

Christopher Kim (Bar No. 082080)  
christopher.kim@limruger.com  
Lisa J. Yang (Bar No. 208971)  
lisa.yang@limruger.com  
LIM, RUGER & KIM, LLP  
1055 West Seventh Street, Suite 280  
Los Angeles, California 90017-2554  
Telephone: (213) 955-9500  
Facsimile: (213) 955-9511

Thomas A. Dubbs (*Pro Hac Vice*)  
tdubbs@labaton.com  
James W. Johnson (*Pro Hac Vice*)  
jjohnson@labaton.com  
Richard T. Joffe (*Pro Hac Vice*)  
rjoffe@labaton.com  
Thomas G. Hoffman, Jr. (*Pro Hac Vice*)  
thoffman@labaton.com  
LABATON SUCHAROW LLP  
140 Broadway  
New York, New York 10005  
Telephone: (212) 907-0700  
Facsimile: (212) 818-0477

Allyn Z. Lite (*Pro Hac Vice*)  
alite@litedepalma.com  
Bruce D. Greenberg (*Pro Hac Vice*)  
bgreenberg@litedepalma.com  
Katrina Carroll  
kcarroll@litedepalma.com  
LITE DEPALMA GREENBERG, LLC  
Two Gateway Center, 12th Floor  
Newark, New Jersey 07102  
Telephone: (973) 623-3000  
Facsimile: (973) 623-0858

*Attorneys for Lead Plaintiff the State of New Jersey, Department of Treasury,  
Division of Investment, Plaintiffs International Brotherhood of Electrical Workers,  
Local 103 and Norfolk County Retirement System and Lead Counsel for the Class*

*(Caption continued on following page)*

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

IN RE STEC, INC. SECURITIES LITIGATION  <hr/> This Document Relates to  ALL ACTIONS.	) No. SACV 09-01304-JVS (MLGx) ) ) <b>DECLARATION OF THOMAS A.</b> ) <b>DUBBS IN SUPPORT OF CLASS</b> ) <b>REPRESENTATIVES' MOTION FOR</b> ) <b>FINAL APPROVAL OF PROPOSED</b> ) <b>CLASS ACTION SETTLEMENT, PLAN</b> ) <b>OF ALLOCATION, AND AWARD OF</b> ) <b>ATTORNEYS' FEES AND EXPENSES</b> ) ) Judge: Hon. James V. Selna ) Court: 10C ) Date: May 20, 2013 ) Time: 1:30 p.m.
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1 Thomas Bienert, Jr.  
tbienert@bmkattorneys.com  
2 BIENERT, MILLER & KATZMAN  
903 Calle Amanecer, Suite 350  
3 San Clemente, CA 92673  
Telephone: (949) 369-3700  
4 Facsimile: (949) 369-3701

Robert S. Green  
rsg@classcounsel.com  
GREEN & NOBLIN, P.C.  
700 Larkspur Landing Circle, Suite 275  
Larkspur, CA 94939  
Telephone: (415) 477-6700  
Facsimile: (415) 477-6710

5 *Attorneys for Plaintiff Mark V. Ripperda*  
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1 THOMAS A. DUBBS, declares as follows, pursuant to 28 U.S.C. § 1746:

2 1. I am a Partner at Labaton Sucharow LLP, Co-Counsel for Lead  
3 Plaintiff, the State of New Jersey, Department of Treasury, Division of Investment  
4 (“Lead Plaintiff”), and the Class, and am admitted *pro hac vice* before this Court. I  
5 was actively involved in the prosecution of this case, am intimately familiar with  
6 its proceedings, and have personal knowledge of the matters set forth herein based  
7 upon my close supervision and participation in all material aspects of the action.

8 2. I respectfully submit this declaration in support of Class  
9 Representatives’ motion, pursuant to Rule 23 of the Federal Rules of Civil  
10 Procedure (“Rule 23”), for final approval of: (a) the proposed \$35,750,000 cash  
11 settlement (the “Settlement”) of all claims against defendants STEC, Inc.  
12 (“STEC”), Manouch Moshayedi, Mark Moshayedi and Raymond Cook  
13 (collectively, “Defendants”) in this class action, as set forth in the Stipulation and  
14 Agreement of Settlement, dated as of October 5, 2012, as amended on February 20,  
15 2013 (the “Stipulation”)<sup>1</sup>; (b) the proposed Plan of Allocation; and (c) Plaintiffs’  
16 Counsel’s motion for attorneys’ fees and payment of litigation expenses; and (d)  
17 the request of certain Plaintiffs for reimbursement of lost time and expenses.

18 **I. DEFINITIONS**

19 3. As used in this Declaration, the following terms shall have the  
20 meanings set forth below, consistent with the terms defined in the Stipulation:

21 (a) “Authorized Claimant” means a Class Member who timely  
22 submits a valid Proof of Claim and Release form to the Claims Administrator that  
23 is accepted for payment by the Court.

24 (b) “Claims Administrator” means the Garden City Group.  
25  
26

27 <sup>1</sup> All capitalized terms not defined herein have the same meaning as set forth in  
28 the Stipulation.

1 (c) “Class” or “Class Member” means all Persons that, between  
2 June 16, 2009 and February 23, 2010, inclusive, purchased or otherwise acquired  
3 the publicly traded common stock of STEC and were damaged thereby. Excluded  
4 from the Class are: Defendants; the members of the immediate families of the  
5 Individual Defendants; the subsidiaries and affiliates of Defendants; any Person  
6 who is an officer, director, partner or controlling person of STEC or any other  
7 Defendant; any entity in which any Defendant has a controlling interest; and the  
8 legal representatives, heirs, successors and assigns of any such excluded Person or  
9 entity. Also excluded from the Class are any Class Members who properly  
10 exclude themselves by filing a valid and timely request for exclusion in accordance  
11 with the requirements set forth in the Notice.

12 (d) “Class Period” means the period from June 16, 2009 through  
13 February 23, 2010, inclusive.

14 (e) “Class Representatives” means Lead Plaintiff, International  
15 Brotherhood of Electrical Workers, Local 103 (“Local 103”), Norfolk County  
16 Retirement System (“Norfolk County”) and Mark Ripperda.

17 (f) “Co-Lead Counsel” means the law firms of Labaton Sucharow  
18 LLP and Lite DePalma Greenberg, LLC.

19 (g) “Court” means the United States District Court for the Central  
20 District of California.

21 (h) “Defendants” means STEC and the Individual Defendants.

22 (i) “Defendants’ Counsel” means the law firm of Latham &  
23 Watkins LLP.

24 (j) “Individual Defendants” means Manouch Moshayedi, Mark  
25 Moshayedi, and Raymond Cook.

26 (k) “Liaison Counsel” means Lim, Ruger & Kim LLP.

27 (l) “Lead Plaintiff” means the State of New Jersey, Department of  
28 Treasury, Division of Investment.

1 (m) “Net Settlement Fund” means the Settlement Fund less: (i)  
2 Court-awarded attorneys’ fees and expenses; (ii) Notice and Administration  
3 Expenses; (iii) Taxes; and (iv) any other fees or expenses approved by the Court,  
4 including any award to Class Representatives for reasonable costs and expenses  
5 (including lost wages) pursuant to the Private Securities Litigation Reform Act of  
6 1995 (“PSLRA”).

7 (n) “Notice” means the Notice of Pendency of Class Action and  
8 Proposed Settlement and Motion for Attorneys’ Fees and Expenses, which was  
9 sent to Members of the Class.

10 (o) “Party” or “Parties” means Defendants and the Class  
11 Representatives on behalf of themselves and other Class Members.

12 (p) “Person” means an individual, corporation (including all  
13 divisions and subsidiaries), general or limited partnership, association, joint stock  
14 company, joint venture, limited liability company, professional corporation, estate,  
15 legal representative, trust, unincorporated association, government or any political  
16 subdivision or agency thereof, and any other business or legal entity.

17 (q) “Plaintiffs” means Lead Plaintiff, Local 103 and Norfolk  
18 County.

19 (r) “Plaintiffs’ Counsel” means Co-Lead Counsel and the firms of  
20 Lim, Ruger & Kim LLP, Green & Noblin, P.C. and Bienert, Miller & Katzman.

21 (s) “Preliminary Approval Order” means the proposed order  
22 preliminarily approving the Settlement and directing notice to the Class of the  
23 pendency of the Action and of the Settlement, which, was entered on February 11,  
24 2013.

25 (t) “Proof of Claim” means the Proof of Claim and Release form  
26 for submitting a claim, which accompanied the Notice.

27 (u) “SAC” means the Second Amended Complaint which was filed  
28 on February 22, 2011 (ECF No. 178).

(v) “Settlement Amount” means the total principal amount of thirty-five million seven hundred fifty thousand dollars (\$35,750,000) in cash.

(w) “Settlement Fund” means the Settlement Amount and any earnings thereon.

(x) “Settlement” means the resolution of the Action as against the Defendants in accordance with the terms and provisions of the Stipulation

(y) “Stipulation” means this Stipulation and Agreement of Settlement dated October 5, 2012.

(z) “Summary Notice” means the Summary Notice of Pendency of Class Action and Proposed Settlement and Motion for Attorneys’ Fees and Expenses for publication, which was published in *Investor’s Business Daily* and issued over the *PR Newswire* on March 8, 2013.

(aa) “TAC” means the Third Amended Complaint, which was filed on December 14, 2012.

## **II. PRELIMINARY STATEMENT**

### **A. Introduction**

4. I respectfully submit that the proposed \$35.75 million settlement represents an outstanding result for the Class, and more than satisfies the “fair, adequate, and reasonable” standard that is required for final approval of a common fund settlement under Rule 23. It also has the support of Lead Plaintiff, as set forth in the accompanying Declaration of Brian F. McDonough (“McDonough Decl.”), annexed hereto as Exhibit 1.

5. Lead Plaintiff fully supports this Settlement based on, in large measure, the extraordinary effort and vigorous prosecution of the case by Co-Lead Counsel, including, among other things, and as described more fully below, (i) Co-Lead Counsel’s defeat of Defendants’ efforts to dismiss the complaint for failing to state a claim, (ii) Co-Lead Counsel’s discovery and marshalling of evidence potentially raising triable issues regarding not only misstatements or omissions by

1 Defendants alleged in the SAC, but also, regarding additional misstatements and  
2 omissions first discovered during the process of discovery, (iii) Co-Lead Counsel's  
3 defeat of Defendants' efforts to reduce the amount of Class Members' alleged  
4 damages by eliminating from the certified class period the last of the alleged  
5 disclosures of the truth on February 23, 2010, (iv) Plaintiffs' successful addition to  
6 the case of claims under the Securities Act specifically alleged on behalf of Class  
7 Members who purchased in the Offering, and (v) Co-Lead Counsel's negotiation  
8 of a substantial settlement amount.

9         6. In Defendants' motions to dismiss successive iterations of the  
10 consolidated complaint, Defendants repeatedly argued that Plaintiffs could not  
11 allege facts sufficient to show either that Defendants made a statement or omission  
12 that was false, or that Defendants had scienter for any such statement—*i.e.*, knew  
13 when they made such statement that it was false, or made the statement with  
14 reckless disregard for whether it was true or false. When addressed to the SAC,  
15 these arguments by Defendants were rejected by the Court, which held that "in  
16 light of the supplemental allegations in the SAC, the Court now finds that the  
17 statements STEC made announcing the EMC [Agreement] could reasonably be  
18 interpreted to create [the] impression [alleged in the SAC] and that the information  
19 omitted from the statements could render them material, misleading 'half-truths.'" (Emphasis added.) Specifically, the Court held that the SAC's marshalling and  
20 analysis of data about recent growth in STEC's revenues from its ZeusIOPS solid  
21 state drive, Defendants' statements in the Prospectus about expected continued  
22 growth of such revenues, and analysts' interpretations of Defendants' statements as  
23 estimates that ZeusIOPS sales would continue at the same level as under the EMC  
24 Agreement all supported Class Representative's allegation that statements or  
25 omissions made by Defendants regarding the EMC Agreement were misleading.  
26 The Court also held that Defendants' scienter was adequately alleged based on, not  
27 only the Moshayedi Defendants' suspicious stock sales, an admission by Manouch  
28



1 Moshayedi made during an earnings conference call and a “patently disingenuous”  
2 statement made by Defendants in a letter to the Securities and Exchange  
3 Commission (“SEC”), but also based on Defendants alleged failure to file the EMC  
4 Agreement with the SEC, in apparent violation of SEC regulations—a violation  
5 never alleged by the previous Lead Plaintiffs.

6 7. During discovery, Co-Lead Counsel uncovered evidence that, in Class  
7 Representatives’ view, potentially raises triable issues regarding, not only  
8 numerous misstatements or omissions by Defendants alleged in the SAC, but also,  
9 additional misstatements and omissions by Defendants discovered for the first time  
10 during the process of discovery. This achievement by Co-Lead Counsel was  
11 disclosed to Defendants at the close of the fact discovery period, in Class  
12 Representative’s written responses to Defendants’ contention interrogatories.  
13 Defendants’ contention interrogatories requested, among other things, that Class  
14 Representatives list every statement or omission by Defendants for which Class  
15 Representatives allege Defendants may be held liable, and, for each such statement  
16 or omission, evidence tending to prove that the statement or omission was  
17 misleading, as well as evidence tending to prove that the statement or omission  
18 was made by Defendants with scienter. Co-Lead Counsel was able to list such  
19 evidence for fourteen (14) such statements or omissions alleged in the SAC, and an  
20 additional five (5) such statements or omissions not alleged in the SAC.<sup>2</sup> It is  
21 logical to conclude that the substantial size of the settlement amount, which the  
22 Court’s decision preliminarily approving the Settlement held to be “fair and  
23 reasonable,” reflects, among other things, Defendants’ belief that Co-Lead Counsel  
24  
25

26  
27 <sup>2</sup> For the purpose of this tally, if the same misstatement or omission appears in  
28 two separate places—*e.g.*, in both the Prospectus and the 2009 Second Quarter  
Form 10-Q—it is counted twice. Similarly, if a statement contains both a  
misrepresentation and an omission, or two distinct omissions, it is counted twice.



1 has assembled evidence of Defendants' liability sufficient to raise significant  
2 triable issues.

3       8. In response to Co-Lead Counsel's motion for certification of a  
4 litigation class, Defendants attempted to reduce the amount of Class Members'  
5 alleged damages by eliminating from any certified class period the last of the  
6 alleged corrective disclosures—the alleged corrective disclosure made on February  
7 23, 2010, which was followed by a drop in the price of STEC's stock of \$3.15 per  
8 share, or 23%. Defendants argued that any truth about the EMC Agreement  
9 concealed by Defendants' alleged false statements or omissions had been fully  
10 disclosed by the alleged corrective disclosure on November 3, 2009, so that the  
11 fraud-on-the-market presumption of reliance could not apply after that date. After  
12 reviewing the briefing by the Parties, the Court rejected Defendants' argument,  
13 noting, among other things, that "Plaintiffs have corroborated their claims [in  
14 support of the fraud-on-the-market presumption] with expert testimony regarding  
15 the relationship between STEC's alleged misstatement and the security price  
16 changes over the course of the Class Period."

17       9. Co-Lead Counsel added claims under the Securities Act to this case.  
18 Co-Lead Counsel's first step was to allege such claims in the Amended Complaint,  
19 along with claims under the Securities Exchange Act of 1934 (the "Exchange  
20 Act"). The original consolidated complaint, filed by the previous lead plaintiff,  
21 alleged claims only under the Exchange Act. Although the Court dismissed the  
22 claims under the Securities Act of 1933 (the "Securities Act") in the Amended  
23 Complaint without prejudice, because the named plaintiff asserting them lacked  
24 standing, the Court also held that these claims "have adequately alleged material  
25 misrepresentation" and would not be dismissed for failure to state a claim.  
26 Subsequently, based on Co-Lead Counsel's filing of the TAC and, after a  
27 comprehensive search, naming of a representative plaintiff with standing to allege  
28

1 the Securities Act claims in the TAC, the Court certified a settlement class with  
2 claims under the Securities Act as well as under the Exchange Act.

3 10. The amount of the settlement obtained by Co-Lead Counsel, which  
4 has been found “fair and reasonable” by the Court in its order preliminarily  
5 approving the settlement, indicates that Plaintiffs’ Counsel not only successfully  
6 prosecuted this case, but also successfully negotiated the Settlement.

7 **B. Overview of Strengths and Weaknesses of Claims**

8 11. That this case has merit is supported by the fact that the SEC has filed  
9 suit regarding some of the same wrongful conduct alleged herein. However, that  
10 this case is difficult is shown by the fact that it took the SEC three years before it  
11 decided to bring suit, and when it did bring suit it named only one defendant,  
12 Manouch Moshayedi, and none of the other Defendants named herein. Moreover,  
13 in bringing suit, the SEC has important advantages over private plaintiffs. For one  
14 thing, in order for the SEC to establish liability, the SEC need not prove that the  
15 wrongful conduct at issue caused any damages. For another thing, SEC lawsuits  
16 arguably are not governed by the PSLRA safe harbor, which protects defendants  
17 from liability for forward looking statements made in the context of cautionary  
18 language.

19 12. Herein, as discussed in detail below, Class Representatives and the  
20 Class face significant risks in establishing that Defendants are liable, and that the  
21 amount of any damages is substantial.

22 13. From the inception of the litigation, Defendants have disputed the  
23 falsity of their statements, their scienter for those statements, and, as explained  
24 above, whether there is a causal relationship between one of the alleged corrective  
25 disclosures and any part of Class Members’ damages.

26 14. Moreover, although it is not unusual for Defendants to contest the  
27 falsity of their statements, in this case, Defendants also have contested that their  
28 statements had the meaning attributed to them by Plaintiffs.

1           15. Still further, Defendants have persistently asserted that the majority of  
2 the alleged misstatements were “forward looking” statements made in the context  
3 of cautionary language. Under the PSLRA, which governs certain aspects of  
4 securities lawsuits, defendants may not be held liable even for false statements, if  
5 those false statements were predictions about the future, and were made in the  
6 context of statements adequately cautioning investors against relying on just such  
7 predictions.

8           16. Although Co-Lead Counsel was able to persuade the Court that none  
9 of the foregoing arguments by Defendants was adequate to prevent Plaintiffs from  
10 going forward with the discovery—*i.e.*, with the court supervised process of  
11 collecting evidence from Defendants and third parties regarding Class Members’  
12 claims—in almost every instance, the Court specifically noted that, while  
13 Plaintiffs’ pleading was adequate, Defendants would have an opportunity to  
14 contest the same issue at trial, based on the evidence collected during discovery.

15           17. In addition, Class Representatives face a significant hurdle at trial  
16 because the key witnesses in this case, other than Defendants themselves, are, in  
17 large part, (i) Defendants’ large corporate customers, who, it is fair to assume,  
18 would like to maintain good relationships with their suppliers, such as STEC, and  
19 (ii) securities analysts who depend on the companies that they analyze, such as  
20 STEC, to provide them with information for their reports.

21           18. Yet another risk is that the amount of any damages to be awarded also  
22 is subject to dispute. Thus, even if Defendants were to be held liable after trial,  
23 there is no guarantee that the amount of damages awarded would be substantially  
24 larger than the currently available settlement.

25           19. Finally, any judgment favorable to Class Representatives is likely to  
26 be appealed and could be reversed.

27  
28

1           **C.    Summary of Relief Requested**

2           20.    In addition to approval of the Settlement, Class Representatives and  
3 Plaintiffs' Counsel also respectfully request that the Court approve the Plan of  
4 Allocation, which was prepared by the Class Representatives and Co-Lead Counsel  
5 in conjunction with a consulting damages expert. The Plan of Allocation provides  
6 for a pro rata distribution of the Net Settlement Fund (the Settlement Fund minus  
7 expenses and attorneys' fees) to each Class Member. The Class received copies of  
8 the Plan of Allocation as part of the Notice program pursuant to the Preliminary  
9 Approval Order. As set forth in detail below, Class Representatives and Plaintiffs'  
10 Counsel respectfully submit that the Plan of Allocation is fair, adequate and  
11 reasonable and should be approved.

12           21.    Plaintiffs' Counsel also request a fee award of 16.07% of the  
13 Settlement Fund, which includes accrued interest, and payment of litigation  
14 expenses in the amount of approximately \$1,925,895.67, plus accrued interest.  
15 This 16.07% fee request is made on behalf of the following Plaintiffs' Counsel:

- 16           (a)    Co-Lead Counsel, the law firms of Labaton Sucharow LLP and Lite  
17                   DePalma Greenberg, LLC, along with Liaison Counsel, Lim Roger &  
18                   Kim, LLP;  
19           (b)    Tom Bienert of Bienert, Miller & Katzman, and Robert S. Green of  
20                   Green & Noblin, P.C., counsel for Plaintiff Mark Ripperda; and  
21           (c)    Berman DeValerio, who Lead Plaintiff retained to serve as local  
22                   counsel in the District Court of Massachusetts to pursue the discovery  
23                   claims against EMC Corporation, as more fully set forth in Section  
24                   V(C)(3), *supra*.

25           22.    Plaintiffs' Counsel respectfully submit that the 16.07% fee award and  
26 payment of expenses should be approved by the Court because, among other  
27 reasons, it is supported by Lead Plaintiff. *See* Ex 1 ¶¶ 14-17. Lead Plaintiff is a  
28 sophisticated public institution, has experience in securities class actions in

1 addition to this one, and takes its fiduciary responsibilities with the utmost  
2 seriousness and care. Lead Plaintiff was involved in every significant strategic  
3 decision made regarding the handling of the case as well as the settlement of the  
4 Action. Based on its experience and deep involvement in the case, Lead Plaintiff  
5 believes that the application to the Court for attorneys' fees and payment of  
6 expenses is manifestly reasonable.

7 23. Finally, Kahn Swick & Foti, LLC ("KS&F") is one of the two former  
8 co-lead counsel in this action who represented former lead plaintiffs Keith A. Ovitt  
9 and Arman Rashtchi. KS&F has represented to Co-Lead Counsel that it has a  
10 lodestar of \$781,297 for its work in prosecuting the action on behalf of these  
11 former lead plaintiffs. KS&F has agreed to accept the same negative multiplier as  
12 Plaintiffs' Counsel in this case, which is approximately 0.27. Accordingly, KS&F  
13 has agreed to request a fee in the amount of \$195,324, or one-quarter of its  
14 lodestar, which is approximately 0.55% of the Settlement Fund. Lead Plaintiff  
15 does not object to this request.

16 24. Therefore, the total request for fees sought by Co-Lead Counsel,  
17 Ripperda's counsel, Berman DeValerio and KS&F is 16.66% of the Settlement  
18 Fund. The request for attorneys' fees is well within the range of fees that courts in  
19 this Circuit and across the country award in comparable securities class actions.  
20 Specifically, it is well below the 25 percent "benchmark" applied within the Ninth  
21 Circuit for fees in common fund cases. *Vizcaino v. Microsoft Corp.*, 290 F.3d  
22 1043 (9th Cir. 2002) (affirming the award of a 28 percent fee); *Paul v. Graulity*,  
23 886 F.2d 268 (9th Cir. 1989) ("the district court should take note that 25 percent  
24 has been a proper benchmark figure"). The fee requested by Plaintiffs' Counsel  
25 also represents a negative lodestar multiplier of 0.27.<sup>3</sup> Courts have noted that a

26  
27 <sup>3</sup> The lodestar multiplier is calculated by dividing (i) the fee requested by  
28 (ii) the number of hours counsel billed to the case multiplied by each counsel's  
standard hourly rate.

percentage fee that falls below counsel's lodestar further supports the reasonableness of the award. *See, e.g., In re Flag Telecom Holdings, Ltd. Sec. Litig.*, No. 02-CV-3400, 2010 WL 4537550, at \*26 (S.D.N.Y. Nov. 8, 2010). Accordingly, Plaintiffs' Counsel respectfully submits that the Court should approve the fees and expense application as reasonable.

### **III. THE SETTLEMENT**

25. The terms of the proposed Settlement are set forth in the Stipulation, previously filed with the Court on October 5, 2012 (ECF No. 328-1), between and among: (1) Class Representative, on behalf of itself and all the Members of the Class; and (2) Defendants. Pursuant to the Settlement, Defendants paid \$35.75 million in cash into an interest-bearing escrow account, defined in the Stipulation as the Settlement Fund. The Settlement Fund will not be distributed to the Class unless the Settlement is approved by the Court, and will then be held in the Settlement Fund until the Claims Administrator reviews all eligible claim forms, and the Court issues an Order authorizing distribution to the Class.

26. The consideration received by Defendants is the entry of a judgment that will dismiss this action against Defendants, with prejudice, and bar and permanently enjoin Class Representatives and each Member of the Class (with the exception of those who validly requested exclusion from the Class) from prosecuting the Released Claims.<sup>4</sup> Any such Member of the Class will be conclusively deemed to have fully, finally, and forever resolved, discharged and settled the Released Claims.

#### **A. Preliminary Approval and Court Ordered Notice Program**

27. On February 11, 2013, the Court granted preliminary approval (ECF No. 361) and on March 7, 2013, the Court entered an Order: (i) preliminarily approving the Settlement as fair, adequate and reasonable; (ii) scheduling a

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<sup>4</sup> See Stipulation ¶(1)(cc).



1 Settlement Hearing; (iii) approving the form, substance and requirements of the  
2 Notice and Summary Notice; and (iv) appointing The Garden City Group, Inc.  
3 (“GCG”) as the Claims Administrator to supervise and administer the notice  
4 procedure and process all the claims. *See* Preliminary Approval Order, ECF No.  
5 372.

6 28. Compliance with the court-approved notice program is discussed in  
7 detail in the accompanying Affidavit of Jose C. Fraga Regarding (A) Mailing of  
8 the Notice and Proof of Claim; (B) Publication of the Summary Notice; and (C)  
9 Requests for Exclusion Received to Date (“Fraga Aff.”), annexed hereto as Exhibit  
10 2.

11 29. GCG has undertaken an extensive effort to execute the notice  
12 program, as ordered by the Court. Through records maintained by STEC,  
13 information gathered from brokerage firms and requests made by individuals and  
14 brokerage firms, GCG mailed and published the notices by the deadlines the Court  
15 set. It mailed 125,482 Notices and Proof of Claim forms to potential Class  
16 Members. Fraga Aff. ¶¶ 6. Also, a Summary Notice was published in *Investor’s*  
17 *Business Daily* (*id.* at ¶ 7, Ex. 2-B)<sup>5</sup> and issued over the *PR Newswire* on October  
18 29, 2012. *Id.* at ¶ 7, Ex. 2-C.

19 30. GCG also created a dedicated website,  
20 [www.stecsecuritiessettlement.com](http://www.stecsecuritiessettlement.com) to publicize the Settlement and provide easy  
21 access to download information to interested investors. *Id.* ¶ 8.

22 31. The Notice program has also included providing substantial assistance  
23 to potential Class Members. For instance, in order to address Class Member  
24 questions effectively, GCG created a toll free Interactive Voice Response where  
25

26 \_\_\_\_\_  
27 <sup>5</sup> Citations to exhibits that also attach sub-exhibits will be referenced as “Ex. \_\_\_\_-  
28 \_\_\_\_.” The first numerical reference refers to the designation of the entire exhibit  
attached hereto and the second reference refers to the designation within the  
exhibit itself.

1 potential Class Members could request information and leave messages requesting  
2 that they be contacted. *Id.* ¶ 9. GCG has received 451 calls. *Id.* Each call that  
3 requested to speak with GCG administrators was responded to in a timely manner.  
4 *Id.*

5 32. To date, there have been no objections to any aspect of the  
6 Settlement, Plan of Allocation or fees and expenses. The deadline for such  
7 objections is April 22, 2013.

#### 8 **IV. THE COMPLAINTS FILED IN THE ACTION**

##### 9 **A. Background**

10 33. As alleged in the Third Consolidated Amended Complaint for  
11 Violation of the Federal Securities Laws (the “TAC”), Defendant STEC  
12 manufactures data storage devices, including solid-state drives (“SSDs,” also  
13 known as “flash drives”), for computer systems. ¶ 4.<sup>6</sup> STEC’s flagship product is  
14 the ZeusIOPS, a high-performance SSD. ¶ 5. STEC’s customers include original  
15 equipment manufacturers (“OEMs”), such as EMC, IBM, Hitachi, Hewlett-  
16 Packard (“HP”), and Sun Microsystems (“Sun”). ¶ 3.

17 34. As alleged in the TAC, Defendants Manouch Moshayedi and  
18 Mehrdad (“Mark”) Moshayedi (the “Moshayedi Brothers”) founded STEC, then  
19 named Simple Technology, Inc., in 1990. ¶ 27. At the beginning of the Class  
20 Period, the Moshayedi Brothers held approximately 45% of the Company’s  
21 common stock. ¶ 7.

22 35. As alleged in the TAC, at all relevant times, Defendant Manouch  
23 Moshayedi was STEC’s Chief Executive Officer and Chairman of the Board of  
24 Directors, ¶ 29; Defendant Mark Moshayedi was STEC’s Chief Operating Officer,  
25 Chief Technical Officer, President, and Secretary, as well as a member of its Board  
26

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27 <sup>6</sup> Unless otherwise indicated, all citations to “¶ \_\_\_\_” refer to paragraphs in the  
28 TAC.



of Directors and Equity Awards Committee, ¶ 30; and Defendant Raymond D. Cook (“Cook”) was STEC’s Chief Financial Officer and Principal Accounting Officer, ¶ 31.

**B. Complaints Filed in this Action**

**1. The Initial Complaints**

36. Beginning on November 6, 2009, several securities fraud class action complaints were filed on behalf of investors who had purchased or otherwise acquired STEC common stock between June 16, 2009 and November 3, 2009. *See Jean v. STEC, Inc.*, No. 8:09-cv-01304-JVS-MLG (C.D. Cal. filed Nov. 6, 2009); *Sakhai v. STEC, Inc.*, No. 8:09-cv-01306-JVS-MLG (C.D. Cal. filed Nov. 6, 2009); *Greenwald v. STEC, Inc.*, No. 8:09-cv-01315-JVS-MLG (C.D. Cal. filed Nov. 9, 2009); *Munter v. STEC, Inc.*, No. 8:09-cv-01320-JVS-MLG (C.D. Cal. filed Nov. 10, 2009); *Fischer v. STEC, Inc.*, No. 2:09-cv-08536-JVS-MLG (C.D. Cal. Nov. filed 19, 2009); *Weinberger v. STEC, Inc.*, No. 8:09-cv-01460-CJC-RNB (C.D. Cal. filed Dec. 11, 2009). On January 21, 2010, the Court issued an Order consolidating the six initial actions under the caption *In re STEC, Inc. Securities Litigation*, No. SACV-09-01304-JVS (MLGx) (the “Action”). ECF No. 54.

(a) Pursuant to the Private Securities Litigation Reform Act of 1995 (“PSLRA”), 15 U.S.C. § 78u-4(a)(3)(A), a notice of pendency was published, advising investors of the deadline to seek appointment as lead plaintiff with respect to a class period between June 16, 2009 and November 3, 2009.

(b) On February 8, 2010, the Court issued an Order appointing two individual STEC investors, Arman Rashtchi (“Rashtchi”) and Keith Ovitt (“Ovitt”), as co-lead plaintiffs and Kahn Swick & Foti, LLC and Bernstein Litowitz Berger & Grossman LLP (“BLBG”) as co-lead counsel. ECF No. 61.

37. On March 2, 2010, a putative class action was filed on behalf of investors who had purchased or otherwise acquired STEC stock between

1 November 4, 2009 and February 23, 2010.<sup>7</sup> On March 26, 2010, the Court  
2 consolidated that action with the Action. ECF No. 71.

3 **2. The Consolidated Complaint**

4 38. On April 9, 2010, Rashtchi and Ovitt filed a Consolidated Complaint  
5 for Violations of the Federal Securities Laws (the “Consolidated Complaint”),  
6 which alleged claims under Sections 10(b) and 20(a) of the Securities Exchange  
7 Act of 1934 (the “Exchange Act”) on behalf of investors who purchased or  
8 otherwise acquired STEC common stock between June 16, 2009 and February 23,  
9 2010 (the “Class Period”). ECF No. 83. In light of the expanded class period, the  
10 Court directed publication of a new notice of pendency and the lead plaintiff  
11 process was reopened. ECF No. 71.

12 39. On May 12, 2010, Defendants moved to dismiss the Consolidated  
13 Complaint. ECF No. 89. On June 11, 2010, Rashtchi and Ovitt opposed the  
14 motion, ECF No. 92, and, on June 28, 2010, Defendants filed a reply, ECF No.  
15 113. Although the motion was fully briefed, it was never decided because the  
16 Court appointed a new lead plaintiff.

17 **3. The Consolidated Amended Complaint**

18 40. On July 14, 2010, the Court issued an Order appointing New Jersey as  
19 Lead Plaintiff and approving New Jersey’s choice of Co-Lead and Liaison Counsel  
20 to represent the putative class. ECF No. 123.<sup>8</sup>

21 41. On August 13, 2010, New Jersey and representative plaintiffs the  
22 International Brotherhood of Electrical Workers, Local 103 (“Local 103”) and the  
23 Norfolk County Retirement System (“Norfolk County”) (collectively, “Plaintiffs”)

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24  
25 <sup>7</sup> *Meda v. STEC, Inc.*, No. SACV 10-00248 AG (ANx) (C.D. Cal. filed Mar. 2, 2010).

26 <sup>8</sup> The Court denied Ovitt and Rashtchi’s motion pursuant to 28 U.S.C. § 1292(b)  
27 for an order certifying the Court’s July 14, 2010 Order for interlocutory appeal.  
28 ECF No. 135. The Ninth Circuit subsequently denied their petition for a writ of  
mandamus vacating the Order. See ECF No. 144 (Order, *Rashtchi v. U.S. District  
Court (Selna)*, No. 10-72711 (9th Cir. filed Sept. 3, 2010)).

1 filed a Consolidated Amended Complaint for Violation of the Federal Securities  
2 Laws (the “CAC”). ECF No. 131. Plaintiffs alleged claims under Sections 10(b),  
3 20(a), and 20A of the Exchange Act, 15 U.S.C. §§ 78j(b), 78t(a), 78-t1(a), and  
4 Rule 10b-5 promulgated by the SEC under Section 10, 17 C.F.R. § 240.10b-5 (the  
5 “Exchange Act Claims”), and, as to Defendants’ misrepresentations and omissions  
6 in connection with the Offering, under Sections 11, 12(a)(2), and 15 of the  
7 Securities Act, 15 U.S.C. §§ 77k, 77l(a)(2), 77o (the “Securities Act Claims”). *Id.*  
8 ¶ 13.

9 (a) Local 103 alleged the Section 20A claim on behalf of all Class  
10 Members who purchased STEC common stock contemporaneously with sales by  
11 the Moshayedi Brothers during the Class Period. *Id.* ¶ 18.

12 (b) Norfolk County alleged the Securities Act Claims on behalf of  
13 all Class Members who acquired STEC common stock pursuant or traceable to  
14 STEC’s August 2009 secondary offering (the “Offering”). *Id.* ¶ 19. The Securities  
15 Act Claims were alleged against Defendants; Rajat Bahri, a member of STEC’s  
16 Board of Directors and Chair of its Audit Committee, *id.* ¶¶ 31-33; and the four  
17 investment banks that acted as underwriters with respect to the Offering  
18 (collectively, the “Underwriters”): J.P. Morgan Securities Inc. (“J.P. Morgan  
19 Securities”), Deutsche Bank Securities Inc. (“Deutsche Bank Securities”), Barclays  
20 Capital Inc. (“Barclays Capital”), and Oppenheimer & Co. Inc. (“Oppenheimer”).  
21 *Id.* ¶¶ 34-41.

22 42. On January 10, 2011, the Court issued a tentative Order dismissing  
23 the CAC for failure to adequately plead falsity; the parties submitted on the  
24 tentative Order. ECF No. 175.

#### 25 **4. The Second Amended Complaint**

26 43. On February 22, 2011, Plaintiffs filed a Second Consolidated  
27 Amended Complaint for Violation of the Federal Securities Laws (the “SAC”).  
28 ECF No. 178.

1           44. On June 17, 2011, the Court granted the Underwriters' motion to  
2 dismiss the Securities Act Claims. ECF No. 200. The Court found that Plaintiffs  
3 had adequately stated claims for relief under the Securities Act, but that Norfolk  
4 County lacked standing because it did not adequately allege that it had acquired  
5 STEC stock pursuant or traceable to the Offering. *Id.* at 20-21. In the same Order,  
6 the Court sustained the Exchange Act Claims against Defendants STEC, the  
7 Moshayedi Brothers, and Cook. *Id.* at 23.

8           45. On July 15, 2011, the remaining Defendants answered the SAC. ECF  
9 No. 203.

10           **C. The Operative Complaint**

11           46. The TAC was filed herewith in connection with Class  
12 Representatives' motion for preliminary approval of the proposed settlement of the  
13 Action (the "Settlement"). The purpose of this amendment was to add plaintiff Dr.  
14 Mark V. Ripperda ("Dr. Ripperda") as a proposed Class Representative. ¶ 25. Dr.  
15 Ripperda purchased STEC common stock on the Offering and held that stock until  
16 at least the first partial corrective disclosure alleged in the TAC. ECF No. 335-11  
17 (Ripperda Decl.) at Ex. 1. Therefore, he has standing to assert the alleged  
18 Securities Act Claims on behalf of similarly situated Class members.

19           **1. The Alleged Fraud**

20           47. In the TAC, Class Representatives contend that from mid-June 2009  
21 through early August 2009, Defendants knowingly made material  
22 misrepresentations and omissions, including, among others:

23           (a) that an agreement signed by STEC with its largest customer,  
24 EMC, in the middle of 2009 for a huge volume of purchases to be made in the  
25 second half of 2009 (the "EMC Agreement") was an ordinary course contract  
26 whose size was determined solely by an increase in the customer's supply  
27 requirements such that a similar volume of purchases by the same customer could  
28 be expected on a regular recurring basis;

(b) that purchases by EMC would remain “a significant percentage” of STEC’s total revenues, including in the first quarter of 2010;

(c) that, as of August 2009, STEC was expecting the volume of purchases of its ZeusIOPS by its other large customers (the “Other OEMs”) to increase during the second half of 2009;

(d) that, as part of the expected increase in purchases by the Other OEMs during the second half of 2009, STEC was expecting IBM to transition to a much larger volume of purchases during that period;

(e) that IBM was selling the ZeusIOPS as a standard feature in certain of its products;

(f) that, as of September 2009, one or more of the Other OEMs would have been willing and able to replace EMC as the purchaser under the EMC Agreement, or to purchase a similar amount of ZeusIOPS under a similar agreement;

(g) that during the 2009 second quarter, STEC’s reported revenue would grow, and then did grow, by an amount that—unknown to investors—had been artificially inflated; and

(h) that, as of August 3, 2009, no competition existed for the ZeusIOPS, or was expected to emerge during 2009 or early 2010. ¶ 9.

48. Class Representatives allege that Defendants’ misrepresentations and omissions had the effect of doubling the price of STEC’s common stock in mid-2009. ¶ 11.

49. The TAC alleges that the Moshayedi Brothers took advantage of that artificial inflation to sell more than 50% of their own stock in the Company through the Offering, for a total of \$267.8 million. ¶ 12.

## **2. The Partial Corrective Disclosures Alleged in the TAC**

50. Only a few weeks after the Offering, a series of partial corrective disclosures began to reveal the falsity of Defendants’ misstatements and omissions,

1 and, in turn, drove down the price of STEC's stock to below its pre-Class Period  
2 level. ¶ 10.

3 51. First, on September 17, 2009, a major drop in the price of STEC's  
4 common stock was allegedly caused by the revelation of the falsity of statements  
5 and omissions in the Prospectus that competition for the ZeusIOPS neither existed  
6 nor was imminent (the "September 17, 2009 Corrective Disclosure"). ¶¶ 194-97.

7 52. Then, on November 3, 2009, the price of STEC's stock dropped  
8 dramatically in the immediate wake of several revelations (collectively, the  
9 "November 3, 2009 Corrective Disclosure"):

10 (a) Manouch Moshayedi revealed, among other things, that:

11 (i) the EMC Agreement was a non-recurring "one-off type  
12 of a deal;"

13 (ii) IBM's purchases of ZeusIOPS had "dropped off  
14 significantly in the third quarter" and that Sun's purchases of ZeusIOPS were  
15 below "normal volumes;" and

16 (iii) none of the Other OEMs could have replaced EMC under  
17 terms similar to the EMC Agreement since the Other OEMs were not "selling to  
18 any degree yet" and were all "a year behind" EMC in product development, ¶ 173.

19 (b) As disclosed in STEC's 2009 third quarter earnings release,  
20 EMC might have excess inventory of ZeusIOPS at the end of 2009 that it would  
21 carry into 2010; and

22 (c) Based on STEC's fourth quarter revenue guidance, purchases of  
23 ZeusIOPS in the second half of 2009 by the Other OEMs would not even match  
24 the level of such purchases in the first half of 2009, let alone increase. ¶ 144.

25 53. Finally, on February 23, 2010, Defendant Manouch Moshayedi  
26 announced that STEC did not expect any revenue from EMC in the first half of  
27  
28



2010, and that ZeusIOPS sales to the Other OEMs would not recover in the first quarter of 2010 (the “February 23, 2010 Corrective Disclosure”). ¶¶ 156-57.<sup>9</sup> The earnings release projected a dramatic decline in STEC’s 2010 first quarter revenues, which Plaintiffs allege, disclosed the falsity of STEC’s 2009 second quarter revenues. *Id.* The day after this new information came to light, STEC’s common stock price fell significantly. ¶ 300.

### 3. The Indemnified Non-Parties

54. The SAC named the Underwriters as defendants and alleged Securities Act Claims against them. ECF No. 178 ¶¶ 36-40, 334-40, 354-66. The Court dismissed the Securities Act Claims in the SAC for lack of standing, and, for that reason, also dismissed the Underwriters as Defendants, ECF No. 200.

55. At the time of the Offering, Defendants STEC and the Moshayedi Brothers agreed to indemnify the Underwriters against any liabilities relating to the Offering that might arise under the Securities Act. *See* Prospectus at S-29. Therefore, even if Plaintiffs were able to bring Securities Act claims to trial, any damages owed by the Underwriters after such trial would be paid by STEC and the Moshayedis. Moreover, it is exceedingly rare that any liability on the part of an underwriter can increase the amount of a Securities Act plaintiff’s damages, because, under the Securities Act, an issuer, such as STEC, if found liable, is liable for the entire amount of such plaintiff’s damages—and, moreover, under the Securities Act, it is easier to prove the liability of an issuer than the liability of the issuer’s underwriter. *See* ECF No. 335 at 15. For these reasons, and because the results of discovery did not provide any reason to the contrary, the Underwriters

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<sup>9</sup> STEC also disclosed that the Moshayedi Brothers had been subpoenaed by the SEC as part of a formal investigation. ¶¶ 14, 253. The SEC is now prosecuting a civil action against Defendant Manouch Moshayedi for insider trading and some of the same misstatements and omissions alleged in this Action. *See SEC v. Moshayedi*, No. 8:12-cv-01179-JVS-MLGx (C.D. Cal. filed July 19, 2012).

1 have not been named as Defendants in the TAC, but, rather, are referred to in the  
2 TAC as “Indemnified Non-Parties.” *See* ¶¶ 37-45.

3 **4. The Competition Claim**

4 56. The CAC alleged false and misleading statements and material  
5 omissions related to the competition for ZeusIOPS. Defendants allegedly  
6 maintained that STEC had a virtual monopoly in the high-end SSD market, and  
7 that STEC’s ZeusIOPS had “no competition” (the “Competition Claim”). ECF No.  
8 131 ¶ 140. The CAC alleged losses resulting from a September 17, 2009,  
9 Corrective Disclosure that competition for the ZeusIOPS was imminent. ECF No.  
10 131-1 ¶¶ 176-79.

