealthSouth board of directors to hold an annual shareholder meeting for the purpose of electing directors, as no such meeting had been held for over thirteen months. Following a trial, G&E negotiated a settlement of part of its claims, pursuant to which five of the defendant directors who were alleged to have engaged in improper self-dealing with the company agreed to resign and be replaced by directors selected by a committee comprised in part by institutional investors of HealthSouth. *Teachers' Retirement System of Louisiana v. Scrushy*, Del. Ch., C.A. No. 20529 (March 2, 2004).

(13) **NYSE/Archipelago**

G&E served as co-lead counsel in a class action in New York state court, brought on behalf of a class of seat holders of the New York Stock Exchange (“NYSE”) challenging the proposed merger between the NYSE and Archipelago Holdings, LLC. The complaint alleged that the terms of the proposed merger were unfair to the NYSE seat holders, and that by approving the proposed merger, the NYSE board of directors had violated their fiduciary duties of care, loyalty and candor, because the transaction was the result of a process that was tainted by conflicts of interest and the directors failed adequately to inform themselves of the relevant facts. The court denied the defendants’ motion to dismiss, and after expedited discovery, including over 30 depositions in a five week period, a preliminary injunction evidentiary hearing was held, in which plaintiffs sought to postpone the vote on the merger until a new, current fairness opinion was obtained from an independent financial advisor. On the second day of the hearing, the defendants agreed to the relief being sought, namely that they would obtain a new, current fairness opinion from an independent financial advisor. *In re New York Stock Exchange/Archipelago Merger Litig.*, No. 601646/05 (Sup. Ct. N.Y. Co.)

(14) **Caremark / CVS**

G&E represented institutional shareholders in this derivative litigation challenging the conduct of the board of directors of Caremark Rx Inc. in connection with the negotiation and execution of a merger agreement with CVS, Inc., as well as that board’s decision to reject a competing proposal from a different suitor. Ultimately, through the litigation, G&E was able to force Caremark’s board not only to provide substantial additional disclosures to the public shareholders, but also to renegotiate the terms of the merger agreement with CVS to provide Caremark shareholders with an additional \$3.19 billion in cash consideration and to ensure Caremark’s shareholders had statutory appraisal rights in the deal. *Louisiana Municipal Police Employees’ Retirement System, et al. v. Crawford, et al.*, C.A. No. 2635-N (Del. Ch.).

(15) **AIG**

G&E achieved a settlement of derivative claims against former American International Group, Inc. (“AIG”) CEO Hank Greenberg and other officers of the insurer in connection with a well-documented bid-rigging scheme used to inflate the company’s income. The scheme — which included an array of wrongful activities, such as sham insurance transactions intended to deceive shareholders and illegal contingent commissions which amounted to kickbacks to obtain business — caused billions of dollars' worth of damage to AIG, and ultimately led to the restatement of years of financial statements.

In approving a settlement that returned \$90 million to AIG, the Court said the settlement was “an incentive for real litigation” with “a lot of high-quality lawyering.” *In re American International Group, Inc., Consolidated Derivative Litigation*. Delaware Chancery Court, 769-VCS

(16) **Del Monte Foods**

G&E served as lead counsel in shareholder litigation in which the Firm obtained an \$89.4 million settlement against Del Monte Foods Co. and Barclays Capital. On February 14, 2011, the Delaware Chancery Court issued a ground-breaking order enjoining not only the shareholder vote on the merger, but the merger agreement's termination fee and other mechanisms designed to deter competing bids. As a result of plaintiff's efforts, the Board was forced to conduct a further shopping process for the company. Moreover, the opinion issued in connection with the injunction has resulted in a complete change on Wall Street regarding investment banker conflicts of interests and company retention of investment bankers in such circumstances. *In re Del Monte Shareholder Litigation*, C.A. No. 6027-VCL (Del. Ch).

(17) **Facebook**

G&E served as co-lead counsel for plaintiffs, alleging that Facebook Chairman and CEO Mark Zuckerberg, as well as other officers and directors, breached their fiduciary duties to the class by approving the reclassification of Facebook stock. The reclassification, if implemented, would have allowed Mark Zuckerberg to maintain majority voting control while reducing his economic stake in the Company by over 65%. Just days before the trial was set to begin with Mark Zuckerberg's testimony, the Facebook Board of Directors met and decided to abandon the reclassification. Because G&E was seeking to enjoin the reclassification, the Board's abandonment of it was a complete win for the plaintiffs and the class. *In re Facebook Class C Reclassification Litigation*, C.A. No. 12286 (Del Ch).