11 57. After the Court’s dismissal of the CAC, Plaintiffs elected not to allege  
12 the Competition Claim or losses resulting from the September 17, 2009 Corrective  
13 Disclosure, in the SAC, *see* ECF No. 178. Plaintiffs made this decision based on  
14 the Court’s reasons for dismissing the Competition Claim, and a subsequent  
15 discovery by Plaintiffs’ that cast doubt on the credibility of the September 17,  
16 2009, disclosure. *See* ECF No. 335 at 10-12, 335-7, and 335-8.

17 58. Despite not having realleged the Competition Claim in the SAC,  
18 Plaintiffs vigorously investigated this claim during discovery, because, among  
19 other reasons, (1) certain facts relevant to the Competition Claim also are relevant  
20 to the EMC Agreement claim, *see* ECF No. 335-1 ¶ 11; (2) if the claim were  
21 supported by evidence obtained during discovery, Plaintiffs could seek leave to re-  
22 allege the Competition Claim prior to any motions for summary judgment or an  
23 appeal, and (3) even if a claim is not strong enough to prevail at trial, it may have  
24 settlement value.

25 59. Based on Plaintiffs’ conclusion that the Competition Claim is worth  
26 something for purposes of settlement, the TAC reinstates the Competition Claim,  
27 alleges relevant misstatements and omissions in the Prospectus, and alleges losses  
28 resulting from several partial disclosures relating to competition for ZeusIOPS,



1 which were included among the corrective disclosures that comprise the September  
2 17, 2009 Corrective Disclosure, the November 3, 2009 Corrective Disclosure, and  
3 the February 23, 2010 Corrective Disclosure. ¶¶ 70-72, 187-223, 275-78, 298-99,  
4 314-26, 366-71.

5 **5. Other Amendments**

6 60. The TAC includes additional allegations that Defendants made false  
7 and misleading statements regarding:

8 (a) the quality of STEC's products, ¶¶ 203, 385-86; and  
9 (b) Defendants' belief that purchases by EMC would remain "a  
10 significant percentage" of STEC's total revenue, including into the first quarter of  
11 2010. ¶¶ 76, 280, 301-04, 364-65.

12 61. The TAC includes additional allegations indicative of Defendant  
13 Manouch Moshayedi's scienter:

14 (a) that STEC was informed by EMC that EMC's demand for  
15 ZeusIOPS for the third quarter of 2009 was substantially less than half of what  
16 EMC had agreed to purchase for the second half of 2009;

17 (b) that STEC made a secret side deal with EMC, pursuant to  
18 which EMC agreed to increase its 2009 third quarter purchases to an amount that  
19 exceeded its needs for the third quarter of 2009, and that was greater than the  
20 amount that it had told STEC it would purchase, in exchange for an additional  
21 discount from STEC on EMC's purchases in the fourth quarter of 2009; and

22 (c) that on August 3, 2009, STEC issued its third quarter revenue  
23 guidance without disclosing the side deal, thereby concealing the fact that EMC's  
24 actual third quarter demand had fallen short of the average quarterly demand  
25 implied by the volume of the EMC Agreement. ¶ 99.

26 62. The TAC also includes allegations relating to the timeliness of the  
27 Securities Act Claims. ¶¶ 411-27.

1 **V. DISCOVERY TAKEN IN THE ACTION**

2 **A. Written Discovery**

3 **1. Lead Plaintiff's Requests for Production**  
4 **of Documents by Defendants**

5 63. On October 13, 2011, Lead Plaintiff served its First Request for  
6 Production of Documents on each of Defendants STEC, Manouch Moshayedi,  
7 Mark Moshayedi and Raymond Cook ("First Requests"). Among other things, this  
8 document request asked for documents that Defendants produced to, or received  
9 from, the SEC. In response, Defendants produced nearly 1.6 million pages of  
10 documents on November 7, 2011 and served their Objections and Responses on  
11 November 17, 2011. In response to this same request, Defendants made twelve  
12 additional productions containing a total of more than 75 thousand pages, starting  
13 on November 18, 2011, and finishing on June 6, 2012.

14 64. On October 20, 2011, Lead Plaintiff served its Second Request for  
15 Production of Documents on Defendant STEC ("Second Request"). STEC served  
16 its Objections and Responses on November 28, 2011. STEC initially produced  
17 about 540 pages of documents in response to Lead Plaintiff's Second Request on  
18 December 19, 2011. The parties then met and conferred regarding STEC's  
19 responses to Lead Plaintiff's Second Request. On January 20, 2012, Lead Plaintiff  
20 filed a Joint Stipulation Of Discovery Dispute In Connection With Lead Plaintiff's  
21 Motion To Compel Production Of Documents. On February 10, 2012, Magistrate  
22 Judge Goldman held a hearing on Lead Plaintiff's motion to compel, and issued an  
23 Order stating that "during the course of the hearing, the parties reached an  
24 agreement resolving the motion," such that "[STEC] shall produce the categories  
25 of documents agreed upon at the hearing as soon as practicable, but commencing  
26 no later than March 2, 2012, with a completion date of March 9, 2012." In  
27 response to Judge Goldman's Order, Defendants made six productions of over  
28

1 61,000 pages on the following dates: January 31, 2012; February 28, 2012; March  
2 1, 2012; March 9, 2012; March 31, 2012; and April 5, 2012.

3 65. On February 24, 2012, Lead Plaintiff served its Third Request for  
4 Production of Documents on the Defendants (“Third Request”). Defendants  
5 served their Objections and Responses on March 29, 2012. In response to Lead  
6 Plaintiff’s Third Request, Defendants produced about 1,000 pages of documents on  
7 March 31, 2012.

8 **2. Defendants’ Requests for Production of Documents**

9 66. On November 9, 2011, Defendants served their First Set of Requests  
10 for Production of Documents on Lead Plaintiff. In response, Lead Plaintiff  
11 produced over 88,000 pages of documents on December 9, 2011.

12 67. On November 25, 2011, Defendants served their Second Set of  
13 Requests for Production of Documents on Lead Plaintiff, which were directed to  
14 the native format regression models and related documents of Lead Plaintiff’s  
15 damages expert, Dr. John Finnerty. Lead Plaintiff served its Objections and  
16 Responses on December 30, 2011. After several meet and confers, Lead Plaintiff  
17 agreed to produce certain information underlying Dr. Finnerty’s report that did not  
18 disclose Dr. Finnerty’s proprietary information.

19 68. On February 27, 2012, Defendants served their Third Set of Requests  
20 for Production of Documents on Lead Plaintiff. Lead Plaintiff served its  
21 Objections and Responses on April 2, 2012, but did not produce any documents in  
22 response to this request at that time on the ground that they relate to Defendants’  
23 interrogatories (as discussed below) and class damages. On April 11, 2012,  
24 Defendants sent Lead Plaintiff a meet and confer letter regarding the Third Set of  
25 Requests for Production of Documents; the parties met and conferred and agreed to  
26 further meet and confer after the status conference on May 15, 2012. Following  
27 that status conference, as more fully set forth below, the Parties entered into an  
28

agreement regarding the deadline for answering the contention interrogatories and producing the relevant documents.

**3. Document Productions Subpoenaed from Non-Parties by Lead Plaintiff**

69. Lead Plaintiff subpoenaed documents from twenty-six non-parties to this action, including STEC's six largest OEM customers plus Smart Modular Technologies, Inc., who was a purchasing intermediary for two of the OEMs; the four Underwriters for the Offering; ten securities analysts not working for any of the Underwriters; STEC's outside counsel at the time of the Offering, Reed Smith LLP; STEC's outside auditor, Pricewaterhouse Coopers LLP; the Moshayedi Defendants' retired brother, Mike Moshayedi; EMC's consultant, McKinsey & Co.; and West Virginia Laborers' Pension Trust Fund. Together, these non-parties produced over one million pages of responsive documents, not including the Native files. The dates of the subpoenas and productions, and the number of pages or files in native format included in each production are set forth in the table, *infra*.

Non-Party	Date Served	Beginning and Ending Dates of Productions Received by Class Counsel	Number of Pages or Natives Produced
EMC Corporation	10/21/2011	12/5/2011 1/26/2012	5,197
Sun Microsystems International, Inc.	10/21/2011	2/3/2012	180
International Business Machines Corporation	10/21/2011	12/29/2011	1,098
Hitachi Data Systems Corporation	10/20/2011	10/27/2011	31 Native files
Hewlett-Packard Company	10/21/2011	1/5/2012	11,513
Cisco Systems, Inc.	10/21/2011	11/11/11 11/14/11	913
Barclays Capital Inc.	11/9/2011	12/2/2011 4/12/2012	2,247
Barclays Capital Inc.	2/27/2012	see above	see above
Deutsche Bank Securities Inc.	11/9/2011	12/2/2011 2/22/2012	337,118
Deutsche Bank Securities Inc.	2/27/2012	3/28/2012 5/31/2012	393,982
J.P. Morgan Securities Inc.	11/9/2011	2/14/2012 4/19/2012	274,123

<b>Non-Party</b>	<b>Date Served</b>	<b>Beginning and Ending Dates of Productions Received by Class Counsel</b>	<b>Number of Pages or Natives Produced</b>
J.P. Morgan Securities Inc.	2/27/2012	see above	see above
Oppenheimer & Co., Inc.	11/9/2011	12/5/2011 4/12/2012	61,629
Oppenheimer & Co., Inc.	2/27/2012	see above	see above
Masoud Mike Moshayedi	11/25/2011	1/30/2012 2/23/2012	6,459
Smart Modular Technologies, Inc.	11/15/2011	2/9/2012 2/16/2012	55,742
West Virginia Laborers' Pension Trust Fund	1/26/2012	refused to produce	0
McKinsey & Co.	1/24/2012	3/13/2012	49
PricewaterhouseCoopers LLP	1/24/2012	2/27/2012 2/28/2012	408
Reed Smith LLP	1/24/2012	4/10/2012	2,164
B. Riley & Company	1/24/2012	2/7/2012	263 Native files
CapStone Investments	1/24/2012	2/15/2012	4,255
Needham & Company	1/24/2012	2/16/2012	14 Native files
Noble Financial Group	1/24/2012	2/10/2012	23 Native files
Pacific Crest Securities	1/24/2012	2/13/2012	42 Native files
Stifel Nicolaus	1/24/2012	2/13/2012	58 Native files
ThinkEquity LLC	1/24/2012	2/13/2012	4148 Native files
Thomas Weisel Partners	1/24/2012		0
Thrivent Asset Management	1/24/2012	2/13/2012	13 Native files
Wedbush Securities, Inc.	1/24/2012	2/14/2012	13 Native files
		<b>TOTAL PAGES</b>	<b>1,157,077</b>
		<b>TOTAL NATIVE FILES</b>	<b>4,605</b>

#### **4. Defendants' Contention Interrogatories**

70. Defendant STEC served its First Set of Interrogatories to Lead Plaintiff on January 24, 2012. During a status conference before Judge Goldman

1 held on February 10, 2012, Lead Plaintiff requested that the responses to these  
2 interrogatories be deferred. Based on matters discussed during the February 10,  
3 2012 hearing and Judge Goldman's comments, Lead Plaintiff believed that its  
4 responses to the Interrogatories were not due on February 24, 2012, that the  
5 Interrogatories would be lodged with Judge Goldman and that the Court would set  
6 a deadline for responses.

7 71. In a meet and confer on February 24, 2012, and in a subsequent email  
8 dated February 28, 2012, Defendants stated their position that responses to certain  
9 of the requests by STEC were due on March 2, 2012 and that Lead Plaintiff's  
10 failure to respond at all to those interrogatories would result in waiver of Lead  
11 Plaintiff's objections. In addition, on February 27, 2012, Defendant Manouch  
12 Moshayedi served his First Set of Interrogatories to Lead Plaintiff.

13 72. During a hearing on February 27, 2012, Judge Selna, *inter alia*, stayed  
14 all dates in the action except for fact depositions and scheduled a status conference  
15 for May 8, 2012.

16 73. On March 20, 2012, Lead Plaintiff filed a letter motion regarding the  
17 Interrogatories issue with Judge Goldman. On March 23, 2012 and April 11, 2012,  
18 Defendants filed letters in opposition.

19 74. On April 2, 2012, Lead Plaintiff served Objections and Responses to  
20 Manouch Moshayedi's First Set of Interrogatories. Lead Plaintiff objected to  
21 specific interrogatories on, among other grounds, the fact that these were  
22 "contention interrogatories" and, thus, served prematurely, given that fact  
23 discovery had not been concluded.

24 75. On April 11, 2012, Defendants sent Lead Plaintiff a meet and confer  
25 letter regarding Manouch Moshayedi's First Set of Interrogatories; the parties met  
26 and conferred and agreed to further meet and confer after the status conference  
27 with Judge Selna, which had been rescheduled for May 15, 2012. ECF No. 298.  
28

1           76. On June 1, 2012, prior to Judge Goldman having made any ruling on  
2 this Interrogatories issue, the Parties reached an agreement that, with certain  
3 limited specific exceptions, the deadline for Lead Plaintiff to serve its Answers  
4 And Objections to Defendant STEC's Interrogatories, and its Supplemental  
5 Answers And Objections to Defendant Manouch Moshayedi's Interrogatories  
6 (together, the "Interrogatory Responses") would be June 25, 2012. The  
7 interrogatories not included in this deadline were scheduled to be answered after  
8 the close of expert discovery.

9           77. STEC's Interrogatories contained 25 individual interrogatories, and  
10 Manouch Moshayedi's Interrogatories contained 22 individual interrogatories,  
11 making for a total of 47 individual interrogatories served by the two Defendants  
12 together. On June 25, 2012, consistent with the prior agreement of the Parties,  
13 Lead Plaintiff served Answers and Objections to STEC's Interrogatories, and  
14 Supplemental Answers and Objections to Manouch Moshayedi's Interrogatories,  
15 including responses to all but six of the 47 individual interrogatories served by the  
16 two Defendants together.

17           78. On July 17, 2012, Lead Plaintiff served its Answers and Objections or  
18 Supplemental Answers and Objections to the remaining six interrogatories.

19           79. Defendants' Interrogatories asked Lead Plaintiff to, among other  
20 things, list each statement made by any Defendant that Lead Plaintiff contended  
21 was false when made, "all facts supporting your contention that the statement was  
22 false . . . when made," each material fact that Lead Plaintiff contended was  
23 concealed by each alleged false statement, all facts supporting any contention that  
24 when any of the allegedly false statements was made any Defendant knew or was  
25 reckless in not knowing that the statement was false, whether by any of several  
26 specific dates any Defendant was aware of the facts allegedly concealed by any of  
27 the allegedly false statements, all evidence demonstrating that each such fact was  
28 known by any Defendant by each such specific date, all facts supporting any



1 contention that by certain specific dates any Defendant knew for certain specific  
2 reasons that certain allegedly false statement were false, when and how the market  
3 learned that each allegedly false statement was false, and when and how each fact  
4 concealed by each false statement was made known to the market.

5 80. Defendants' Interrogatories asked questions specifically about Lead  
6 Plaintiff's contentions regarding, among other subjects, the EMC Agreement,  
7 Defendants' creation of unearned revenues, Defendants' channel stuffing,  
8 Defendants' manipulation of deliveries to OEMs other than EMC, the market's  
9 expectation regarding sales of ZeusIOPS to OEMs other than EMC, the causation  
10 of Class Members' damages and the identity of confidential witnesses referenced  
11 in the SAC.

12 81. Lead Plaintiff's Interrogatory Responses fill approximately two  
13 hundred and fourteen (214) pages of text. The portion that was served on June 25,  
14 2012, fills approximately one hundred ninety (190) pages of text.

15 **5. Lead Plaintiff's Proposed Stipulation to Certain Facts**

16 82. On March 29, 2012, based on documents produced by Defendants,  
17 Lead Plaintiff proposed that the parties stipulate to certain facts for the purpose of  
18 this litigation, and emailed Defendants a proposed stipulation, along with a list of  
19 documents produced by Defendants that Lead Plaintiff believed supported the  
20 proposed stipulation. The purpose of the proposed stipulation was to establish  
21 certain details regarding each of the orders received by STEC from its leading  
22 customer, EMC, during the first half of 2009, the dates on which those orders were  
23 shipped, and the price EMC was charged for each shipment. Lead Plaintiff  
24 believed this information was relevant to, among other things, Defendants' scienter  
25 for their allegedly false statements and material omissions regarding the EMC  
26 Agreement. Lead Plaintiff explained to Defendants that, if Defendants were not  
27 willing to execute the stipulation, Defendants would request permission from the  
28



1 Court to take a Rule 30(b)(6) deposition of STEC regarding the issues that Lead  
2 Plaintiff hoped to resolved by the proposed stipulation.

3 83. Defendants responded by email that, in principle, they were agreeable  
4 to executing such a stipulation, but that Defendants were not convinced that the  
5 proposed stipulation was adequately comprehensive or accurate, and that  
6 Defendants needed time to develop their own view of the facts. Subsequently, on  
7 March 30, 2012, during a meet and confer telephone call, Defendants stated that  
8 they would draft their own alternative proposed stipulation, but that they would not  
9 agree to a Rule 30(b)(6) deposition.

10 84. On April 2, 2012, Lead Plaintiff notified Magistrate Goldman that, if  
11 Defendants did not produce an alternative proposed stipulation satisfactory to Lead  
12 Plaintiff, Lead Plaintiff would request an order permitting Lead Plaintiff to take a  
13 Rule 30(b)(6) deposition of STEC regarding the facts and documents related to  
14 Lead Plaintiff's proposed stipulation.

15 85. Thereafter, the Parties entered into a negotiation of a stipulation  
16 regarding the orders received by STEC from, and shipments made by STEC to,  
17 EMC, during the relevant period. STEC produced multiple successive iterations of  
18 a stipulation and accompanying exhibits, and Lead Plaintiff requested  
19 modifications and additions to each such iteration, until, on August 16, 2012,  
20 STEC sent Lead Plaintiff an email noting the Parties' agreement that further  
21 negotiation of the stipulation was "on hold while settlement discussions continue."

22 **B. Depositions of Fact Witnesses**

23 **1. Depositions Taken by Lead Plaintiff**

24 86. Lead Plaintiff deposed the following twenty-five individuals:

- 25 • Roberto Basilio, analyst at Hitachi Data Systems Corporation, on  
26 February 29, 2012 in San Francisco, California;
- 27 • Gary Hsueh, former analyst at Oppenheimer & Co., Inc., on March 1,  
28 2012 in San Jose, California;

- 1 • Kevin Vassily, analyst at Pacific Crest Securities, on March 2, 2012 in  
2 Portland, Oregon;
- 3 • Michael Desens, at International Business Machines Corporation, on  
4 March 6, 2012 in Poughkeepsie, New York;
- 5 • William J. Fahey, III, STEC Director of Sales, on March 6, 2012 in  
6 Costa Mesa, California;
- 7 • Timothy Smith, Senior Director, Disk Drive Global Supply Chain  
8 Management at EMC Corporation, on March 8, 2012 in Boston,  
9 Massachusetts;
- 10 • Anthony Anvari, STEC Vice President of Sales, on March 13, 2012 in  
11 Costa Mesa, California;
- 12 • Aaron C. Rakers, analyst at Stifel Nicolaus, on March 13, 2012 in St.  
13 Louis, Missouri;
- 14 • Anthony Anvari, STEC Vice President of Sales, on March 13, 2012 in  
15 Costa Mesa, California;
- 16 • Vijay R. Rakesh, analyst at ThinkEquity LLC, on March 14, 2012 in  
17 Chicago, Illinois;
- 18 • Cindy Reese, Senior Vice President of Worldwide Operations at  
19 Oracle, on March 15, 2012 in Menlo Park, California;
- 20 • Mitch Gellman, STEC Vice President of Investor Relations, on March  
21 19, 2012 in Costa Mesa, California;
- 22 • Michael Roy Crawford, analyst at B. Riley & Company, on March 21,  
23 2012 in Los Angeles, California;
- 24 • Tommy Vogtman, STEC Director of Program Management, Japan  
25 Sales on March 21, 2012 in Costa Mesa, California;
- 26 • Betsy Van Hees, analyst at Wedbush Securities, Inc., on March 22,  
27 2012 in Palo Alto, California;
- 28

- Jeffrey Schreiner, analyst at CapStone Investments, on March 23, 2012 in Palo Alto, California;
- Michael Higa, STEC Senior Vice President of Finance, on March 23, 2012 in Costa Mesa, California;
- Christopher J. Casella, Senior Manager, Global Supply Chain Management at EMC Corporation, on March 26, 2012 in Boston, Massachusetts;
- Mark Pridgen, Strategic Procurement Manager at Hewlett-Packard Company, on March 29, 2012 in Boise, Idaho;
- Mark Moshayedi, STEC President/COO, on March 28, 2012 in Costa Mesa, California;
- Raymond Cook, STEC CFO, on March 30, 2012 in Costa Mesa, California;
- Sherri Scribner, analyst at Deutsche Bank, on April 2, 2012 in New York, New York;
- Manouch Moshayedi, STEC CEO, on April 4-5, 2012 in Costa Mesa, California;
- David Mittelman, partner at Reed Smith LLP, on April 24, 2012 in San Francisco, California;
- Lorenzo Salhi, former STEC Vice President of Sales, on April 30, 2012 in Palo Alto, California; and
- Trevor Schick, Vice President of Global Supply Chain Management and Chief Procurement Officer at EMC Corporation, on May 4, 2012 in Chicago, Illinois.

## **2. Depositions Taken by Defendants**

87. Defendants deposed the following five individuals:

- Timothy Walsh, the Director of the Division of Investment, on December 21, 2011 in Newark, New Jersey;

- 1 • Vincent Benedetti, an Investment Analyst at the Division of
- 2 Investment, on December 21, 2011 in Newark, New Jersey;
- 3 • Michael Donovan, the Chief Financial Officer of Representative
- 4 Plaintiff the International Brotherhood of Electrical Workers, Local
- 5 103, on January 6, 2012 in Boston, Massachusetts;
- 6 • Leighton Christopher Wood, Jr., confidential witness (“CW”) 2 in the
- 7 Lead Plaintiff’s Second Consolidated Amended Complaint for
- 8 Violation of the Federal Securities Laws (“SAC”), on March 20, 2012
- 9 in Menlo Park, California; and
- 10 • Gloria Alvarado, CW 3 in the SAC, on March 25, 2012 in Costa
- 11 Mesa, California.

12 Defendants also subpoenaed Chris Pages, CW 4 in the SAC, for a deposition  
13 scheduled to be held on March 15, 2012 in Menlo Park, California, but Mr. Pages  
14 failed to appear.

15 **C. Discovery Disputes**

16 **1. Defendants’ Effort to Obstruct Plaintiffs’**  
17 **Discovery from Non-Parties**

18 88. On October 20 and 21, Plaintiffs served document subpoenas on each  
19 of STEC’s six large OEM customers, EMC, Sun, IBM, Hitachi, HP and Cisco.

20 89. By letter, dated October 28, 2011, Defendants informed Plaintiffs that  
21 Defendants would seek a protective order limiting production in response to the  
22 subpoenas served by Plaintiffs on these OEMs, unless Plaintiffs were to  
23 “immediately withdraw” the subpoenas.

24 90. By letter, dated November 9, 2011, Plaintiffs informed Defendants  
25 that, without waiving their rights at a later date to demand responses to these  
26 subpoenas as originally served, or to any other subpoenas served by Plaintiffs on  
27 these OEMs, Plaintiffs would narrow their requests in certain specific ways, in  
28 return for Defendants withdrawing their objections.

1           91. Apparently informed by Defendants about the existence and content  
2 of Defendants' letter to Plaintiffs, certain of the OEMs then refused to make any  
3 production until Defendants' objection was resolved and/or until a stipulated  
4 protective order governing confidential information was entered in the case.

5           92. Defendants never responded to Plaintiffs' letter, dated November 9,  
6 2011, or made any motion for a protective order regarding these subpoenas.

7           93. With each OEM, Plaintiffs eventually were able to negotiate modified  
8 document requests acceptable to both the OEM and to Plaintiffs.

9           94. On December 9, 2011, a stipulated protective order was filed by the  
10 Parties.

11           95. On December 12, 2012, the Court "so ordered" the Parties' stipulated  
12 protective order.

13           96. The OEMs' document productions commenced and finished on the  
14 dates set forth in the table in paragraph 69, *supra*.

15                   **2. Lead Plaintiff's Effort to Obtain An Expedited**  
16                   **Procedure for Resolving Discovery Disputes**

17           97. During a meet and confer process held in November and December  
18 2011, Lead Plaintiff proposed to Defendants that the parties jointly seek the  
19 appointment of a special master who could expedite discovery dispute procedures.  
20 ECF No. 236 at 4. Specifically, Lead Plaintiff proposed the appointment of former  
21 Orange County Superior Court judge, the Honorable James L. Smith, as Special  
22 Master. *Id.* However, Defendants rejected Judge Smith and declined to suggest  
23 any additional candidates. *Id.*

24           98. In a joint status report filed with the Court on January 20, 2012, Lead  
25 Plaintiff informed the Court that it intended to file a motion, pursuant to Fed. R.  
26 Civ. P. 53, for the appointment of a special master to oversee discovery issues. *Id.*  
27 Lead Plaintiff argued that, "given the discovery deadlines, the progress of the case  
28 will be thwarted should the parties be required to resolve discovery disputes

1 pursuant to Local Rule 37.1, which may require up to 38 days to present each  
2 discovery dispute to the Court.” *Id.* Lead Plaintiff noted that, at the time, April 10,  
3 2012 was the deadline for nonexpert discovery and April 24, 2012 was the  
4 deadline for expert discovery; accordingly, discovery disputes needed to be  
5 resolved on an expedited basis so as not to jeopardize those deadlines and the trial  
6 date, which was then set for July 24, 2012. *Id.* at 4-5. As evidence of the potential  
7 for delay, Lead Plaintiff cited four specific discovery disputes, including disputes  
8 relating to the document requests that Lead Plaintiff had served on STEC and third  
9 parties, as well as a dispute concerning the number of deposition to be taken in the  
10 Action. *Id.* at 5-6.

11 99. Defendants responded that the appointment of a special master was  
12 inappropriate and unnecessary because there were no “exceptional circumstances  
13 to justify the appointment of a special master.” *Id.* at 7.

14 100. At a status conference on January 23, 2012, the Court stated that,  
15 because a contested motion for the appointment of a special master would take too  
16 long to resolve, the Court had consulted with Magistrate Judge Goldman, who had  
17 assured the Court that he was “prepared to give this case the hands-on attention  
18 that you believe it needs not only in the form of ruling on discovery motions, but  
19 also visiting with the parties informally to get to the bottom of the problems to  
20 make sure that this case moves along the way it should.” Transcript of  
21 Proceedings on January 23, 2012, at 8. The Court further stated, “I think you have  
22 a good point that the 38-day cycle spelled out under the local rules is unduly  
23 cumbersome given the trial date in this case. I am prepared right now to order  
24 shortening of times with respect to those interim dates.” *Id.* The Court therefore  
25 reduced the ten-day notice requirement for the Local Rule 37.1 “meet and confer”  
26 to five days and shortened other time periods under the Rule nearly in half. *Id.*  
27 The Court also stated that it would suggest to Magistrate Judge Goldman that he  
28

1 meet with the parties in order to have a “global discussion of where the problems  
2 are and how they are going to get addressed.” *Id.* at 9.

3 101. After the status conference, the Court issued an order memorializing  
4 its order with respect to the time periods under Local Rule 37.1 and further stating  
5 that “The Magistrate Judge may make such other adjustments to the Local Rule for  
6 resolving discovery disputes as he finds warranted.” ECF No. 246.

7 102. At a hearing before Magistrate Judge Goldman on February 10, 2012,  
8 Lead Plaintiff requested that the parties adopt an even more expedited protocol  
9 under which the parties could raise discovery dispute via letter briefs. Transcript  
10 of Proceedings on February 10, 2012, at 5-12. In response, Magistrate Judge  
11 Goldman issued an order further expediting the discovery dispute procedure “[i]n  
12 light of the impending discovery cutoff date, and the amount of discovery yet to be  
13 completed.” ECF No. 255. That order adopted Lead Plaintiff’s proposal,  
14 providing for a procedure under which the parties would submit letter briefs in  
15 advance of an expedited telephonic hearing on any discovery disputes. *Id.*

16 **3. Motion Practice Against Non-Parties**

17 **(i) EMC**

18 103. On October 21, 2011, Plaintiffs served EMC Corporation, STEC’s  
19 largest customer during the proposed Class Period, with a subpoena issued out of  
20 the District of Massachusetts, which sought “all documents received by EMC from  
21 the SEC in connection with any SEC investigation relating to STEC.” That request  
22 was specifically directed towards the production of the deposition transcripts of  
23 two EMC employees, Timothy Smith and Trevor Schick, whose depositions were  
24 taken as part of an ongoing SEC investigation into securities violations of STEC.  
25 EMC refused and, on January 20, 2012, Lead Plaintiff and its local counsel,  
26 Berman DeValerio, filed a Motion to Compel Production of the subpoenaed SEC  
27 transcripts. *In re STEC, Inc. Securities Litigation*, Misc. No. 12-mc-91018-RGS  
28 (D. Mass.) (Stearns, J.)



1           104. After briefing, on February 16, 2012, the Court granted EMC's Cross-  
2 Motion to Quash, holding in a one sentence decision that, "Plaintiffs have not  
3 shown that the information, whether privileged or not, cannot be obtained from  
4 other sources, including depositions taken by plaintiffs themselves." Lead Plaintiff  
5 thereafter deposed Mr. Smith who was directed by counsel not to answer questions  
6 concerning his SEC testimony.

7           105. Accordingly, on March 30, 2012, Lead Plaintiff filed a motion for  
8 reconsideration before Judge Stearns on the grounds that EMC's counsel instructed  
9 Mr. Smith not to answer questions related to their SEC testimony. After briefing  
10 by Lead Plaintiff and EMC, the Court entered an electronic order on May 29, 2012  
11 denying the motion for reconsideration, holding that "Plaintiffs still have not  
12 shown that they cannot find what they wish to know (about the testimony  
13 contained in the SEC transcript) from another source other than EMC."

14           106. On June 28, 2012, Lead Plaintiff filed a Notice of Appeal from Judge  
15 Stearn's decision with the United States Court of Appeals for the First Department.  
16 Lead Plaintiff subsequently voluntarily dismissed the appeal following the  
17 execution of the Stipulation of Settlement.

18                           (ii) **The Underwriters**

19           107. On February 27, 2012, Co-Lead Counsel issued document subpoenas  
20 to each of the four Underwriters to obtain the names and addresses of all persons or  
21 entities who purchased on the Offering.

22           108. During the week of March 19, 2012, the Underwriters produced on  
23 the names of the purchasers. Since many of the purchasers were individuals, and  
24 not institutional investors, Co-Lead Counsel sought production of the mailing  
25 addresses for the purchasers.

26           109. Counsel for the Underwriters initially refused to produce contact  
27 information for the purchasers. Therefore, Co-Lead Counsel filed a letter motion  
28 with Magistrate Judge Goldman on March 28, 2012. While that letter motion was

1 pending, the Underwriters consented to produce the contact information for the  
2 purchasers.

3 110. In mid-April 2012, the Underwriters produced the relevant contact  
4 information.

5 **4. Lead Plaintiff's Motion to Compel**  
6 **Production of Documents by Defendants**

7 111. On October 20, 2011, Lead Plaintiff served its Second Request for  
8 Production of Documents on STEC. Three months later, on January 20, 2012,  
9 having failed to obtain satisfactory productions in response to a number of the  
10 individual requests in the Second Request, and, despite Lead Plaintiff having  
11 offered to narrow the requests, having failed to obtain any agreement from  
12 Defendants that satisfactory productions in response to these narrowed requests  
13 would be made, Lead Plaintiff filed a motion to compel production of documents  
14 by STEC. *See* ECF Nos. 237 & 237-1.

15 112. The requests at issue regarded documents relating to communications  
16 regarding ZeusIOPS with certain of STEC's OEM customers, documents sent to or  
17 received from certain of STEC's OEM customers during the 2009 second or third  
18 quarter, documents relating to any sale of any product or service by STEC during  
19 STEC's 2009 second quarter, documents relating to any shipment delivered by  
20 STEC to any customer during STEC's 2009 second quarter, documents relating to  
21 revenue reported by STEC for its 2009 second quarter, documents relating to  
22 revenue reported by STEC for its 2009 third quarter, documents relating to STEC's  
23 cost of revenues during the 2009 third and fourth quarters, documents relating to  
24 any discount given to any STEC customer in return for such customer advancing  
25 into the 2009 second quarter purchases that such customer had planned to make in  
26 a later quarter, documents relating to any request that a STEC customer make a  
27 purchase in the 2009 second quarter that such customer had planned to make, or,  
28 otherwise would have made, in a later quarter, and documents created, modified, or

1 used during the second or third quarters of 2009, relating to any communication  
2 between STEC Vice President of Sales, Lorenzo Salhi, and HP or Cisco, *See id.*

3 113. On February 10, 2012, after a hearing on the motion by Magistrate  
4 Judge Marc L. Goldman, during which Magistrate Goldman stated in general terms  
5 how he believed the motion should be resolved, it was resolved by an agreement of  
6 the parties that, for the most part, required STEC to produce documents in response  
7 to the specific requests at issue, as previously narrowed by Lead Plaintiff. *See*  
8 ECF No. 255.

9 **D. Expert Discovery**

10 **1. Class Certification**

11 114. As discussed in greater detail, in Part VI, *infra*, on November 21,  
12 2011, Lead Plaintiff filed the Declaration of John D. Finnerty, Ph.D. in Support of  
13 Lead Plaintiff's Motion for Class Certification, and, on December 21, 2011, Dr.  
14 Finnerty was deposed by defense counsel on class related issues.

15 **2. Merits**

16 115. Following the close of fact discovery, the Court entered an Order on  
17 June 11, 2012 (ECF No. 310) that set forth the following deadlines governing  
18 expert discovery:

- 19 (a) initial disclosure of expert witnesses on or before July 10, 2012;  
20 (b) rebuttal disclosure of expert witnesses on or before July 24,  
21 2012; and  
22 (c) expert discovery cut-off date of August 3, 2012.

23 **(i) Plaintiffs' Initial Expert Reports**

24 116. Pursuant to this Order, Plaintiffs designated the following four experts  
25 and served their respective reports on July 10, 2012:

- 26 (a) John D. Finnerty, Ph.D.  
27 Finnerty Economics Consulting  
28 (b) Alan D. Jagolinzer, Ph.D.

University of Colorado at Boulder

(c) Richard Willis, Ph.D.

Vanderbilt University

(d) Steven L. Henning, Ph.D.

Marks Paneth & Shron

Each expert is more fully discussed below.

117. Dr. Finnerty was retained by Co-Lead Counsel in the Spring of 2012 to:

(a) opine on the materiality of Defendants' alleged misrepresentations and omissions;

(b) opine on whether and to what degree investor losses were proximately caused by Defendants' alleged violations of the federal securities laws; and

(c) quantify the damages suffered by Class members on a per share basis under Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated hereunder.

118. Dr. Finnerty prepared a 39 page report, along with 10 exhibits totaling another 17 pages of supporting graphs, that was served on Defendants on July 10, 2012. Dr. Finnerty (1) opined that declines in the price of STEC common stock on November 4, 2009 and February 24, 2010 were attributable to and substantially caused by identifiable news events relating to the disclosure of the alleged fraud; and (2) calculated the damages per share suffered by purchasers of STEC common stock as a result of the alleged fraud.

119. Co-Lead Counsel retained Dr. Jagolinzer to:

(a) provide an expert opinion regarding the trading proceeds that Manouch and Mark Moshayedi would have received had their shares been sold within the Rule 10b5-1 plans that were adopted by STEC on May 29, 2009 and to determine whether those proceeds would have been greater or smaller

1 than the proceeds that they received from the shares they sold in the secondary  
2 offering on August 11, 2009; and

3 (b) provide an expert opinion regarding the testimony of Manouch  
4 and Mark Moshayedi that their Rule 10b5-1 Plans would have started executing  
5 and every day they would have sold hundreds of thousands of shares “with zero  
6 visibility for the investors when this is going to end” (Mark Moshayedi deposition  
7 transcript, March 28, 2012, p. 95) and that “[i]t is not customary” for making the  
8 terms of 10b5-1 plans available to the public (*Id.* at 96) and that “5 million shares  
9 were going to go into the market and all be dumped at the same time with no  
10 explanation to any investors of why this is happening.” (Manouch Moshayedi  
11 deposition transcript, April 5, 2012, pp. 413-414).

12 120. Dr. Jagolinzer prepared a 23 page report, along with several  
13 appendices of charts that totaled another 36 pages, that was served on Defendants  
14 on July 10, 2012.

15 121. Dr. Willis was retained by Co-Lead Counsel to opine on the role of  
16 financial analysts, who gather and analyze financial information about the  
17 companies they cover in order to build financial “models” used to predict the  
18 future performance of those companies. Dr. Willis is a CPA and the Ann Marie  
19 and Thomas B. Walker, Jr. Associate Professor of Accounting at the Owen  
20 Graduate School of Management at Vanderbilt University

21 122. In his 65 page report, including exhibits, Dr. Willis opined that  
22 analysts significantly increased their fiscal year 2010 revenue estimates, earnings  
23 per share (“EPS”) forecasts and price targets for STEC stock following  
24 Defendants’ announcements in July and August 2009 concerning the EMC  
25 Agreement.

26 123. Dr. Willis also opined that analysts decreased their fiscal year 2010  
27 revenue estimate, EPS forecasts and price targets for STEC stock following the  
28

1 November 3, 2009 Corrective Disclosure and again following the February 23,  
2 2010 Corrective Disclosure.

3 124. Dr. Henning was retained by Co-Lead Counsel to opine on the  
4 disclosures required by relevant SEC regulations concerning the EMC Agreement  
5 and the materiality of STEC's omission to disclose that \$12 million of its third  
6 quarter revenue guidance resulted from its promise to give EMC a benefit in the  
7 2009 fourth quarter in return for EMC's promise to increase its purchases of  
8 ZeusIOPS during the 2009 third quarter. Dr. Henning is a CPA and a Partner at  
9 Marks Paneth & Shron, LLP. He is a former Academic Fellow at the SEC's Office  
10 of the Chief Accountant.

11 125. In his 18 page report, excluding exhibits, Dr. Henning opined that  
12 STEC was required to file the \$120 million agreement with the SEC on or before  
13 August 3, 2009, for each of two independent reasons, namely, (a) because the  
14 agreement was not entered into in the ordinary course, and (b) because it was an  
15 agreement on which STEC was substantially dependent.

16 126. Dr. Henning further opined that if, on August 3, 2009, STEC had  
17 reason to believe it was unlikely that the \$120 million agreement would be  
18 renewed, even if STEC was not otherwise required to disclose that likely non-  
19 renewal, STEC was obligated by the provisions of SEC Regulation S-K to disclose  
20 that likely non-renewal in the MD&A section of its second quarter Form 10-Q; and  
21 STEC's failure to make such disclosure rendered its statement about the \$120  
22 million agreement in the Form 10-Q misleading to investors.

23 127. Finally, Dr. Henning opined that under SEC guidance, the materiality  
24 of STEC's omission to disclose that \$12 million of its 2009 third quarter revenue  
25 guidance was the result of its agreement to provide EMC a benefit in the 2009  
26 fourth quarter must be evaluated based on qualitative as well as quantitative  
27 factors. Each of these factors indicates that the omission was material, and,  
28

1 considering them collectively, the conclusion is even stronger that the omission  
2 was material.

3 **(ii) Defendants' Initial Expert Reports**

4 128. Pursuant to the June 11, 2012 Order, Defendants designated the  
5 following two experts and served their respective reports on July 10, 2012:

6 (a) Allan W. Kleidon, Ph.D.

7 Cornerstone Research

8 (b) Dale Kitchens

9 Berkeley Research Group, LLC

10 129. Dr. Kleidon, Senior Vice President at Cornerstone Research and  
11 Honorary Professor in the School of Business at the University of Queensland in  
12 Australia, was retained by Defendants to opine on issues related to alleged  
13 inflation, loss causation and damages. In his report, Dr. Kleidon opined that Lead  
14 Plaintiff had not specified what could and should have been said in lieu of the  
15 alleged misrepresentations sufficiently for an economist to calculate the amount of  
16 the artificial inflation in STEC's stock price relating to the alleged fraud..

17 130. Dr. Kitchens, a CPA and Director with Berkeley Research Group,  
18 LLC, was retained by Defendants as an accounting expert to opine on the  
19 allegations regarding STEC's revenue recognition accounting policies and  
20 practices, including Plaintiffs' claims of "channel stuffing" and improper "pull-  
21 ins" and "push-outs." Dr. Kitchens opined that, among other things, Defendants  
22 did not engage in channel stuffing.

23 **(iii) Plaintiffs' Rebuttal Expert Witness Reports**

24 131. On July 24, 2012, the parties exchanged their rebuttal expert reports.  
25 Plaintiffs submitted the following rebuttal expert reports:

26 (a) John D. Finnerty, Ph.D.

27 Finnerty Economics Consulting  
28



1 (b) Steven L. Henning, Ph.D.

2 Marks Paneth & Shron

3 132. Dr. Finnerty responded to the expert report of Dr. Kleidon. In his 33  
4 page rebuttal report, Dr. Finnerty opined that Lead Plaintiff specified the alleged  
5 material misstatements and omissions in the SAC and Interrogatory Responses in  
6 sufficient detail to enable an economist to calculate the amount of share price  
7 inflation throughout the Class Period and the losses caused by those alleged  
8 misstatements and omissions.

9 133. Dr. Henning responded to the expert report of Dr. Kitchens, in a 12  
10 page rebuttal report.

11 134. Dr. Henning addressed the issue of channel stuffing, opining that,  
12 among other things, channel stuffing transactions, even when resulting in revenue  
13 recognized in accordance with GAAP, can constitute misleading or improper  
14 financial reporting, and a violation of SEC regulations.

15 135. Dr. Henning also opined that STEC violated GAAP by recording  
16 revenue upon reshipment of 402 modules to Hewlett-Packard in April 2009, and  
17 thereby overstated its revenues for the second quarter of 2009.

18 (iv) **Defendants' Rebuttal Expert Witness Reports**

19 136. Pursuant to the June 11, 2012 Order, Defendants designated the  
20 following four rebuttal experts:

21 (a) Allan W. Kleidon, Ph.D.

22 Cornerstone Research

23 (b) Robert A. Barron

24 (c) Allen Ferrell

25 Harvard Law School

26 (d) Bradford Cornell

27 Compass Lexicon

1           137. Dr. Kleidon responded to the initial expert report of Dr. Finnerty and  
2       opined that Dr. Finnerty's inflation and damages numbers were flawed.

3           138. Dr. Barron, a former senior vice president and co-director of  
4       Executive Financial Services at Salomon Smith Barney, Inc. responded to the  
5       initial expert report of Dr. Jagolinzer. He opined that Securities Act Rule 144  
6       volume limitations did not impede Manouch's and Mark's ability to sell their  
7       shares under their respective 10(b)5-I plans.

8           139. Dr. Farrell, the Greenfield Professor of Securities Law at Harvard  
9       Law School, responded to the initial expert report of Dr. Henning. He opined that  
10      Dr. Henning had failed to provide the requisite support for his opinions.

11          140. Dr. Cornell, Visiting Professor of Financial Economics at California  
12      Institute of Technology, responded to the expert report of Dr. Willis. He opined  
13      that Defendants did not mislead investors regarding the \$120 million volume sales  
14      agreement with EMC or STEC's expected sales of ZeusIOPS products during the  
15      second half of 2009 to customers other than EMC.

16                               **(v)   Expert Depositions**

17          141. By mid-July 2012, the Parties had agreed to an expert deposition  
18      schedule, commencing on July 27 and ending on August 17, 2012.

19          142. Defendants commenced expert depositions by deposing Dr. Henning  
20      on July 27, 2012 in New York City.

21          143. On July 30, 2012, a more fully set forth in Section X, *supra*, the  
22      Parties attended a mediation in Orange County, California. While no agreement  
23      was reached during that mediation, the Parties did agree, subject to approval of the  
24      Court, to postpone the remaining discovery and pleading deadlines and focus on  
25      continued mediation.

1           **E. Consulting Experts**

2           144. In addition to expert discovery, Co-Lead Counsel also contained  
3 several consulting experts.

4           145. Forensic Economics provided Co-Lead Counsel with an analysis of  
5 the stock market's reaction to the new information released by STEC during the  
6 Class Period by analyzing press releases, analysts reports and news stories and  
7 merging that information with daily STEC stock prices and other price data.

8           146. JuryScope provided Co-Lead Counsel with deliberation group  
9 research in which a large group of surrogate jurors were selected from the trial  
10 venue. The surrogate jurors were presented with the case facts for both plaintiffs'  
11 and defendants' case. Various testing of the surrogate jurors' opinions was done  
12 throughout the presentations. The surrogate jurors were subsequently divided into  
13 groups, given jury instructions, deliberated and rendered verdicts. JuryScope then  
14 analyzed that data for Plaintiffs' Counsel.

15           147. Tom Barker is the William Paul Measey Professor of Law and Health  
16 Sciences at the University of Pennsylvania Law School. He provided Plaintiffs'  
17 Counsel with an analysis of securities fraud class action settlements and the  
18 allocation of settlement monies among various subclasses.

19           **VI. THE CLASS CERTIFICATION PROCESS**

20           **A. Plaintiffs' Initial Motion for Class Certification**

21           148. Plaintiffs initially filed a Motion for Class Certification and  
22 Appointment of Class Counsel on November 21, 2011. ECF No. 218. That  
23 motion included declarations from counsel, Lead Plaintiff and the proposed class  
24 representatives, as well as the Declaration of John D. Finnerty.

25           149. Plaintiffs originally retained Dr. Finnerty in the Fall of 2010, to  
26 conduct appropriate studies and opine on the efficiency of the market for STEC  
27 common stock during the alleged Class Period. On November 21, 2011, Lead  
28 Plaintiff filed the Declaration of John D. Finnerty, Ph.D., in Support of Lead

1 Plaintiff's Motion for Class Certification (the "Finnerty Market Efficiency  
2 Report"), in which Professor Finnerty opined that the market for the common stock  
3 of STEC was open, developed, and efficient during the Class Period. ECF No.  
4 220. On December 21, 2011, Professor Finnerty was deposed by defense counsel  
5 in Menlo Park, California regarding his expert qualifications and the opinions that  
6 he expressed in the Finnerty Market Efficiency Report concerning the responses of  
7 STEC's stock price to several economically significant events.

8 150. Defendants did not challenge the Finnerty Market Efficiency Report  
9 in their opposition to Plaintiffs' motion for class certification. ECF No. 233.

10 151. Defendants thereafter deposed Plaintiffs' expert, Dr. Finnerty, on  
11 class-related issues on December 21, 2011 in Menlo Park, California and deposed  
12 two client representatives: Vincent Benedetti, an Investment Analyst at the New  
13 Jersey Department of Treasury, Division of Investment, on December 21, 2011, in  
14 Newark, New Jersey, and Michael Donovan, the Chief Financial Officer of the  
15 International Brotherhood of Electrical Workers, Local 103, on January 5, 2012 in  
16 Boston, Massachusetts.

17 152. On January 6, 2012, non-party West Virginia Laborers' Trust Fund  
18 ("West Virginia"), represented by BLBG filed a Motion For Leave To Intervene  
19 Regarding Plaintiffs' Motion For Class Certification. ECF No. 228.

20 153. West Virginia sought modification of the proposed class definition to  
21 exclude the Securities Act Claims. ECF No. 231 ¶¶ 14-17. In its motion to  
22 intervene in this Action, West Virginia asserted that it purchased STEC stock on  
23 the Offering but did not assert that it held that stock until at least the first alleged  
24 partial corrective disclosure. *See* ECF No. 333 at 25.

25 154. West Virginia asserts Securities Act Claims arising from the Offering,  
26 against Defendants and the Underwriters on behalf of a putative class of investors,  
27 in an action in the Superior Court of Orange County styled *West Virginia*  
28 *Laborers' Trust Fund v. STEC, Inc.*, No. 30-2011-0489022-CU-SL-CXC (Cal.

1 Super. Ct. filed July 1, 2011) (the “State Court Action”). *See* ECF No. 250 at Ex.  
2 A. The State Court Action arises out of the same set of facts as this Action and the  
3 complaint in the State Court Action includes substantial portions of the SAC,  
4 copied verbatim. ECF No. 249 at 4-5.

5 155. After West Virginia moved to intervene, Plaintiffs issued a subpoena  
6 to West Virginia seeking production of its trading records with respect to its  
7 purchases and sales of STEC stock. *See* ECF No. 249 at 6-7. West Virginia did  
8 not produce its trading records in response to that subpoena.<sup>10</sup> However,  
9 subsequently, when filing an objection to Class Representatives’ motion for  
10 preliminary approval of the Settlement, West Virginia filed an affidavit disclosing  
11 that it had sold the last of its stock purchased in the Offering on October 20, 2009,  
12 *prior to* the first corrective disclosure alleged in the SAC, although after the first  
13 alleged disclosure alleged in the TAC. *See* ECF No. 336-2 at ¶ 3 & Ex. B.

14 156. On January 12, 2012, Defendants filed their opposition to Plaintiffs’  
15 motion for class certification and argued, among other things, that Plaintiffs’  
16 Motion for Class Certification should be denied because: (1) the named plaintiffs  
17 were not adequate class representatives and (2) the alleged Class Period was too  
18 long. Defendants asserted that the named plaintiffs were not adequate  
19 representatives of the proposed class because there was an impermissible conflict  
20 between the interests of the named plaintiffs, who had standing to assert claims  
21 under only the Exchange Act, and the interests of those members of the proposed  
22 class who had standing to assert claims under both the Exchange Act and under the  
23 Securities Act. Defendants asserted that the alleged Class Period, which extended  
24 to the February 23, 2010 Corrective Disclosure, was too long because the “relevant  
25  
26

27 <sup>10</sup> On March 7, 2012, the Court issued an Order denying West Virginia’s motion  
28 to intervene. ECF No. 279 at 21.

1 truth” was disclosed to the market by the November 3, 2009 Corrective Disclosure.  
2 ECF No. 233.

3 157. On February 6, 2012, Plaintiffs filed their opposition to West  
4 Virginia’s motion to intervene and argued that West Virginia, as a non-Class  
5 Member, could not meet the requirements for mandatory intervention based on its  
6 “representative plaintiff” status in the State Court Action, which had not (and still  
7 has not) been certified as a class action. Plaintiffs further argued that West  
8 Virginia’s motion was deficient to the extent it sought to exclude the Offering  
9 Purchasers (defined below) from the Class because doing so would improperly  
10 force absent Class Members to give up their Exchange Act Claims. ECF No. 249.

11 158. The following week, on February 13, 2012, Plaintiffs filed their reply  
12 papers in further support of its motion for class certification, arguing that no  
13 impermissible class conflict existed where Plaintiffs and all Class Members sought  
14 only economic damages for the same alleged injury based on identical facts, and  
15 that Defendants’ attack on the length of the alleged Class Period was a premature  
16 merits issue. ECF No. 256.

17 159. Also on February 13, 2012, West Virginia filed its reply papers in  
18 further support of its motion to intervene, asserting that it sought to exclude only  
19 Securities Act *claims* from the alleged Class Definition (not the Offering  
20 Purchasers themselves) and that Plaintiffs cited no authority for the proposition  
21 that the Offering Purchasers could not be members of both an Exchange Act class  
22 in this Action and a Securities Act class in the State Court Action. ECF No. 257.

23 160. On February 27, 2012, the Court heard oral argument on Plaintiffs’  
24 motion for class certification and West Virginia’s motion to intervene. The Court  
25 took the motions under submission and stayed the case for 60 days, except for  
26 discovery, in order to permit Plaintiffs to search for a representative plaintiff with  
27 standing to assert the Securities Act Claims. ECF No. 278.

1           161. On March 7, 2012, the Court entered an Order denying the motion for  
2 class certification and the motion to intervene. The Court found that the Class was  
3 certifiable under Rule 23(b)(3) and that Plaintiffs satisfied the numerosity,  
4 commonality and typicality requirements of Rule 23(a). The Court also rejected  
5 Defendants' attack on the alleged Class Period. However, the Court found that the  
6 adequacy requirement was not satisfied because Plaintiffs did not present a class  
7 representative who had standing to bring the Securities Act Claims. The Court  
8 rejected West Virginia's proposal to carve out the Securities Act Claims from the  
9 Class Definition because it would result in impermissible "claim-splitting" by the  
10 Offering Purchasers who had both Exchange Act and Securities Act Claims. The  
11 Court granted Lead Plaintiff 60 days to add a new class representative who had  
12 standing to assert those claims. ECF No. 279.

13           **B. The Rule 23(f) Appeal**

14           162. On March 23, 2012, Lead Plaintiff filed a Rule 23(f) petition with the  
15 United States Court of Appeals for the Ninth Circuit ("Ninth Circuit"), Defendants  
16 filed their opposition to that petition on April 5, 2012.

17           163. The Ninth Circuit denied Lead Plaintiff's Rule 23(f) petition on June  
18 14, 2012.

19           **C. Mailings, Advertisements, and Other Efforts**  
20           **to Identify a Securities Act Plaintiff**

21           164. Following the February 27, 2012 oral argument, Plaintiffs issued a  
22 document subpoena to each of the four Underwriters to obtain the names and  
23 addresses of all persons or entities who purchased on the Offering ("Offering  
24 Purchasers"). ECF No. 307-1 ¶ 2.<sup>11</sup> The Underwriters produced the relevant  
25 contact information in mid-April 2012. *Id.* ¶ 5. Immediately thereafter, Co-Lead  
26

27           <sup>11</sup> The Underwriters initially refused to produce contact information for the  
28 Offering Purchasers, but they agreed to produce that information after Plaintiffs  
filed a letter motion with Magistrate Judge Goldman. See ECF No. 307-1 ¶¶ 3-4.



1 Counsel sent a letter to each of the 464 Offering Purchasers, of which 212 were  
2 individuals and 252 were business entities. *Id.* ¶¶ 6-8. The letters described the  
3 Action and stated that Plaintiffs were seeking an investor who purchased STEC  
4 stock pursuant or traceable to the Offering. ECF No. 307-2 at Exs. A, B. Counsel  
5 for Plaintiffs retained Diane Karpman, Esq. of Karpman & Associates to ensure  
6 that the letters complied with all California ethics rules and restrictions. Karpman  
7 & Associates is one of the premiere legal ethics firms in California and exclusively  
8 serves the legal profession. Ms. Karpman reviewed, revised, and approved the  
9 contents of these letters.

10 165. One of the 252 business entities that purchased in the Offering, was  
11 Jeffries & Company, Inc., now known as Jeffries Group, Inc. (“Jeffries”). A  
12 Jeffries broker at the Harborside Financial Center in Jersey City, New Jersey,  
13 purchased STEC common stock on the Offering for a limited partnership client.  
14 ECF No. 307-1 ¶ 9.

15 166. In response to the letter described in paragraph 164 *supra*, this Jeffries  
16 office produced the names and addresses of 665 clients who purchased STEC  
17 common stock during the Class Period, but not necessarily on the Offering. In an  
18 abundance of caution, Co-Lead Counsel sent to each of these 665 individuals or  
19 entities a letter that was identical in all material respects to the letter described in  
20 paragraph 164 *supra*. *See id.*

21 167. On Monday, April 23, 2012, Co-Lead Counsel caused an  
22 advertisement to be placed in *Investor’s Business Daily*, which has a total audience  
23 of 401,000 and a total distribution on Monday of 162,758. ECF No. 307-1 ¶¶ 11-  
24 12. The advertisement described the Action and stated that Plaintiffs were seeking  
25 an investor who purchased STEC stock pursuant or traceable to the Offering. ECF  
26 No. 307-2 at Ex. D.

27 168. On May 10, 2012, Plaintiffs caused the same advertisement to be  
28 placed in the Eastern Edition of *The Wall Street Journal*, which has a total

1 circulation of 733,611. *See* ECF No. 307-1 ¶ 13; ECF No. 307-2 at Ex. G.<sup>12</sup> The  
2 Eastern Edition of *The Wall Street Journal* was selected because an analysis of the  
3 geographical location of the 464 Offering Purchasers revealed that the vast  
4 majority of them resided within the circulation area of the Eastern Edition. ECF  
5 No. 307-1 ¶ 13.

6 169. As a result of the mailings and advertisements, Co-Lead Counsel was  
7 contacted by 23 investors, none of whom had standing to bring the Securities Act  
8 Claims, as alleged in the SAC. *Id.* ¶ 15. Three of the 23 investors did not purchase  
9 on the Offering. *Id.* ¶ 17. The other 20 investors purchased STEC stock on the  
10 Offering but sold that stock prior to the first partial corrective disclosure alleged in  
11 the SAC. *Id.* ¶ 16. Dr. Ripperda was among the 20 Offering Purchasers who  
12 contacted Co-Lead Counsel in response to the mailings and advertisements.

13 170. Finally, Co-Lead Counsel sought assistance from more than ten law  
14 firms, including BLBG (counsel for Rashtchi, Ovitt, and West Virginia), in  
15 identifying an adequate class representative. None of these attorneys were able to  
16 refer an investor who had standing to assert the Securities Act Claims, as alleged in  
17 the SAC. *Id.* ¶ 18.

18 **D. Plaintiffs' Renewed Motion For Class Certification**

19 171. The Court held a status conference on May 15, 2012 during which  
20 Lead Plaintiff explained that it had been unable to find a putative class member  
21 with standing to assert the Securities Act claim, despite its diligent efforts to do so.  
22 The Court instructed Lead Plaintiff to file supplemental briefing by May 25, 2012,  
23 documenting its efforts to find an adequate Securities Act representative. ECF No.  
24 300. Defendants were instructed to file a response by June 1, 2012 if they chose to  
25 respond. *Id.*

26  
27 <sup>12</sup> Ms. Karpman also reviewed, revised, and approved the text of the  
28 advertisements described in paragraphs ¶¶ 167-69 prior to their publication.

1           172. On May 25, 2012, Lead Plaintiff submitted a supplemental  
2 memorandum of law in further support of Plaintiffs' Motion for Class  
3 Certification. ECF No. 307.

4           173. The supplemental memorandum detailed Lead Plaintiff's efforts to  
5 search for a representative plaintiff with standing to assert the Securities Act  
6 Claims, which, as discussed *supra*, included sending a letter to each of the 464  
7 Offering Purchasers and the 665 clients Jeffries who may or may not have been  
8 Offering Purchasers, as well as placing advertisements in *Investor's Business Daily*  
9 and *The Wall Street Journal*. ECF No. 307.

10           174. The supplemental memorandum reported to the Court that, as a result  
11 of these mailings and advertisements, Lead Plaintiff was contacted by 23  
12 individuals or entities who either did not purchase in the Offering or purchased on  
13 the Offering but sold their STEC stock prior to the what was then the first alleged  
14 partial disclosure on November 3, 2009. *Id.* at 2. It therefore concluded that Lead  
15 Plaintiff had not been able to identify a class representative who had standing to  
16 assert the Securities Act Claims. *Id.*

17           175. On June 1, 2012, Defendants files a notice of intent to rely on their  
18 prior briefing regarding Plaintiffs' motion for class certification.

19           176. On June 19, 2012, the Court entered an Order certifying the Class for  
20 Plaintiffs' Exchange Act Claims. ECF No. 314. The Court held, in part, that  
21 "certifying an Exchange Act only Class is preferable o the alternative of certifying  
22 no class at all. Indeed, a class action is the superior method for adjudicating an  
23 Exchange Act claim." *Id.* at 6. The Court also held that "to the extent that Class  
24 notification reveals the identity of a class member with standing to assert a  
25 Securities Act claim, the Court may reexamine the certification issue." *Id.*

1           **E. Defendants’ Rule 23(f) Appeal**

2           177. On July 5, 2012, Defendants filed a Rule 23(f) petition with the Ninth  
3 Circuit. Plaintiffs filed their opposition to that petition on July 16, 2012. The  
4 Ninth Circuit declined to take the appeal on September 6, 2012.

5           **VII. FILING, REMOVAL AND REMAND OF**  
6           **WEST VIRGINIA’S CASE IN STATE COURT**

7           178. Prior to New Jersey’s appointment as Lead Plaintiff in the Federal  
8 Action, two individual investors, Arman Rashtchi (“Rashtchi”) and Keith Ovitt  
9 (“Ovitt”) served as Court-appointed lead plaintiffs. Counsel for Rashtchi and  
10 Ovitt, BLBG and KS&F, served as Court-appointed lead counsel.

11           179. On April 9, 2010, on behalf of Rashtchi and Ovitt, KS&F and BLBG  
12 filed the first consolidated class action complaint in this Action (the “Consolidated  
13 Complaint”), which asserted only Exchange Act claims and not any Securities Act  
14 claims. *See* ECF No. 83. Because the Consolidated Complaint significantly  
15 expanded the alleged class period, the Court re-opened the lead plaintiff  
16 appointment process in this Action. *See* ECF No. 123. On July 14, 2010, the  
17 Court issued an Order appointing New Jersey as Lead Plaintiff. *Id.*

18           180. On August 13, 2010, Co-Lead Counsel filed an amended consolidated  
19 complaint (the “First Amended Complaint”) on behalf of New Jersey. *See* ECF  
20 Nos. 131 & 131-1. The Amended Complaint was the first consolidated complaint  
21 filed in this Action that alleged any Securities Act Claims.

22           181. On July 1, 2011, BLBG filed a separate action in California state court  
23 alleging Securities Act claims against STEC and the Individual Defendants (the  
24 “State Action”) on behalf of the West Virginia Laborers’ Trust Fund (“West  
25 Virginia”).<sup>13</sup> As BLBG acknowledged during a recent hearing in this Action, if  
26  
27

28           <sup>13</sup> KS&F is not involved in the State Action.

1 West Virginia had filed its complaint in federal court, the parties would have  
2 sought to consolidate it with this Action. *See* ECF No. 360-2.

3 182. West Virginia's complaint is based on the same facts as those alleged  
4 in this Action, as West Virginia itself later admitted, stating:

5 Any challenge to the adequacy of the Complaint's falsity  
6 allegations would be misplaced. On June 17, 2011,  
7 United States District Judge James V. Selna for the  
8 Central District of California found that Plaintiffs in a  
9 parallel federal securities class action alleging the *same*  
10 *facts* as in this action adequately stated a claim under the  
11 Securities Act against these same defendants.

12 ECF No. 250-53 at 2 n.2 (emphasis added) (quoting Opposition to Defendants'  
13 Demurrer at 2 n.2, *West Virginia v. STEC* (Cal. Super. Dec. 16, 2011)); *see also*  
14 ECF No. 335 at 9-10 (showing that the misstatements and omissions alleged in the  
15 State Action are generally the same as those alleged in this Action). Indeed, West  
16 Virginia's complaint includes significant portions of Lead Plaintiff's SAC, copied  
17 verbatim. *See* ECF No. 249 at 4-5 (listing portions of the SAC copied verbatim in  
18 West Virginia's complaint).

19 183. Defendants removed the State Action to federal court, but West  
20 Virginia resisted consolidation with this Action and successfully moved to remand.  
21 *See* Order, *West Virginia v. STEC*, No. 11-cv-01171 (C.D. Cal. Oct. 12, 2011)  
22 (ECF No. 26).

23 184. On remand, Defendants filed demurrers and moved to stay the State  
24 Action pending the outcome of this Action. West Virginia opposed the stay and  
25 the demurrers. On February 17, 2012, the court presiding over the State Action  
26 stayed that Action "pending the resolution of" this Action and declined to rule on  
27 the defendants' demurrers in light of the stay. *See* Order, *West Virginia v. STEC*  
28

1 (Cal. Super. Feb. 17, 2011). Therefore, the State Action has not yet survived the  
2 defendants' demurrers and has never been certified as a class action.

3 185. In September 2012, West Virginia filed a motion to lift the stay and,  
4 in October 2012, West Virginia sought the opportunity to proceed with informal  
5 discovery. The state court denied the motion to lift the stay as premature. *See*  
6 Order, *West Virginia v. STEC* (Cal. Super. Oct. 18, 2012).<sup>14</sup>

7 **VIII. PLAINTIFFS VIGOROUSLY PROSECUTED**  
8 **THE EXCHANGE ACT CLAIMS**

9 **A. Plaintiffs Vigorously Prosecuted the EMC Agreement Claims**

10 186. Plaintiffs reviewed publicly available documents and the voluminous  
11 documents produced in discovery by Defendants and various third parties,  
12 including EMC, the Other OEMs, Securities Analysts, the Underwriters, McKinsey  
13 & Co., and STEC's outside attorney, regarding the issues, some of which are  
14 described, *infra*, that are relevant to these claims.

15 187. The deponents who were questioned regarding these same issues,  
16 described, *infra*, included, without limitation, Defendant Manouch Moshayedi who  
17 (i) made or participated in making all of the alleged misstatements and omissions  
18 regarding the EMC Agreement, (ii) as STEC's CEO, had ultimate authority over  
19 sales, purchasing of supplies and communications with investors, and (iii)  
20 personally negotiated sales agreements with EMC and STEC's other large  
21 customers; Defendant Mark Moshayedi, who signed the EMC Agreement for  
22 STEC, and who, as STEC's Chief Technology Officer had intimate relations with  
23 EMC and STEC's other OEM customers; Anthony Anvari, STEC's Vice President  
24 of Sales in charge of sales to, among others, EMC; William Fahey, STEC's  
25 Director of Sales in charge of sales to EMC, who obtained information from EMC

26  
27 <sup>14</sup> Defendants in the State Action subsequently agreed to produce certain  
28 documents to West Virginia. *See* Supplemental Joint Status Report at 2-3, *West Virginia v. STEC* (Cal. Super. Nov. 28, 2012).



1 about its expected demand and actual purchase orders for STEC's ZeusIOPS,  
2 including under the EMC Agreement, and who lived in relatively close proximity  
3 to EMC's headquarters and therefore had substantial in-person contact with  
4 relevant EMC personnel; Mitch Gellman, STEC's Investment Relations Officer;  
5 Lorenzo Salhi, STEC's former Vice President of Sales in charge of sales to  
6 Hewlett-Packard and Cisco; Thomas Vogtman, STEC's Strategic Accounts  
7 Manager, in charge of sales to Hitachi; David Mittleman, partner at Reed Smith  
8 LLP, which during the relevant time period was outside counsel for STEC; Trevor  
9 Schick, who had ultimate authority for, and signed, the EMC Agreement on behalf  
10 of EMC Corporation, and was Vice President of Global Supply Chain  
11 Management and Chief procurement Officer at EMC; Timothy Smith, who, on  
12 behalf of EMC, personally negotiated the EMC Agreement and other purchase  
13 arrangements with STEC, and who was Senior Director, Disk Drive Global Supply  
14 Chain Management at EMC; Christopher J. Casella, who during the relevant time  
15 period played a key role in communicating EMC's expected demand for ZeusIOPS  
16 to STEC, and who was Senior Manager, Global Supply Chain management at  
17 EMC; Cindy Reese, former Senior Vice President of Worldwide Operations at  
18 Sun, and current Senior Vice President of Worldwide Operations at Oracle, who  
19 personally negotiated with Manouch Moshayedi regarding Sun's purchases from  
20 STEC; Michael Desens, Vice President of System Z and Power Development at  
21 IBM; Roberto Basilio, Vice President of Hardware Product Management at Hitachi  
22 Data Systems Corp.; Mark Pridgen, Strategic Procurement Manager at Hewlett-  
23 Packard Co.; and eight different securities analysts who covered STEC during the  
24 relevant time period, including Gary Hsueh, formerly at Oppenheimer & Co., Inc.;  
25 Kevin Vassily, at Pacific Crest Securities; Aaron C. Rakers, at Stifel Nicolaus;  
26 Vijay R. Rakesh, at ThinkEquity LLC; Michael Roy Crawford, at B. Riley & Co.;  
27 Betsy Van Hees, at Wedbush Securities, Inc.; Jeffrey Schreiner, at CapStone  
28 Investments; and Sheri Scribner, at Deutsche Bank.



1           188. Issues relevant to this claim for which documents were reviewed and  
2 deponents were questioned include, without limitation: based on Defendants  
3 alleged misstatements and omissions, what did investors understand Defendants to  
4 be telling them about the nature of the EMC Agreement; what did Defendants want  
5 investors to believe about the EMC Agreement; what did Defendants believe they  
6 were telling investors about the EMC Agreement; what cautionary statements did  
7 Defendants believe investors should hear regarding the EMC Agreement; what  
8 cautionary statements did Defendants actually make; did the cautionary statements  
9 change over time, and, if so, when, how and why; what was the text of the EMC  
10 Agreement; at the time of the negotiation and execution of the EMC Agreement,  
11 how was it characterized by EMC; what was EMC's motive for executing the  
12 EMC Agreement, and to what extent were Defendants aware of that motive; prior  
13 to the making of Defendants' alleged false statements and omissions regarding the  
14 EMC Agreement, what were EMC's forecasts regarding its future demand for  
15 ZeusIOPS, and to what extent were Defendants aware of those forecasts; at the  
16 time when Defendants made their alleged misstatements and omissions, what were  
17 STEC's internal forecasts of EMC's future demand; pursuant to its normal  
18 business practices, how far ahead did Defendants usually know the size of its OEM  
19 customers purchases of ZeusIOPS, and, in particular, the size of EMC's purchases  
20 of ZeusIOPS; what was the relationship, if any, between expectations for the  
21 timing of the emergence of competition for the ZeusIOPS and the likelihood that  
22 the EMC Agreement would be renewed, and what was the expected timing for  
23 such emergence of competition; at the time when Defendants made their alleged  
24 misstatements and omissions, what were Defendants' expectations regarding future  
25 changes in end-user demand, and what was, or would have been, the reasonably  
26 expected effect of those changes, in combination with the emergence of  
27 competition for the ZeusIOPS, on EMC's demand for the ZeusIOPS; what was the  
28 actual effect on EMC's demand for the ZeusIOPS when competition finally

1 emerged; what relationship, if any, was there between EMC renewing the volume  
2 commitment made under the EMC Agreement, and the size of EMC's likely  
3 purchases after the termination of the period governed by the EMC Agreement;  
4 what light might be shed on the answer to the previous question based on  
5 Defendants' motive for executing the EMC Agreement, and/or by STEC's efforts  
6 to obtain volume commitments regarding ZeusIOPS from its other OEM  
7 customers; how does Defendants' conduct after making the alleged misstatements  
8 and omissions reflect on Defendants' knowledge of the falsity of their statements  
9 and materiality of their omissions at the time when those alleged misstatements  
10 and omissions were made; aside from their alleged false statements and omissions,  
11 did Defendants make other efforts to hide the truth regarding the EMC Agreement;  
12 when did Defendants first learn that EMC might have excess inventory of  
13 ZeusIOPS at the end of 2009 that EMC would carry into 2010; what was the  
14 reason for the Moshayedi Defendants cancelling their 10b5-1 plans for selling their  
15 STEC stock gradually, over a long period of time, and was this related to their  
16 knowledge of the falsity of their statements and omissions regarding the EMC  
17 Agreement; what was the reason for the Offering and its timing; did Defendants  
18 deal truthfully or falsely with investors regarding matters other than the EMC  
19 Agreement; and, during the relevant period, what was the credibility of EMC's  
20 Timothy Smith and Trevor Schick, and did Defendants reasonably believe that  
21 Smith and Schick had a motive to mislead Defendants?

22       189. One of the facts discovered by Plaintiffs through discovery was that,  
23 although EMC had committed under the EMC Agreement to purchase \$120  
24 million of ZeusIOPS during the second half of 2009, only days before Defendants  
25 made alleged misstatements and omissions regarding the EMC Agreement in the  
26 Prospectus and during STEC's 2009 second quarter earnings conference call, EMC  
27 told STEC it did not need more than \$33-34 million of ZeusIOPS in the 2009 third  
28 quarter, and thereafter, but still prior to the filing of the Prospectus and convening

1 of STEC's earnings conference call, Manouch Moshayedi and EMC's Timothy  
2 Smith agreed to a secret deal pursuant to which EMC committed to purchase \$55  
3 million of ZeusIOPS during the 2009 third quarter, and, in return, STEC agreed to  
4 give EMC an additional approximate \$2 million discount on its 2009 fourth quarter  
5 purchases of ZeusIOPS.

6 190. Another fact discovered by Plaintiffs through discovery was that, just  
7 hours before the filing of the Prospectus, Manouch Moshayedi received an e-mail  
8 from EMC's Timothy Smith, stating, among other things, "I think I can say with a  
9 high degree of confidence that our most recent volume commitment deal will be  
10 our last."

11 191. Through document discovery and depositions, Plaintiffs investigated  
12 the extent to which the foregoing secret deal and email from Timothy Smith to  
13 Manouch Moshayedi support or contradict the falsity of Defendants' statements  
14 and omissions regarding the EMC Agreement, and Defendants' scienter for those  
15 statements and omissions. This investigation included, without limitation, an  
16 investigation of the content of the deal and email, an investigation of the context in  
17 which the deal and email occurred, the contemporaneous understanding of these  
18 transactions by the parties involved, the possible motives of the parties to these  
19 transactions, and how securities analysts, and, thus, investors would have reacted  
20 had they known about these transactions.

21 192. The evidence obtained by Plaintiffs regarding the foregoing secret  
22 deal and email is among the evidence featured prominently in Plaintiffs'  
23 Interrogatory Responses.

24 193. Approximately three weeks after Plaintiffs served Defendants with  
25 Plaintiffs' Interrogatory Responses, the SEC publicly disclosed the existence of the  
26 foregoing secret deal and email, by referencing the deal and email in the SEC's  
27 complaint filed in this Court against Manouch Moshayedi. *See SEC v. Moshayedi*,  
28 No. 12-cv-01179-JVS-MLG (C.D. Cal. July 19, 2012) (ECF No. 1).

**B. Plaintiffs Vigorously Prosecuted the Other OEMs Claims**

194. Plaintiffs reviewed publicly available documents and the voluminous documents produced in discovery by Defendants and various third parties, including the Other OEMs, Cisco, Smart Modular Technologies, Inc., Securities Analysts, the Underwriters, and STEC's outside counsel during the relevant period—Reed Smith LLP—regarding the issues, some of which are described, *infra*, that are relevant to these claims.

195. The deponents who were questioned regarding these same issues, described, *infra*, included, without limitation, Defendant Manouch Moshayedi who (i) made or participated in making all of the alleged misstatements and omissions regarding the Other OEMs, and IBM, (ii) as STEC's CEO, had ultimate authority over sales, purchasing of supplies and communications with investors, and (iii) who personally negotiated sales agreements with Sun; Defendant Mark Moshayedi, who as STEC's Chief Technology Officer had intimate relations with each of the Other OEMs; Defendant Raymond Cook, STEC's CFO, who signed the September 10, 2009, letter from STEC to the SEC; Mike Higa, STEC's Senior Vice President of Finance, who sometimes circulated internal STEC forecasts of sales in upcoming quarters; Mitch Gellman, STEC's Investment Relations Officer; Anthony Anvari, who (i) was STEC's Vice President of Sales in charge of sales to, among others, IBM, and (ii) participated in the drafting certain of STEC's press releases relevant to this claim; Lorenzo Salhi, STEC's former Vice President of Sales in charge of sales to Hewlett-Packard and Cisco; Thomas Vogtman, STEC's Strategic Accounts Manager, in charge of sales to Hitachi; Christopher Wood, Jr., former chief technologist for the storage division at Sun; Gloria Alvarado, former HP sales coordinator for STEC; David Mittleman, partner at Reed Smith LLP, which during the relevant time period was outside counsel for STEC; Cindy Reese, former Senior Vice President of Worldwide Operations at Sun, and current Senior Vice President of Worldwide Operations at Oracle, who personally negotiated with

1 Manouch Moshayedi regarding Sun's purchases from STEC; Michael Desens,  
2 Vice President of System Z and Power Development at IBM; Roberto Basilio,  
3 Vice President of Hardware Product Management at Hitachi Data Systems Corp.;  
4 Mark Pridgen, Strategic Procurement Manager at Hewlett-Packard Co.; and eight  
5 different securities analysts who covered STEC during the relevant time period,  
6 including Gary Hsueh, formerly at Oppenheimer & Co., Inc.; Kevin Vassily, at  
7 Pacific Crest Securities; Aaron C. Rakers, at Stifel Nicolaus; Vijay R. Rakesh, at  
8 ThinkEquity LLC; Michael Roy Crawford, at B. Riley & Co.; Betsy Van Hees, at  
9 Wedbush Securities, Inc.; Jeffrey Schreiner, at CapStone Investments; and Sheri  
10 Scribner, at Deutsche Bank.

11 196. Issues relevant to this claim for which documents were reviewed and  
12 deponents were questioned include, without limitation: What was the amount of  
13 STEC's sales of ZeusIOPS to each of the Other OEMs during the second half of  
14 2009; how did this compare to STEC's sales of ZeusIOPS to the same customers  
15 during the first half of 2009, both for each individual OEM, and for the Other  
16 OEMs in the aggregate; what was the amount of STEC's sales of ZeusIOPS to  
17 each of its Other OEM customers in each quarter of 2009, and does the variation  
18 among quarters show any trend different from the trend between halves of the year;  
19 what was the universe of statements made by Defendants during the relevant time  
20 period regarding (i) expected sales of ZeusIOPS to the Other OEMs, (ii) expected  
21 sales of ZeusIOPS to IBM, and (iii) whether IBM was selling the ZeusIOPS as a  
22 standard feature in certain of its systems; what did securities analysts, and, thus,  
23 investors understand Defendants to be stating regarding (i) expected sales to the  
24 Other OEMs, (ii) expected sales to IBM, and (iii) whether IBM was selling the  
25 ZeusIOPS as a standard feature in certain of its systems; in retrospect, how do  
26 Defendants understand their own statements; what was Defendants' intention in  
27 drafting the relevant portion of the September 10, 2009, letter to the SEC; at the  
28 time when Defendants made their alleged misstatements; what did Defendants,

1 any individual Defendant, or any other STEC or OEM employee actually expect  
2 regarding (i) future sales to the Other OEMs, (ii) future sales to IBM, (iii) whether  
3 IBM was selling the ZeusIOPS as a standard feature in certain of its systems; and  
4 (iv) whether a replacement for EMC could be found under the EMC Agreement or  
5 a similar contract; what was the amount of supplies for building ZeusIOPS drives  
6 ordered by STEC during the relevant time period, and does that amount of supplies  
7 provide evidence of Defendants' expectations regarding future sales of ZeusIOPS;  
8 during the relevant time period, what did each of STEC's OEM customers tell  
9 Defendants about their expected future purchases of ZeusIOPS; did Defendants  
10 have non-public discussions with securities analysts regarding future sales of  
11 ZeusIOPS to the Other OEMs, or, specifically, IBM, and, if so, what was the  
12 content of those discussions; apart from Defendants' allegedly false statements  
13 regarding the Other OEMs and IBM, is there other evidence of an intention on the  
14 part of Defendants to mislead investors regarding expected sales to the Other  
15 OEMs and IBM; how, if at all, did the history of ZeusIOPS sales to each of  
16 STEC's OEM customers impact Defendants' ability to estimate sales to each OEM  
17 in the near future; what efforts did Defendants make to obtain volume  
18 commitments from each of the Other OEMs, what was the result of such efforts,  
19 and how did that result impact likely future sales to the Other OEMs; and how did  
20 Defendants react, both privately and publicly, to information showing that sales to  
21 the Other OEMs and IBM were below Defendants' previously announced  
22 expectations?

23 **C. Plaintiffs Vigorously Prosecuted the Inflated Revenues Claims**

24 197. Plaintiffs reviewed publicly available documents and documents  
25 produced in discovery by Defendants and various third parties, including EMC and  
26 the Other OEMs, relating to, *inter alia*, STEC's reported revenue; STEC's revenue  
27 guidance; STEC's anticipated, forecast, or estimated sales of ZeusIOPS to its  
28 customers; STEC's anticipated, forecast, or estimated revenue from ZeusIOPS



1 sales; any decline in STEC's ZeusIOPS sales, whether in total, or in regard to any  
2 specific customer; customers' projected or actual requirements of ZeusIOPS;  
3 ZeusIOPS inventory held by customers; communications between STEC and its  
4 customers regarding ZeusIOPS; customers' production of systems incorporating  
5 ZeusIOPS; STEC's purchase of inventory; any discount STEC gave to a customer  
6 in return for such customer advancing purchases; and research reports published by  
7 financial analysts concerning STEC's sales and revenues.

8 198. Plaintiffs also reviewed documents produced by PwC, STEC's  
9 auditor, relating to the procedures applied, work performed, evidence obtained, and  
10 conclusions reached in the auditing engagement ("workpapers") concerning, *inter*  
11 *alia*, PwC's quarterly review of STEC's 2009 second quarter revenue and PwC's  
12 interim audit testing concerning STEC's 2009 second quarter revenue.

13 199. Co-Lead Counsel questioned numerous deponents about Defendants'  
14 alleged inflation of STEC's reported revenues for the second quarter of 2009:

15 (a) Defendant Cook and Michael Higa ("Higa"), Senior Vice  
16 President of Finance at STEC, were questioned about STEC's revenue recognition  
17 policies. Raymond Cook Dep. Tr. at 159; Michael Higa Dep. Tr. at 17-23.<sup>15</sup>

18 (b) Christopher Casella, Manager of Global Supply Chain at EMC,  
19 was questioned about return material authorization and negative revenue  
20 recognition. Christopher Casella Dep. Tr. at 111-14.

21 (c) Co-Lead Counsel questioned numerous deponents about  
22 whether Defendants engaged in channel stuffing in order to inflate STEC's  
23 reported revenues:

24 (i) Defendant Manouch Moshayedi and Cindy Reese  
25 ("Reese"), Senior Vice President of Sun, were questioned about Manouch  
26

27 <sup>15</sup> Lead Plaintiff is not filing the deposition transcripts cited herein because they  
28 are generally designated confidential. *See* ECF Nos. 224 and 225.



1 Moshayedi's insistence that Sun purchase more STEC products than it actually  
2 needed. *See* Manouch Moshayedi Dep. Tr. at 192-94; Cindy Reese Dep. Tr. at 33-  
3 35.

4 (ii) William Fahey ("Fahey"), Director of Sales at STEC,  
5 was questioned about excess inventory at EMC and shipping products to EMC at a  
6 time when EMC did not want additional products. William Fahey Dep. Tr. at 143-  
7 60, 201-04.

8 (iii) Anthony Anvari ("Anvari"), Vice President of Sales at  
9 STEC, was questioned about Manouch Moshayedi's instruction to ship everything he  
10 could in the second quarter of 2009. Anthony Anvari Dep. Tr. at 152-55.

11 (iv) Higa was questioned about timing shipments according  
12 to internal revenue targets and incentives to sales employees. Michael Higa Dep.  
13 Tr. at 33-40.

14 (v) Thomas Vogtman ("Vogtman"), Director of Program  
15 Management – Japan Sales at STEC, was questioned about internal pressure to  
16 ship products. Thomas Vogtman Dep. Tr. at 101-02.

17 (vi) Mark Pridgen ("Pridgen"), Strategic Procurement  
18 Manager of HP, was questioned about STEC's insistence that HP increase  
19 volumes; HP's inventory of and demand for ZeusIOPS; pulling forward July  
20 purchase orders into June; and STEC's refusal to push out purchase orders. Mark  
21 Pridgen Dep. Tr. at 74-77, 93-118.

22 (vii) Michael Desens, Vice President of System and Power  
23 Development at IBM, was questioned about the timing of shipments from STEC  
24 and pushing out orders. Michael Desens Dep. Tr. at 40-41.

25 (viii) Lorenzo Salhi ("Salhi"), former Director of Sales for  
26 OEMs at STEC, was questioned about, *inter alia*, STEC sales employees inflating  
27 sales and revenue figures; pulling purchase orders from future quarters into earlier  
28 quarters; STEC's refusal to cancel orders; excess inventory held by HP and

1 STEC's attempts to advance shipments to HP; offering discounts to dissuade  
2 customers from cancelling orders or to convince customers to take shipments early;  
3 and the timing of sales to Cisco. Lorenzo Salhi Dep. Tr. at 87, 163, 151-59, 185-  
4 89, 193-94.

5 (ix) Kevin Vassily ("Vassily"), Senior Research Analyst at  
6 Pacific Crest, was asked about STEC's allegedly false guidance and financial  
7 reporting and whether STEC engaged in channel stuffing to increase its revenues.  
8 Kevin Vassily Dep. Tr. at 263, 270-74.

9 (x) Michael Crawford ("Crawford"), Director of Research at  
10 B. Riley & Co., was asked about channel stuffing and whether STEC engaged in  
11 channel stuffing. Michael Crawford Dep. Tr. at 117-18, 215.

12 (d) Co-Lead Counsel also questioned several deponents about  
13 whether Defendants knowingly shipped defective products in order to inflate  
14 STEC's reported revenues:

15 (i) Defendant Mark Moshayedi was questioned about HP  
16 issuing a stop shipment order because it had received defective products. Mark  
17 Moshayedi Dep. Tr. at 128-29.

18 (ii) Pridgen was questioned about HP returning defective and  
19 unwanted products to STEC and STEC improperly charging HP for shipments.  
20 Mark Pridgen Dep. Tr. at 48-49, 57.

21 (iii) Vogtman was questioned about shipping defective  
22 products to Hitachi. Thomas Vogtman Dep. Tr. at 102-21.

23 (iv) Salhi was questioned about intentionally shipping  
24 defective products. Lorenzo Salhi Dep. Tr. at 173-74.

25 200. Co-Lead Counsel reviewed the transcripts of depositions taken by the  
26 SEC, including the deposition of Defendant Mark Moshayedi, who was questioned  
27 by the SEC about STEC's revenue recognition policies and moving EMC's buffer  
28 inventory to fill revenue gaps. Mark Moshayedi SEC Dep. Tr. at 34, 192-94.

1           201. Co-Lead Counsel attended the deposition of CW2, a marketing  
2 employee for one of STEC's customers, who was questioned by Defendants about  
3 STEC shipping empty boxes, defective products, and products that were not  
4 ordered. CW2 Dep. Tr. at 43-45, 73.

5           202. Co-Lead Counsel attended the deposition of CW3, a former sales  
6 employee at STEC, who was questioned by Defendants about shipping defective  
7 products; incorrectly reporting product failures to HP; shipping products to HP  
8 despite a stop order; and moving sales into an earlier quarter to inflate sales  
9 numbers. CW3 Dep. Tr. at 29-39, 43, 48-54.

10           **D. Plaintiffs Vigorously Prosecuted the Competition Claim**

11           203. Plaintiffs reviewed publicly available documents and documents  
12 produced in discovery by Defendants and various third parties, including EMC, the  
13 Other OEMs, and financial analysts who covered STEC during the Class Period,  
14 relating to, *inter alia*, actual and projected competition for STEC's ZeusIOPS.

15           204. Plaintiffs reviewed documents relating to the September 17, 2009  
16 research report issued by Betsy Van Hees ("Van Hees"), a Publishing Analyst at  
17 Wedbush (the "Wedbush Report"), which asserted that there would be competition  
18 for STEC's ZeusIOPS by the fourth quarter of 2009. *See* ECF No. 335-7.