(C) **In Securities Class Action Opt-Out Litigation**

(1) **AOL Time Warner, Inc.**

G&E filed an opt-out action against AOL Time Warner, its officers and directors, auditors, investment bankers and business partners. The case challenged certain transactions entered by the company to improperly boost AOL Time Warner's financials. G&E was able to recover for its clients more than 6 times the amount that they would have received in the class case.

(2) **BankAmerica Corp.**

G&E filed an individual action seeking to recover damages caused by the defendants' failure to disclose material information in connection with the September 30, 1998 merger of NationsBank Corporation and BankAmerica Corporation. G&E was preparing the case for trial when it achieved a settlement whereby the firm's client received more than 5 times what it would have received



in the related class action. Those proceeds were also received approximately one year earlier than the proceeds from the class action settlement.

(3) **Bristol-Myers Squibb**

G&E filed an opt-out action against Bristol-Myers Squibb, certain of its officers and directors, its auditor, and Imclone, Inc., alleging that Bristol-Myers had falsified billions of dollars of revenue as part of a scheme of earnings management. While the federal class action was dismissed and eventually settled for only 3 cents on the dollar, G&E's action resulted in a total settlement representing approximately 10 times what the firm's clients likely would have received from the class action.

(4) **Petrobras**

G&E filed securities fraud actions in Manhattan federal court on behalf of several U.S. and European public and private institutional investors against Petrobras, the Brazilian oil conglomerate, arising out of a decade-long bribery and kickback scheme that has been called the largest corruption scandal in Brazil's history. The action alleged that Petrobras concealed bribes to senior officers and government officials and improperly capitalized these bribes as assets on its books in order to inflate the value of the company's refineries. Many of these officers and officials have pled guilty before the Brazilian courts to charges stemming from their participation in the alleged scheme. G&E settled the action before the class action was resolved, and our clients received 2-3 times more than they would have had they stayed in the class, and received their share of the settlement at least two years before a class distribution.

(5) **Qwest Communications**

G&E filed an individual action against Qwest, its accountant (Arthur Andersen LLP), Solomon Smith Barney, and current and former officers and directors of those companies. The case alleged that Qwest used "swap deals" to book fake revenue and defraud investors. G&E was able to recover for its clients more than 10 times what they would have recovered had they remained members of the class.

(6) **WorldCom**

G&E filed an opt-out action against former senior officers and directors of WorldCom, including former CEO Bernard Ebbers, and Arthur Andersen LLP (WorldCom's former auditor), among others. The case stemmed from the widely-publicized WorldCom securities fraud scandal that involved false and misleading statements made by the defendants concerning WorldCom's financials, prospects and business operations. G&E recovered for its clients more than 6 times what they would have received from the class action.

# **EXHIBIT 9**

*Baker v. SeaWorld Entertainment, Inc., et al.*

Case No. 3:14-cv-02129-MMA-AGS

**BREAKDOWN OF PLAINTIFFS' COUNSEL'S EXPENSES  
BY CATEGORY**

CATEGORY	AMOUNT
Court Fees	\$3,296.00
Court Reporters, Videographers & Transcripts	\$191,168.01
Document Hosting & Management	\$141,185.19
Experts & Consultants	\$1,143,882.92
External Printing & Copying	\$9,998.57
Internal Printing & Copying	\$28,011.00
Litigation Support & Trial Preparation	\$20,961.88
Local Transportation	\$474.88
Mediation	\$37,506.00
Messenger Services	\$668.76
Office Supplies	\$397.96
Online Legal & Factual Research	\$74,698.80
Out of Town Travel (Meals, Lodging & Transportation)	\$364,426.33
Outside Investigators	\$68,443.59
Postage & Overnight Mail	\$5,338.72
Telephone & Faxes	\$1,334.56
Translation Services	\$643.52
Service of Process	\$4,903.95
Working Meals	\$7,536.21
(less interest earned on Litigation Expense Fund)	(\$506.66)
<b>TOTAL EXPENSES:</b>	<b>\$2,104,370.19</b>