19           205. Co-Lead Counsel questioned numerous deponents about competition  
20 for STEC's ZeusIOPS and investigated, *e.g.*, whether EMC was planning not to  
21 renew the EMC Agreement because it expected to start purchasing more cheaply  
22 from STEC's competitors and whether STEC knew that and whether the Other  
23 OEMs were refraining from purchasing from STEC because they were expecting  
24 competition to emerge and force STEC to lower its pricing. Several analysts were  
25 also questioned about whether the issue of developing competition was important  
26 to them and what they thought ultimately was disclosed about competition. Both  
27 Plaintiffs and Defendants sought to elicit information about STEC's competition to  
28 support their side of the case.

1 (a) Defendant Manouch Moshayedi was questioned about, *inter*  
2 *alia*, competitors selling enterprise SSDs in 2009; the announcement in 2009 by  
3 Hitachi and Intel, Inc. of plans to jointly develop enterprise SSD products, with the  
4 first shipments expected in early 2010; whether in 2009 other companies  
5 announced plans to enter the market; whether in 2009 EMC expected STEC to  
6 have competition; exclusivity agreements with customers and whether they were  
7 necessary if STEC was the only supplier; EMC's purchases from competitors in  
8 2010 and competitors' pricing for EMC; EMC's qualification of competitors'  
9 products; and potential competition from Samsung. Manouch Moshayedi Dep. Tr.  
10 at 81, 84-88, 99, 103-104, 204-206, 230-31, 302-306.

11 (b) Defendant Mark Moshayedi was questioned about competition  
12 for STEC's SSDs in 2007; competitive products first manufactured by Samsung  
13 and Hitachi in the second half of 2010; EMC's qualification of Samsung as a  
14 competitor; Seagate's announced plans to release an enterprise SSD; the  
15 announcement in 2009 by Hitachi and Intel, Inc. of plans to jointly develop  
16 enterprise SSD products, with the first shipments expected in early 2010; and  
17 collaboration between Sun and Micron to develop enterprise SSDs. Mark  
18 Moshayedi Dep. Tr. at 19-20, 137-38, 140-42.

19 (c) Defendant Cook was questioned about competition for STEC's  
20 ZeusIOPS in 2009; the Wedbush Report and other analyst reports in 2009  
21 regarding competition in the SSD market; and pressure on STEC's stock because  
22 of competition. Raymond Cook Dep. Tr. at 31-32, 132-36.

23 (d) Fahey was questioned about competition for STEC's ZeusIOPS  
24 in 2008; other SSD suppliers offering price quotes to EMC for the 2011 time-  
25 frame; Samsung's pricing and Samsung's SSDs expected to be qualified in 2010;  
26 and competition from Sandforce and Hitachi. William Fahey Dep. Tr. at 123-25,  
27 130-31, 136-38.

1 (e) Anvari and Vogtman were also questioned about competition  
2 for STEC's ZeusIOPS. Anthony Anvari Dep. Tr. at 146; Thomas Vogtman Dep.  
3 Tr. at 24-25.

4 (f) Timothy Smith, Senior Director at EMC, was questioned about  
5 STEC's ZeusIOPS and the development and availability to EMC of competitive  
6 products; and STEC's pricing prior to EMC's qualification of a competitor.  
7 Timothy Smith Dep. Tr. at 97-100, 181.

8 (g) Trevor Schick, Vice President and Chief Procurement Officer at  
9 EMC, who executed the EMC Agreement on behalf of EMC, was questioned about  
10 his expectations—at the time when he executed the EMC Agreement—regarding  
11 when there would be competition for STEC's ZeusIOPS; and whether he ever  
12 purchased SSDs from other manufacturers while working for EMC. Trevor Schick  
13 Dep. Tr. at 58:14-62:22; 81:2-84:23.

14 (h) During the deposition of Trevor Schick, Plaintiffs' attorney  
15 explained the relevance of a certain question he was asking by saying, "[t]he  
16 history of EMC's purchases from STEC and the context of those purchases and the  
17 competition is all very essential to this case." Trevor Schick Dep. Tr. at 84:6-9.

18 (i) Reese was questioned about STEC's pricing and Sun's interest  
19 in various other suppliers as potential replacements for STEC. Cindy Reese Dep.  
20 Tr. at 17-19.

21 (j) Pridgen was questioned about HP's purchases of SSDs from  
22 Samsung. Mark Pridgen Dep. Tr. at 70.

23 (k) Christopher Casella, Manager of Global Supply Chain for SSDs  
24 at EMC, was questioned about conversations around January 2010 with  
25 competitors or potential competitors of STEC about pricing. Christopher Casella  
26 Dep. Tr. at 116-17.

27 (l) Van Hees was questioned about the EMC Agreement and  
28 protection for STEC from its competitors; her industry checks regarding

1 competition; the Wedbush Report; competition from Samsung; and her concerns  
2 that the competitive landscape would likely pose challenges to STEC's earnings  
3 and revenues in the second half of 2010. Van Hees Dep. Tr. at 18-19, 80-82, 93-  
4 95, 125-28. During that deposition, Van Hees was also questioned by Defendants  
5 about her industry expectations in the middle of 2009 and in 2010; and statements  
6 by EMC that it was actively working with competitors and looking for a second  
7 source for enterprise SSDs. *Id.* at 203-207.

8 (m) Gary Hsueh, Executive Director at Oppenheimer, discussed  
9 STEC's competition in response to questions asked by Co-Lead Counsel at various  
10 points during his deposition. Gary Hsueh Dep. Tr. at 102-103, 112-13, 131. He  
11 was also questioned by Defendants about his suspicion or concern about intensified  
12 competition or the possibility that EMC might be qualifying a second source for  
13 SSDs and whether EMC ever qualified a second source. *Id.* at 162-63, 198-99.

14 (n) Vassily was questioned about the competitive pressures on  
15 STEC and a setback at Seagate, one of STEC's potential competitors. Kevin  
16 Vassily Dep. Tr. at 55-56, 73, 78-79. During that deposition, Vassily was also  
17 questioned by Defendants about competition in 2009 and 2010 for STEC's  
18 ZeusIOPS; his statement in an analyst report that, as of June 2009, legitimate  
19 competition in the enterprise storage space was still at least three to four quarters  
20 away; sources of information published in his analyst reports regarding STEC's  
21 competition; rumors of impending competition around November 2009; and the  
22 competitive landscape as of February 24, 2010. *Id.* at 195-203, 252-55.

23 (o) Aaron Rakers ("Rakers"), Managing Director and Senior  
24 Analyst at Stifel Nicolaus, was questioned about whether he had an understanding  
25 that the EMC Agreement would continue and EMC potentially sourcing SSDs  
26 from a company other than STEC in the future; statements in his analyst reports  
27 that, as of July 2009, his checks continued to suggest that there would be no viable  
28 competitor to STEC in the market for enterprise SSDs until mid-2010; the sources



1 of information published in his analyst reports regarding STEC's competition;  
2 EMC's interest in other SSD suppliers. Aaron Rakers Dep. Tr. at 49-54, 75-76.  
3 During that deposition, Rakers was also questioned by Defendants about  
4 conversations with EMC regarding STEC's competitive position. *Id.* at 164.

5 (p) Vijay Rakesh ("Rakesh"), Think Equity's Analyst covering  
6 semiconductors, was questioned about STEC's competition in September 2009 and  
7 November 2009; the potential for competition for STEC's ZeusIOPS; his estimate  
8 that competition would come in early 2010; and his conversations with Defendant  
9 Manouch Moshayedi regarding the competitive landscape. Vijay Rakesh Dep. Tr.  
10 at 88-89, 123-27, 130, 136. During that deposition, Rakesh was also questioned by  
11 Defendants about a statement in his March 13, 2009 analyst report that aggressive  
12 competition for SSDs was on the horizon; analyst reports citing competition as a  
13 risk to STEC in his analyst reports; and STEC's competition at or around the time  
14 of the Offering. *Id.* at 147-49, 154, 172-73, 182, 199-201.

15 (q) Crawford was questioned about competition as a risk factor  
16 STEC faced. Michael Crawford Dep. Tr. at 239. During that deposition, Crawford  
17 was also questioned by Defendants about the risk that prices and margins would be  
18 affected when other vendors emerged as competitors and investor concern  
19 regarding when and whether a competitor might emerge. *Id.* at 179-80, 184-85.

20 (r) Jeffrey Schreiner, Senior Research Analyst at Capstone, was  
21 questioned about the EMC Agreement and protection for STEC from its  
22 competitors, as well as the competitive landscape in 2009. Jeffrey Schreiner Dep.  
23 Tr. at 61-62, 95-97, 116-17.

24 206. Co-Lead Counsel attended the deposition of Steven L. Henning,  
25 Ph.D., CPA, an expert retained by Lead Plaintiff, who was questioned by  
26 Defendants about whether he was aware of any suppliers of enterprise SSDs in  
27 2009 other than STEC and when STEC's competitors were qualified with EMC.  
28 Steven Henning Dep. Tr. at 130-32.



1           207. Co-Lead Counsel reviewed the transcripts of depositions taken by the  
2 SEC, during which several deponents were questioned about STEC's competition:

3           (a) Defendant Manouch Moshayedi was asked by the SEC about  
4 competition around the time of the EMC Agreement and in 2010; communications  
5 with EMC regarding competitors and competitive pricing; and what Fahey and  
6 Chris Coeney, a field application engineer, both of whom were at the EMC factory,  
7 told him regarding EMC's alternatives to STEC's ZeusIOPS. Manouch  
8 Moshayedi SEC Dep. Tr. at 251-57, 261, 264.

9           (b) Defendant Mark Moshayedi was asked by the SEC about  
10 communications in 2009 and 2010 with EMC regarding competitors and  
11 competitive pricing. Mark Moshayedi SEC Dep. Tr. at 142-44, 207-08.

12           (c) Masoud ("Mike") Moshayedi, who co-founded STEC with his  
13 brothers Manouch and Mark Moshayedi and was President of the Company prior  
14 to his retirement in 2007, was questioned by the SEC about the Wedbush Report  
15 and what Manouch and Mark Moshayedi told him regarding STEC's competition.  
16 Mike Moshayedi SEC Dep. Tr. at 130-31, 136-37.

17           (d) Fahey was questioned by the SEC regarding when he heard  
18 about competition from EMC and whether in 2010 EMC would qualify other  
19 suppliers. William Fahey SEC Dep. Tr. at 89-92.

20           (e) Co-Lead Counsel attended the deposition of Roberto Basilio,  
21 Vice President of Hardware Product Management at Hitachi, who was questioned  
22 by Defendants about whether in 2009 Hitachi procured SSDs from manufacturers  
23 other than STEC and when other suppliers became available to Hitachi. Roberto  
24 Basilio Dep. Tr. at 24-28.

1 **IX. PLAINTIFFS VIGOROUSLY PROSECUTED**  
2 **THE SECURITIES ACT CLAIMS**

3 **A. Plaintiffs Vigorously Prosecuted the Securities Act Claims**  
4 **Through Their Vigorous Prosecution of the Exchange Act Claims**

5 208. The Exchange Act Claims and the Securities Act Claims alleged in  
6 this Action are based on the same factual predicate.<sup>16</sup> Every misstatement or  
7 omission alleged under the Securities Act is identical to one or more of the  
8 misstatements or omissions alleged under the Exchange Act, *compare* ¶¶ 46-321  
9 *with* ¶¶ 356-85—except for the alleged omission, under the Securities Act, to file  
10 the EMC Agreement with the SEC, *see* ¶ 101.<sup>17</sup> Therefore, every effort to discover  
11 evidence sufficient to prove the elements of the Exchange Act Claims was,  
12 necessarily, an effort to prove the smaller set of elements comprising the related  
13 Securities Act Claims.

14 209. Plaintiffs conducted an extensive pre-discovery investigation, which  
15 included, *inter alia*,

16 (a) review and analysis of documents filed publicly by Defendants  
17 with the SEC;

18 (b) review and analysis of press releases, news articles, and other  
19 public statements issued by or concerning Defendants;

20 (c) review and analysis of research reports issued by financial  
21 analysts concerning STEC's securities and business;

22 (d) interviews of former STEC employees;

23 (e) interviews of employees and former employees of computer  
24 manufacturing companies; and

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25 <sup>16</sup> The Court has previously recognized that the Exchange Act Claims and the  
26 Securities Act Claims are based on a "unified course of fraudulent conduct", *see*  
ECF No.175 at 4, 14, and the "same foundation of facts", ECF No. 279 at 12.

27 <sup>17</sup> The factual details regarding the omission to file the EMC Agreement with the  
28 SEC (in violation of the Securities Act) are part of the allegations under the  
Exchange Act because the omission to file the EMC Agreement is also evidence of  
scienter. *See* ¶¶ 100-12.

1 (f) review and analysis of news articles, media reports, and other  
2 publications concerning the computer industry.

3 210. Plaintiffs engaged in significant and meaningful discovery regarding  
4 the facts underlying the Action.

5 (a) Co-Lead Counsel served interrogatories and notices to produce  
6 documents on Defendants, which resulted in the production by Defendants of more  
7 than 1.7 million pages of documents, including documents previously produced by  
8 Defendants to the SEC in connection with the SEC's related investigation of STEC  
9 and the Moshayedis (the "SEC Investigation").

10 (b) Co-Lead Counsel also obtained over 1 million pages of  
11 documents from third parties, including EMC, the Other OEMs, the Underwriters,  
12 STEC's auditor PricewaterhouseCoopers LLP ("PwC"), and financial analysts who  
13 covered STEC during the Class Period.

14 (c) Co-Lead Counsel deposed more than two dozen witnesses,  
15 including Defendants and certain of their employees and various third parties,  
16 including employees of EMC and the Other OEMs, as well as financial analysts  
17 who covered STEC during the Class Period.<sup>18</sup>

18 211. The Parties exchanged expert reports, with each side retaining  
19 multiple experts. Reports were rendered on the subjects of Class Members'  
20 damages, the role of financial analysts in the market, the response of analysts to  
21 Defendants' misrepresentations and omissions, and Defendants' duties under  
22 regulations promulgated by the SEC.<sup>19</sup>

23  
24  
25  
26 <sup>18</sup> Pursuant to a stipulation with Defendants, Plaintiffs were allowed to take 30  
depositions. ECF No. 62.

27 <sup>19</sup> Depositions of the experts were scheduled to occur, and the Court's deadline  
28 for filing summary judgment motions was fast approaching, prior to the scheduled  
November 6, 2012 trial date, when the Parties reached a settlement.

1           **B.     Plaintiffs Continuously Searched for a Plaintiff**  
2           **with Standing to Allege the Securities Act Claims**

3           212. Throughout the prosecution of this Action, including during discovery  
4 and depositions, Plaintiffs diligently searched for a representative plaintiff with  
5 standing to assert the Securities Act Claims.<sup>20</sup>

6           213. Among other reasons for Plaintiffs' continuing search for a Securities  
7 Act representative plaintiff, on January 5, 2012, during the first mediation,  
8 Defendants communicated to Plaintiffs that Defendants would not settle unless the  
9 Securities Act Claims were included in the settlement.

10          214. The Court held that, to have standing to bring the Securities Act  
11 Claims, a plaintiff must have purchased or otherwise acquired STEC stock  
12 traceable to the Offering and held that stock until at least after the first alleged  
13 partial corrective disclosure, which, in the SAC, was after the close of trading on  
14 November 4, 2009. *See* ECF No. 314 at 2.

15          215. None of the plaintiffs who filed the seven initial complaints, the  
16 Consolidated Complaint, and/or motions for appointment as lead plaintiff alleged  
17 that they purchased or otherwise acquired STEC stock pursuant or traceable to the  
18 Offering and held that stock until at least November 4, 2009.<sup>21</sup>

19          216. On March 7, 2012, the Court stayed the action for all purposes other  
20 than discovery, to permit Plaintiffs to find a class representative with standing. *See*  
21 ECF No. 279 at 21 (staying Action for 60 days for all purposes other than  
22 discovery to permit Plaintiffs to find a class representative with standing).

23          217. On April 19, 2012, after having taken twenty-two of its twenty-five  
24 fact depositions, Lead Plaintiff still was vigorously searching for a Securities Act

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25          <sup>20</sup> *See* ECF No. 314 at 7 (“Should Plaintiffs discover an adequate Securities Act  
26 representative upon Class notification, the Court may revisit the class certification  
issue.”).

27          <sup>21</sup> Only one of the initial complaints alleged Securities Act Claims. *See* Class  
28 Action Complaint for Violation of Federal Securities Laws ¶¶ 104-21, *Sakhai v.*  
*STEC, Inc.*, No. 8:09-cv-01306-JVS-MLG (C.D. Cal. Nov. 6, 2009) (ECF No. 1).

1 representative plaintiff. *Compare, e.g.*, ECF No. 288 (stipulation, dated April 4,  
2 2012, explaining that only three of Lead Plaintiff's twenty-five fact depositions  
3 remained to be taken), with ECF No. 307-2 (letter from Lead Plaintiff, dated April  
4 19, 2012, seeking Securities Act representative plaintiff).

5 218. In its Order, dated June 19, 2012, the Court concluded that Lead  
6 Plaintiff had "reasonably exhausted all avenues for discovering an adequate  
7 Securities Act representative." *See* ECF No. 314 at 3-4 (reciting Lead Plaintiff's  
8 efforts, during the 60 day stay, to find a Securities Act representative plaintiff who  
9 had purchased in the Offering, and who had held until at least November 4, 2009);  
10 *see also* ECF No. 307-1 (declaration by Co-Lead Counsel, detailing search efforts  
11 made during the stay) & 307-2 (exhibits to Co-Lead Counsel's declaration).

12 219. Following the July 30, 2012 mediation, Plaintiffs broadened their  
13 criteria for a Securities Act representative plaintiff to include purchasers in the  
14 Offering who held until the September 17, 2009 disclosure related to the  
15 Competition Claim. Dr. Ripperda, who purchased on the Offering and held  
16 through September 17, 2009, agreed to serve as a Securities Act representative  
17 plaintiff and retained Thomas Bienert and Robert Green as his counsel.

18 **C. Plaintiffs Vigorously Prosecuted Claims Relating to the Offering**

19 220. Among the topics thoroughly investigated during discovery by  
20 Plaintiffs were those relating to the nature of the Offering and how it compared to  
21 the Moshayedis' history of trading, the Moshayedis' motivations for the Offering,  
22 the process by which the Offering was approved by STEC, the essential  
23 simultaneity of the Offering with the alleged misstatements and material  
24 omissions, the specifics of the alleged misstatements and material omissions—  
25 which were made primarily in the Registration Statement and Prospectus, and in  
26 the Form 10-Q incorporated into the Registration Statement and Prospectus—and  
27 Defendants' knowledge at the time of the Offering that their statements were false  
28 and their omissions were material.

1           221. On August 3, 2009, STEC filed with the SEC, and thereby made  
2 public, the registration statement and prospectus for a secondary offering of STEC  
3 stock comprised entirely of stock owned by Manouch and Mark Moshayedi (the  
4 “Registration Statement,” “Prospectus” and “Offering”), as well as STEC’s Form  
5 10-Q for the 2009 second quarter. The Prospectus is incorporated by reference  
6 into the Registration Statement. The Form 10-Q is incorporated by reference into  
7 both the Prospectus and Registration Statement.

8           222. The Offering closed on August 11, 2009.

9           223. As part of discovery, Plaintiffs evaluated the unusualness of the  
10 number of shares sold by Manouch and Mark Moshayedi in the Offering, by  
11 obtaining and reviewing documents filed with the SEC, and documents produced  
12 herein by Defendants, regarding Manouch and Mark Moshayedis’ holdings of  
13 STEC stock; their sales in, and profits from, the Offering; and their trading in  
14 STEC stock during the six years between STEC’s IPO and the Offering. Plaintiffs  
15 also questioned Manouch and Mark Moshayedi about this subject during each of  
16 their depositions, including what they did with their proceeds from the Offering.  
17 To shed further light on this subject, Plaintiffs also investigated the history of  
18 trading in STEC stock by Mike Moshayedi, the brother of Manouch and Mark,  
19 who was retired at the time of the Offering. Plaintiffs obtained and reviewed more  
20 than 6,400 pages of documents produced by Mike Moshayedi, documents filed  
21 with the SEC regarding his trading history, and the transcript of a deposition of  
22 Mike Moshayedi taken by the SEC.

23           224. Also as part of discovery, Plaintiffs investigated Manouch and Mark  
24 Moshayedis’ motivations for conducting the Offering, including the Moshayedis’  
25 decision to sell STEC shares as part of the Offering rather than pursuant to Rule  
26 10b5-1 trading plans created by Manouch and Mark in the spring of 2009, or  
27 pursuant to certain other arrangements that were suggested by investment banks  
28 other than the Underwriters for the Offering. Plaintiffs obtained from Defendants



1 and reviewed the 10b5-1 trading plans, including, without limitation, the plans  
2 created by Manouch and Mark for trading shares of STEC stock held by Manouch  
3 or Mark as a trustee for other family members. Plaintiffs also obtained from  
4 Defendants and reviewed documents relating to STEC's insider trading policy.  
5 Plaintiffs also obtained from Defendants and reviewed relevant emails and other  
6 communications, including communications between Manouch and Mark  
7 Moshayedi, and communications between one or both of the Moshayedis and third  
8 persons, including STEC employees, personal investment advisers, and even  
9 customers. During his deposition, Manouch was asked about, among other  
10 relevant things, statements by him prior to the Offering that he wanted to sell his  
11 stock at a certain price, his reason for cancelling his 10b5-1 plans, his reasons for  
12 rejecting a competing proposal made by an investment bank other than the  
13 Underwriters, the level of advance investor interest in the Offering, the expected  
14 effect of the Offering on the price of STEC stock, and Manouch's need to  
15 approve—and therefore know the contents of—Mark's 10b5-1 plans. During  
16 Mark Moshayedi's deposition he was asked about, among other relevant things, his  
17 reasons for selling his stock through the Offering rather than through his  
18 pre-existing 10b5-1 plans, the timing of the decision to make the sales through the  
19 Offering, the price of STEC stock at the time when the decision to sell through the  
20 Offering was made, the expected effect of the Offering on the price of STEC stock  
21 and his communications with Manouch and others regarding possible alternative  
22 methods for the sale of his STEC stock.

23       225. Also as part of discovery, Plaintiffs investigated the process by which  
24 the approval of STEC's board of directors was obtained for the Offering, including  
25 by, among other things, obtaining and reviewing the minutes of relevant board  
26 meetings, and by deposing the Moshayedis and other relevant witnesses regarding  
27 this subject. For example, Defendant Raymond Cook, STEC's CFO and member  
28 of the board of directors, was questioned during his deposition regarding the timing



1 and process by which the board approved the Offering, Cook's knowledge of the  
2 Moshayedis' motive for the Offering, prior involvement with the Moshayedis'  
3 10b5-1 trading plans by Cook and STEC's board of directors, the selection of the  
4 Underwriters for the Offering, meetings with the Underwriters, the intended and  
5 actual operation of the over-allotment provision in the underwriting agreement, the  
6 decision to do the Offering through a shelf-registration, whether STEC had  
7 planned to also sell shares owned by the Company through the Offering or  
8 otherwise pursuant to the shelf-registration, whether and why such a subsequent  
9 offering ever was or was not made, Cook's public remarks about the Offering  
10 made during STEC's 2009 second quarter earnings conference call, the road show  
11 for the Offering, and the fact that the decision to do the Offering was made at the  
12 same time that the EMC Agreement was being negotiated and then announced to  
13 the public.

14       226. Also as part of discovery, Plaintiffs sought and obtained an agreement  
15 from Defendants that they would make a limited-scope waiver of the attorney-  
16 client privileged as it applied to communications between themselves and their  
17 outside attorney at the time of the Offering—Reed Smith—concerning, among  
18 other subjects, the Offering. Pursuant to this agreement, Plaintiffs deposed David  
19 Mittelman, an attorney at Reed Smith, and questioned him on, among other things,  
20 his contemporaneous knowledge of the Offering and the Moshayedis' motives for  
21 the Offering, whether he advised STEC—and the content of any such advise—  
22 regarding (a) cancellation of the Moshayedis' 10b5-1 plans, (b) the decision to do  
23 the Offering, (c) public statements made by STEC during the time that STEC was  
24 planning to do the Offering and/or during the Offering itself—including in the  
25 Prospectus, STEC's second quarter Form 10-Q, and STEC's second quarter  
26 earnings conference call—whether Mittelman attended STEC board meetings  
27 regarding the Offering and, if so, what happened at the meetings, and how else the  
28

1 job of Mittelman and other Reed Smith attorneys was affected by the planning for  
2 and implementation of the Offering.

3 227. Also as part of discovery, Plaintiffs made vigorous and wide ranging  
4 efforts prove the falsity of statements and omissions made by Defendants during or  
5 shortly before the Offering—including, especially, in the Offering documents  
6 themselves—and to prove that Defendants had contemporaneous knowledge of  
7 such falsity. One way to understand the breadth and depth of these efforts is to  
8 consider certain aspects of Lead Plaintiff’s answers to Defendants’ contention  
9 interrogatories, which were served by Lead Plaintiff after the end of fact  
10 discovery—on June 25, 2012 (the “Interrogatory Answers”).

11 228. The Interrogatory Answers assert that Defendants are liable for  
12 sixteen (16) false statements and material omissions made by Defendants on  
13 August 3, 2009, the same day that STEC filed with the SEC the Registration  
14 Statement, Prospectus and third quarter Form 10-Q incorporated into the  
15 Registration Statement and Prospectus.<sup>22</sup>

16 229. These sixteen alleged misstatements and omissions, made on the same  
17 day that the Registration Statement, Prospectus and Form 10-Q were filed with the  
18 SEC, comprise the large majority of misstatements and omissions that ever have  
19 been alleged in this case.

20 230. Ten of the sixteen alleged misstatements and omissions made on  
21 August 3, 2009, were made in the Prospectus, or in the Form 10-Q incorporated  
22 into the Prospectus.

23 231. All ten of the misstatements and omissions made in, or incorporated  
24 into, the Prospectus are actionable under the Securities Act.

25  
26 <sup>22</sup> For the purpose of this tally, if the same misstatement or omission appears in  
27 two separate places—*e.g.*, in both the Prospectus and the Form 10-Q—it is counted  
28 twice. Similarly, if a statement contains both a misrepresentation and an omission,  
or two distinct omissions, it is counted twice.

232. Two of the ten misstatements and omissions listed in the Interrogatory Answers that are actionable under the Securities Act are alleged in the Second Amended Complaint as being actionable *only* under the Securities Act, and *not* under the Exchange Act. *See* ECF No. 178-3, at ¶¶ 312-23; *compare id.* at ¶¶ 304-24 *with id.* at ¶¶ 224-31.

233. Five of the sixteen misstatements and omissions listed in the Interrogatory Answers that were made on August 3, 2009—the same day that the Registration Statement, Prospectus and Form 10-Q were filed—had not been alleged in the Second Amended Complaint. These five additional misstatements and omissions were alleged in the Interrogatory Answers because evidence in support of their material falsity had been obtained during discovery. In summary form, these five additional misstatements and omissions made on August 3, 2009, include:

(a) A material omission from an estimate of expected third quarter revenue made in STEC’s earnings release filed on August 3, 2009;

(b) A statement by Manouch made during STEC’s 2009 second quarter earnings conference call, on August 3, 2009, that STEC’s customers, other than EMC, were “a quarter or two away from full ramping production [of systems incorporating STEC’s ZeusIOPS]”;

(c) A material omission from a statement made by Manouch during STEC’s 2009 second quarter earnings conference call that “I would say \$55 million out of the \$120 million [of purchases agreed to by EMC under the EMC Agreement] was built into the Q3 [revenue projection]”;

(d) A statement made by Manouch to a securities analyst during a telephone call made shortly after STEC’s 2009 second quarter earnings conference call, on August 3, 2009, as recorded in notes made by Defendants regarding what was said during the call; and

1 (e) A statement made by Manouch to a second securities analyst  
2 during a second telephone call made shortly after STEC's 2009 second quarter  
3 earnings conference call, on August 3, 2009, as recorded in notes made by  
4 Defendants regarding what was said during the call.

5 234. A description of some, but not all, of the evidence obtained during  
6 discovery demonstrating that Defendants' knew, as of August 3, 2009, that the  
7 sixteen statements and omissions made by them on August 3, 2009, were  
8 materially false, fills twenty-five pages of the Interrogatory Answers.<sup>23</sup>

9 235. Also following the close of fact discovery, Plaintiffs served  
10 Defendants with the report of Steven L. Henning, Ph.D., CPA, an expert witness  
11 regarding disclosures required under SEC regulations, and materiality under SEC  
12 guidance. This report contained opinions regarding the materiality of each of the  
13 two alleged omissions made on August 3, 2009, that the Second Amended  
14 Complaint alleges are actionable solely under the Securities Act, *see supra*, and a  
15 third opinion regarding the materiality of the omission made on August 3, 2009, in  
16 STEC's third quarter revenue forecast—which, as explained, *supra*, was alleged  
17 for the first time in the Interrogatory Answers, based on evidence obtained during  
18 discovery.

19 236. Prior to the completion of fact discovery Plaintiffs already had served  
20 Defendants with the declaration of John D. Finnerty, Ph.D., an expert witness  
21 regarding, among other things, market efficiency, which included Dr. Finnerty's  
22 analysis of the reaction of STEC's stock price to news regarding STEC made  
23 public on August 3, 2009, including, but not limited to, the misstatements and  
24 omissions made by Defendants on August 3, 2009. *See* ECF No. 220, at 19-22.

25  
26  
27 <sup>23</sup> This description of evidence is provided in response to Manouch Moshayedi's  
28 Interrogatory No. 12, and includes the response to Manouch Moshayedi's  
Interrogatory No. 10, which is incorporated by reference into the response to  
Manouch Moshayedi's Interrogatory No. 12.

**D. Plaintiffs Vigorously Prosecuted the Securities Act Claims Against the Underwriters**

237. The Offering was underwritten by the four Underwriters: J.P. Morgan Securities, Deutsche Bank Securities, Barclays Capital, and Oppenheimer. Prospectus Supplement at S-27 (Aug. 7, 2009). The lead underwriters (a/k/a “joint bookrunners”) of the Offering were J.P. Morgan Securities and Deutsche Bank Securities.

238. The Underwriters were named as defendants in both the CAC and the SAC. However, as noted, the Court dismissed the class claims against the Underwriters on June 17, 2011.

239. On November 9, 2011, Plaintiffs issued subpoenas out of the Southern District of New York to each of the Underwriters (the “Underwriter Subpoenas”). The Underwriter Subpoenas sought the production of documents relating to, *inter alia*, the due diligence performed by the Underwriters in connection with the Offering, all communications with STEC personnel regarding the Offering, and the identities of all Offering Purchasers.<sup>24</sup>

240. After protracted negotiations concerning the scope of discovery, lead underwriters J.P. Morgan Securities and Deutsche Bank Securities produced to Plaintiffs a total of 668,105 pages of documents responsive to the Underwriter Subpoenas. In addition, the other two underwriters produced a total of 63,876 pages of documents.

241. The Underwriters’ document productions included all of the due diligence documents that they had produced to the SEC in connection with the SEC Investigation. Significantly, the Underwriters’ production included the

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<sup>24</sup> Plaintiffs issued supplemental subpoenas out of the Central District of California to the Underwriters seeking the identities of the Offering Purchasers. After a discovery dispute concerning the production of the Offering Purchasers’ addresses, which Plaintiffs raised with Magistrate Judge Goldman on March 28, 2012 (ECF No. 283), the Underwriters eventually produced that information.

1 “Commitment Committee” memorandum that each firm drafted in connection with  
2 the Offering. The Commitment Committee memoranda described the due  
3 diligence procedures performed by each Underwriter and contained each  
4 Underwriter’s rationale for participating in the Offering—including a detailed  
5 analysis of STEC’s financial position, competitive position, and business  
6 prospects—based on public information, STEC’s internal documents, and  
7 interviews with STEC’s managers, auditors, and customers.

8 242. In addition, on April 2, 2012, Plaintiffs deposed Sherri Scribner  
9 (“Scribner”), a financial analyst at Deutsche Bank Securities who was part of the  
10 Deutsche Bank Securities engagement team for the Offering, and who  
11 subsequently initiated coverage of STEC as a securities analyst on August 16,  
12 2009. Scribner was questioned about, *inter alia*, Deutsche Bank Securities’  
13 Commitment Committee memorandum; due diligence with respect to the Offering;  
14 Scribner’s involvement with the Offering; and Scribner’s interaction with another  
15 analyst at Deutsche Bank Securities who published research reports on STEC prior  
16 to the Offering. Sherri Scribner Dep. Tr. at 22-23, 29-36, 44-57, 62-81. During  
17 that deposition, Scribner was also questioned by Defendants about due diligence  
18 for the Offering. *Id.* at 247-52, 278-79, 295.

19 243. Plaintiffs also questioned other deponents such as Defendants  
20 Manouch Moshayedi, Mark Moshayedi and Raymond Cook, and STEC’s outside  
21 counsel at the time of the Offering, David Mittleman, regarding any involvement  
22 by the Underwriters in drafting alleged misstatements or deciding to conduct the  
23 Offering, and any knowledge by the Underwriters of the falsity of Defendants’  
24 alleged misstatements or omissions.

25 244. Defendant Manouch Moshayedi specifically testified that he did not  
26 inform the Underwriters about the email that he received from EMC’s Timothy  
27 Smith some hours before the filing of the Prospectus, in which Smith told  
28 Manouch Moshayedi that “I think I can say with a high degree of confidence that



our most recent volume commitment deal will be our last.” Manouch Moshayedi Tr. 220:18- 221:18; 439:19-440:7.

**E. Plaintiffs Vigorously Prosecuted the Only Alleged Misstatements or Omissions Alleged as Actionable Only Under the Securities Act**

245. The SAC alleges that Defendants had a duty to disclose the one-off nature of the EMC Agreement in, among other places, STEC’s 2009 second quarter 10-Q, because that is one of the places where Defendants made a misleading statement about the EMC Agreement. *See* ECF No. 178-1 at ¶¶ 97-109. The SAC also alleges that, even if Defendants did not otherwise have a duty to disclose the one-off nature of the EMC Agreement in STEC’s 2009 second quarter 10-Q, they had a duty under the SEC’s Regulation S-K to do so. This duty under Reg. S-K is alleged to be actionable only under the Securities Act, not under the Exchange Act. *See* ECF No. 178-3 at ¶¶ 321-23. The report of Plaintiffs’ expert on accounting and SEC regulations, Dr. Steven L. Henning, drafted and produced during expert discovery, devoted one of its three opinions to the role of this requirement under Reg. S-K.

246. The only other statement or omission alleged in the SAC as actionable only under the Securities Act was Defendants’ omission to file the EMC Agreement with the SEC. Although this omission was not alleged to be actionable under the Exchange Act, it was alleged to be evidence of Defendants’ scienter under the Exchange Act, and was vigorously prosecuted for that reason, as well as because it was actionable under the Securities Act. The second of Dr. Henning’s three expert opinions regarded Defendants’ failure to file the EMC Agreement with the SEC.

**X. SETTLEMENT**

**A. Negotiations Among the Settling Parties**

247. The Settlement resulted from extensive negotiations that were undertaken over the course of nearly nine months with the assistance of the



1 Honorable Layn R. Phillips, a former Federal Judge, who was retained by the  
2 Parties as a mediator.

3 248. In the fall of 2011, Co-Lead Counsel and Defendants' Counsel,  
4 contacted Judge Phillips to request his assistance in mediating this case. After  
5 ensuring that no conflicts existed, Judge Phillips agreed to do so.

6 249. The Parties first met with Judge Phillips for a formal, full-day  
7 mediation session on January 5, 2012. In advance of this session, Co-Lead  
8 Counsel and Defendants' Counsel submitted detailed, comprehensive mediation  
9 statements. Along with Co-Lead Counsel, a representative of Lead Plaintiff (a  
10 Deputy Attorney General) attended and actively participated in the mediation  
11 session.

12 250. During the January 2012 mediation session, Judge Phillips engaged in  
13 numerous discussions with Co-Lead Counsel and the Defendants' Counsel in an  
14 effort to find common ground between the Parties' respective positions. However,  
15 although the January 2012 mediation session narrowed some of the Parties'  
16 differences, it did not lead to a resolution.

17 251. Thereafter, the Parties ceased all mediation discussions, deciding to  
18 pursue discovery. During this time, Judge Phillips was generally kept apprised of  
19 the litigation, including the progress of discovery.

20 252. Then, in May 2012, Co-Lead Counsel and Defendants' Counsel  
21 agreed that further formal mediation in the wake of the completion of extensive  
22 fact discovery might prove fruitful. Therefore, they scheduled a formal, full-day  
23 mediation with Judge Phillips for July 30, 2012. In advance of this session, Co-  
24 Lead Counsel and Defendants' Counsel submitted detailed, comprehensive  
25 mediation statements informed by their extensive mutual discovery.<sup>25</sup> The July  
26

27 <sup>25</sup> In connection with this mediation, Lead Plaintiff's damages expert prepared  
28 an event study, using a conservative model suitable for trial, and calculated  
aggregate damages of approximately \$233 million.

1 2012 mediation session was also attended by client representatives from the  
2 Parties, including a Deputy Attorney General from New Jersey and the General  
3 Counsel of STEC, who were actively involved in the discussions.

4 253. Although the mediation in July 2012 was productive in terms of  
5 focusing the areas of dispute and narrowing the settlement range, the Parties were  
6 not able to reach an agreement.

7 254. In August 2012, Dr. Ripperda agreed to serve as a class representative  
8 on behalf of investors who acquired STEC stock pursuant or traceable to the  
9 Offering and held that stock until at least the September 17, 2009 Corrective  
10 Disclosure, the first partial corrective disclosure alleged in the TAC.<sup>26</sup>

11 255. Dr. Ripperda retained Thomas Bienert, Jr. (“Bienert”) of Bienert  
12 Miller & Katzman and Robert S. Green (“Green”), of Green & Noblin, P.C. After  
13 Dr. Ripperda retained them as counsel, Bienert and Green reviewed the pleadings,  
14 the discovery record, and other aspects of the Action prior to joining the Parties in  
15 settlement negotiations. *See* ECF No. 354-2 (Green Decl.) ¶¶ 7-9; ECF No. 354-3  
16 (Bienert Decl.) ¶ 6.

17 256. On September 5, 2012, the Parties met in New York for a third and  
18 final mediation session with Judge Phillips.<sup>27</sup> The mediation was attended by  
19 counsel for the Parties, an Assistant Attorney General from New Jersey, the  
20 General Counsel of STEC, and counsel for Dr. Mark Ripperda.<sup>28</sup> Bienert and  
21

---

22 <sup>26</sup> Dr. Ripperda initially contacted Co-Lead Counsel on April 24, 2012 to discuss  
23 the Action. At that time, Dr. Ripperda provided to Co-Lead Counsel his trading  
24 records, which show that he had purchased STEC common stock on the Offering  
but had sold that stock prior to November 4, 2009 and, thus, did not have standing  
to assert the Securities Act Claims alleged in the SAC.

25 <sup>27</sup> Bernie Schneider, a colleague of Judge Philips, began the mediation. Judge  
Philips arrived later and jointly conducted the mediation with Mr. Schneider.

26 <sup>28</sup> Counsel requested that Dr. Ripperda attend the mediation. However, because  
27 Dr. Ripperda is an Emergency Room physician in Arizona, it was not possible for  
28 him to arrange his schedule to attend in person. Instead, he communicated with  
counsel via e-mail and was available during the mediation by telephone. *See* ECF  
No. 354-4 (Ripperda Declaration) ¶ 7.

1 Green actively participated in the negotiations. ECF No. 354-2 ¶ 11; *see also* ECF  
2 No. 354-3 ¶ 7. At the close of the third day of mediation, the Parties had narrowed  
3 their areas of dispute, but there was no agreement reached.

4 257. After additional discussions by telephone over the next two days, the  
5 Parties, including Dr. Ripperda, reached agreement and signed a Memorandum of  
6 Understanding on September 11, 2012, which set forth, subject to the preparation  
7 of formal stipulations of settlement, the material terms and conditions of the  
8 combined \$35.75 million settlement. The Settlement Agreement was executed on  
9 October 5, 2012. ECF No. 328-1.

10 **B. Negotiations Between Class Representatives' Counsel**

11 258. In October 2012, Co-Lead Counsel and counsel for Dr. Ripperda  
12 participated in additional negotiations with the assistance of Judge Phillips  
13 regarding the allocation of the Settlement between Class Members with only  
14 Exchange Act Claims and those with both Exchange Act and Securities Act  
15 Claims.

16 259. On October 22, 2012, Judge Phillips held a conference call solely on  
17 the issue of allocation, at which time Lead Plaintiff and Co-Lead Counsel accepted  
18 the allocation proposed by Dr. Ripperda and his counsel, whereby Class Members  
19 with Securities Act Claims would receive a 25% premium on their recovery.

20 260. The loss causation and damages expert retained by Lead Plaintiff to  
21 assist in creating the Plan of Allocation, Professor John D. Finnerty, has opined  
22 that a premium of 25% to Securities Act Claims, as compared to Section 10(b)  
23 claims, is reasonable. *See* ECF No. 354-5.

24 **XI. THE RISKS OF FURTHER LITIGATION**

25 261. Co-Lead Counsel respectfully submit that the \$35.75 million cash  
26 Settlement represents an outstanding result for the Class, and fully satisfies the  
27 requirements for final approval, especially in light of the substantial risks faced by  
28 Class Representatives. Co-Lead Counsel, together with Lead Plaintiff and the

1 Class Representatives, were fully aware and carefully evaluated the risks of further  
2 litigation. This Settlement was reached only after substantial fact discovery,  
3 including the depositions of the Individual Defendants and many of STEC's  
4 officers and employees with direct responsibility for the ZeusIOPS, analysis of  
5 millions of pages of documents, briefing multiple motions addressing the critical  
6 issues in the case, and careful consideration by Co-Lead Counsel in close  
7 consultation with Class Representatives and the Office of the New Jersey Attorney  
8 General. Accordingly, there can be no doubt that Lead Plaintiff and Class  
9 Representatives were fully aware of the strengths and weaknesses of the case at the  
10 time.

11 262. Based on this careful assessment, Lead Plaintiff and Class  
12 Representatives have concluded that the Settlement is fair, adequate and  
13 reasonable, and in the best interest of the Class. In reaching this conclusion, Lead  
14 Plaintiff, the Class Representatives and Co-Lead Counsel considered: (i) the  
15 substantial and immediate benefits that members of the Class will receive from the  
16 Settlement; (ii) the evidence available to support Class Representatives' claims;  
17 (iii) the risks that STEC's likely motion for summary judgment could be granted,  
18 in whole or in part; (iv) the risks at trial, especially in a complex action such as this  
19 one; and (v) the delay from the likely post-trial motions and appeals if the Class  
20 were to prevail at trial.

21 **A. Falsity Defense**

22 263. Defendants have consistently maintained that their statements were  
23 accurate and made without material omissions. Although it is not unusual for  
24 defendants to assert the truthfulness of their previous statements, in this case,  
25 Defendants have consistently asserted an additional defense that their statements  
26 regarding the EMC Agreement did not have the meaning attributed to them by  
27 Plaintiffs. Thus, the meaning communicated by Defendants' statements about the  
28

1 EMC Agreement, *as well as* the truthfulness of that meaning, would be facts to be  
2 determined by the jury.

3 264. In addition to statements regarding the EMC Agreement, the  
4 Operative Complaint alleges false statements and omissions regarding at least three  
5 other subjects: (i) sales to the Other OEMs, (ii) STEC's 2009 second quarter  
6 revenues, and (iii) competition for the ZeusIOPS. However, in allowing Plaintiffs  
7 to go forward with discovery, the Court did not find it necessary to examine  
8 whether Plaintiffs' allegations regarding any of these three other subjects were  
9 plausible, which adds to the difficulty of predicting how the Court would rule on a  
10 motion by Defendants to dismiss these claims on summary judgment. Moreover,  
11 when the SEC recently filed its own complaint against Defendant Manouch  
12 Moshayedi, the SEC did not allege the falsity of any statements regarding any of  
13 these three other subjects.

14 **B. Scienter Defense**

15 265. Defendants have consistently maintained that, when making their  
16 statements, they reasonably believed them to be true. Even if any of their  
17 statements were found by a jury to have been false, Defendants cannot be liable  
18 under the Exchange Act for such falsity, unless Defendants made the statements  
19 with scienter—*i.e.*, knowledge of their falsity, or reckless disregard for whether the  
20 statements were true or false. Even under the Securities Act, if the statements were  
21 forward looking statements—*i.e.*, primarily statements about the future—  
22 Defendants cannot be liable, unless they made such forward looking statements  
23 with knowledge of their falsity.

24 266. Whether Defendants reasonably believed that their statements about  
25 the EMC Agreement were true, may depend, in part, on what they had been told by  
26 EMC, and on whether they reasonably doubted what EMC had told them,  
27 Therefore, the ability of Plaintiffs to prove Defendants' scienter may depend not  
28

1 only on the credibility of Defendants, but also, on the credibility of the EMC  
2 witnesses—an additional factor to be determined by the jury.

3 **C. Safe Harbor Defense**

4 267. Defendants have persistently asserted that the majority of the alleged  
5 misstatements were “forward looking” statements made in the context of  
6 cautionary language. Under the so called “safe harbor” that governs securities  
7 suits by private plaintiffs, Defendants cannot be held liable for forward looking  
8 statements made in the context of other, cautionary language about the same  
9 subject, even if the forward looking statements were knowingly false. Therefore,  
10 regardless of whether Defendants made knowingly false statements, Defendants  
11 may be able to escape liability, if they can show that the statements were forward  
12 looking statements made in the context of other, adequately cautionary language,  
13 regarding the same subjects.

14 **D. Defenses Against Damages**

15 268. In moving to dismiss the CAC, Defendants argued that Plaintiffs had  
16 failed to allege that any of the stock drops following any of the alleged corrective  
17 disclosures—whether on September 17, 2009, November 3, 2009, or February 23,  
18 2010—had been *caused* by a disclosure of any truth concealed by Defendants’  
19 alleged misstatements. ECF No. 147 at 21-24. Because the CAC was dismissed  
20 for other reasons, the Court never ruled on Defendants’ argument, and it is likely  
21 that similar arguments would be made by Defendants on a motion for summary  
22 judgment and at trial. If the Court or a jury were to determine that Defendants’  
23 statements did not cause Class Members’ losses, Class Members would not be able  
24 to recover anything, regardless of whether or not Defendants’ statements were  
25 knowingly false.

26 269. Defendants also made a separate argument specifically attacking Class  
27 Members’ ability to recover damages for the stock drop on February 23, 2010. In  
28 opposing Plaintiffs’ motion for Class Certification, Defendants argued that



1 Plaintiffs had failed to allege that they had *relied* on any statement whose falsity,  
2 when disclosed, could have caused the stock drop on February 23, 2010, because  
3 any truth concealed by Defendants' alleged false statements already had been fully  
4 disclosed by the alleged corrective disclosure on November 3, 2009. The Court  
5 held that such a defense was premature on a motion for Class Certification. *See*  
6 ECF No. 279 at 20. However, Defendants likely would reassert such a defense at  
7 summary judgment and trial

8       270. Damages from the stock drop on September 17, 2009, might not be  
9 available to Class Members for a different reason, namely, because these damages  
10 are alleged to have been caused solely by disclosure of the truth regarding the  
11 Competition claim. For reasons explained, *supra*, the chances of this claim  
12 surviving summary judgment, trial and appeal are relatively small.

13       271. Finally, it is routine for defendants to argue that every disclosure that  
14 causes a stock drop is merely a disclosure regarding a new development in the  
15 issuer's business, rather than a disclosure of some concealed truth regarding a past  
16 event. Therefore, it is likely that Defendants will make such an argument  
17 regarding the stock drop that followed the corrective disclosure on November 3,  
18 2009. Even if Defendants could not convince a jury that the disclosure on  
19 November 3, 2009, was entirely about a new event, they might be able to convince  
20 the jury that the disclosure was at least partly about a new event, and, therefore,  
21 only partly about a previously concealed truth, and thereby might be able to limit  
22 Class Members' damages to some fraction of the loss caused by the stock drop that  
23 followed the disclosure.

24       272. As a result of the availability to Defendants of the various defenses  
25 described, *supra*, it is possible that, even if a jury were to find that Defendants  
26 knowingly made misleading statements, Class Members would recover no  
27 damages, or damages in an amount smaller than the amount of the Settlement.

28       **E. The Complexity of Trial**

1           273. Another significant risk was trial. One of the ways in which Lead  
2 Plaintiff and Class Representatives have analyzed this risk was by organizing and  
3 observing jury focus groups. Securities class actions, in general, are already  
4 difficult cases that involve complicated questions of law and fact, including arcane  
5 technical questions of loss causation and damages. Probably, the case would not  
6 be entirely disposed of at summary judgment, since certain of STEC's anticipated  
7 arguments on summary judgment raise pure issues of fact. But summary judgment  
8 could make the case considerably smaller. Moreover, at trial, loss causation would  
9 have become a hotly debated issue mired in expert testimony and statistical jargon.  
10 Further, the issues related to the ZeusIOPS would require expert testimony and  
11 extreme attention to detail on the part of the jury. This complexity would have  
12 worked against the Class because Class Representatives have the burden of proof.  
13 While Lead Plaintiff and Class Representatives did not believe that explaining the  
14 case at trial was impossible, the risk of losing even with a flawless presentation  
15 was substantial.

16           274. In short, the risk that the Class could see its claims diminished at  
17 summary judgment, and dismissed entirely at trial or on an appeal by Defendants,  
18 was significant. Having completed fact discovery and exchanged expert reports,  
19 Class Representatives balanced the risk, the expense, and the length of time  
20 necessary to prosecute the action through the end of expert discovery, summary  
21 judgment motions, trial, and any appeals, with the substantial and assured recovery  
22 provided by the Settlement. In light of these considerations, Class Representatives  
23 and Co-Lead Counsel all believe that the Settlement is fair, adequate and  
24 reasonable, and should be approved.

25 **XII. PLAN OF ALLOCATION**

26           275. Pursuant to the Preliminary Approval Order, all Class Members who  
27 wish to participate in the Settlement are required to file a valid Proof of Claim  
28 form on or before June 25, 2013.

1           276. As set forth in the Notice, Class Members will receive a distribution  
2 from the settlement proceeds, after deduction of fees and expenses approved by the  
3 Court, administrative costs and taxes incurred on interest income earned by the  
4 Settlement Fund, *i.e.* the Net Settlement Fund. The distribution will be made in  
5 accordance with the Plan of Allocation, as preliminarily approved by the Court,  
6 which has been set forth and described in detail on pages 10-15 of the Notice.

7           277. The Plan of Allocation is not intended to estimate the amount a class  
8 member might have been able to recover after a trial, nor is it intended to estimate  
9 the amount that will be paid to Authorized Claimants. The Plan of Allocation is  
10 the basis upon which the Net Settlement Fund will be proportionately divided  
11 among all eligible Authorized Claimants, who will receive their pro rata share of  
12 the Net Settlement Fund. The Court will be asked to approve the Claims  
13 Administrator's determinations before the Net Settlement Fund is distributed to  
14 Authorized Claimants.

15           278. The Plan of Allocation was crafted by Co-Lead Counsel and Class  
16 Representatives' damages expert. It is consistent with the TAC and reflects the  
17 allegations that the price of STEC common stock during the Class Period was  
18 inflated artificially by reason of Defendants' allegedly false and misleading  
19 statements. The artificial inflation allegedly began on June 16, 2009, when STEC  
20 issued a press release increasing its quarterly guidance. STEC denies any  
21 allegations of liability and had no input into the Plan of Allocation.

22           279. The Class Period began on June 16, 2009, when STEC issued a press  
23 release announcing a \$120 million supply agreement for the ZeusIOPS for the  
24 second half of 2009. Class Representatives allege that the artificial inflation was  
25 eliminated after disclosures on February 23, 2010. Class Representatives' expert's  
26 methodology was incorporated into the Plan of Allocation by taking into account  
27 that there were disclosures of the truth on September 17, 2009, followed by  
28 additional news on November 3, 2009 and February 23, 2010, as discussed above.

1 The Plan of Allocation provides a recovery for each claimant that is relative to the  
2 amount of stock price inflation suffered.

3 280. Based on the analysis conducted by Class Representatives' damages  
4 expert, and Class Representatives' and Co-Lead Counsel's careful assessment of  
5 the claims in the Action, Co-Lead Counsel respectfully submits that the Plan of  
6 Allocation is fair, adequate and reasonable, and should be approved by the Court.

7 **XIII. ATTORNEYS' FEES AND EXPENSES**

8 **A. The Fee Request is Fair and Reasonable, and**  
9 **Has the Support of Lead Plaintiff**

10 281. Plaintiffs' Counsel seeks an award of attorneys' fees of 16.07% of the  
11 Settlement Fund, including accrued interest, and payment of litigation expenses in  
12 the amount of \$1,925,895.67, plus accrued interest. While the determination of  
13 whether to approve a fee and expense request rests squarely with this Court, Lead  
14 Plaintiff supports Plaintiffs Counsel's request and believes that an award of such  
15 fees and expenses would be reasonable under the circumstances of this case. *See*  
16 *McDonough Decl.*, Ex. 1 annexed hereto.

17 282. Here, we submit that the result achieved strongly supports an award of  
18 the requested fee. The global settlement of \$35.75 million represents a tremendous  
19 result for the Class.

20 **(i) Fees Typically Awarded**

21 283. A fee of 16.07% is well below the 25% "benchmark" governing the  
22 award of attorneys' fees in common fund cases established by the Ninth Circuit  
23 Court of Appeals. *See, e.g., Vizcaino v. Microsoft Corp.*, 290 F.3d 1043 (9th Cir.  
24 2002) (affirming award of 28% fee).

25 284. Likewise, a fee of 16.07% is below the Ninth Circuit's 25%  
26 benchmark in securities class actions involving comparable recoveries in district  
27 courts within the Ninth Circuit. *See, e.g., In re Heritage Bond Litig.*, No. 02-ML-  
28

1 1475 DT, 2005 WL 1594403, at \*27 (C.D. Cal. June 10, 2005) (awarding 33 1/3%  
2 of \$27,783 million settlement).

3 (ii) **Risks Faced by Plaintiffs' Counsel and**  
4 **Contingent Nature of Fee**

5 285. The fee request is also fair and reasonable because of the significant  
6 risks Plaintiffs' Counsel faced in pursuing this action. As noted above, scienter,  
7 loss causation and damages were vigorously disputed throughout the course of the  
8 Action, and the case could have been dismissed by the Court or rejected by the jury  
9 at trial. Compounding these risks, Plaintiffs' Counsel made a very significant  
10 financial commitment to the prosecution of the case, including litigation expenses  
11 of \$1,925,895.67.

12 (iii) **Plaintiffs' Counsel's Extensive Efforts and**  
13 **Quality of Work**

14 286. In addition, the fee request should be approved because the Settlement  
15 was in large part the result of Plaintiffs' Counsel's hard work, persistence and skill.  
16 The challenges posed by the significant size of the document production in  
17 connection with the Defendants and third parties, the scope of the case, and the  
18 complexity of the issues were substantial. Counsel for Defendants is a top-tier  
19 national firm that mounted a vigorous defense. Through the skill, experience and  
20 dedication of Plaintiffs' Counsel, Lead Plaintiff and Class Representative were  
21 able to mount a strong and vigorous prosecution, which ultimately led to this  
22 excellent recovery.

23 287. Indeed, Plaintiffs' Counsel expended over 41,000 hours in the  
24 prosecution and investigation of this Action. *See* Summary Table of Lodestar and  
25 Expenses annexed hereto as Exhibit 3.

26 288. The hours invested by counsel are a testament Plaintiffs' Counsel's  
27 commitment and professional dedication to obtaining the best possible result.  
28 Having demonstrated exceptional commitment, perseverance and skill, coupled  
with an outstanding recovery, Plaintiffs' Counsel respectfully submit that they

1 performed a great service to the Class. The fee requested fairly and reasonably  
2 rewards Plaintiffs' Counsel's performance.

3 289. The fee is also reasonable in terms of the lodestar multiplier. At the  
4 Court's discretion, a lodestar multiplier serves as a "cross-check" to the  
5 reasonableness of a fee award based on the percentage approach. It is calculated  
6 by (i) dividing the fee requested by (ii) the number of hours counsel billed to the  
7 case multiplied by counsel's standard hourly rate. The multiplier reflects litigation  
8 risk, the complexity of the issues, the nature of the engagement, the skill of the  
9 attorneys, and other factors. Courts have recognized that a multiplier is  
10 appropriate to compensate for the risk inherent in contingency fee arrangements.

11 290. The cumulative hours expended by Plaintiffs' Counsel was 41,050.50  
12 hours and the resulting lodestar for the services performed totals \$20,995,456.00,  
13 at counsel's current billing rates. *See* Exs. 3-8. Thus, the requested fee represents  
14 a negative multiplier of 0.27 of counsel's lodestar. This means that Co-Lead  
15 Counsel, in particular, will recover significantly less than their actual time  
16 expended in prosecuting this Action.

17 291. The lodestar multiplier here strongly supports approval of the fee  
18 request because it is squarely below the multiplier range of 1.0 to 4.0 that the Ninth  
19 Circuit has found reasonable. *Vizcaino*, 290 F.3d at 1051 n.6 (finding multipliers  
20 from 1.0 to 4.0 are frequently awarded and affirming multiplier of 3.65).

21 292. In sum, we respectfully submit that a fee request of 16.07% is fair and  
22 reasonable. It is well within the range of fees typically approved by Courts in this  
23 District and in this Circuit. It is significantly below the fee request of cases of  
24 similar size, complexity and result, and it fairly compensates Plaintiffs' Counsel  
25 for an extraordinary result and outstanding effort. The fact that the lodestar  
26 multiplier is 0.27 further confirms that the fee request is reasonable.



**B. Payment of the Requested  
Litigation Expenses is Fair and Reasonable**

293. Plaintiffs' Counsel also request payment of the expenses incurred in connection with this Action. Plaintiffs' Counsel have submitted declarations (*see* Exhibits 4-8 annexed hereto) which state that the expenses are (i) reflected in the books and records maintained by the respective Plaintiffs' firm, (ii) an accurate recording of the expenses incurred, and (iii) reasonable and necessary for the successful prosecution of the case. In total, Plaintiffs' Counsel incurred reimbursable expenses in the amount of \$1,925,895.67 as more fully set forth below:

- (a) Labaton Sucharow LLP incurred expenses of \$1,594,630.56;
- (b) Lite DePalma Greenberg, LLP incurred expenses of \$323,865.65;
- (c) Lim, Roger & Kim LLP incurred expenses of \$2,460.92;
- (d) Bienert, Miller & Katzman incurred expenses of \$1,929.88;
- (e) Green & Noblin, P.C. incurred expenses of \$2,615.94; and
- (f) Berman DeValerio incurred expenses of \$393.32.

294. Of this amount, \$1,098,475 relates to substantial but critical expenditures for consulting and testifying experts in the fields of damages, SEC regulation and financial markets, who submitted expert disclosures and opinions to Defendants and provided Co-Lead Counsel with substantial guidance and analysis into the substantive issues in dispute.

295. The remaining expenses reflect the typical expenses incurred in the course of complex commercial litigation, such as legal research (*i.e.*, Westlaw fees), mediation and special master fees, travel, document duplication, telephone, FedEx, etc.

296. Lead Plaintiff has considered the expenses for which Plaintiffs' Counsel seek payment and believes that they are reasonable and were necessary for

1 the prosecution of the Action. *See* McDonough Decl. ¶ 14-16 Accordingly, Lead  
2 Plaintiff also supports Plaintiffs' Counsel's application for payment of expenses.

3 **XIV. CLASS REPRESENTATIVES' EXPENSE REQUEST**  
4 **PURSUANT TO THE PSLRA**

5 297. As set forth in the annexed McDonough Declaration, Exhibit 1 hereto,  
6 as representative of Lead Plaintiff, Mr. McDonough attests to the fact that New  
7 Jersey, during the course of representing the Class, incurred \$31,657.53 in  
8 expenses related to lost wages given the time employees of the Office of the  
9 Attorney General of the State of New Jersey dedicated to prosecution of the Action  
10 in connection with the claims against Defendants.

11 298. Assistant Attorney General McDonough explains that the Attorney  
12 General's deputies: (a) engaged in numerous meetings and conferences with Co-  
13 Lead Counsel; (b) reviewed documents, including those related to the adequacy of  
14 the Amended Complaint, discovery, and attempts at settlement; (c) attended court  
15 hearings; (d) provided input regarding litigation and settlement strategy; (e)  
16 monitored and participated in settlement sessions, settlement negotiations and  
17 approval of the Settlement with Defendants. The McDonough Declaration further  
18 details that the New Jersey spent more than 240 hours overseeing the Action and  
19 the hourly rates used to determine the amount of lost wages.

20 299. Accordingly, New Jersey is seeking a total of \$31,657.53 as  
21 reimbursement of expenses directly related to the prosecution of the Action, as is  
22 permitted by the PSLRA, 15 U.S.C. §78u-4 (a)(4).

23 300. As set forth in the Declaration of Michael Patrick Donovan  
24 ("Donovan Decl."), annexed hereto as Exhibit 9, Class Representative Local 103,  
25 working under the Direction of Lead Plaintiff, expended 51.5 hours in connection  
26 with litigating the claims against Defendants. Among other things, Michael  
27 Patrick Donovan was deposed by Defendants in this Action and, along with  
28

1 Richard Gambino, supervised the litigation. Accordingly, Local 103 seeks total of  
2 \$2,750.04 as reimbursement of expenses.

3 301. The total amount sought by Lead Plaintiff and Local 103 is  
4 \$34,407.57.

5 **XV. MISCELLANEOUS EXHIBITS**

6 302. Annexed hereto as Exhibit 10 is a true and correct copy of the  
7 Declaration of Layn R. Phillips.

8 303. Annexed hereto as Exhibit 11 is a true and correct copy of a research  
9 study by Ellen Ryan & Laura E. Simmon of Cornerstone Research, titled *Securities*  
10 *Class Action Settlements: 2012 Review and Analysis* (2013).

11 304. Annexed hereto as Exhibit 12 is a compendium of unreported cases, in  
12 alphabetical order, cited in the accompanying Memorandum of Points and  
13 Authorities in Support of Plaintiffs' Counsel's Motion for an Award of Attorneys'  
14 Fees and Expenses.

15 305. Annexed hereto as Exhibit 13 is a true and correct copy of a research  
16 study by Dr. Renzo Comolli, Dr. Ron Miller, Dr. John Montgomery, and Svetlana  
17 Starykh, titled *Recent Trends in Securities Class Action Litigation: 2012 Mid-Year*  
18 *Review* (NERA July 24, 2012).

19 **XVI. CONCLUSION**

20 306. In view of the outstanding recovery obtained for the Class, the  
21 substantial risks of this litigation, the enormous efforts of Co-Lead Counsel and  
22 Plaintiffs' Counsel, the quality of the work performed, the nature of the fee, the  
23 complexity of the case, and the experience of and outstanding work performed by  
24 all counsel, Co-Lead Counsel respectfully submit that the Settlement should be  
25 approved as fair, adequate and reasonable; that the Plan of Allocation should be  
26 approved as fair and reasonable; that attorneys' fees in the amount of 16.07% of  
27 the Settlement Fund, or \$5,745,025, should be approved as fair and reasonable; and  
28 that the litigation expenses should be reimbursed in full.

1 I declare under penalty of perjury under the laws of the United States that  
2 the foregoing is true and correct. Executed on April 8, 2013.

3  
4 /s/ Thomas A. Dubbs

5 Thomas A. Dubbs  
6 LABATON SUCHAROW LLP  
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# EXHIBIT 1

Christopher Kim (Bar No. 082080)  
christopher.kim@limruger.com  
Lisa J. Yang (Bar No. 208971)  
lisa.yang@limruger.com  
LIM, RUGER & KIM, LLP  
1055 West Seventh Street, Suite 280  
Los Angeles, California 90017-2554  
Telephone: (213) 955-9500  
Facsimile: (213) 955-9511

Thomas A. Dubbs (*Pro Hac Vice*)  
tdubbs@labaton.com

James W. Johnson (*Pro Hac Vice*)  
jjohnson@labaton.com

Richard T. Joffe (*Pro Hac Vice*)  
rjoffe@labaton.com

Thomas G. Hoffman, Jr. (*Pro Hac Vice*)  
thoffman@labaton.com

LABATON SUCHAROW LLP  
140 Broadway  
New York, New York 10005  
Telephone: (212) 907-0700  
Facsimile: (212) 818-0477

Allyn Z. Lite (*Pro Hac Vice*)  
alite@litedepalma.com

Bruce D. Greenberg (*Pro Hac Vice*)  
bgreenberg@litedepalma.com

Katrina Carroll  
kcarroll@litedepalma.com  
LITE DEPALMA GREENBERG, LLC  
Two Gateway Center, 12th Floor  
Newark, New Jersey 07102  
Telephone: (973) 623-3000  
Facsimile: (973) 623-0858

*Attorneys for Lead Plaintiff the State of New Jersey, Department of Treasury,  
Division of Investment, Plaintiffs International Brotherhood of Electrical Workers,  
Local 103 and Norfolk County Retirement System and Lead Counsel for the Class*

*(Caption continued on following page)*

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

IN RE STEC, INC.  
SECURITIES LITIGATION

This Document Relates to  
ALL ACTIONS.

No. SACV 09-01304-JVS (MLGx)

**DECLARATION OF BRIAN F.  
MCDONOUGH IN SUPPORT OF  
FINAL APPROVAL OF SETTLEMENT,  
AND REIMBURSEMENT OF LEAD  
PLAINTIFF'S REASONABLE COSTS  
AND EXPENSES RELATING TO ITS  
REPRESENTATION OF THE CLASS**

Judge: Hon. James V. Selna  
Court: 10C  
Date: May 20, 2013  
Time: 1:30 p.m.



1 Thomas Bienert, Jr.  
tbienert@bmkattorneys.com  
2 BIENERT, MILLER & KATZMAN  
903 Calle Amanecer, Suite 350  
3 San Clemente, CA 92673  
Telephone: (949) 369-3700  
4 Facsimile: (949) 369-3701

Robert S. Green  
rsg@classcounsel.com  
GREEN & NOBLIN, P.C.  
700 Larkspur Landing Circle, Suite 275  
Larkspur, CA 94939  
Telephone: (415) 477-6700  
Facsimile: (415) 477-6710

5 *Attorneys for Plaintiff Mark V. Ripperda*  
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1 I, BRIAN MCDONOUGH, declare, pursuant to 28 U.S.C. § 1764, as follows:

2 1. The State of New Jersey, Division of Investment, is the lead plaintiff  
3 in this matter. I am an Assistant Attorney General in the Affirmative Civil  
4 Enforcement Practice Group with the Division of Law in the Office of the Attorney  
5 General of the State of New Jersey. Since approximately April 1, 2011, my  
6 responsibilities have included monitoring and supervising the conduct of this  
7 matter.

8 2. A significant amount of this work was performed by Samuel S.  
9 Cornish, a Deputy Attorney General and the Section Chief of the Securities Fraud  
10 Prosecution Section, Division of Law, Office of Attorney General of the State of  
11 New Jersey, from approximately February 1, 2011 through February 2013. During  
12 that time, I was Mr. Cornish's immediate superior. Prior to Mr. Cornish's  
13 involvement in this matter, the monitoring and supervision role was performed by  
14 Carol G. Jacobson, Assistant Attorney General in charge of Pension Securities  
15 Fraud Litigation in the Office of the Attorney General.

16 3. I have personal knowledge of facts contained in this declaration that  
17 relate to the time period beginning as of approximately April 2011. I have  
18 knowledge of events prior to that date from documents in the files of Lead Plaintiff  
19 as well as the files of the Division of Law. Without waiving the attorney-client  
20 privilege, if called as a witness, I could and would competently testify to the  
21 following:

22 **Background**

23 4. Lead Plaintiff has participated extensively and diligently in all phases  
24 of this matter. New Jersey carefully evaluated, both internally and with its outside  
25 counsel, Lite DePalma Greenberg, LLC and Labaton Sucharow LLP, who became  
26 the Co-Lead Counsel here, whether to pursue appointment as Lead Plaintiff.  
27 Thereafter, Lead Plaintiff communicated on a regular, frequent basis (sometimes  
28 daily) with Co-Lead Counsel as to the status of this case. New Jersey, through me

1 and other senior personnel in the Office of the New Jersey Attorney General,  
2 carefully monitored and supervised the work of Co-Lead Counsel.

3 5. Lead Plaintiff required Co-Lead Counsel to provide periodic written  
4 reports about the status of the case, Co-Lead Counsel's staffing, lodestar and  
5 expenses, and other matters. New Jersey authorized Co-Lead Counsel's choice of  
6 Christopher Kim of Lim, Ruger & Kim, LLP to serve as Co-Lead Plaintiff's local  
7 counsel, and also authorized Co-Lead Counsel to use the services of one additional  
8 law firm (Berman DeValerio) to assist in the task of enforcing a document  
9 subpoena against EMC, a key third party witness, in the District of Massachusetts.  
10 In addition to scrutinizing Lead Counsel's reports and providing feedback to Co-  
11 Lead Counsel, New Jersey (among other things):

12 (a) Selected Co-Lead Counsel from a number of law firms who are  
13 on a list maintained by New Jersey of firms that, after a qualification process, have  
14 been deemed qualified to handle plaintiffs' class action securities fraud litigation;

15 (b) Agreed with Co-Lead Counsel in 2010, in advance of seeking  
16 lead plaintiff status and at arms-length, on an attorneys' fee schedule;

17 (c) Rigorously reviewed, substantively participated in the drafting  
18 of, and approved the pleadings, briefs on dispositive motions, written submissions  
19 in mediation, and other work product in connection with this matter;

20 (d) Consulted extensively with Co-Lead Counsel regarding  
21 discovery;

22 (e) Carefully evaluated with Co-Lead Counsel the decision to  
23 retain and the identities of liability and damage experts, and reviewed their expert  
24 reports;

25 (f) Observed jury focus group presentations conducted by Co-Lead  
26 Counsel and reviewed in detail the results of those jury focus group presentations;

27 (g) Provided Co-Lead Counsel with parameters for settlement  
28 discussions;

- 1 (h) Worked with Co-Lead Counsel in selecting a private mediator;
- 2 (i) Attended and participated directly, through me and Mr.
- 3 Cornish, in the mediations that resulted in the settlement of this matter;
- 4 (j) Reviewed, edited, and ultimately approved the stipulation of
- 5 settlement, the Plan of Allocation, and other settlement documents; and
- 6 (k) Authorized the selection of The Garden City Group, Inc.
- 7 (“Garden City”) as notice and claims administrator based on the advice of Co-Lead
- 8 Counsel.

9 **The Settlement**

10 6. Co-Lead Counsel kept New Jersey fully apprised, through their  
11 periodic written reports and otherwise, of the status and progress of, and the  
12 outlook for, this case. When defendants indicated an interest in mediation, Mr.  
13 Cornish and I consulted with Co-Lead Counsel as to the identity of the mediator,  
14 and we approved the ultimate choice, former United States District Judge Layn R.  
15 Phillips of Irell & Manella in Newport Beach, California. Three mediation  
16 sessions with Judge Phillips occurred in 2012. Mr. Cornish and I were intimately  
17 involved on behalf of Lead Plaintiff with all of those sessions, and with activities  
18 surrounding them. Mr. Cornish attended the first two mediation sessions, one of  
19 which took place in New York, New York and the other in Newport Beach,  
20 California, while I attended the third session, which occurred in New York, New  
21 York.

22 7. Among other things, I participated, on behalf of Lead Plaintiff, in  
23 numerous conferences with Co-Lead Counsel concerning the decision to mediate,  
24 the identity of potential mediators, and the strategy and settlement objectives for  
25 the mediation in light of the results of discovery, the results of the jury focus  
26 group, the opinions of our liability and damage experts, and the opinions of the  
27 experts retained by defendants. I fully understood the strengths and potential  
28 weaknesses of our case. Co-Lead Counsel made me fully aware of the insurance

1 coverage that defendants had, and the layering of and limitations on that coverage.  
2 I reviewed and ultimately approved the written submissions that New Jersey made  
3 to the mediator.

4 8. The first mediation session occurred on January 5, 2012 in New York,  
5 New York. Mr. Cornish attended along with Co-Lead Counsel. Counsel for  
6 defendants (both in-house and outside counsel) and counsel for numerous insurers  
7 were also present. The mediation began at 9 A.M. and lasted all day, but did not  
8 make any real progress.

9 9. The second mediation session occurred on July 30, 2012 in Newport  
10 Beach, California. Mr. Cornish again attended with Co-Lead Counsel. The  
11 mediation began early in the morning and consumed another entire day of often  
12 contentious bargaining. The parties made substantial progress in closing the gap  
13 toward settlement, but no agreement was reached.

14 10. The parties reconvened with Judge Phillips for a third time on  
15 September 5, 2012 in New York, New York. I attended that mediation session,  
16 along with Co-Lead Counsel and counsel for Dr. Ripperda. They worked until  
17 nearly 8 P.M. that day. Still, the case was not resolved. Only after further  
18 discussions by telephone did the parties finally reach this settlement. The New  
19 Jersey Attorney General's Office and the Division of Investment approved that  
20 settlement.

21 11. Based on Lead Plaintiff's direct, intimate and extensive involvement  
22 with the prosecution of this action, our awareness of the maximum potential  
23 damages recoverable and the risks of litigation, and my role, with Mr. Cornish and  
24 Co-Lead Counsel, in negotiating the settlement through the three mediation  
25 sessions and the further discussions that followed the final mediation, Lead  
26 Plaintiff strongly endorses the settlement. Lead Plaintiff also unqualifiedly  
27 approves the Plan of Allocation as a fair, reasonable and appropriate means of  
28

1 valuing the claims of class members and apportioning the settlement fund among  
2 them.

3 12. New Jersey has served as the court-appointed lead plaintiff in other  
4 securities class actions, including, in this District, *In re Tenet Healthcare Securities*  
5 *Litigation*, Docket No. 02-8462 RSWL (RZx) (C.D. Cal.), as well as *In re*  
6 *Electronic Data Systems Securities Litigation*, Docket No. 6:03-MD-1512 (N.D.  
7 Tex.); *In re Nortel Networks Securities Litigation*, Docket No. 05-MD-1659  
8 (S.D.N.Y.); *In re Motorola Securities Litigation*, No. 03 C 00287 (N.D. Ill.), and *In*  
9 *re Sears, Roebuck & Co. Securities Litigation*, Case No. 02C 07527 (N.D. Ill.).  
10 All of the cases listed in the preceding sentence have resulted in full or partial  
11 settlements. New Jersey is very experienced in evaluating proposed securities  
12 class action settlements, and New Jersey believes that this is a fair and reasonable  
13 settlement that should be approved by the Court.

14 **Co-Lead Counsel's Fee and Expense Report**

15 13. New Jersey authorized Co-Lead Counsel to proceed with the  
16 settlement of the claims against Defendants for \$35.75 million in cash. New Jersey  
17 continues to believe that the Settlement represents an outstanding recovery that  
18 would not have been possible without the tremendous efforts of Class  
19 Representatives and Co-Lead Counsel.

20 14. In a case of this magnitude and degree of complexity, where Co-Lead  
21 Counsel has demonstrated superior skill and ability, which directly resulted in an  
22 outstanding recovery for the Class, New Jersey believes that a fee of 16.07% for  
23 Co-Lead Counsel is a reasonable attorneys' fee award. New Jersey authorizes  
24 counsel to present this fee request to the Court for its ultimate determination on the  
25 application for attorneys' fees.

26 15. New Jersey, in agreeing to this fee amount, took into consideration,  
27 among other things, the following factors: (a) the very favorable result achieved for  
28 the Class; (b) Co-Lead Counsel's litigation efforts; (c) Co-Lead Counsel expended

1 in excess of 43,000 hours in the prosecution of the claims against Defendants; (d)  
2 the quality of Co-Lead Counsel's work particularly in light of the difficulty of the  
3 claims against Defendants; and (e) the fee agreement between Lead Plaintiff and  
4 Co-Lead Counsel.

5 16. In light of these factors and considerations, the result obtained by  
6 Plaintiffs' Counsel, and the quality of work which counsel performed, I believe  
7 that a fee of 16.07% of the Settlement Fund, plus any accrued interest, and  
8 reimbursement of Plaintiffs' Counsel's litigation expenses, plus any accrued  
9 interest, is fair and reasonable. However, New Jersey understands that the matter  
10 of the total award of attorneys' fees for litigating this action, as is typical in all  
11 class actions, is ultimately left to the sound discretion of the Court.

12 17. New Jersey also approved the language in the Notice that Plaintiffs'  
13 Counsel would seek fees "not to exceed 16.75%". New Jersey understands that  
14 Co-Lead Counsel, along with counsel for Mark Ripperda and Berman DeValerio,  
15 will collectively seek a fee of 16.07% of the Settlement Fund. As noted above,  
16 New Jersey supports this fee request.

17 18. In addition, the law firm of Kahn Swick & Foti ("KS&F") represented  
18 former lead plaintiffs Keith A. Ovitt and Arman Rashtchi. I understand, based on  
19 communications between Co-Lead Counsel and KS&F, that KS&F has a lodestar  
20 of \$781,297.00 plus expenses. I further understand from Co-Lead Counsel that  
21 KS&F has agreed to take the same negative multiplier as Co-Lead Counsel of  
22 0.27% and will seek a fee of \$210,950.19, or approximately 0.59% of the  
23 Settlement Fund, plus interest, and expenses that will not exceed \$20,000. New  
24 Jersey approved including this fee request in the 16.75% fee cap set forth in the  
25 Notice and does not object to KS&F's request for fees and expenses.

26 **Lead Plaintiffs Request For Reimbursement Of Its Costs And Expenses**

27 19. Lead Plaintiff is aware that the Private Securities Litigation Reform  
28 Act ("PSLRA") permits a lead plaintiff to apply for reimbursement of its



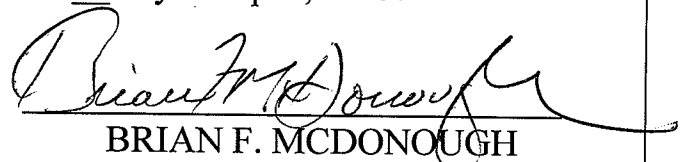
1 reasonable costs and expenses (including lost wages) directly relating to the  
2 representation of the class. I have determined the unreimbursed costs and expenses  
3 that the Office of the Attorney General ("AG") has incurred, including the time  
4 expended by personnel of the AG. Those unreimbursed costs and expenses  
5 through March 30, 2013 total \$31,657.53, as detailed in the chart below:

<u>Name</u>	<u>Office</u>	<u>Hours</u>	<u>Charge</u>
Carol G. Jacobson (Assistant Attorney General)	AG	41.3	\$ 6,535.85
Brian McDonough (Assistant Attorney General)	AG	29.9	\$ 4,957.26
Samuel S. Cornish (Deputy Attorney General)	AG	171.2	\$20,164.42
Total		242.4	\$31,657.53

14 20. Lead Plaintiff reserves the right to submit a further request for  
15 reimbursement for costs and expenses incurred by the New Jersey Department of  
16 Treasury and/or its Division of Investment.

17 I declare, under penalty of perjury, that the foregoing facts are true and  
18 correct.

19 Executed at Newark, New Jersey, this 8th day of April, 2013.

20   
21 BRIAN F. MCDONOUGH  
22  
23  
24  
25  
26  
27  
28

## EXHIBIT 2

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION

IN RE STEC, INC. SECURITIES  
LITIGATION

This Document Relates To:

ALL ACTIONS

No. SACV 09-01304-JVS (MLGx)

**AFFIDAVIT OF JOSE C. FRAGA  
REGARDING (A) MAILING OF  
THE NOTICE AND PROOF OF  
CLAIM; (B) PUBLICATION OF THE  
SUMMARY NOTICE; AND (C)  
REQUESTS FOR EXCLUSION  
RECEIVED TO DATE**

Judge: The Hon. James V. Selna

STATE OF NEW YORK )  
COUNTY OF NASSAU ) ss.:

JOSE C. FRAGA, being duly sworn, deposes and says:

1. I am a Senior Director of Operations for The Garden City Group, Inc. ("GCG"). Pursuant to the Court's Preliminary Approval Order Providing for Notice and Hearing in Connection with Proposed Class Action Settlement dated March 5, 2013 (the "Preliminary Approval Order"), GCG was authorized to act as the Claims Administrator in connection with the settlement of the above-captioned action (the "Action").

**MAILING OF THE NOTICE AND PROOF OF CLAIM**

2. Pursuant to the Preliminary Approval Order, GCG has been responsible for disseminating the Notice of Pendency of Class Action and Proposed Settlement and Motion for Attorneys' Fees and Expenses (the "Notice") and the Proof of Claim and Release (the "Proof of Claim" and, collectively with the Notice, the "Claim Packet") to potential Class Members. A copy of the Claim Packet is attached hereto as Exhibit A.

AFFIDAVIT OF JOSE C. FRAGA  
No. SACV 09-01304-JVS (MLGx)

1           3.       On or about November 13, 2012, GCG received, via email, from Defendants'  
2 Counsel, the names and addresses of 16 unique record holders who held STEC, Inc. ("STEC")  
3 common stock between June 16, 2009 and February 23, 2010, inclusive. Three of the 16  
4 unique record holders were Individual Defendants and they were therefore removed from the  
5 mailing list. On February 25, 2013, GCG mailed by first-class mail, postage prepaid, a Claim  
6 Packet to the 13 record holders.  
7

8           4.       As in most class actions of this nature, the large majority of potential Class  
9 Members are beneficial purchasers whose securities are held in "street name"- i.e., the  
10 securities are purchased by brokerage firms, banks, institutions and other third-party nominees  
11 in the name of the nominee, on behalf of the beneficial purchasers. GCG maintains a  
12 proprietary database with names and addresses of the largest and most common U.S. banks,  
13 brokerage firms, and nominees, including national and regional offices of certain nominees  
14 (the "Nominee Database"). GCG's Nominee Database is updated from time to time as new  
15 nominees are identified, and others go out of business. At the time of the initial mailing, the  
16 Nominee Database contained 2,014 mailing records. On February 25, 2013, GCG caused the  
17 Claim Packet to be mailed to the 2,014 mailing records contained in GCG's Nominee  
18 Database.  
19

20           5.       To date, GCG has received from nominee holders and others a total of 117,084  
21 names and addresses of potential Class Members. GCG promptly sent a Claim Packet to each  
22 such name and address. In addition, to date, GCG has received requests from nominee  
23 holders for 6,190 Claim Packets to be forwarded by the nominee holders to potential Class  
24 Members. GCG promptly provided the requested Claim Packets to the nominee holders.  
25  
26  
27



1           6.       In the aggregate, to date, GCG has mailed 125,482 Claim Packets to potential  
2 nominees and Class Members by first-class mail, postage prepaid. This includes 181 Claim  
3 Packets that were remailed due to updated addresses provided by the U.S. Postal Service.

4                   **PUBLICATION OF THE SUMMARY NOTICE AND WEBSITE**

5  
6           7.       Pursuant to the Preliminary Approval Order, GCG Communications, the media  
7 division of GCG, caused the Summary Notice of Pendency and Proposed Settlement and  
8 Motion for Attorneys' Fees and Expenses (the "Summary Notice") to be published on March  
9 8, 2013 in *Investor's Business Daily*; attached hereto as Exhibit B is the affidavit of Stephan  
10 Johnson, attesting to that publication for the publisher of *Investor's Business Daily*. On  
11 March 8, 2013, the Summary Notice was also issued over the *PR Newswire*; attached hereto  
12 as Exhibit C is a Confirmation Report for the *PR Newswire*, attesting to that issuance.

13  
14           8.       On February 25, 2013 the Notice and Proof of Claim were posted on the case  
15 dedicated website [www.stecsecuritiessettlement.com](http://www.stecsecuritiessettlement.com).

16                   **TELEPHONE HELPLINE**

17           9.       GCG established a toll-free Interactive Voice Response ("IVR") system to  
18 accommodate potential Class Members. This system became operational on or about  
19 February 25, 2013. As of April 2, 2013, GCG has received a total of 451 calls, out of which  
20 196 potential Class Members left messages to speak with GCG administrators for assistance.  
21 All of the requests for a return phone call have been responded to in a timely manner.

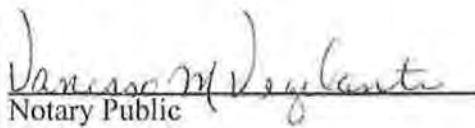
22  
23  
24                   **REQUESTS FOR EXCLUSION**

25           10.       Page 7 of the Notice informs potential Class Members that any written requests  
26 for exclusion from the Class must be addressed to *In re STEC, Inc. Securities Litigation -*  
27

1 EXCLUSIONS, c/o The Garden City Group, Inc., P.O. Box 9949, Dublin, OH 43017-5949,  
2 such that they are received no later than April 22, 2013. GCG has been monitoring all mail  
3 delivered to that Post Office Box. To date, GCG has received no requests for exclusion from  
4 the Class.

5  
6  
7   
Jose C. Fraga

8 Sworn to before me this  
9 4<sup>th</sup> day of April, 2013

10   
11 Notary Public

12  
13 VANESSA M. VIGILANTE  
14 Notary Public, State of New York  
No. 01VI6148817  
Qualified in Queens County  
15 My Commission Expires 4-17-2014

# EXHIBIT A



UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA SOUTHERN DIVISION

IN RE STEC, INC. SECURITIES LITIGATION

This Document Relates To:

ALL ACTIONS

No. SACV 09-01304-JVS (MLGx)

**NOTICE OF PENDENCY OF CLASS ACTION AND PROPOSED  
SETTLEMENT AND MOTION FOR ATTORNEYS' FEES AND  
EXPENSES**

Judge: Hon. James V. Selna

**If you purchased or otherwise acquired the publicly traded common stock of STEC, Inc. ("STEC" or the "Company") during the period from June 16, 2009 to February 23, 2010, inclusive (the "Class Period"), and were allegedly damaged thereby, you may be entitled to a payment from this class action settlement.**

*A federal court authorized this Notice. This is not a solicitation from a lawyer.*

The purpose of this Notice is to inform you of (a) the pendency of this class action (the "Action"), (b) the proposed settlement of the Action with Defendants (defined below), (c) the hearing to be held by the Court to consider (i) whether the settlement should be approved, (ii) the application of plaintiffs' counsel for attorneys' fees and expenses, and (iii) certain other matters (the "Settlement Hearing"). This Notice describes important rights you may have and what steps you must take if you wish to participate in the settlement or wish to be excluded from the Class (defined below).<sup>1</sup>

- If approved by the Court, the Settlement will provide a thirty-five million seven hundred fifty thousand (\$35,750,000) cash settlement fund for the benefit of eligible investors (the "Settlement") who purchased or otherwise acquired the publicly traded common stock of STEC during the period from June 16, 2009 to February 23, 2010, inclusive, and were allegedly damaged thereby (the "Class").
- The Settlement resolves claims that Defendants misled investors about STEC's revenue growth and inflated the price of STEC's stock, avoids the costs and risks of continuing the litigation, pays money to investors like you, and releases Defendants from liability.<sup>2</sup>
- Your legal rights are affected whether you act or do not act. Read this Notice carefully.
- The Court will review the Settlement at the Settlement Hearing to be held on May 20, 2013.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
<b>SUBMIT A CLAIM FORM BY JUNE 25, 2013</b>	The only way to get a payment.
<b>EXCLUDE YOURSELF BY APRIL 22, 2013</b>	Get no payment. This is the only option that allows you to ever bring or be part of any <u>other</u> lawsuit about the Released Claims (defined below) against Defendants and the other Released Defendant Parties (defined below).
<b>OBJECT BY APRIL 22, 2013</b>	Write to the Court about why you do not like the Settlement, the proposed Plan of Allocation and/or the requests for attorneys' fees and reimbursement of expenses. You will still be a member of the Class.
<b>GO TO A HEARING ON MAY 20, 2013</b>	Ask to speak in Court about the Settlement at the Settlement Hearing.
<b>DO NOTHING</b>	Get no payment. Give up rights.

- These rights and options—and the deadlines to exercise them—are explained in this Notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. Payments will be made if the Court approves the Settlement and after any appeals are resolved. Please be patient.

<sup>1</sup> All capitalized terms not otherwise defined in this Notice have the meanings provided in the Stipulation and Agreement of Settlement ("Stipulation"), as amended, dated as of October 5, 2012.

<sup>2</sup> The Settlement does not release claims in: (i) *In re STEC, Inc. Derivative Litigation*, Master File No. CV 10-00667-JV(MLGx) (C.D. Cal.); (ii) *In re STEC, Inc. Shareholder Derivative Litigation*, No. 30-2009-00320001-CU-SL-CXC (Orange County Super. Ct.); and (iii) the books and records claims set forth in *Berry v. STEC, Inc.*, No. 30-2012-00552385 (Orange County Super. Ct.).



**SUMMARY OF THIS NOTICE**

**(a) Statement of Class Representatives' Recovery**

Pursuant to this proposed Settlement, a Settlement Fund consisting of \$35,750,000 million in cash, plus any accrued interest, has been established. Based on Class Representatives' estimate of the number of shares of common stock entitled to participate in the Settlement, and assuming that all such shares entitled to participate do so, Class Representatives estimate that the average recovery per damaged share of the publicly traded common stock of STEC would be approximately \$0.65 per share, before deduction of Court-approved expenses, such as attorneys' fees and expenses.<sup>3</sup> A Class Member's actual recovery will be a portion of the Net Settlement Fund determined by comparing his or her Recognized Claim to the total Recognized Claims of all Class Members who submit acceptable Proofs of Claim. An individual Class Member's actual recovery will depend on, for example: (1) the total number of claims submitted; (2) when the Class Member purchased or otherwise acquired STEC common stock during the Class Period; (3) the purchase price paid; and (4) whether the STEC common stock was held at the end of the Class Period or sold during the Class Period (and, if sold, when it was sold and the amount received). See the Plan of Allocation beginning on page 10 for more information on your Recognized Claim.

**(b) Statement of Potential Outcome if the Action Continued to Be Litigated**

The Parties disagree on both liability and damages and do not agree on the average amount of damages, if any, that would be recoverable if Class Representatives were to prevail on each claim alleged. The issues on which the Parties disagree include, but are not limited to: (1) whether Defendants made any material misstatements or omissions; (2) whether Defendants acted with the required state of mind; (3) the amount by which the publicly traded common stock of STEC was allegedly artificially inflated (if at all) during the Class Period; (4) the extent to which the various matters that Class Representatives alleged were false and misleading influenced (if at all) the trading price of STEC publicly traded common stock at various times during the Class Period; (5) whether any purchasers/acquirers of the publicly traded common stock of STEC have suffered damages as a result of the alleged misstatements and omissions in STEC's public statements; (6) the extent of such damages, assuming they exist; (7) the appropriate economic model for measuring damages; and (8) the extent to which external factors, such as general market and industry conditions, influenced the trading price of STEC publicly traded common stock at various times during the Class Period.

Defendants deny that they did anything wrong, deny any liability to Class Representatives, and deny that Class Representatives and the Class have suffered any losses attributable to Defendants' actions. While Class Representatives believe that they have meritorious claims, they recognize that there are significant obstacles in the way to recovery.

**(c) Statement of Attorneys' Fees and Expenses Sought**

Co-Lead Counsel intend to make a motion, on behalf of Plaintiffs' Counsel, asking the Court for an award of attorneys' fees not to exceed 16.75% of the Settlement Fund and payment of litigation expenses incurred in prosecuting this Action in an amount not to exceed \$2,200,000, plus any interest on such amounts at the same rate and for the same periods as earned by the Settlement Fund ("Fee and Expense Application"). As set forth in detail in question 17 below, the 16.75% cap includes attorneys' fees for Kahn Swick & Foti ("KSF"), one of the former co-lead counsel in this Action. If the Court approves the Fee and Expense Application, the average cost per damaged share of common stock will be approximately \$0.15 per share and the average recovery per damaged share after such fees and expenses will be approximately \$0.50 per share. The average recovery per damaged share will vary depending on the number of acceptable claims submitted. Co-Lead Counsel has expended considerable time and effort in the prosecution of this litigation without receiving any payment, and has advanced the expenses of the litigation, such as the cost of experts, in the expectation that if it were successful in obtaining a recovery for the Class it would be paid from such recovery. In this type of litigation it is customary for counsel to be awarded a percentage of the common fund recovered as attorneys' fees.

Additionally, as set forth in detail in question 17 below, the law firm of Bernstein Litowitz Berger & Grossman LLP ("BLBG") intends to make a motion to the Court for an award of attorneys' fees not to exceed 7.27% of the Settlement Fund and payment of litigation expenses in an amount not to exceed \$80,000, plus any interest on such amounts at the same rate and for the same periods as earned by the Settlement Fund ("BLBG Fee and Expense Application"). If the Court approves BLBG's Fee and Expense Application, the average cost per damaged share of common stock will be approximately \$0.05 per share and the average recovery per damaged share after such fees and expenses will be approximately \$0.60 per share. If the Court approves both BLBG's Fee and Expense Application and Co-Lead Counsel's Fee and Expense Application, the average cost per damaged share of common stock will be approximately \$0.20 per share and the average recovery per damaged share after all fees and expenses requested in this Action will be \$0.45 per share. Other counsel may also make motions to the Court requesting additional awards of attorneys' fees and expenses to be paid from the Settlement Fund.

Pursuant to the Private Securities Litigation Reform Act of 1995 ("PSLRA"), the Fee and Expense Applications may include a request for an award to Class Representatives, former lead plaintiffs Arman Rashtchi and Keith A. Ovitt (as described

<sup>3</sup> An allegedly damaged share might have been traded more than once during the Class Period, and the indicated average recovery would be the estimated average for each purchase of a share which allegedly incurred damages.



in question 17), and/or West Virginia Laborers' Pension Trust Fund (as described in question 17) for payment of their reasonable costs and expenses, including lost wages, directly related to their representation of the Class. For example, several of the Class Representatives may seek lost wages for their time being deposed in the case, attending mediations and court hearings, and/or supervising Co-Lead Counsel in the prosecution of this Action. The requests in total will not exceed \$150,000.

**(d) Further Information**

Further information regarding this Action and this Notice may be obtained by contacting the Claims Administrator: The Garden City Group, Inc., 1-855-728-4603, [www.stecsecuritiessettlement.com](http://www.stecsecuritiessettlement.com) or Co-Lead Counsel: Labaton Sucharow LLP, (888) 219-6877, [www.labaton.com](http://www.labaton.com), [settlementquestions@labaton.com](mailto:settlementquestions@labaton.com); and Lite DePalma Greenberg, LLC, (973) 623-3000, [www.litedepalma.com](http://www.litedepalma.com).

**Do Not Call The Court With Questions About The Settlement**

**(e) Reasons for the Settlement**

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

For Defendants, who deny all allegations of wrongdoing or liability whatsoever, the principal reason for the Settlement is to eliminate the expense, risks, and uncertain outcome of the litigation.

**[END OF COVER PAGE]**

**A. BASIC INFORMATION**

**1. Why did I get this notice package?**

You or someone in your family may have purchased or otherwise acquired the publicly traded common stock of STEC during the period from June 16, 2009 to February 23, 2010, inclusive.

The Court directed that this Notice be sent to Class Members because they have a right to know about a proposed settlement of a class action lawsuit, and about all of their options, before the Court decides whether to approve the Settlement. The Court will review the Settlement at a Settlement Hearing on May 20, 2013, at 1:30 p.m. at the United States District Court for the Central District of California, Southern Division in the Ronald Reagan Federal Building and U.S. Courthouse, Courtroom 10C, 411 West Fourth Street, Santa Ana, CA 92701. If the Court approves the Settlement, and after objections and appeals are resolved, an administrator appointed by the Court will make the payments that the Settlement allows.

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

The Court in charge of the case is the United States District Court for the Central District of California. The Action is known as *In re STEC, Inc. Securities Litigation*, No. SACV-09-01304-JVS (MLGx) and is assigned to United States District Judge James V. Selna. The people who sued are called plaintiffs, and the company and the persons they sued are called defendants.

The Lead Plaintiff, the State of New Jersey, Department of Treasury, Division of Investment, along with plaintiffs, International Brotherhood of Electrical Workers, Local 103 ("Local 103") and the Norfolk County Retirement System ("Norfolk County") (together with Lead Plaintiff "Plaintiffs"), and plaintiff Mark Ripperda (collectively, "Class Representatives"), represent the Class. Defendants in this Settlement are STEC and the Individual Defendants, Manouch Moshayedi, Mark Moshayedi, and Raymond Cook.<sup>4</sup>

**2. What is this lawsuit about?**

The operative complaint in the Action is the Third Amended Consolidated Complaint (the "Complaint"). The Complaint generally alleges, among other things, that Defendants violated Sections 10(b), 20(a), and 20A of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 promulgated thereunder by making alleged misstatements and omissions during the Class Period that created an inflated impression of STEC's revenue growth, and of conditions that supposedly ensured a near and long term continuation and even acceleration of that growth. The Complaint also alleges that Defendants violated Sections 11, 12, and 15 of the Securities Act of 1933 ("Securities Act") by making alleged misstatements and omissions in STEC's registration statement and/or prospectus in connection with the August 3, 2009 secondary offering of STEC stock ("Secondary Offering"). The Complaint

<sup>4</sup> STEC together with the Individual Defendants are the "Defendants" in the Action.



alleges that Plaintiffs and other Class Members purchased or acquired the publicly traded common stock of STEC during the Class Period at artificially inflated prices and were damaged thereby.

On March 22, 2011, Defendants filed motions to dismiss the Second Amended Consolidated Complaint, which Plaintiffs opposed on April 25, 2011. On May 16, 2011, Defendants filed reply briefs in further support of their motions. On June 17, 2011, the Court partially denied and partially granted Defendants' motions to dismiss. The Court denied the motions with respect to the claims under the Exchange Act but granted the motions with respect to the claims under the Securities Act.

Discovery commenced in October 2011, including the production of documents by Defendants and third parties, which resulted in the production of over two million pages of documents. Co-Lead Counsel deposed over twenty-five witnesses including Defendants and certain of their employees, and various third parties, including customers of STEC and securities analysts who covered STEC during the Class Period. Defendants deposed six witnesses, including two of the three Plaintiffs. Additionally, Defendants served Lead Plaintiff with Interrogatory Requests to which Lead Plaintiff responded. The Parties also exchanged expert reports.

On November 21, 2011, Plaintiffs moved to certify a litigation class in the Action which Defendants opposed on January 12, 2012. The Court denied the motion on March 7, 2012 on the ground that Plaintiffs did not have standing to bring claims under the Securities Act. Plaintiffs petitioned the Ninth Circuit pursuant to Rule 23(f) to reverse the denial of class certification, which petition was denied on June 14, 2012. On May 25, 2012, Plaintiffs, with the Court's permission, filed a supplemental memorandum of law in further support of their motion for class certification informing the Court that they could not find a class representative with standing to bring the Securities Act claims. On June 19, 2012, the Court certified the Class for the claims under the Exchange Act and appointed Lead Plaintiff and Local 103 as class representatives. The Court also appointed Co-Lead Counsel and Liaison Counsel as joint lead counsel for the Class pursuant to Rule 23(g). STEC petitioned the Ninth Circuit pursuant to Rule 23(f) to reverse the grant of class certification, which petition was denied on September 6, 2012.

On June 11, 2012, the Court set trial to begin on November 6, 2012.

In January 2012, Plaintiffs and Defendants engaged in a mediation with the assistance of an experienced mediator, the Honorable Layn R. Phillips (Ret.) ("Judge Phillips"). This initial discussion did not result in a resolution of the Action. Later, after the Court's Order certifying the Class for Plaintiffs' claims under the Exchange Act and after the Parties had engaged in extensive discovery, Plaintiffs and Defendants renewed their discussions, with the assistance of Judge Phillips. This discussion did not result in a resolution of the Action. In August 2012, Mark Ripperda, who purchased STEC securities pursuant or traceable to the registration statement and/or the prospectus issued in connection with the Secondary Offering, agreed to serve as a Class Representative and retained separate counsel. In September 2012, the Parties, including Mr. Ripperda's counsel, renewed their discussions, with the assistance of Judge Phillips. Following lengthy, arm's-length, and mediation negotiations, the Parties reached an agreement in principle to settle the claims against Defendants, resulting in the Memorandum of Understanding ("MOU") entered into on September 11, 2012.

The Action seeks money damages against Defendants for violations of the federal securities laws. Defendants deny all allegations of misconduct contained in the Complaint, and deny having engaged in any wrongdoing whatsoever. The Settlement should not be construed or seen as evidence of or an admission or concession on the part of any Defendant with respect to any claim or of any fault or liability or wrongdoing or damage whatsoever, or any infirmity or weakness in the defenses that Defendants have asserted.

### **3. Why is this a class action?**

In a class action, one or more people called class representatives (in this case Lead Plaintiff, Plaintiffs and Mark Ripperda), sue on behalf of people who have similar claims. They are known as class members. Here, the Court certified this as a class action for claims under the Exchange Act in its June 19, 2012 Order and preliminarily certified the claims under the Securities Act for purposes of Settlement only. Bringing a case as a class action allows adjudication of many similar claims of persons and entities that might be economically too small to bring individual actions. One court resolves the issues for all class members, except for those who exclude themselves from the class. At the Settlement Hearing, the Court will decide whether to finally certify the Class for the purposes of Class Representatives' claims under the Securities Act, for purposes of the Settlement only.

### **4. Why is there a settlement?**

The Court did not finally decide in favor of Class Representatives or Defendants. Instead, both sides, with the assistance of Judge Phillips acting as a mediator, agreed to a settlement. That way, they avoid the risks and cost of a trial and the people affected will get compensation immediately, rather than after the time it would take to have a trial and exhaust all appeals. Class Representatives and Plaintiffs' Counsel think the Settlement is in the best interest of all Class Members.



**B. WHO IS IN THE SETTLEMENT**

To see if you will get money from this Settlement, you first have to decide if you are a Class Member.

**5. How do I know if I am part of the Settlement?**

The Court has directed that everyone who fits this description is a Class Member, unless they are an excluded person or they take steps to exclude themselves (see below): *all persons and entities, that, between June 16, 2009 and February 23, 2010, inclusive (the "Class Period"), purchased or otherwise acquired the publicly traded common stock of STEC and were damaged thereby.*

**6. Are there exceptions to being included in the Class?**

Excluded from the Class are: Defendants; the members of the immediate families of the Individual Defendants; the subsidiaries and affiliates of Defendants; any person who is an officer, director, partner or controlling person of STEC or any other Defendant; any entity in which any Defendant has a controlling interest; and the legal representatives, heirs, successors and assigns of any such excluded Person or entity. Also excluded from the Class are any Class Members who properly exclude themselves by filing a valid and timely request for exclusion in accordance with the requirements explained below.

If one of your mutual funds purchased or acquired the publicly traded common stock of STEC during the Class Period, that alone does not make you a Class Member. You are only eligible to be a Class Member if you individually purchased or acquired STEC publicly traded common stock during the Class Period. Check your investment records or contact your broker to see if you have eligible purchases/acquisitions.

If you sold the publicly traded common stock of STEC during the Class Period, your sale alone does not make you a Class Member. You are eligible to be a Class Member only if you **purchased or acquired** your publicly traded common stock of STEC during the Class Period.

**7. What if I am still not sure if I am included?**

If you are still not sure whether you are included, you can ask for free help. You can call (855) 728-4603 or visit [www.stecsecuritiessettlement.com](http://www.stecsecuritiessettlement.com) for more information. Or you can fill out and return the Proof of Claim and Release form ("Proof of Claim") described in question 10, to see if you qualify.

**C. THE SETTLEMENT BENEFITS—WHAT YOU GET**

**8. What does the Settlement provide?**

In exchange for the Settlement and the release of the Released Claims (defined below) against the Released Defendant Parties (defined below), the Defendants have agreed to create a \$35.75 million cash fund to be divided, after deduction of Court-awarded attorneys' fees and expenses, settlement administration costs, and any applicable taxes, among all Class Members who send in valid and timely Proofs of Claim. Before the Settlement becomes effective, up to \$450,000 may be paid from the Settlement Fund for settlement administration costs, including the costs of mailing this notice.

**9. How much will my payment be?**

Your share of the Net Settlement Fund will depend on several things, including: (1) the total amount of Recognized Claims of other Class Members; (2) how much STEC publicly traded common stock you purchased or acquired; (3) how much you paid for your shares; (4) when you bought your shares; and (5) whether or when you sold your shares (and, if so, for how much).

Your Recognized Claim will be calculated according to the formula shown below in the Plan of Allocation. It is unlikely that you will get a payment for your entire Recognized Claim, given the number of potential Class Members. After all Class Members have sent in their Proofs of Claim, the payment you get will be a portion of the Net Settlement Fund based on your Recognized Claim divided by the total of everyone's Recognized Claims. See the Plan of Allocation beginning on page 10 for more information on your Recognized Claim.

**D. HOW YOU GET A PAYMENT—SUBMITTING A PROOF OF CLAIM**

**10. How can I get a payment?**

To qualify for a payment, you must send in a completed Proof of Claim. A Proof of Claim is being circulated with this Notice. You may also get a Proof of Claim on the Internet at the websites for the Claims Administrator or Co-Lead Counsel: [www.stecsecuritiessettlement.com](http://www.stecsecuritiessettlement.com), [www.labaton.com](http://www.labaton.com), or [www.litedepalma.com](http://www.litedepalma.com). The Claims Administrator can also help



you if you have questions about the form. Please read the instructions carefully, fill out the Proof of Claim, include all the documents the form asks for, sign it, and mail it **postmarked no later than June 25, 2013**.

**11. When would I get my payment?**

The Court will hold a Settlement Hearing on **May 20, 2013**, at 1:30 p.m. to decide whether to approve the Settlement. Even if the Court approves the Settlement, there may still be appeals, which can take time to resolve, perhaps more than a year. It also takes time for all the Proofs of Claim to be processed. All Proofs of Claim need to be submitted by **June 25, 2013**.

Once all the Proofs of Claim are processed and claims are calculated, Co-Lead Counsel, without further notice to the Class, will apply to the Court for an order distributing the Net Settlement Fund to the Members of the Class. Co-Lead Counsel will also ask the Court to approve payment of the Claims Administrator's fees and expenses incurred in connection with giving notice and administering the Settlement. Please be patient.

**12. What am I giving up to get a payment and by staying in the Class?**

Unless you exclude yourself, you will stay in the Class, which means that upon the "Effective Date" you will release all "Released Claims" (as defined below) against the "Released Defendant Parties" (as defined below).

"Released Claims" means any and all claims, rights, causes of action, duties, obligations, demands, actions, debts, sums of money, suits, contracts, agreements, promises, damages, and liabilities of every nature and description, including both known and Unknown Claims (defined below), whether arising under federal, state, common or administrative law, or any other law, whether fixed or contingent, liquidated or un-liquidated, at law or in equity, whether class or individual in nature, that Class Representatives or any other Class Member: (i) asserted in the Action; or (ii) could have asserted in the Action or any other action or forum, that arise out of, relate to, or are in connection with the claims, allegations, transactions, facts, events, acts, disclosures, statements, representations or omissions or failures to act involved, set forth, or referred to in the complaints filed in the Action, and that relate to the purchase or acquisition of the publicly traded common stock of STEC during the Class Period. Released Claims include the claims in *West Virginia Laborers' Trust Fund v. STEC, Inc.*, No. 30-2011-00489022-CU-SL-CXC (Orange County Super. Ct.), but do not include: (i) claims to enforce the Settlement; (ii) any governmental or regulatory agency's claims in any criminal or civil action against any of the Released Defendant Parties; (iii) *In re STEC, Inc. Derivative Litigation*, Master File No. CV 10-00667-JVS(MLGx) (C.D. Cal.); (iv) *In re STEC, Inc. Shareholder Derivative Litigation*, No. 30-2009-00320001-CU-SL-CXC (Orange County Super. Ct.); and (v) the books and records claims set forth in *Berry v. STEC, Inc.*, No. 30-2012-00552385 (Orange County Super. Ct.).

"Unknown Claims" means any and all Released 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 the Released Defendant Parties, and any Released Defendants' Claims that Defendants do not know or suspect to exist in his, her or its favor at the time of the release of the Released Plaintiff Parties, which if known by him, her or it might have affected his, her or its decision(s) with respect to the Settlement. With respect to any and all Released Claims and Released Defendants' Claims, the Parties stipulate and agree that, upon the Effective Date, Class Representatives and Defendants, shall expressly, and each other Class Member shall be deemed to have, and by operation of the Judgment or Alternative Judgment shall have, expressly waived and relinquished any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Cal. Civ. 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.

Class Representatives, the other Class Members or Defendants may hereafter discover facts in addition to or different from those which he, she, or it now knows or believes to be true with respect to the subject matter of the Released Claims and the Released Defendants' Claims, but Class Representatives and Defendants shall expressly, fully, finally and forever settle and release, and each other Class Member shall be deemed to have settled and released, and upon the Effective Date and by operation of the Judgment or Alternative Judgment shall have settled and released, fully, finally, and forever, any and all Released Claims and Released Defendants' Claims as applicable, without regard to the subsequent discovery or existence of such different or additional facts. Class Representatives and Defendants acknowledge, and other Class Members by operation of law shall be deemed to have acknowledged, that the inclusion of "Unknown Claims" in the definition of Released Claims and Released Defendants' Claims was separately bargained for and was a key element of the Settlement.

"Released Defendant Parties" means Defendants, their past or present subsidiaries, parents, successors and predecessors, officers, directors, shareholders, partners, agents, employees, attorneys, auditors, insurers, underwriters of securities offerings, investment advisors, and their respective employees and agents; the spouses, members of the immediate families, representatives, and heirs of the Individual Defendants, as well as any trust of which any Individual Defendant is the settlor or which is for the benefit of any of their immediate family members; and any person, firm, trust, corporation, officer, director or other individual or entity in which any Defendant has a controlling interest or which is related to or affiliated with any of the Defendants and the legal representatives, heirs, successors in interest or assigns of Defendants.



The "Effective Date" will occur when an Order by the Court approving the Settlement becomes Final and is not subject to appeal as set out more fully in the Stipulation on file with the Court.

If you remain a Member of the Class, all of the Court's orders, whether favorable or unfavorable, will apply to you and legally bind you.

#### **E. EXCLUDING YOURSELF FROM THE SETTLEMENT**

If you do not want a payment from this Settlement, but you want to keep any right you may have to sue or continue to sue Defendants and the other Released Defendant Parties, on your own, about the Released Claims (as explained in Question 12), then you must take steps to get out. This is called excluding yourself from—or "opting out" of—the Class. Defendants may withdraw from and terminate the Settlement if Class Members who purchased or acquired in excess of a certain amount of STEC publicly traded common stock during the Class Period exclude themselves from the Class.

##### **13. How do I get out of the proposed Settlement?**

To exclude yourself from the Class, you must send a signed letter by mail stating that you "request exclusion from the Class in *In re STEC, Inc. Securities Litigation*, No. SACV-09-01304-JVS (MLGx) (C.D. Cal.)." Your letter must state the date(s), price(s), and number(s) of shares of all your purchases, acquisitions, and sales of the publicly traded common stock of STEC during the Class Period. In addition, be sure to include your name, address, telephone number and your signature. You must mail your exclusion request so that it is **received no later than April 22, 2013**, to:

*In re STEC, Inc. Securities Litigation* - EXCLUSIONS  
c/o The Garden City Group, Inc.  
P.O. Box 9949  
Dublin, OH 43017-5949

You cannot exclude yourself by telephone or by email. Your exclusion request must comply with these requirements in order to be valid. If you write to request to be excluded, you will not get any settlement payment, and you cannot object to the Settlement. You will not be legally bound by anything that happens in this lawsuit, and you may be able to sue (or continue to sue) Defendants and the other Released Defendant Parties in the future.

##### **14. If I do not exclude myself, can I sue Defendants and the other Released Defendant Parties for the same thing later?**

No. Unless you exclude yourself, you give up any rights to sue Defendants and the other Released Defendant Parties for any and all Released Claims. If you have a pending lawsuit speak to your lawyer in that case immediately. You must exclude yourself from *this* Class to continue your own lawsuit. Remember, the exclusion deadline is **April 22, 2013**.

##### **15. If I exclude myself, can I get money from the proposed Settlement?**

No. If you exclude yourself, do not send in a Proof of Claim to ask for any money. But, you may exercise any right you may have to sue, continue to sue, or be part of a different lawsuit against Defendants and the other Released Defendant Parties.

#### **F. THE LAWYERS REPRESENTING YOU**

##### **16. Do I have a lawyer in this case?**

The Court appointed the law firms of Labaton Sucharow LLP and Lite DePalma Greenberg, LLC to represent all Class Members. These lawyers are called Co-Lead Counsel. In addition, Mr. Ripperda retained the law firms of Bienert, Miller & Katzman and Green & Noblin, P.C. These two law firms, along with Co-Lead Counsel, are referred to as "Plaintiffs' Counsel". You will not be separately charged for these lawyers. The Court will determine the amount of Plaintiffs' Counsel's fees and expenses, which will be paid from the Settlement Fund. If you want to be represented by your own lawyer, you may hire one at your own expense.

##### **17. How will the lawyers be paid?**

Plaintiffs' Counsel have not received any payment for their services in pursuing the claims against Defendants on behalf of the Class, nor have they been paid for their litigation expenses. At the Settlement Hearing, or at such other time as the Court may order, Co-Lead Counsel will ask the Court, on behalf of Plaintiffs' Counsel, for an award from the Settlement Fund, of attorneys' fees of no more than 16.75% of the Settlement Fund, plus any interest on such amount at the same rate and for the same periods as earned by the Settlement Fund. The fee of no more than 16.75% represents a negative multiplier; that is,



should the Court approve a fee award of 16.75%, Co-Lead Counsel will receive a fee that is substantially less than the amount of time they have spent (their "lodestar") prosecuting the claims against Defendants.

Co-Lead Counsel, on behalf of Plaintiffs' Counsel, will also ask the Court to award Plaintiffs' Counsel their litigation expenses (such as the cost of experts) that have been incurred in pursuing the Action. The request for payment of expenses will not exceed \$2,200,000, plus interest on the expenses at the same rate as may be earned by the Settlement Fund. Pursuant to the PSLRA, Class Representatives may ask the Court for payment of their reasonable costs and expenses, including lost wages, directly related to their representation of the Class.

The law firms of BLBG and KSF served as co-lead counsel for lead plaintiffs Arman Rashtchi and Keith A. Ovitt in this Action until July 4, 2010, when the Court appointed current Lead Plaintiff and approved selection of current Co-Lead Counsel after a second lead plaintiff selection process following an expansion of the Class Period. BLBG and KSF may submit an application for an award of fees and expenses in accordance with the Court's July 14, 2010 minute order which read in relevant part:

"[Former Lead Plaintiffs] Rashtchi & Ovitt have obviously expended significant resources drafting a consolidated complaint and responding to STEC's motion to dismiss. At the appropriate time, Rashtchi & Ovitt may apply for reimbursement of their attorneys' fees and costs incurred as lead plaintiffs."

KSF will request that such attorneys' fees be paid at the same negative multiplier received by current Co-Lead Counsel and will not subject the Class to any additional fees beyond the 16.75% cap set forth in this Notice. KSF will also ask the Court to award them their litigation expenses, which will not exceed \$20,000. These expenses are included in Co-Lead Counsel's Fee and Expense Application.

In addition to serving as former co-lead counsel for the previous lead plaintiffs in this Action, Arman Rashtchi and Keith A. Ovitt, BLBG currently serves as counsel for a putative class of investors who purchased or otherwise acquired STEC common stock pursuant or traceable to STEC's Secondary Offering on or about August 11, 2009 (the "Offering"), and who were damaged thereby, in a separate action currently pending in Orange County Superior Court, in California and captioned *West Virginia Laborers' Trust Fund v. STEC, Inc.*, No. 30-2011-00489022-CU-SL-CXC. BLBG, on behalf of West Virginia Laborers' Pension Trust Fund and the putative class, filed the complaint in that action on July 1, 2011. The complaint alleges violations of the Securities Act based on defendants' alleged false statements and omissions made in connection with the Offering. The settlement proposed in this Action seeks to release the claims in the *West Virginia Laborers* action that have been prosecuted by BLBG on behalf of West Virginia Laborers' Pension Trust Fund and the putative class asserting Securities Act claims.

BLBG has not received any payment for its services in pursuing and preserving the Securities Act claims on behalf of those Class Members who purchased or otherwise acquired STEC common stock pursuant or traceable to the Offering, nor any payment for its services in pursuing the claims under the Exchange Act, when it previously served as co-lead counsel as discussed above. At the Settlement Hearing, or at such other time as the Court may order, BLBG will ask the Court for an award from the Settlement Fund of attorneys' fees in the amount of BLBG's lodestar actually incurred in preserving and pursuing the Securities Act and Exchange Act claims, in a total amount not to exceed \$2.6 million, plus any interest on such amount at the same rate and for the same periods as earned by the Settlement Fund. BLBG will not seek to increase its attorneys' fee award through the application of a multiplier above the amount of its actually incurred lodestar. BLBG will also ask the Court to award BLBG its litigation expenses that have been incurred in preserving and pursuing the Securities Act and Exchange Act claims in a total amount not to exceed \$80,000, plus any interest on such amount at the same rate and for the same periods as earned by the Settlement Fund.

BLBG's request of a \$2.6 million fee would represent approximately 7.27% of the Settlement Fund. Should the Court award BLBG fees of 7.27% of the Settlement Fund and Plaintiffs' Counsel fees of 16.75% of the Settlement Fund, the total fees paid to counsel would not exceed 24.02% of the Settlement Fund.

In addition, other counsel may also make motions to the Court seeking awards of attorneys' fees and expenses to be paid from the Settlement Fund.

Lead Plaintiff, the State of New Jersey, Department of Treasury, Division of Investment, reserves its right to oppose all fee and expense applications made by counsel other than Plaintiffs' Counsel, including but not limited to BLBG's Fee and Expense Application.

#### **G. OBJECTING TO THE SETTLEMENT**

You can tell the Court that you do not agree with the Settlement or some part of it.

<b>18. How do I tell the Court that I do not like the proposed Settlement?</b>
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If you are a Class Member you can object to the Settlement or any of its terms, the certification of the Class in connection with Class Representatives' claims under the Securities Act for Settlement purposes only, the proposed Plan of



Allocation and/or the applications for attorneys' fees and expenses. You may write to the Court setting out your objection. You must give reasons why you think the Court should not approve any part or all of the Settlement terms or related matters. The Court will consider your views if you file a proper objection within the deadline and according to the following procedures.

To object, you must send a signed letter stating that you object to the proposed settlement in "*In re STEC, Inc. Securities Litigation*, No. SACV-09-01304-JVS (MLGx) (C.D. Cal.)." You must include your name, address, telephone number, and your signature, identify the date(s), price(s) and number(s) of shares of all purchases, acquisitions and sales of STEC common stock you made during the Class Period, and state the reasons why you object to the Settlement. Your objection must be filed with the Court and mailed or delivered to all the following so that it is **received on or before April 22, 2013**:

**COURT:**

Clerk of the Court  
United States District Court for the Central District of California, Southern Division  
Ronald Reagan Federal Building and U.S. Courthouse  
411 West Fourth Street  
Santa Ana, CA 92701

**CO-LEAD COUNSEL:**

Thomas A. Dubbs, Esq.  
James W. Johnson, Esq.  
Labaton Sucharow LLP  
140 Broadway  
New York, NY 10005

Allyn Z. Lite, Esq.  
Bruce D. Greenberg, Esq.  
Lite DePalma Greenberg, LLC  
Two Gateway Center, 12th Floor  
Newark, NJ 07102

**DEFENDANTS' COUNSEL:**

Patrick E. Gibbs, Esq.  
Matthew Rawlinson, Esq.  
Latham & Watkins LLP  
140 Scott Drive  
Menlo Park, CA 94025

**19. What is the difference between objecting and seeking exclusion?**

Objecting is simply telling the Court that you do not like something about the proposed Settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you do not want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

**H. THE COURT'S SETTLEMENT HEARING**

The Court will hold a hearing to decide whether to approve the proposed Settlement. You may attend, and you may ask to speak, but you do not have to do so.

**20. When and where will the Court decide whether to approve the proposed Settlement?**

The Court will hold a Settlement Hearing at 1:30 p.m. on **May 20, 2013**, at the United States District Court for the Central District of California, Southern Division in the Ronald Reagan Federal Building and U.S. Courthouse, Courtroom 10C, 411 West Fourth Street, Santa Ana, CA 92701.

At this hearing the Court will consider whether the Settlement is fair, reasonable and adequate. The Court also will consider the proposed Plan of Allocation for the Net Settlement Fund, the certification of Class Representatives' claims under the Securities Act for purposes of Settlement only, and the applications for attorneys' fees and reimbursement of expenses. The Court will take into consideration any written objections filed in accordance with the instructions set out in question 18 above. The Court also may listen to people who have properly indicated, within the deadline identified above, an intention to speak at the Settlement Hearing, but decisions regarding the conduct of the Settlement Hearing will be made by the Court. See question 22 for more information about speaking at the Settlement Hearing. After the Settlement Hearing, the Court will decide whether to approve the Settlement, and, if the Settlement is approved, how much attorneys' fees and expenses should be awarded. We do not know how long these decisions will take.

You should be aware that the Court may change the date and time of the Settlement Hearing without another notice being sent. If you want to come to the hearing, you should check with Co-Lead Counsel before coming to be sure that the date and/or time has not changed.

**21. Do I have to come to the Settlement Hearing?**

No. Co-Lead Counsel will answer questions the Court may have. But, you are welcome to come at your own expense. Class Members do not need to appear at the Settlement Hearing or take any other action to indicate their approval. If you submit an objection, you do not have to come to Court to talk about it. As long as you filed and sent your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.



**22. May I speak at the Settlement Hearing?**

If you object to the Settlement, you may ask the Court for permission to speak at the Settlement Hearing. To do so, you must include with your objection (see question 18 above) a statement stating that it is your "Notice of Intention to Appear in *In re STEC, Inc. Securities Litigation*, No. SACV-09-01304-JVS (MLGx) (C.D. Cal.)." Persons who intend to object to the Settlement, the Plan of Allocation, and/or applications for attorneys' fees and expenses and desire to present evidence at the Settlement Hearing must also include in their written objections the identity of any witness they may call to testify and submit the exhibits they intend to introduce into evidence at the Settlement Hearing. You cannot speak at the Settlement Hearing if you excluded yourself from the Class or if you have not provided written notice of your intention to speak at the Settlement Hearing in accordance with the procedures described in questions 18 and 20.

**I. IF YOU DO NOTHING**

**23. What happens if I do nothing at all?**

If you do nothing, you will get no money from this Settlement and you will be precluded from starting a lawsuit, continuing with a lawsuit, or being part of any other lawsuit against the Defendants and the other Released Defendant Parties about the Released Claims in this case, ever again. To share in the Net Settlement Fund you must submit a Proof of Claim (see question 10). To start, continue or be a part of any **other** lawsuit against the Defendants and the other Released Defendant Parties about the Released Claims in this case you **must** exclude yourself from this Class (see question 13).

**J. GETTING MORE INFORMATION**

**24. Are there more details about the proposed Settlement?**

This Notice summarizes the proposed Settlement. More details are in the Stipulation, dated October 5, 2012. You may review the Stipulation filed with the Court or documents filed during the case during business hours at the Office of the Clerk of the United States District Court for the Central District of California, Ronald Reagan Federal Building and U.S. Courthouse, 411 West Fourth Street, Santa Ana, CA 92701.

You also can call the Claims Administrator toll free at 1-855-728-4603; write to *In re STEC, Inc. Securities Litigation*, c/o The Garden City Group, Inc. P.O. Box 9949, Dublin, OH 43017-5949; or visit the websites of the Claims Administrator or Co-Lead Counsel at [www.stecsecuritiessettlement.com](http://www.stecsecuritiessettlement.com), [www.labaton.com](http://www.labaton.com), or [www.litedepalma.com](http://www.litedepalma.com) where you can find answers to common questions about the Settlement, download copies of the Stipulation or Proof of Claim, and locate other information to help you determine whether you are a Class Member and whether you are eligible for a payment.

**Please Do Not Call The Court With Questions About The Settlement**

**K. PLAN OF ALLOCATION OF NET SETTLEMENT FUND AMONG CLASS MEMBERS**

**25. How will my claim be calculated?**

The purpose of the Plan of Allocation (the "Plan") is to distribute settlement proceeds equitably to those Class Members who suffered economic losses resulting from the alleged misrepresentations and omissions by Defendants during the Class Period. The Court may approve the Plan or modify it without additional notice to the Class. Any order modifying the Plan will be posted on the Claims Administrator's website at [www.stecsecuritiessettlement.com](http://www.stecsecuritiessettlement.com) and the websites of Co-Lead Counsel, [www.labaton.com](http://www.labaton.com) and [www.litedepalma.com](http://www.litedepalma.com).<sup>5</sup>

The Net Settlement Fund will be the gross settlement of \$35.75 million reduced by attorneys' fees and expenses, reduced by Notice and Administration Expenses, reduced by Taxes, and increased by interest earned on the Settlement Amount, as set forth in the Stipulation. The Net Settlement Fund will be distributed among those Class Members who submit timely and valid Proofs of Claim to the Claims Administrator, which are accepted for payment by the Court ("Authorized Claimants"). No distribution of funds among such Authorized Claimants will occur until: (1) the Court has approved the Settlement and the Plan of Allocation; (2) the time has expired for any petition for rehearing or appeal of the Court's order(s) approving the Settlement and Plan of Allocation; and (3) the Court has approved the Claims Administrator's determinations of eligible claims.

After a Proof of Claim with adequate documentation is submitted to the Claims Administrator, a "Recognized Claim," will be calculated by the Claims Administrator using the Recognized Loss formulas set forth below for each purchase or acquisition of publicly traded common stock of STEC during the Class Period. The Recognized Loss amounts are not intended to be an estimate of the amount which might have been recovered after trial, or an estimate of the amount to be paid to an Authorized

<sup>5</sup> Defendants had no involvement in the proposed Plan of Allocation.



Claimant from the Net Settlement Fund. The Recognized Loss per share figures reflect price changes of STEC common stock allegedly in reaction to certain public announcements regarding the Company, adjusting for price changes that were attributable to market and industry influences, or other Company information unrelated to the alleged fraud, based on Plaintiffs' allegations in the Complaint. The method for calculating Recognized Losses is intended to provide a fair basis for allocating the Net Settlement Fund proportionately among Authorized Claimants.

## **I. CERTAIN DEFINITIONS**

A. The term "market loss" means the amount by which the purchase or acquisition price is greater than the sale or holding price of STEC's common stock.

B. The term "market profit" means the amount by which the purchase or acquisition price is less than the sale or holding price of STEC's common stock.

C. The terms "net market loss" and "net market profit" mean the total market loss or profit that occurs from the trading of STEC's common stock during the Class Period, as discussed in "Computation of Recognized Claim for Each Class Member" below.

D. The term "Recognized Loss," as used herein, is not market loss or net market loss. It is a calculation to arrive at a loss figure for purposes of calculating an Authorized Claimant's Recognized Claim and *pro rata* participation in the Net Settlement Fund as described below.

E. The date of a purchase or sale of STEC's common stock will be deemed to have occurred on the "contract" or "trade" date as opposed to the "settlement" or "payment" date.

## **II. GENERAL PROVISIONS OF THE PLAN**

### **A. Allocation of Net Settlement Fund**

Payment under the Plan of Allocation approved by the Court will be conclusive for all Authorized Claimants. Claimants whose claims are determined to have a value of zero will nevertheless be bound by the Settlement. No person shall have any claim against Class Representatives, Defendants, their respective counsel, the Claims Administrator, or any other agent designated by Co-Lead Counsel, arising from distributions made substantially in accordance with the Plan of Allocation or further orders of the Court. Class Representatives, Defendants, their respective counsel, Class Representatives' consulting damages expert, the Claims Administrator and all other Released Parties shall have no responsibility or liability whatsoever for the investment or distribution of the Settlement Fund consistent with the Plan of Allocation or Stipulation; or the determination, administration, calculation, or payment of any Proof of Claim consistent with the Plan of Allocation or Stipulation; the payment or withholding of Taxes owed by the Settlement Fund, or any losses incurred in connection therewith.

The Recognized Claims of all Authorized Claimants may be greater than the Net Settlement Fund. In such event, each Authorized Claimant shall receive his, her or its *pro rata* share of the Net Settlement Fund, which shall be his, her or its Recognized Claim divided by the total of Recognized Claims for all Authorized Claimants, multiplied by the total amount in the Net Settlement Fund. To the extent there are sufficient funds in the Net Settlement Fund, each Authorized Claimant will receive an amount equal to the Authorized Claimant's Recognized Claim.

### **B. Use of "FIFO" Methodology for Computation of Recognized Losses for Class Members Who Made Multiple Transactions in STEC's Publicly Traded Common Stock During the Class Period**

For Class Members who made multiple purchases, acquisitions or sales of STEC's publicly traded common stock during the Class Period, the earliest subsequent sale shall be matched first against the claimant's closing position on the day before the first day of the Class Period, and then matched chronologically thereafter against each purchase or acquisition made during the Class Period.

### **C. No Recognized Losses for Certain Purchases/Acquisitions and Sales**

Purchases or acquisitions of STEC's common stock before June 16, 2009 will have a Recognized Loss of zero. This is because any purchases or acquisitions before the first day of the Class Period are not impacted by the alleged wrongdoing.

Any person or entity that sold STEC common stock "short" shall have no Recognized Loss with respect to the related purchase or cover of said short sale during the Class Period. Recognized Loss will be calculated only on purchases of STEC common stock. No Recognized Loss will be calculated on receipt of such securities by gift, grant, inheritance, or operation of law.

Purchases/Acquisitions of STEC common stock during the Class Period that are matched to sales prior to September 17, 2009 will have a Recognized Loss of zero. This is because any losses prior to the first allegedly corrective disclosure cannot be caused by the alleged wrongdoing, but rather by other market forces.



**D. Payments Less Than \$10**

A payment to any Authorized Claimant that would amount to less than \$10.00 in total will not be included in the calculation of the Net Settlement Fund, and no payment will be made to those Authorized Claimants.

**III. CALCULATION OF RECOGNIZED LOSS FOR PUBLICLY TRADED COMMON STOCK OF STEC**

**Publicly Traded STEC Common Stock**

For STEC common stock purchased or acquired between June 16, 2009 and July 15, 2009 and:

- a) sold prior to September 17, 2009, the Recognized Loss is zero;
- b) sold between September 17, 2009 and November 3, 2009, the Recognized Loss is the lesser of:
  - 1) \$0.99 per share, which is the maximum damages per share as calculated by Plaintiffs' damages expert; or
  - 2) the purchase price paid per share less the sales proceeds received per share;
- c) sold between November 4, 2009 and February 23, 2010, the Recognized Loss is the lesser of:
  - 1) \$8.48 per share, which is the maximum damages per share as calculated by Plaintiffs' damages expert; or
  - 2) the purchase price paid per share less the sales proceeds received per share;
- d) sold between February 24, 2010 and May 24, 2010, the Recognized Loss is the lesser of:
  - 1) \$11.61 per share, which is the maximum damages per share as calculated by Plaintiffs' damages expert; or
  - 2) the purchase price paid per share less the greater of (i) the sales proceeds received per share, or (ii) the average closing price per share applicable to the date of sales as found in Table A;<sup>6</sup>
- e) held after May 24, 2010, the Recognized Loss is the lesser of:
  - 1) \$11.61 per share, which is the maximum damages per share as calculated by Plaintiffs' damages expert; or
  - 2) the purchase price paid per share less \$12.73, the average closing price per share for the 90 days following the end of the Class Period.

For STEC common stock purchased or acquired between July 16, 2009 and August 3, 2009 and:

- a) sold prior to September 17, 2009, the Recognized Loss is zero;
- b) sold between September 17, 2009 and November 3, 2009, the Recognized Loss is the lesser of:
  - 1) \$4.93 per share, which is the maximum damages per share as calculated by Plaintiffs' damages expert; or
  - 2) the purchase price paid per share less the sales proceeds received per share;
- c) sold between November 4, 2009 and February 23, 2010, the Recognized Loss is the lesser of:
  - 1) \$12.42 per share, which is the maximum damages per share as calculated by Plaintiffs' damages expert; or
  - 2) the purchase price paid per share less the sales proceeds received per share;
- d) sold between February 24, 2010 and May 24, 2010, the Recognized Loss is the lesser of:
  - 1) \$15.55 per share, which is the maximum damages per share as calculated by Plaintiffs' damages expert; or
  - 2) the purchase price paid per share less the greater of (i) the sales proceeds received per share, or (ii) the average closing price per share applicable to the date of sales as found in Table A;
- e) held after May 24, 2010, the Recognized Loss is the lesser of:
  - 1) \$15.55 per share, which is the maximum damages per share as calculated by Plaintiffs' damages expert; or
  - 2) the purchase price paid per share less \$12.73, the average closing price per share for the 90 days following the end of the Class Period.

For STEC common stock purchased or acquired between August 4, 2009 and September 16, 2009 and:

- a) sold prior to September 17, 2009, the Recognized Loss is zero;
- b) sold between September 17, 2009 and November 3, 2009, the Recognized Loss is the lesser of:
  - 1) \$6.61 per share, which is the maximum damages per share as calculated by Plaintiffs' damages expert; or
  - 2) the purchase price paid per share less the sales proceeds received per share;
- c) sold between November 4, 2009 and February 23, 2010, the Recognized Loss is the lesser of:
  - 1) \$14.10 per share, which is the maximum damages per share as calculated by Plaintiffs' damages expert; or
  - 2) the purchase price paid per share less the sales proceeds received per share;
- d) sold between February 24, 2010 and May 24, 2010, the Recognized Loss is the lesser of:
  - 1) \$17.23 per share, which is the maximum damages per share as calculated by Plaintiffs' damages expert; or
  - 2) the purchase price paid per share less the greater of (i) the sales proceeds received per share, or (ii) the average closing price per share applicable to the date of sales as found in Table A;

<sup>6</sup> Pursuant to Section 21(D)(e)(2) of the PSLRA, "in any private action arising under this title in which the plaintiff seeks to establish damages by reference to the market price of a security, if the plaintiff sells or repurchases the subject security prior to the expiration of the 90-day period described in paragraph (1), the plaintiff's damages shall not exceed the difference between the purchase or sale price paid or received, as appropriate, by the plaintiff for the security and the mean trading price of the security during the period beginning immediately after dissemination of information correcting the misstatement or omission and ending on the date on which the plaintiff sells or repurchases the security."



- e) held after May 24, 2010, the Recognized Loss is the lesser of:
  - 1) \$17.23 per share, which is the maximum damages per share as calculated by Plaintiffs' damages expert; or
  - 2) the purchase price paid per share less \$12.73, the average closing price per share for the 90 days following the end of the Class Period.

For STEC common stock purchased or acquired between September 17, 2009 and November 3, 2009 and:

- a) sold prior to November 4, 2009, the Recognized Loss is zero;
- b) sold between November 4, 2009 and February 23, 2010, the Recognized Loss is the lesser of:
  - 1) \$7.49 per share, which is the maximum damages per share as calculated by Plaintiffs' damages expert; or
  - 2) the purchase price paid per share less the sales proceeds received per share;
- c) sold between February 24, 2010 and May 24, 2010, the Recognized Loss is the lesser of:
  - 1) \$10.62 per share, which is the maximum damages per share as calculated by Plaintiffs' damages expert; or
  - 2) the purchase price paid per share less the greater of (i) the sales proceeds received per share, or (ii) the average closing price per share applicable to the date of sales as found in Table A;
- d) held after May 24, 2010, the Recognized Loss is the lesser of:
  - 1) \$10.62 per share, which is the maximum damages per share as calculated by Plaintiffs' damages expert; or
  - 2) the purchase price paid per share less \$12.73, the average closing price per share for the 90 days following the end of the Class Period.

For STEC common stock purchased or acquired between November 4, 2009 and February 23, 2010 and:

- a) sold prior to February 24, 2010, the Recognized Loss is zero;
- b) sold between February 24, 2010 and May 24, 2010, the Recognized Loss is the lesser of:
  - 1) \$3.13 per share, which is the maximum damages per share as calculated by Plaintiffs' damages expert; or
  - 2) the purchase price paid per share less the greater of (i) the sales proceeds received per share, or (ii) the average closing price per share applicable to the date of sales as found in Table A;
- c) held after May 24, 2010, the Recognized Loss is the lesser of:
  - 1) \$3.13 per share, which is the maximum damages per share as calculated by Plaintiffs' damages expert; or
  - 2) the purchase price paid per share less \$12.73, the average closing price per share for the 90 days following the end of the Class Period.

#### **Section 11 Claims**

For STEC common stock purchased or acquired pursuant to the registration statement filed in connection with STEC's secondary offering on August 6, 2009 (Authorized Claimants must provide documentation showing that they purchased or acquired STEC common stock pursuant to the registration statement, including that those shares were purchased or acquired at the offering price of \$31.00), the Recognized Loss solely with respect to those shares is equal to 125% of the Recognized Loss as calculated above.

#### **Calculation of Overall Out-of-Pocket Gain/Loss**

To the extent a claimant had an overall out-of-pocket gain from his, her or its overall transactions in STEC common stock during the Class Period, the value of the Recognized Loss will be zero. To the extent that a claimant suffered an overall out-of-pocket loss on his, her or its overall transactions in STEC common stock during the Class Period, but that out-of-pocket loss was less than the Recognized Loss calculated above, then the Recognized Loss shall be limited to the amount of the out-of-pocket loss.

For purposes of determining whether a claimant had an out-of-pocket gain from his, her or its overall transactions in STEC common stock during the Class Period or suffered an out-of-pocket loss, the Claims Administrator will: (i) total the amount paid for all common stock purchased during the Class Period by the claimant (the "Total Common Stock Purchase Amount"); (ii) match any sales of common stock during the Class Period first against the claimant's opening position in the common stock (the proceeds of those sales will not be considered for purposes of calculating gains or losses); (iii) total the amount received for sales of the remaining common stock sold on or before May 24, 2010 (the "Common Stock Sales Proceeds"); and (iv) ascribe a \$12.73 per Common Stock holding value for the number of shares of common stock purchased during the Class Period and still held after May 24, 2010 ("Common Stock Holding Value"). The difference between (i) the Total Common Stock Purchase Amount and the (ii) sum of the Common Stock Sales Proceeds and Common Stock Holding Value will be deemed a claimant's out-of-pocket gain or loss on his, her or its overall transactions in STEC common stock during the Class Period.



Table A

Date	Closing Price <sup>[1]</sup>	Average Price <sup>[1]</sup>	Date	Closing Price <sup>[1]</sup>	Average Price <sup>[1]</sup>
2/24/2010	\$10.27	\$10.27	4/10/2010	N/A	11.88
2/25/2010	10.48	10.38	4/11/2010	N/A	11.88
2/26/2010	10.28	10.34	4/12/2010	11.88	11.88
2/27/2010	N/A	10.34	4/13/2010	11.82	11.88
2/28/2010	N/A	10.34	4/14/2010	11.9	11.88
3/1/2010	10.7	10.43	4/15/2010	13.69	11.93
3/2/2010	10.9	10.53	4/16/2010	13.32	11.97
3/3/2010	10.55	10.53	4/17/2010	N/A	11.97
3/4/2010	11.14	10.62	4/18/2010	N/A	11.97
3/5/2010	11.9	10.78	4/19/2010	13.72	12.01
3/6/2010	N/A	10.78	4/20/2010	13.97	12.06
3/7/2010	N/A	10.78	4/21/2010	14.17	12.12
3/8/2010	13.32	11.06	4/22/2010	15.15	12.19
3/9/2010	12.75	11.23	4/23/2010	15.88	12.28
3/10/2010	13.18	11.41	4/24/2010	N/A	12.28
3/11/2010	12.92	11.53	4/25/2010	N/A	12.28
3/12/2010	12.89	11.64	4/26/2010	15.4	12.35
3/13/2010	N/A	11.64	4/27/2010	15.36	12.42
3/14/2010	N/A	11.64	4/28/2010	15.45	12.49
3/15/2010	12.6	11.71	4/29/2010	15.32	12.55
3/16/2010	12.22	11.74	4/30/2010	13.9	12.58
3/17/2010	11.97	11.75	5/1/2010	N/A	12.58
3/18/2010	12.33	11.79	5/2/2010	N/A	12.58
3/19/2010	11.96	11.80	5/3/2010	14.76	12.62
3/20/2010	N/A	11.80	5/4/2010	13.99	12.65
3/21/2010	N/A	11.80	5/5/2010	13.83	12.67
3/22/2010	12.12	11.81	5/6/2010	13.23	12.68
3/23/2010	12.37	11.84	5/7/2010	12.87	12.69
3/24/2010	11.99	11.85	5/8/2010	N/A	12.69
3/25/2010	11.85	11.85	5/9/2010	N/A	12.69
3/26/2010	11.87	11.85	5/10/2010	13.54	12.70
3/27/2010	N/A	11.85	5/11/2010	13.49	12.72
3/28/2010	N/A	11.85	5/12/2010	13.77	12.74
3/29/2010	12.03	11.86	5/13/2010	13.38	12.75
3/30/2010	12.06	11.87	5/14/2010	13.31	12.76
3/31/2010	11.98	11.87	5/15/2010	N/A	12.76
4/1/2010	11.97	11.87	5/16/2010	N/A	12.76
4/2/2010	N/A	11.87	5/17/2010	13.24	12.77
4/3/2010	N/A	11.87	5/18/2010	12.73	12.77
4/4/2010	N/A	11.87	5/19/2010	12.41	12.76
4/5/2010	12.13	11.88	5/20/2010	12.03	12.75
4/6/2010	11.97	11.89	5/21/2010	12.26	12.74
4/7/2010	11.76	11.88	5/22/2010	N/A	12.74
4/8/2010	11.87	11.88	5/23/2010	N/A	12.74
4/9/2010	11.85	11.88	5/24/2010	11.96	12.73

Note: <sup>[1]</sup> N/A's represent non-trading days, weekends and holidays, or days for which no pricing data are available and thus are not included in the average calculation.

#### IV. COMPUTATION OF RECOGNIZED CLAIM FOR EACH CLASS MEMBER

The Recognized Loss or Gain with respect to each purchase or acquisition of STEC publicly traded common stock is calculated by multiplying the number of shares by the appropriate Recognized Loss per share, as set forth above in Section III.

The Recognized Claim for each Class Member is calculated by: (1) adding the Recognized Losses for each publicly traded share of STEC common stock purchased or acquired by the Class Member during the Class Period (i.e. adding all Recognized Losses); and (2) subtracting any Recognized Gains for each publicly traded share of STEC common stock purchased or acquired by the Class Member during the Class Period (i.e. subtracting all Recognized Gains).

If, during the Class Period, a Class Member made a net market profit in STEC publicly traded common stock, the amount of the Class Member's Recognized Claim shall be zero.

If, during the Class Period, a Class Member has a net market loss in STEC publicly traded common stock that is less than his, her or its Recognized Claim, the Class Member's Recognized Claim shall be limited to the Class Member's net market loss.

#### **V. DISTRIBUTION OF THE NET SETTLEMENT FUND**

Distributions to Authorized Claimants will be made after all claims have been processed and after the Court has approved the Claims Administrator's determinations. After an initial distribution of the Net Settlement Fund, if there is any balance remaining in the Net Settlement Fund after at least six (6) months from the date of initial distribution (whether by reason of tax refunds, uncashed checks or otherwise), Co-Lead Counsel shall, if feasible and economical, reallocate such balance among Authorized Claimants who have cashed their checks in an equitable and economic fashion. Any balance that still remains in the Net Settlement Fund, after payment of Notice and Administration Expenses, Taxes, and attorneys' fees and expenses, if any, shall be contributed to a non-sectarian not-for-profit charitable organization(s) serving the public interest, designated by Class Representatives.

Each claimant is deemed to have submitted to the jurisdiction of the United States District Court for the Central District of California with respect to his/her/its Proof of Claim.

#### **SPECIAL NOTICE TO SECURITIES BROKERS AND OTHER NOMINEES**

If you purchased or acquired publicly traded common stock of STEC (NYSE ticker: STEC; CUSIP 784774101; ISIN US7847741011) during the period between June 16, 2009 and February 23, 2010, inclusive, for the beneficial interest of a person or organization other than yourself, the Court has directed that, WITHIN SEVEN (7) DAYS OF YOUR RECEIPT OF THIS NOTICE, you either: (a) provide to the Claims Administrator the name and last known address of each person or organization for whom or which you purchased or acquired publicly traded shares of STEC common stock during such time period or; (b) request additional copies of this Notice and the Proof of Claim form, which will be provided to you free of charge, and within seven (7) days mail the Notice and Proof of Claim form directly to the beneficial owners of those STEC shares.

If you choose to follow alternative procedure (b), the Court has directed that, upon such mailing, you send a statement to the Claims Administrator confirming that the mailing was made as directed. You are entitled to reimbursement from the Settlement Fund of your reasonable expenses actually incurred in connection with the foregoing, including reimbursement of postage and the cost of ascertaining the names and addresses of beneficial owners. Those expenses will be paid upon request and submission of appropriate supporting documentation. All communications concerning the foregoing should be addressed to the Claims Administrator:

*In re STEC, Inc. Securities Litigation*  
c/o The Garden City Group, Inc.  
P.O. Box 9949  
Dublin, OH 43017-5949  
1-855-728-4603

Dated: February 25, 2013

BY ORDER OF THE COURT  
UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA



Must Be  
Postmarked  
No Later Than  
June 25, 2013

*In re* STEC, Inc. Securities Litigation  
c/o The Garden City Group, Inc.  
Claims Administrator  
P.O. Box 9949  
Dublin, OH 43017-5949  
1-855-728-4603  
www.stecsecuritiessettlement.com

STC



Claim Number:

Control Number:

## **PROOF OF CLAIM AND RELEASE**

To recover from the Net Settlement Fund as a Member of the Class in the action entitled *In re* STEC, Inc. Securities Litigation, No. SACV-09-01304-JVS (MLGX) (the "Action"), you must complete and, on page 5 below, sign this Proof of Claim and Release form ("Proof of Claim"). If you fail to submit a timely, properly completed and addressed Proof of Claim, your claim may be rejected and you may be precluded from any recovery from the Settlement Fund created in connection with the Settlement of the Action. Submission of this Proof of Claim, however, does not assure that you will share in the Settlement Fund.

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**Important** - This form should be completed IN CAPITAL LETTERS using BLACK or DARK BLUE ballpoint/fountain pen. Characters and marks used should be similar in the style to the following:

A B C D E F G H I J K L M N O P Q R S T U V W X Y Z 1 2 3 4 5 6 7 0





# PART I - CLAIMANT IDENTIFICATION

LAST NAME (CLAIMANT)

FIRST NAME (CLAIMANT)

Last Name (Beneficial Owner if Different From Claimant)

First Name (Beneficial Owner)

Last Four Digits of the Beneficial Owner's Employer Identification Number or Social Security Number<sup>1</sup>

Last Name (Co-Beneficial Owner)

First Name (Co-Beneficial Owner)

Company/Other Entity (If Claimant Is Not an Individual)

Contact Person (If Claimant is Not an Individual)

Trustee/Nominee/Other

Account Number (If Claimant Is Not an Individual)

Trust/Other Date (If Applicable)

Address Line 1

Address Line 2 (If Applicable)

City

State

Zip Code

Foreign Province

Foreign Country

Foreign Zip Code

Telephone Number (Day)

Telephone Number (Night)

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.)

IDENTITY OF CLAIMANT (check only one box):

- ☐ Individual ☐ Joint Owners ☐ Estate ☐ Corporation ☐ Trust ☐ Partnership
- ☐ Private Pension Fund ☐ Legal Representative
- ☐ IRA, Keogh, or other type of individual retirement plan (indicate type of plan, mailing address, and name of current custodian)
- ☐ Other (specify, describe on separate sheet)

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

To view GCG's Privacy Notice, please visit <http://www.gcginc.com/pages/privacy-policy.php>

<sup>1</sup>The last four digits of the taxpayer identification number (TIN), consisting of a valid Social Security Number (SSN) for individuals or Employer Identification Number (EIN) for business entities, trusts, estates, etc., and telephone number of the beneficial owner(s) may be used in verifying this claim.





## PART II - GENERAL INSTRUCTIONS

**YOU MUST MAIL YOUR COMPLETED AND SIGNED PROOF OF CLAIM POSTMARKED ON OR BEFORE JUNE 25, 2013, ADDRESSED AS FOLLOWS:**

*In re STEC, Inc. Securities Litigation*  
c/o The Garden City Group, Inc.  
Claims Administrator  
P.O. Box 9949  
Dublin, OH 43017-5949

If you are NOT a Member of the Class (as defined in the Notice of Pendency of Class Action and Proposed Settlement and Motion for Attorneys' Fees and Expenses (the "Notice")) DO NOT submit a Proof of Claim.

If you are a Member of the Class and you have not timely requested exclusion, you will be bound by the terms of the Judgment entered in the Action, WHETHER OR NOT YOU SUBMIT A PROOF OF CLAIM.

### DEFINITIONS

All capitalized terms not otherwise defined in this form shall have the same meaning as set forth in the Notice which accompanies this Proof of Claim.

### IDENTIFICATION OF CLAIMANT

If you purchased or otherwise acquired the publicly traded common stock of STEC, Inc. ("STEC") during the period from June 16, 2009 to February 23, 2010, inclusive (the "Class Period") and held the stock in your name, you are the beneficial purchaser as well as the record purchaser. If, however, you purchased or otherwise acquired the publicly traded common stock of STEC during the Class Period through a third party, such as a nominee or brokerage firm, you are the beneficial purchaser of these securities, but the third party is the record purchaser of these securities.

Use Part I of this form entitled "Claimant Identification" to identify each beneficial purchaser of STEC publicly traded common stock that forms the basis of this claim. **THIS CLAIM MUST BE SUBMITTED BY THE ACTUAL BENEFICIAL PURCHASER(S) OR AUTHORIZED OR LEGAL REPRESENTATIVE(S) OF SUCH PURCHASER(S) OF THE PUBLICLY TRADED STEC COMMON STOCK UPON WHICH THIS CLAIM IS BASED.**

All joint beneficial purchasers must sign this claim. Executors, administrators, guardians, conservators and trustees must complete and sign this claim on behalf of Persons represented by them and their authority must accompany this claim and their titles or capacities must be stated. The last 4 digits of the Social Security (or taxpayer identification) number and telephone number of one of the beneficial owner(s) may be used in verifying this claim. Failure to provide the foregoing information could delay verification of your claim or result in rejection of your claim. If you need help completing this claim form, you may contact the Claims Administrator for assistance: 1-855-728-4603 or [www.stecsecuritiessettlement.com](http://www.stecsecuritiessettlement.com).

### IDENTIFICATION OF TRANSACTION(S)

Use Part III of this form to supply all required details of your transaction(s) in the publicly traded common stock of STEC. If you need more space or additional schedules, attach separate sheets giving all of the required information in substantially the same form. Sign and print or type your name on each additional sheet.

On the schedules, provide all of the requested information with respect to: (i) **all** of your holdings of publicly traded common stock of STEC as of the beginning of trading on June 16, 2009; (ii) **all** of your purchases, other acquisitions and sales of publicly traded common stock of STEC which took place at any time beginning June 16, 2009 through and including May 24, 2010; and (iii) proof of your holdings of publicly traded common stock of STEC as of the close of trading on May 24, 2010, whether such purchases, acquisitions, sales or transactions resulted in a profit or a loss. Failure to report all such transactions may result in the rejection of your claim.

List each purchase, acquisition, sale and transaction during the relevant period separately and in chronological order, by trade date, beginning with the earliest. You must accurately provide the month, day and year of each such transaction you list.

Copies of broker confirmations or other documentation of your purchases, acquisitions, sales or transactions in publicly traded STEC common stock should be attached to your claim. **DO NOT SEND ORIGINALS OR HIGHLIGHT THE COPIES.** Failure to provide this documentation could delay verification of your claim or result in rejection of your claim. The Claims Administrator may also request additional information as requested to efficiently and reliably calculate your losses.

If you need help, you may ask the Claims Administrator for assistance: 1-855-728-4603 or [www.stecsecuritiessettlement.com](http://www.stecsecuritiessettlement.com). Although the Claims Administrator does not have information about your transactions in STEC publicly traded common stock, someone will be able to help you with the process of locating your information.





**PART III - SCHEDULE OF TRANSACTIONS IN STEC COMMON STOCK**

- A. BEGINNING HOLDINGS:** Number of shares of publicly traded STEC common stock held at the beginning of trading on **June 16, 2009** (If none, write "zero" or "0").

Shares									

- B. PURCHASES/ACQUISITIONS:** Purchases or acquisitions of publicly traded STEC common stock between **June 16, 2009** and **February 23, 2010**, inclusive (Must be documented).

Trade Date List Chronologically (Month/Day /Year)	Number of Shares Purchased or Acquired	Price Per Share	Total Purchase Price (Excluding taxes, fees, and commissions)

- C. PURCHASES/ACQUISITIONS:** Number of shares of publicly traded STEC common stock purchased or acquired between **February 24, 2010** and **May 24, 2010**, inclusive (If none, write "zero" or "0").

Shares									

- D. SALES:** Sales (from **June 16, 2009** to **May 24, 2010**, inclusive) of publicly traded STEC common stock (Must be documented).

Trade Date List Chronologically (Month/Day /Year)	Number of Shares Sold	Price Per Share	Total Sale Price (Excluding taxes, fees, and commissions)

- E. ENDING HOLDINGS:** Number of shares of publicly traded STEC common stock held at the close of trading on **May 24, 2010** (Must be documented).

Shares									

IF YOU NEED ADDITIONAL SPACE TO LIST YOUR TRANSACTIONS YOU MUST  
PHOTOCOPY THIS PAGE AND CHECK THIS BOX ☐  
IF YOU DO NOT CHECK THIS BOX THESE ADDITIONAL PAGES WILL NOT BE REVIEWED



**PART IV - SUBMISSION TO JURISDICTION OF COURT AND ACKNOWLEDGMENTS**

I (We) submit this Proof of Claim under the terms of the Stipulation and Agreement of Settlement ("Stipulation") described in the Notice. I (We) also submit to the jurisdiction of the United States District Court for the Central District of California with respect to my (our) claim as a Class Member and for purposes of enforcing the release set forth herein. I (We) further acknowledge that I (we) will be bound by and subject to the terms of any Final Order and Judgment that may be entered in the Action. I (We) agree to furnish additional information to the Claims Administrator to support this claim if requested to do so. I (We) have not submitted any other claim covering the same purchases, acquisitions or sales or holdings of publicly traded STEC common stock during the relevant period and know of no other Person having done so on my (our) behalf.

**PART V - RELEASE AND CERTIFICATION**

1. I (We) hereby acknowledge full and complete satisfaction of, and do hereby fully, finally and forever settle, release and discharge from the Released Claims each and all of the Released Defendant Parties as those terms and terms related thereto are defined in the accompanying Notice.

2. This release shall be of no force or effect unless and until the Court approves the Stipulation and the Effective Date (as defined in the Stipulation) has occurred.

3. I (We) hereby warrant and represent that I (we) have not assigned or transferred or purported to assign or transfer, voluntarily or involuntarily, any matter released pursuant to this release or any other part or portion thereof.

4. I (We) hereby warrant and represent that I (we) have included information about all of my (our) purchases, acquisitions, and sales and other transactions in publicly traded STEC common stock that occurred during the relevant time periods and the number of shares of publicly traded STEC common stock held by me (us) at the relevant time periods.

5. I (We) hereby warrant and represent that I (we) am (are) not excluded from the Class as defined herein and in the Notice.

6. The number(s) shown on this form is (are) from the correct SSN/TIN.

I (We) declare under penalty of perjury under the laws of the United States of America that the foregoing information supplied by the undersigned is true and correct.

Executed this \_\_\_\_\_ day of \_\_\_\_\_ in \_\_\_\_\_  
(Month) (Year) (City, State, Country)

\_\_\_\_\_  
Signature of Claimant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print your name here

\_\_\_\_\_  
Signature of Joint Claimant, if any

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print your name here

\_\_\_\_\_  
Capacity of person signing on behalf of Claimant, if other than an individual, e.g., executor, president, custodian, etc.





**REMINDER CHECKLIST**

**ACCURATE CLAIMS PROCESSING TAKES A SIGNIFICANT AMOUNT OF TIME.  
THANK YOU FOR YOUR PATIENCE.**

1. Please sign the Proof of Claim and Release.
2. If this claim is made on behalf of Joint Claimants, then both must sign.
3. **DO NOT SEND ORIGINALS OF ANY SUPPORTING DOCUMENTS.**
4. Keep a copy of your completed Proof of Claim and all documentation submitted for your records.
5. The Claims Administrator will acknowledge receipt of your Proof of Claim by mail, within 60 days. Your claim is not deemed filed until you receive an acknowledgment postcard. If you do not receive an acknowledgment postcard within 60 days, please call the Claims Administrator toll free at 1-855-728-4603.
6. If you move, you must send the Claims Administrator your new address. Otherwise, any funds allocated to your claim are subject to forfeiture.
7. **Do not use highlighter on the Proof of Claim or supporting documentation.**
8. If you have any questions or concerns regarding your Proof of Claim, please contact the Claims Administrator at the address listed below or at 1-855-728-4603, or visit [www.stecsecuritiessettlement.com](http://www.stecsecuritiessettlement.com)

**THIS PROOF OF CLAIM MUST BE POSTMARKED ON OR BEFORE  
JUNE 25, 2013 AND MUST BE MAILED TO:**

**In re STEC, Inc. Securities Litigation  
c/o The Garden City Group, Inc.  
Claims Administrator  
P.O. Box 9949  
Dublin, OH 43017-5949**



# **EXHIBIT B**

# INVESTOR'S BUSINESS DAILY®

## Affidavit of Publication

Name of Publication: Investor's Business Daily  
Address: 12655 Beatrice Street  
City, State, Zip: Los Angeles, CA 90066  
Phone #: 310.448.6700  
State of: California  
County of: Los Angeles

I, Stephan Johnson, for the publisher of Investor's Business Daily, published in the city of Los Angeles, state of California, county of Los Angeles hereby certify that the attached notice for The Garden City Group, Inc. was printed in said publication on the following date:

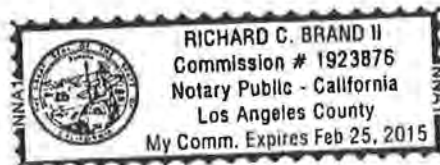
March 8<sup>th</sup>, 2013: STEC, INC. SECURITIES LITIGATION

State of California  
County of Los Angeles

Subscribed and sworn to (or affirmed) before me on this 8<sup>th</sup> day of March, 2013,

by Stephan Johnson, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Signature Richard C. Brand II (Seal)



# PERFORMANCE

FRIDAY, MARCH 8, 2013

A13

Mos rformance ting   Fund	4Wk Net % Asset MAY  Chg Value Chg
Equity Inc	+3 55.39n+.05
EuroStkIdx	+1 62.73n+.43
Explorer	+3 81.54n+.42
Ext Mkt Idx	+2 50.61n+.21
GNMA	0 10.83n-.02
Growth & Inc	+3 53.76n+.10
Growth Idx	+2 39.37n+.07
HiYld Corp r	+1 6.12n+.00
HiYldTxE	0 11.30n-.01
Hlth Care r	+3 66.49n+.04
InflProSecs	0 28.25n-.09
Int Treas	0 11.62n-.02
Intl Growth r	+2 64.09n+.26
Intlnd Tax Ex	0 14.36n-.02
IntlndInvGrd	0 10.24n-.02
LglnvGdAdmr	0 10.59n-.05
LT Tax Ex	0 11.79n-.01
LT Treas	0 12.51n-.09
LidTrm TxE	0 11.16n+.00
Mid Cap Idx	+2 112.41n
Morgan Gr	+2 66.45n+.13
NJ LngTxE	0 12.32n-.01
NY LngTxE	0 11.78n-.01
PA LngTxE	0 11.71n-.01
Pac Stk Idx r	+4 70.50n+.14
Primecap r	+3 80.25n+.16
REIT Idx r	+2 99.04n+.50
Sh Trm TxE	0 15.92n+.00
Sh Trm Fed	0 10.79n+.00
ShrlowAdmr	0 10.82n-.01
ShTrmBdIdx	0 10.61n-.01
Small Idx	+3 42.69n+.17
ST Treas	0 10.73n+.00
Tot Bd Idx	0 10.98n-.03
TlStMktIdx	+3 38.87n+.09
TxMgd G&I r	+3 69.46n+.14
TxMgdCap r	+2 77.50n+.19
TxMglnAd r	+2 11.81n+.05
TxMgSCAd r	+2 34.12n+.16
Value Idx	+3 25.28n+.06
Wellesley Inc	+1 60.16n-.08
Wellington	+2 61.86n+.07
Windsor	+3 56.20n+.25
Windsor II	+2 56.42n+.11
Vanguard Index	
\$ 279 bil B00-662-7447	
S&P 500	+3 142.82n
Balanced	+2 24.99n-.02
DevMktId r	+2 10.22n+.04
DevMktIdSP r	+2 105.60n
EmgMkSt r	0 77.92n+.03
EmgMkStSP r	0 92.81
+ 12	
ExtDurTryl	-1 32.73n-.38
Extnd Mkt	+2 50.59n+.20
FTSEWldIsP r	+1 97.65n+.27
Growth	+2 39.37n+.07
HighDivYld	+3 21.46n+.02
Int Bd	0 11.83n-.04

## UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA SOUTHERN DIVISION

IN RE STEC, INC. SECURITIES LITIGATION ) No. SACV 09-01304-JVS (MLGx)  
This Document Relates To: ) SUMMARY NOTICE OF  
ALL ACTIONS ) PENDENCY AND PROPOSED  
SETTLEMENT AND MOTION  
FOR ATTORNEYS' FEES AND  
EXPENSES  
Judge: The Hon. James V. Selna

TO: ALL PERSONS THAT, BETWEEN JUNE 16, 2009 AND FEBRUARY 23, 2010, INCLUSIVE, PURCHASED OR OTHERWISE ACQUIRED THE PUBLICLY TRADED COMMON STOCK OF STEC AND WERE DAMAGED THEREBY (THE "CLASS").

YOU ARE HEREBY NOTIFIED, pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the Court, that the above-captioned action has been certified as a class action for the claims pursuant to the Securities Exchange Act of 1934 and has been preliminarily certified as a class action for claims pursuant to the Securities Act of 1933 and that a settlement for \$35,750,000 has been proposed with STEC, Inc., Manouch Moshayedi, Mark Moshayedi and Raymond Cook (collectively, "Defendants"). A hearing will be held before the Honorable James V. Selna of the United States District Court for the Central District of California in the Ronald Reagan Federal Building and U.S. Courthouse, West Fourth Street, Santa Ana, CA 92701, at 1:30 p.m., on May 20, 2013, in Courtroom 10C to determine, among other things whether the proposed Settlement should be approved by the Court as fair, reasonable and adequate; the proposed Plan of Allocation for distribution of the net settlement proceeds should be approved as fair and reasonable; and to consider the applications for attorneys' fees and reimbursement of expenses. The Court may change the date of the hearing without providing another notice.

IF YOU ARE A MEMBER OF THE CLASS DESCRIBED ABOVE, YOUR RIGHTS WILL BE AFFECTED AND YOU MAY BE ENTITLED TO SHARE IN THE NET SETTLEMENT FUND. If you have not yet received the full printed Notice of Pendency of Class Action and Proposed Settlement and Motion for Attorneys' Fees and Expenses ("Notice") and a Proof of Claim and Release form ("Proof of Claim"), you may obtain copies of these documents by contacting the Claims Administrator:

*In re STEC, Inc. Securities Litigation*  
c/o The Garden City Group, Inc.  
Claims Administrator  
P.O. Box 9949  
Dublin, OH 43017-5949  
(855) 728-4603  
[www.stecsecuritiessettlement.com](http://www.stecsecuritiessettlement.com)

The Claims Administrator can also help you if you have questions about these documents. Inquiries, other than requests for the forms of Notice and Proof of Claim or the status of a claim, may be made to Co-Lead Counsel:

Labaton Sucharow LLP  
Thomas A. Dubbs  
James W. Johnson  
140 Broadway  
New York, New York 10005  
(888) 219-6877  
[www.labaton.com](http://www.labaton.com)

Lite DePalma Greenberg, LLC  
Allyn Z. Lite  
Bruce Greenberg  
Two Gateway Center, 12th Floor  
Newark, NJ 07102  
(973) 623-3000  
[www.litedepalma.com](http://www.litedepalma.com)

If you are a Class Member, to be eligible to share in the distribution of the Net Settlement Fund you must submit a Proof of Claim postmarked or received no later than June 25, 2013. To exclude yourself from the Class, you must submit a written request for exclusion in accordance with the instructions set forth in the Notice such that it is received no later than April 22, 2013. If you are a Class Member and do not exclude yourself from the Class, you will be bound by the Final Order and Judgment of the Court and all orders of the Court, whether favorable or unfavorable. Objections to any aspect of the Settlement, Plan of Allocation, or applications for attorneys' fees and reimbursement of expenses must be filed with the Court and served on counsel for the Parties in accordance with the instructions set forth in the Notice, such that they are received no later than April 22, 2013. If you are a Class Member and do not submit an acceptable Proof of Claim, you will not share in the Net Settlement Fund but you nevertheless will be bound by the Final Order and Judgment of the Court.

Further information may be obtained by contacting the Claims Administrator.

Dated: March 8, 2013

By Order of The Court  
United States District Court  
Central District of California

# **EXHIBIT C**



**Tammy Ollivier**

---

**From:** sfhubs@prnewswire.com  
**Sent:** Friday, March 08, 2013 6:01 AM  
**To:** GCGBuyers; Tammy Ollivier  
**Subject:** PR Newswire: Press Release Clear Time Confirmation for Labaton Sucharow LLP, ID# 832169-1-1

## PR NEWSWIRE EDITORIAL

Hello

Here's the clear time\* confirmation for your news release:

Release headline: Labaton Sucharow LLP and Lite DePalma Greenberg, LLC Announce Summary Notice of Pendency and Proposed Settlement and Motion for Attorneys' Fees and Expenses

Word Count: 717

Product Summary:

US1

ReleaseWatch

Complimentary Press Release Optimization

IRW

PR Newswire's Editorial Order Number: 832169-1-1

Release clear time: 08-Mar-2013 09:00:00 AM

\*Clear time represents the time your news release was distributed to the newswire you selected. Releases distributed publicly in the US can be located online in order of release time at: <http://www.prnewswire.com/news-releases-list/>

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To contact PR Newswire directly, please call 888-776-0942 or e-mail [information@prnewswire.com](mailto:information@prnewswire.com).



## Labaton Sucharow LLP and Lite DePalma Greenberg, LLC Announce Summary Notice of Pendency and Proposed Settlement and Motion for Attorneys' Fees and Expenses

NEW YORK, March 8, 2013 /PRNewswire/ -- The following statement is being issued by Labaton Sucharow LLP and Lite DePalma Greenberg, LLC regarding *In re STEC, Inc. Securities Litigation*.

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

**IN RE STEC, INC. SECURITIES LITIGATION**

No. SACV 09-01304-JVS (MLGx)

### **SUMMARY NOTICE OF PENDENCY AND PROPOSED SETTLEMENT AND MOTION FOR ATTORNEYS' FEES AND EXPENSES**

TO: ALL PERSONS THAT, BETWEEN JUNE 16, 2009 AND FEBRUARY 23, 2010, INCLUSIVE, PURCHASED OR OTHERWISE ACQUIRED THE PUBLICLY TRADED COMMON STOCK OF STEC AND WERE DAMAGED THEREBY (THE "CLASS").

YOU ARE HEREBY NOTIFIED, pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the Court, that the above-captioned action has been certified as a class action for the claims pursuant to the Securities Exchange Act of 1934 and has been preliminarily certified as a class action for claims pursuant to the Securities Act of 1933 and that a settlement for \$35,750,000 has been proposed with STEC, Inc., Manouch Moshayedi, Mark Moshayedi and Raymond Cook (collectively, "Defendants"). A hearing will be held before the Honorable James V. Selna of the United States District Court for the Central District of California in the Ronald Reagan Federal Building and U.S. Courthouse, West Fourth Street, Santa Ana, CA 92701, at 1:30 p.m., on May 20, 2013, in Courtroom 10C to determine, among other things whether: the proposed Settlement should be approved by the Court as fair, reasonable and adequate; the proposed Plan of Allocation for distribution of the net settlement proceeds should be approved as fair and reasonable; and to consider the applications for attorneys' fees and reimbursement of expenses. The Court may change the date of the hearing without providing another notice.

IF YOU ARE A MEMBER OF THE CLASS DESCRIBED ABOVE, YOUR RIGHTS WILL BE AFFECTED AND YOU MAY BE ENTITLED TO SHARE IN THE NET SETTLEMENT FUND. If you have not yet received the full printed Notice of Pendency of Class Action and Proposed Settlement and Motion for Attorneys' Fees and Expenses ("Notice") and a Proof of Claim and Release form ("Proof of Claim"), you may obtain copies of these documents by contacting the Claims Administrator:

*In re STEC, Inc. Securities Litigation*  
c/o The Garden City Group, Inc.  
Claims Administrator  
P.O. Box 9949  
Dublin, OH 43017-5949  
(855) 728-4603  
[www.stecsecuritiessettlement.com](http://www.stecsecuritiessettlement.com)

The Claims Administrator can also help you if you have questions about these documents. Inquiries, other than requests for the forms of Notice and Proof of Claim or the status of a claim, may be made to Co-Lead Counsel:

Labaton Sucharow LLP  
Thomas A. Dubbs  
James W. Johnson  
140 Broadway  
New York, New York 10005  
(888) 219-6877

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

Lite DePalma Greenberg , LLC  
Allyn Z. Lite  
Bruce Greenberg  
Two Gateway Center, 12th Floor  
Newark, NJ 07102  
(973) 623-3000  
[www.litedepalma.com](http://www.litedepalma.com)

If you are a Class Member, to be eligible to share in the distribution of the Net Settlement Fund you must submit a Proof of Claim **postmarked or received no later than June 25, 2013**. To exclude yourself from the Class, you must submit a written request for exclusion in accordance with the instructions set forth in the Notice such that it is **received no later than April 22, 2013**. If you are a Class Member and do not exclude yourself from the Class, you will be bound by the Final Order and Judgment of the Court and all orders of the Court, whether favorable or unfavorable. Objections to any aspect of the Settlement, Plan of Allocation, or applications for attorneys' fees and reimbursement of expenses must be filed with the Court and served on counsel for the Parties in accordance with the instructions set forth in the Notice, such that they are **received no later than April 22, 2013**. If you are a Class Member and do not submit an acceptable Proof of Claim, you will not share in the Net Settlement Fund but you nevertheless will be bound by the Final Order and Judgment of the Court.

Further information may be obtained by contacting the Claims Administrator.

Dated: March 8, 2013 By Order of The Court  
United States District Court  
Central District of California

SOURCE Labaton Sucharow LLP

#### RELATED LINKS

<http://www.labaton.com>  
<http://www.litedepalma.com>  
<http://www.stecsecuritiessettlement.com>

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#### Find this article at:

<http://www.prnewswire.com/news-releases/labaton-sucharow-llp-and-lite-depalma-greenberg-llc-announce-summary-notice-of-pendency-and-proposed-settlement-and-motion-for-attorneys-fees-and-expenses-196292011.html>

☐ Check the box to include the list of links referenced in the article.



# EXHIBIT 3



**Summary Table of Lodestars and Expenses**

<b>Firm</b>	<b>Hours</b>	<b>Fees</b>	<b>Expenses</b>
Labaton Sucharow LLP	36,409.5	\$18,396,408.50	\$1,594,630.56
Lite DePalma Greenberg, LLC	3,967.8	\$2,254,357.50	\$323,865.65
Lim, Ruger & Kim LLP	279.3	\$87,080.00	\$2,460.92
Berman DeValerio	57.5	\$24,826.00	\$393.32
Bienert, Miller & Katzman	140.3	\$96,494.50	\$1,929.28
Green & Noblin, P.C.	196.1	\$136,289.50	\$2,615.94
<b>TOTAL</b>	<b>41,050.50</b>	<b>\$20,995,456.00</b>	<b>\$1,925,895.67</b>

# EXHIBIT 4

Christopher Kim (Bar No. 082080)  
christopher.kim@limruger.com  
Lisa J. Yang (Bar No. 208971)  
lisa.yang@limruger.com  
LIM, RUGER & KIM, LLP  
1055 West Seventh Street, Suite 2800  
Los Angeles, California 90017-2554  
Telephone: (213) 955-9500  
Facsimile: (213) 955-9511

Thomas A. Dubbs (*Pro Hac Vice*)  
tdubbs@labaton.com  
James W. Johnson (*Pro Hac Vice*)  
jjohnson@labaton.com  
Richard T. Joffe (*Pro Hac Vice*)  
rjoffe@labaton.com  
LABATON SUCHAROW LLP  
140 Broadway  
New York, New York 10005  
Telephone: (212) 907-0700  
Facsimile: (212) 818-0477

Allyn Z. Lite (*Pro Hac Vice*)  
alite@litedepalma.com  
Bruce D. Greenberg (*Pro Hac Vice*)  
bgreenberg@litedepalma.com  
LITE DePALMA GREENBERG, LLC  
Two Gateway Center, 12th Floor  
Newark, New Jersey 07102  
Telephone: (973) 623-3000  
Facsimile: (973) 623-0858

*Attorneys for Lead Plaintiff, the State of New Jersey, Department of Treasury,  
Division of Investment, Plaintiff International Brotherhood of Electrical Workers,  
Local 103, The Norfolk County Retirement System and Lead Counsel for the Class*

Thomas Bienert, Jr.  
tbienert@bmkattorneys.com  
BIENERT, MILLER & KATZMAN  
903 Calle Amanecer, Suite 350  
San Clemente, CA 92673  
Telephone: (949) 369-3700  
Facsimile: (949) 369-3701

Robert S. Green  
rsg@classcounsel.com  
GREEN & NOBLIN, P.C.  
700 Larkspur Landing Circle, Suite 275  
Larkspur, CA 94939  
Telephone: (415) 477-6700  
Facsimile: (415) 477-6710

*Attorneys for Plaintiff Mark Ripperda*

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

IN RE STEC, INC. SECURITIES  
LITIGATION

No. SACV 09-01304-JVS (MLGx)

This Document Relates To:  
ALL ACTIONS

**DECLARATION OF THOMAS A.  
DUBBS IN SUPPORT OF CLASS  
REPRESENTATIVES' COUNSEL'S  
APPLICATION FOR ATTORNEYS'  
FEES AND REIMBURSEMENT OF  
LITIGATION EXPENSES**

Hearing Date: May 20, 2013  
Time: 1:30 p.m.  
Judge: Honorable James V. Selna  
Courtroom: 10C

1 THOMAS A. DUBBS, Esq., declares as follows pursuant to 28 U.S.C. §  
2 1746:

3 1. I am a member of the law firm of Labaton Sucharow LLP. I submit  
4 this declaration in support of Co-Lead Counsel's motion for an award of attorneys'  
5 fees and payment of litigation expenses in the above-captioned action (the  
6 "Action") from inception through March 25, 2013 (the "Time Period").

7 2. My firm, which served as Co-Lead Counsel in the Action, was  
8 involved in all aspects of the litigation and settlement of the Action as set forth in  
9 detail in the Declaration of Thomas A. Dubbs in Support of Class Representatives'  
10 Motion for Final Approval of Proposed Class Action Settlement, Plan of  
11 Allocation, and Award of Attorneys' Fees and Expenses, submitted herewith.

12 3. The schedule attached hereto as Exhibit A is a summary indicating the  
13 amount of time spent by each attorney and professional support staff of my firm  
14 who was involved in the prosecution of the Action, and the lodestar calculation  
15 based on my firm's current billing rates. For personnel who are no longer  
16 employed by my firm, the lodestar calculation is based upon the billing rates for  
17 such personnel in his or her final year of employment by my firm. The schedule  
18 was prepared from contemporaneous daily time records regularly prepared and  
19 maintained by my firm, which are available at the request of the Court. Time  
20 expended in preparing this application for fees and payment of expenses has not  
21 been included in this request.

22 4. The hourly rates for the attorneys and professional support staff in my  
23 firm included in Exhibit A are the same as the regular rates charged for their  
24 services in non-contingent matters and/or which have been accepted in other  
25 securities or shareholder litigations.  
26  
27  
28



1           5.     The total number of hours expended on this litigation by my firm  
2 during the Time Period is 36,409.5 hours. The total lodestar for my firm for those  
3 hours is \$18,396,408.50.

4           6.     My firm's lodestar figures are based upon the firm's billing rates,  
5 which rates do not include charges for expenses items. Expense items are billed  
6 separately and such charges are not duplicated in my firm's billing rates.

7           7.     As detailed in Exhibit B, my firm has incurred a total of  
8 \$1,594,630.56 in unreimbursed expenses in connection with the prosecution of the  
9 Action (this includes an estimate of the expenses that will be incurred in order to  
10 attend the final settlement hearing). With respect to transportation expenses, all  
11 charges for airfare were billed at economy class rates.

12          8.     The expenses are reflected on the books and records of my firm.  
13 These books and records are prepared from expense vouchers, check records and  
14 other source materials and are an accurate record of the expenses incurred.

15          9.     My firm was also responsible for maintaining a litigation fund on  
16 behalf of Co-Lead Counsel (the "Litigation Fund"). As reflected in Exhibit C, the  
17 Litigation Fund has received deposits totaling \$938,658.55 from Co-Lead Counsel  
18 and has incurred a total of \$1,286,238.44 in unreimbursed expenses in connection  
19 with the prosecution of the Action during the Time Period. Accordingly, there is a  
20 negative balance of \$347,579.89 in the Litigation Fund, which has been added to  
21 my firm's expense application (*see* Exhibit B hereto). The expenditures from the  
22 Litigation Fund are separately reflected on the books and records of my firm.  
23 These books and records are prepared from expense vouchers, check records and  
24 other source materials and are an accurate record of the expenses incurred.

25          10.    With respect to the standing of my firm, attached hereto as Exhibit D  
26 is a brief biography of my firm as well as biographies of the firm's partners and of  
27 counsels.  
28

1 I declare under penalty of perjury that the foregoing is true and correct.

2 Executed on April 8, 2013.

3 /s/ Thomas A. Dubbs

4 THOMAS A. DUBBS

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# EXHIBIT A

**EXHIBIT A**

**IN RE STEC. INC. SECURITIES LITIGATION**

**LODESTAR REPORT**

**FIRM: LABATON SUCHAROW LLP**

**REPORTING PERIOD: INCEPTION THROUGH MARCH 25 2013**

NAME	STATUS	HOURLY RATE	TOTAL HOURS TO DATE	TOTAL LODESTAR TO DATE
Dubbs, T.	P	\$975	895.7	\$873,307.50
Johnson, J.	P	\$875	1,887.7	\$1,651,737.50
Gottlieb, L.	P	\$875	770.8	\$674,450.00
Alex, M	P	\$875	763.0	\$667,625.00
Keller, C.	P	\$875	7.4	\$6,475.00
Stocker, M.	P	\$775	87.8	\$68,045.00
Tountas, S.	P	\$750	56.4	\$42,300.00
Joffe, R.	OC	\$775	3,840.7	\$2,976,542.50
Zeiss, N.	OC	\$725	33.3	\$24,142.50
Hoffman, T.	OC	\$650	2,565.7	\$1,667,705.00
Einstein, J.	OC	\$550	6.2	\$3,410.00
Wierzbowski, E.	A	\$665	242.3	\$161,129.50
Ellman, A.	A	\$615	57.6	\$35,424.00
Rogers, M.	A	\$615	7.5	\$4,612.50
Martin, C.	A	\$590	133.9	\$79,001.00
Sundel, S.	A	\$500	20.6	\$10,300.00
Bockwoldt, J.	A	\$490	1,653.9	\$810,411.00
Alexander, J.	A	\$490	545.3	\$267,197.00
Vasilchenko, I.	A	\$490	10.8	\$5,292.00
Chakrabarti, M.	A	\$465	680.8	\$316,572.00
Oberdorfer, K.	A	\$440	50.3	\$22,132.00
Schramm, K.	A	\$425	1,547.6	\$657,730.00
Benitez, E.	STA	\$425	1,250.9	\$531,632.50



NAME	STATUS	HOURLY RATE	TOTAL HOURS TO DATE	TOTAL LODESTAR TO DATE
Nahoum, B.	STA	\$425	923.7	\$392,572.50
Fields, H.	STA	\$410	356.2	\$146,042.00
Esposito, D.	STA	\$400	2,050.7	\$820,280.00
Hamed, I.	STA	\$400	1,263.8	\$505,520.00
Lee, D.	STA	\$390	978.8	\$381,732.00
Dickin, A.	STA	\$360	1,796.8	\$646,848.00
Page, K.	STA	\$360	1,556.8	\$560,448.00
Orji, C.	STA	\$360	543.1	\$195,516.00
Dennany, N.	STA	\$360	157.3	\$56,628.00
Knight, S.	STA	\$350	770.5	\$269,675.00
Daigle, C.	STA	\$335	2,102.6	\$704,371.00
Mamorsky, J.	STA	\$335	22.7	\$7,604.50
Hughes, D.	STA	\$325	1,289.4	\$419,055.00
Ozarow, J.	STA	\$325	1,017.2	\$330,590.00
Schneider, M.	STA	\$325	880.1	\$286,032.50
Schervish, W.	LA	\$510	38.8	\$19,788.00
Ching, N.	RA	\$405	23.5	\$9,517.50
Pontrelli, J.	I	\$485	30.3	\$14,695.50
Gumney, A.	I	\$440	149.7	\$65,868.00
Polk, T.	I	\$420	162.3	\$68,166.00
Wroblewski, R.	I	\$410	76.0	\$31,160.00
Muchmore, E.	I	\$410	56.5	\$23,165.00
Cooper, S.	I	\$375	95.8	\$35,925.00
Warner, R.	I	\$365	111.3	\$40,624.50
Gottlieb, E.	LC	\$280	83.4	\$23,352.00
He, J.	LC	\$275	125.5	\$34,512.50
Zhang, K.	LC	\$275	52.8	\$14,520.00
Langadakis, A.	LC	\$275	11.1	\$3,052.50
Appenfeller, M.	LC	\$265	10.5	\$2,782.50
Bliss, J.	PL	\$370	5.0	\$1,850.00
Penrhyn, M.	PL	\$295	1,163.2	\$343,144.00
Wattenberg, S.	PL	\$295	121.4	\$35,813.00

NAME	STATUS	HOURLY RATE	TOTAL HOURS TO DATE	TOTAL LODESTAR TO DATE
Kupersmith, R.	PL	\$295	53.8	\$15,871.00
Mehringer, L.	PL	\$295	14.0	\$4,130.00
Boria, C.	PL	\$295	11.0	\$3,245.00
Benitez, N.	PL	\$295	8.0	\$2,360.00
Rogers, D.	PL	\$295	6.3	\$1,858.50
Auer, S.	PL	\$295	6.0	\$1,770.00
Lewis, G.	PL	\$280	286.7	\$80,276.00
Messier, R.	PL	\$280	70.0	\$19,600.00
Mangini, M.	PL	\$280	38.5	\$10,780.00
Chichilla, M.	PL	\$270	738.2	\$199,314.00
Chan-Lee, E.	PL	\$270	34.0	\$9,180.00
<b>TOTAL</b>			<b>36,409.5</b>	<b>\$18,396,408.50</b>

Partner (P)  
 Of Counsel (OC)  
 Associate (A)  
 Short Term Attorney (STA)  
 Research Analyst (RA)  
 Investigator (I)  
 Law Clerk (LC)  
 Paralegal (PL)

# EXHIBIT B

**EXHIBIT B**

**IN RE STEC. INC. SECURITIES LITIGATION**

**EXPENSE REPORT**

**FIRM: LABATON SUCHAROW LLP**

**REPORTING PERIOD: INCEPTION THROUGH MARCH 25, 2013**

<b>DISBURSEMENT</b>		<b>TOTAL AMOUNT TO DATE</b>
Expert Fees		\$184,962.93
Forensic Economics (Loss Causation and Damages)	\$3,000.00	
Finnerty Economic Consulting, LLC (Market Efficiency, Loss Causation and Damages)	\$174,537.93	
Karpman & Associates (Communications with Class)	\$5,000.00	
Technical Advisory Services for Attorneys (Expert Identification Service)	\$2,425.00	
Duplicating		\$43,584.05
Postage		\$280.75
Telephone / Fax		\$4,326.55
Messengers		\$477.25
Transportation / Meals / Lodging		\$151,791.47
Litigation Support		\$35,063.10
Class Notice		\$39,544.00
Filing Fees		\$2,249.10
Service Fees		\$12,607.30
Computer Research		\$76,223.90
Federal Express		\$24,086.72
Contribution to Litigation Fund		\$637,515.06
Research Material		\$272.87



		<b>TOTAL AMOUNT TO DATE</b>
<b>DISBURSEMENT</b>		
Court Reporter Service / Transcript Fees		\$1,540.62
Mediation Fees		\$32,525.00
Additional Litigation Fund Costs		\$347,579.89
<b>TOTAL</b>		<b>\$1,594,630.56</b>

# EXHIBIT C

**EXHIBIT C**

**IN RE STEC. INC. SECURITIES LITIGATION  
LITIGATION FUND REPORT**

**FIRM: LABATON SUCHAROW LLP**

**REPORTING PERIOD: INCEPTION THROUGH MARCH 25, 2013**

<b>DISBURSEMENT</b>		<b>AMOUNT</b>
Experts		\$913,513.42
Alan D. Jagolinzer (SEC Rule 10b5-1 Trading Plans)	\$33,000.00	
Christopher S. Armstrong (SEC Rule 10b5-1 Trading Plans)	\$12,000.00	
Finnerty Economic Consulting (Market Efficiency, Loss Causation and Damages)	\$667,175.92	
Forensic Economics (Loss Causation and Damages)	\$32,868.75	
Forensis Group (Role of Securities Analysts)	\$17,518.75	
Karpman & Associates (Communications with Class)	\$1,930.00	
Marks Paneth (SEC Reporting Obligations)	\$58,520.00	
Richard H. Willis (Role of Securities Analysts and Underwriters)	\$70,500.00	
Tom Baker (Plan of Allocation)	\$20,000.00	
Cotton & Gundzik, LLP (Counsel for Confidential Witnesses)		\$16,155.05
II Magazines (Expert Identification Service)		\$1,600.00
Irell & Manella (Mediation Fees)		\$21,513.95
Legalink Inc (Merrill) (Litigation Support - Depositions)		\$82,904.23
Merrill Communications LLC (Litigation Support - Document Discovery)		\$184,088.60
Record Press Inc. (Appeal Printer)		\$1,046.88
Serving By Irving Inc. (Service of Process)		\$957.00
Juryscope, Inc. (Jury Research)		\$64,459.31
<b>GRAND TOTAL</b>		<b>\$1,286,238.44</b>
<b>DEPOSITS</b>		
Lite DePalma Greenberg, LLC		\$301,143.49
Labaton Sucharow LLP		\$637,515.06
<b>TOTAL DEPOSITS</b>		<b>\$938,658.55</b>
<b>BALANCE IN LIT FUND</b>		<b>-\$347,579.89</b>

# EXHIBIT D

**Labaton  
Sucharow**

## Firm Resume

### InvestorProtectionLitigation



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## Introduction

Founded in 1963, Labaton Sucharow LLP ("Labaton Sucharow") is an internationally respected law firm with offices in New York, New York and Wilmington, Delaware and has relationships throughout the United States, Europe and the world. The Firm consists of over 70 attorneys and a professional support staff that includes paralegals, sophisticated financial analysts, e-discovery specialists, licensed private investigators, certified public accountants, and forensic accountants with notable federal and state law enforcement experience. The Firm prosecutes major complex litigation in the United States, and has successfully conducted a wide array of representative actions (primarily class, mass and derivative) in the areas of: Securities; Antitrust & Competition; Financial Products & Services; Corporate Governance & Shareholder Rights; Mergers & Acquisitions; Derivative; REITs & Limited Partnerships; Consumer; and Whistleblower Representation.

For nearly 50 years, Labaton Sucharow has cultivated a reputation as one of the finest litigation boutiques in the country. The Firm's attorneys are skilled in every stage of business litigation and have successfully taken on corporations in virtually every industry. Our work has resulted in billions of dollars in recoveries for our clients, and in sweeping corporate reforms protecting consumers and shareholders alike.

On behalf of some of the most prominent institutional investors around the world, Labaton Sucharow prosecutes high-profile and high-stakes securities fraud. Our Securities Litigation Practice has recovered billions of dollars and achieved corporate governance reforms to ensure that the financial marketplace operates with greater transparency, fairness and accountability.

Labaton Sucharow also brings its unparalleled securities litigation expertise to the practice of Whistleblower Representation, exclusively representing whistleblowers that have original information about violations of the federal securities laws. The Firm's Whistleblower

Representation Practice plays a critical role in exposing securities fraud and creating necessary corporate reforms.

Labaton Sucharow's Corporate Governance & Shareholder Rights Practice successfully pursues derivative and other shareholder actions to advance shareholder interests. In addition to our deep knowledge of corporate law and the securities regulations that govern corporate conduct, our established office in Delaware where many of these matters are litigated, uniquely positions us to protect shareholder assets and enforce fiduciary obligations.

Visit our website at [www.labaton.com](http://www.labaton.com) for more information about our dynamic Firm.

## Corporate Governance

Labaton Sucharow is committed to corporate governance reform. Through its leadership of membership organizations which seek to advance the interests of shareholders and consumers, Labaton Sucharow seeks to strengthen corporate governance and support legislative reforms which improve and preserve shareholder and consumer rights.

Through the aegis of the National Association of Shareholder and Consumer Attorneys (NASCAT), a membership organization of approximately 100 law firms that practice class action and complex civil litigation, the Firm continues to advocate against those who would legislatively seek to weaken shareholders' rights, including their right to obtain compensation through the legal system.

From 2009-2011 Partner Ira A. Schochet served as President of NASCAT, following in the footsteps of Chairman Lawrence A. Sucharow who held the position from 2003-2005.

Labaton Sucharow is also a patron of the John L. Weinberg Center for Corporate Governance of the University of Delaware ("The Center") and was instrumental in the task force of the Association of the Bar of the City of New York, which drafted recommendations on the roles of law firms and lawyers' in preventing corporate fraud through improved

governance. One of Labaton Sucharow's partners, Edward Labaton, is a member of the Advisory Committee of The Center.

In early 2011, Partner Michael W. Stocker spoke before the Securities and Exchange Commission's Trading and Markets Division regarding liability for credit rating agencies under the Dodd-Frank Act. His articles on corporate governance issues have been published in a number of national trade publications.

On behalf of our institutional and individual investor clients, Labaton Sucharow has achieved some of the largest precedent-setting settlements since the enactment of the Private Securities Litigation Reform Act of 1995 ("PSLRA"), and has helped avert future instances of securities fraud by negotiating substantial corporate governance reforms as conditions of many of its largest settlements.

Some of the successful cases in which Labaton Sucharow has been able to affect significant corporate governance changes include:

***In re Waste Management, Inc. Securities Litigation,***  
Civ. No. H-99-2183 (S.D. Tex.)

In the settlement of the *In re Waste Management, Inc. Securities Litigation* case, we earned critical corporate governance improvements resulting in:

- A stronger and more independent audit committee;
- A board structure with greater accountability; and
- Protection for whistleblowers.

***In re Bristol-Myers Squibb Securities Litigation,***  
Civ. No. CV-98-W-1407-S (N.D. Ala.)

In *Bristol-Myers Squibb*, we won unprecedented corporate governance concessions, including:

- Required public disclosure of the design of all clinical drug trials; and
- Required public disclosure on the company's website of the results of all clinical studies on drugs marketed in any country throughout the world.



***Cohen v. Gray, et al.,***

Case No. 03 CH 15039 (C.C. Ill.)

In this case against the Boeing aircraft company, we achieved a landmark settlement establishing unique corporate governance standards relating to ethics compliance including:

- At least 75 percent of Boeing's Board must be independent under NYSE criteria;
- Board members will receive annual corporate governance training;
- Direct Board supervision of an improved ethics and compliance program;
- Improved Audit Committee oversight of ethics and compliance; and
- A \$29 million budget dedicated to the implementation and support of these governance reforms.

***In re Vesta Insurance Group Securities Litigation,***

Civ. No. CV-98-W-1407-S (N.D. Ala.)

In settling Vesta, the company adopted provisions that created:

- A Board with a majority of independent members;
- Increased independence of members of the company's audit, nominating and compensation committees;
- Increased expertise in corporate governance on these committees; and
- A more effective audit committee.

***In re Orbital Sciences Corporation Securities Litigation,***

Civ. No. 99-197-A (E.D. Va.)

In this case against Orbital Sciences Corporation, Labaton Sucharow was able to:

- Negotiate the implementation of measures concerning the company's quarterly review of its financial results;
- The composition, role and responsibilities of its Audit and Finance committee; and
- The adoption of a Board resolution providing guidelines regarding senior executives' exercise and sale of vested stock options.

***In re Take-Two Interactive Securities Litigation,***

Civ. No. 06-CV-803-RJS (S.D.N.Y.)

In settling *Take-Two Interactive*, we achieved significant corporate governance reforms which required the company to:

- Adopt a policy, commonly referred to as "clawback" provision, providing for the recovery of bonus or incentive compensation paid to senior executives in the event that such compensation was awarded based on financial results later determined to have been erroneously reported as a result of fraud or other knowing misconduct by the executive;
- Adopt a policy requiring that its Board of Directors submit any stockholder rights plan (also commonly known as 'poison pill') that is greater than 12 months in duration to a vote of stockholders; and

- Adopt a bylaw providing that no business may be properly brought before an annual meeting of stockholders by a person other than a stockholder unless such matter has been included in the proxy solicitation materials issued by the company.

## **Trial Experience**

Few securities class action cases go to trial. But when it is in the best interests of its clients and the class, Labaton Sucharow repeatedly has demonstrated its willingness and ability to try these complex securities cases before a jury. More than 95% of the Firm's partners have trial experience.

Labaton Sucharow's recognized willingness and ability to bring cases to trial significantly increases the ultimate settlement value for shareholders.

In *In re Real Estate Associates Limited Partnership Litigation*, when defendants were unwilling to settle for an amount Labaton Sucharow and its clients viewed as fair, we tried the case with co-counsel for six weeks and obtained a landmark \$184 million jury verdict in November 2002. The jury supported plaintiffs' position that defendants knowingly violated the federal securities laws, and that the general partner had breached his fiduciary duties to plaintiffs. The \$184 million award was one of the largest jury verdicts returned in any PSLRA action and one in which the plaintiff class, consisting of 18,000 investors, recovered 100% of their damages.

## **Notable Lead Counsel Appointments**

Labaton Sucharow's institutional investor clients are regularly appointed by federal courts to serve as lead plaintiffs in prominent securities litigations brought under the PSLRA. Dozens of state, city and country public pension funds and union funds have selected Labaton Sucharow to represent them in federal securities class actions and advise them as securities

litigation/investigation counsel. Listed below are several of our current notable lead and co-lead counsel appointments:

***In re Computer Sciences Corporation Securities Litigation,***

No. 11-cv-610 (E.D. Va.)

Representing Ontario Teachers' Pension Plan Board as lead plaintiff

***In re MF Global Holdings Limited Securities Litigation,***

No. 11-cv-7866 (S.D.N.Y.)

Representing the Province of Alberta as co-lead plaintiff

***Richard Gammel v. Hewlett-Packard Company, et al.,***

No. 8:11-cv-01404-AG-RNB (C.D.Cal.)

Representing Arkansas Teacher Retirement System and the Labourers' Pension Fund of Central and Eastern Canada as co-lead plaintiff

***In re Massey Energy Co. Securities Litigation,***

No. 5:10-cv-00689 (S.D. W. Va.)

Representing Commonwealth of Massachusetts Pension Reserves Investment Trust ("Massachusetts PRIT") as lead plaintiff

***In re Schering Plough/Enhance Securities Litigation,***

No. 08-cv-00397-DMC-JAD (D.N.J.)

Representing the Pension Reserves Investment Management Board (Commonwealth of Massachusetts) as co-lead plaintiff

Listed below are several of our current notable lead and co-lead counsel appointments resulting from the credit crisis:

***In re Regions Morgan Keegan Closed-End Fund Litigation,***

No. 07-CV-02830 (W.D. Tenn)

Representing Lion Fund, L.P., Dr. J. Samir Sulieman, and Larry Lattimore as lead plaintiffs

***In re Goldman Sachs Group Inc. Securities Litigation,***

No. 1:10-cv-03461 (S.D.N.Y.)

Representing the Arkansas Teacher Retirement System as co-lead plaintiff

***In re 2008 Fannie Mae Securities Litigation,***

No. 08-CV-1859 (E.D.Mo.)

Representing Boston Retirement Board as co-lead plaintiff

***Stratte-McClure v. Morgan Stanley et al.,***

No. 09-cv-2017 (S.D.N.Y.)

Representing State Boston Retirement System as lead plaintiff

## Notable Successes

Labaton Sucharow has achieved notable successes in major securities litigations on behalf of its clients and certified investor classes.

Docket Information	Results of the Case
<i>In re Bear Stearns Companies, Inc. Securities Litigation</i> , No. 08-md-1963 (S.D.N.Y.)	\$275 million settlement with Bear Stearns plus a \$19.9 million settlement with Deloitte & Touche LLP, Bear Stearns' outside auditors
<i>In re American International Group Inc. Securities Litigation</i> , No. 04-cv-8141 (S.D.N.Y.)	Negotiated settlements totaling more than \$1 billion
<i>In re HealthSouth Securities Litigation</i> , No. 03-cv-1500 (N.D. Ala.)	Settlement valued at \$671 million
<i>In re Waste Management, Inc. Securities Litigation</i> , No. H-99-2183 (S.D. Tex.)	Settled for \$457 million
<i>In re Countrywide Financial Corp. Securities Litigation</i> , No. 07-cv-5295 (C.D. Cal.)	Settled for \$624 million – the largest credit-crisis-related settlement at the time
<i>In re General Motors Corp. Securities &amp; Derivative Litigation</i> , No. 06-md-1749 (E.D. Mich.)	Settled for \$303 million
<i>In re El Paso Corporation Securities Litigation</i> , No. 02-cv-2717 (S.D. Tex.)	Settled for \$285 million
<i>In re PaineWebber Limited Partnerships Litigation</i> , No. 94-cv-832/7 (S.D.N.Y.)	Settled for \$200 million
<i>Eastwood Enterprises LLC v. Farha (WellCare Securities Litigation)</i> , No. 07-cv-1940 (M.D. Fla.)	Settled for \$200 million
<i>In re Bristol-Myers Squibb Securities Litigation</i> , No. 00-cv-1990 (D.N.J.)	Settled for \$185 million and significant corporate governance reforms
<i>In re Broadcom Corp. Securities Litigation</i> , No. 06-cv-5036 (C.D. Cal.)	Settled for \$160.5 million – at the time, the second largest up-front cash settlement ever recovered from a company accused of options backdating; plus a \$13 million settlement with the auditor, Ernst & Young
<i>In re Satyam Computer Services, Ltd. Securities Litigation</i> , No. 09-md- 2027 (S.D.N.Y.)	Settled for \$125 million with Satyam and \$25.5 million with PwC Entities (partial settlements, case is ongoing)
<i>In re Mercury Interactive Securities Litigation</i> , No. 05-cv- 3395 (N.D. Cal.)	Settled for \$117.5 million – the largest options backdating settlement at the time
<i>In re Prudential Securities Inc. Limited Partnership Litigation</i> , No. M-21-67 (S.D.N.Y.)	Negotiated \$110 million partial settlement

Docket Information	Results of the Case
<i>In re Oppenheimer Champion Fund Securities Fraud Class Actions</i> , No. 09-cv-386 (D. Colo.) and <i>In re Core Bond Fund</i> , No. 09-cv-1186 (D. Colo.)	Settled for \$100 million
<i>In re Vesta Insurance Group, Inc. Securities Litigation</i> , No. 98-cv-1407 (N.D. Ala.)	Settled for \$80 million in total and significant corporate governance reforms
<i>In re St. Paul Travelers Securities Litigation</i> , No. 04-CV-3801 (D. Minn.)	Settled for \$67.5 million
<i>In re St. Paul Travelers Securities Litigation II</i> , No. 04-cv-4697 (D. Minn.)	Settled for \$77 million
<i>In re Regions Morgan Keegan Closed-End Fund Litigation</i>	Settled for \$62 million
<i>In re Monster Worldwide, Inc. Securities Litigation</i> , No. 07-cv-2237 (S.D.N.Y.)	Settled for \$47.5 million – required Monster’s founder and former Chief Executive Officer Andrew McKelvey to personally pay \$550,000 toward the settlement
<i>Hughes v. Huron Consulting Group, Inc.</i> , No. 09-cv-4734 (N.D. Ill.)	Settled for \$38 million
<i>Abrams v. Van Kampen Funds, Inc.</i> , No. 01-cv-7538 (N.D. Ill.)	Settled for \$31.5 million
<i>In re Novagold Resources Inc. Securities Litigation</i> , No. 08-cv-7041 (S.D.N.Y.)	Settled for \$22 million
<i>Police &amp; Fire Ret. System of Detroit v. SafeNet, Inc.</i> , No. 06-cv-5797 (S.D.N.Y.)	Settled for \$25 million
<i>Desert Orchid Partners, L.L.C. v. Transactions Systems Architects, Inc.</i> , No. 02-cv-533 (D. Neb.)	Settled for \$24.5 million
<i>In re Orbital Sciences Corp. Securities Litigation</i> , No. 99-cv-197 (E.D. Va.)	Settled for \$23.5 million and significant corporate governance reforms
<i>In re Take Two Interactive Securities Litigation</i> , No. 06-cv-803 (S.D.N.Y.)	Settled for \$20.1 million and significant corporate governance reforms
<i>In re International Business Machines Corp. Securities Litigation</i> , No. 05-cv-6279 (S.D.N.Y.)	Settled for \$20 million
<i>In re Just for Feet Noteholder Litigation</i> , No. 00-cv-1404 (N.D. Ala.)	Settled for \$17.75 million
<i>In re American Tower Corporation Securities Litigation</i> , No. 06-cv-10933 (D. Mass.)	Settled for \$14 million
<i>In re CapRock Communications Corp. Securities Litigation</i> , No. 00-CV-1613 (N.D. Tex.)	Settled for \$11 million



Docket Information	Results of the Case
<i>In re SupportSoft, Inc. Securities Litigation</i> , No. 04-cv-5222 (N.D. Cal.)	Settled for \$10.7 million
<i>In re InterMune Securities Litigation</i> , No. 03-cv-2954 (N.D. Cal.)	Settled for \$10.4 million
<i>In re HCC Insurance Holdings, Inc. Securities Litigation</i> , No. 07-cv-801 (S.D. Tex.)	Settled for \$10 million

***In re Regions Morgan Keegan Closed-End Fund Litigation***,  
No. 07-CV-02830 (W.D. Tenn)

Labaton Sucharow served as sole lead counsel, representing the Lion Fund, L.P., Dr. J. Sulieman and Larry Lattimore, in this case against Regions Morgan Keegan ("RMK"), alleging that they fraudulently overstated the values of portfolio securities and reported false Net Asset Values ("NAVs"). RMK also falsely touted their professional portfolio management by "one of America's leading high-yield fund managers" when, in fact, portfolio securities frequently were purchased blindly without the exercise of basic due diligence. On April 13, 2011, defendants moved to dismiss. On March 30, 2012, the court issued an Opinion denying the motions to dismiss nearly in their entirety. The court upheld the Section 10(b) claims as against the Funds and defendant James R. Kelsoe, the Funds' Senior Portfolio Manager, and dismissed those claims as against three other individual defendants. The court upheld plaintiffs' Securities Act claims in their entirety. In April 2012 Labaton Sucharow achieved a \$62 million settlement.

***In re HealthSouth Securities Litigation***,  
Civ. No CV-03-BE-1500-S (N.D. Ala.)

Labaton Sucharow served as co-lead counsel in a case stemming from the largest fraud ever perpetrated in the healthcare industry. In early 2006, lead plaintiffs negotiated a settlement of \$445 million with defendant HealthSouth. This partial settlement, comprised of cash and HealthSouth securities to be distributed to the class, is one of the largest in history. On June 12, 2009, the Court also granted final approval to a \$109 million settlement with defendant Ernst & Young LLP ("E&Y") which at the time was approximately the eighth largest securities fraud class action settlement with an auditor. In addition, on July 26, 2010, the Court granted final approval to a \$117 million partial settlement with the remaining principal defendants in the case, UBS AG, UBS Warburg LLC, Howard Capek, Benjamin Lorello and William McGahan (the "UBS Defendants"). The total value of the settlements for HealthSouth stockholders and HealthSouth bondholders, who were represented by separate counsel, is \$804.5 million.

***In re NYSE Euronext Shareholders Litigation***,  
Consolidated C.A., 6220-VCS (Del. Ch. 2011)

Labaton Sucharow played a leadership role in landmark shareholder litigation arising from the acquisition of the New York Stock Exchange—a deal that had implications not only for NYSE shareholders, but for global financial markets. Following aggressive

litigation spanning both sides of the Atlantic, the Firm secured a proposed settlement which would have provided a special dividend of nearly a billion dollars to NYSE shareholders if the transaction was completed. While European regulators ultimately rejected the merger in 2012 citing anticompetitive concerns, the Firm's work in the litigation cemented its reputation as a leader in the field.

***In re American International Group, Inc. Securities Litigation,***  
No. 04 Civ. 8141 (JES) (AJP) (S.D.N.Y.)

In one of the most complex and challenging securities cases in history, Labaton Sucharow secured a landmark \$725 million settlement with American International Group ("AIG") regarding allegations of bid rigging and accounting fraud. This followed our \$97.5 million settlement with AIG's auditors and an additional \$115 million settlement with former AIG officers and related defendants which is still pending before the Court. Further, a proposed \$72 million settlement with General Reinsurance Corporation, which was alleged to have been involved in one of the accounting frauds with AIG, is pending before the Second Circuit. In total, the four AIG settlements would provide a recovery of more than \$1 billion for class members.

***In re Countrywide Financial Corp. Securities Litigation,***  
No. CV 07-cv-05295-MRP-MAN (C.D. Cal.)

Labaton Sucharow served as sole lead counsel on behalf of the New York State Common Retirement Fund and the five New York City public pension funds. Plaintiffs alleged that defendants violated securities laws by making false and misleading statements concerning Countrywide's business as an issuer of residential mortgages, the creditworthiness of borrowers, underwriting and loan origination practices, loan loss and other accounting provisions, and misrepresenting high-risk low-documentation loans as being "prime." While the price of Countrywide stock was artificially inflated by defendants' false representations, insiders received millions of dollars from Countrywide stock sales. On February 25, 2011, the Court granted final approval to a settlement of \$624 million, which at the time was the 14th largest securities class action settlement in the history of the PSLRA.

***In re Waste Management, Inc. Securities Litigation,***  
Civ. No. H-99-2183 (S.D. Tex.)

In 2002, Judge Melinda Harmon approved an extraordinary settlement that provided for recovery of \$457 million in cash, plus an array of far reaching corporate governance measures. At that time, this settlement was the largest common fund settlement of a securities action achieved in any court within the Fifth Circuit and the third-largest achieved in any federal court in the nation. Judge Harmon noted, among other things, that Labaton Sucharow "*obtained an outstanding result by virtue of the quality of the work and vigorous representation of the class.*"

***In re General Motors Corp. Securities Litigation,***  
No. 06-1749, (E.D. Mich.)

Labaton Sucharow was co-lead counsel for DekalInvestment GmbH. The complaint alleged that, over a period of six years, General Motors ("GM"), its officers and its outside auditor overstated GM's income by billions of dollars, and GM's operating cash flows by tens of billions of dollars, through a series of accounting manipulations that

included, among other things, prematurely recognizing income from supplier rebates, misclassifying cash flow as operating rather than investing cash flow, and omitting to disclose the nature and amount of GM's guarantee of pension benefits owing to workers at GM's former parts division, now an independent corporation in Chapter 11 bankruptcy protection, Delphi Corporation. On July 21, 2008, a settlement was reached whereby GM made a cash payment of \$277 million and defendant Deloitte & Touche LLP, which served as GM's outside auditor during the period covered by the action, agreed to contribute an additional \$26 million in cash.

***In re El Paso Corporation Securities Litigation,***  
Civ. No. H-02-2717 (S.D. Tex.)

Labaton Sucharow secured a \$285 million class action settlement against the El Paso Corporation. The case involved a securities fraud stemming from the Company's inflated earnings statements, which cost shareholders hundreds of millions of dollars during a four-year span. The settlement was approved by the Court on March 6, 2007.

***In re PaineWebber Limited Partnerships Litigation,***  
No. 94 Civ. 832/7 (SHS) (S.D.N.Y.)

Judge Sidney H. Stein approved a settlement valued at \$200 million and found "*that class counsel's representation of the class has been of high caliber in conferences, in oral arguments and in work product.*"

***Eastwood Enterprises, LLC v. Farha et al. (WellCare Securities Litigation),***  
No. 8:07-cv-1940-T-33EAJ (M.D. Fla.)

On behalf of The New Mexico State Investment Council and the Public Employees Retirement Association of New Mexico, co-lead counsel for the class, Labaton Sucharow, negotiated a \$200 million settlement over allegations that WellCare Health Plans, Inc., a Florida-based managed healthcare service provider, disguised its profitability by overcharging state Medicaid programs. Under the terms of the settlement, which was approved by the Court on May 4, 2011, WellCare agreed to pay an additional \$25 million in cash if, at any time in the next three years, WellCare is acquired or otherwise experiences a change in control at a share price of \$30 or more after adjustments for dilution or stock splits.

***In re Bristol-Myers Squibb Securities Litigation,***  
Civ. No. 00-1990 (D.N.J.)

After prosecuting securities fraud claims against Bristol-Myers Squibb ("BMS") for more than five years, Labaton Sucharow reached an agreement to settle the claims for \$185 million and significant corporate governance reforms. This settlement is the second largest recovery against a pharmaceutical company, and it is the largest recovery ever obtained against a pharmaceutical company in a securities fraud case involving the development of a new drug. Moreover, the settlement is the largest ever obtained against a pharmaceutical company in a securities fraud case that did not involve a restatement of financial results.

***In re Broadcom Corp. Securities Litigation,***  
No. 06-cv-05036-R-CW (C.D. Cal.)

Labaton Sucharow served as lead counsel on behalf of lead plaintiff New Mexico State Investment Council in a case stemming from Broadcom Corp.'s \$2.2 billion restatement of its historic financial statements for 1998-2005. In August 2010 the Court granted final approval of a \$160.5 million settlement with Broadcom and two individual defendants to resolve this matter, the second-largest upfront cash settlement ever recovered from a company accused of options backdating. On April 14, 2011, the Court of Appeals for the Ninth Circuit issued an opinion in *New Mexico State Investment Council v. Ernst & Young LLP*—a matter related to Broadcom. In particular, the Ninth Circuit's opinion held that the Complaint contains three separate sets of allegations that adequately allege Ernst & Young's ("E&Y") scienter, and that there is "no doubt" that lead plaintiff carried its burden in alleging E&Y acted with actual knowledge or reckless disregard that their unqualified audit opinion was fraudulent. Importantly, the decision confirms that outside auditors are subject to the same pleading standards as all other defendants. In addition, the opinion confirms that a defendant's pre-class-period knowledge is relevant to its fraudulent scienter, and must be considered holistically with the rest of the allegations. In August 2011, the District Court spread the Ninth Circuit's mandate made in April 2011, and denied Ernst & Young's motion to dismiss on the ground of loss causation. This ruling is a major victory for the class and a landmark decision by the Court—the first of its kind in a case arising from stock-options backdating. The decision underscores the impact that institutional investors can have in enforcing the federal securities laws, above and beyond the role of prosecutors and regulators. On October 12, 2012, the Court approved a \$13 million settlement with Ernst & Young.

***In re Satyam Computer Services Ltd. Securities Litigation,***  
09-md-2027-BSJ (S.D.N.Y.)

Satyam, referred to as "India's Enron," engaged in one of the most egregious frauds on record. In a case that rivals the Enron and Madoff scandals, lead plaintiffs allege that Satyam Computer Services Ltd., related entities, its auditors and certain directors and officers allegedly made materially false and misleading statements to the investing public about the company's earnings and assets, which had the effect of artificially inflating the price of Satyam securities. On September 13, 2011, the court granted final approval to a settlement with Satyam of \$125 million, with the possibility of an additional recovery in the future. The Court also granted final approval to a settlement with the company's auditor, PricewaterhouseCoopers (PwC), in the amount of \$25.5 million. Litigation continues against additional defendants. In addition to achieving over \$150 million in collective settlements, we procured a letter of confession from the CEO—unprecedented in its detail—who, with other former officers, remains on trial in India for securities fraud.

***In re Mercury Interactive Corp. Securities Litigation,***  
Civ. No. 5:05-CV- 3395 (N.D. Cal.)

Labaton Sucharow served as co-lead counsel on behalf of co-lead plaintiff Steamship Trade Association/International Longshoremen's Association Pension Fund. The allegations in *Mercury* concern backdated option grants used to compensate employees and officers of the Company. Mercury's former CEO, CFO, and General

Counsel actively participated in and benefited from the options backdating scheme, which came at the expense of Mercury shareholders and the investing public. On September 25, 2008, the Court granted final approval of the \$117.5 million settlement.

***In re Prudential Securities Inc. Limited Partnership Litigation,***  
Civ. No. M-21-67 (S.D.N.Y.)

In this well-known securities litigation, the late Judge Milton Pollack cited the “Herculean” efforts of Labaton Sucharow and its co-lead counsel and, in approving a \$110 million partial settlement, stated that “*this case represents a unique recovery – a recovery that does honor to every one of the lawyers on your side of the case.*”

***In re Oppenheimer Champion Fund Securities Fraud Class Actions,***  
No. 09-cv-525-JLK-KMT (D. Colo.)  
and

***In re Core Bond Fund,***  
No. 09-cv-1186-JLK-KMT (D. Colo.)

Labaton Sucharow served as lead counsel in two related securities class actions brought against OppenheimerFunds, Inc., among others, and certain officers and trustees of two funds – Oppenheimer Core Bond Fund and Oppenheimer Champion Income Fund. The lawsuits alleged that the investment policies followed by the funds resulted in investor losses when the funds suffered drops in net asset value although the funds were presented as safe and conservative investments to consumers. In May 2011 the Firm achieved settlements amounting to \$100 million: \$52.5 million in *In re Oppenheimer Champion Fund Securities Fraud Class Actions* and a \$47.5 million settlement in *In re Core Bond Fund*.

***In re Vesta Insurance Group, Inc. Securities Litigation,***  
Civ. No. CV-98-AR-1407 (N.D. Ala.)

After years of protracted litigation, Labaton Sucharow secured a settlement of \$78 million on the eve of trial.

***In re St. Paul Traveler's II Securities Litigation,***  
Civ. No. 04-4697 (JRT/FLN) (D. Minn.)

In the second of two cases filed against St. Paul Travelers by Labaton Sucharow, arose from the industry-wide insurance scandal involving American International Group, Marsh McLennan, the St. Paul Companies and numerous other insurance providers and brokers. On July 23, 2008, the Court granted final approval of the \$77 million settlement and certified the settlement class.

***In re St. Paul Travelers Securities Litigation,***  
No. 04-CV-3801 (D. Minn.)

Labaton Sucharow was able to successfully negotiate the creation of an all cash settlement fund to compensate investors in the amount of \$67.5 million in November 2005. This settlement is one of the largest securities class action settlements in the Eighth Circuit.



***In re Monster Worldwide, Inc. Securities Litigation,***  
No. 07-CV-02237 (S.D.N.Y.)

Labaton Sucharow represented Middlesex County Retirement System in claims alleging that defendants engaged in a long-running scheme to backdate Monster's stock option grants to attract and retain employees without recording the resulting compensation expenses. On November 25, 2008, the Court granted final approval of the \$47.5 million settlement.

***Hughes v. Huron Consulting Group, Inc.,***  
09-CV-4734 (N.D. Ill.)

Labaton Sucharow acted as co-lead counsel for lead plaintiffs the Public School Teachers' Pension & Retirement Fund of Chicago, the Arkansas Public Employees Retirement System, State-Boston Retirement Board, the Cambridge Retirement System and the Bristol County Retirement System in a suit alleging that Huron Consulting Group and certain individual defendants made materially false or misleading statements to the investing public, which had the effect of artificially inflating the price of Huron's common stock. On May 6, 2011, the Court granted final approval to a settlement in the amount of \$27 million dollars plus 474,547 shares of Huron common stock (valued at approximately \$11 million as of November 24, 2010, based on its closing price of \$23.18). This settlement represents a significant percentage of the alleged \$57 million in earnings that the company overstated.

***Abrams v. VanKampen Funds, Inc.,***  
01 C 7538 (N.D. Ill.)

In January 2006 Labaton Sucharow obtained final approval of a \$31.5 million settlement in an innovative class action concerning VanKampen's senior loan mutual fund, alleging that the fund overpriced certain senior loan interests where market quotations were readily available. The gross settlement fund constitutes a recovery of about 70% of the class's damages as determined by plaintiffs' counsel.

***In re NovaGold Resources Inc. Securities Litigation,***  
No. 1:08-cv-07041 (S.D.N.Y.)

Labaton Sucharow served as lead counsel in a securities class action over NovaGold's misleading representations regarding the economic feasibility of its Galore Creek mining project. Labaton Sucharow secured a global settlement of C\$28 million (approximately \$26 million U.S.), one of the largest cross-border securities class action settlements in 2010.

***Police and Fire Retirement System of the City of Detroit, et al. v. SafeNet, Inc., et al.,***  
No. 06-Civ-5797 (PAC)

Labaton Sucharow served as co-lead counsel for lead plaintiffs the Police and Fire Retirement System of the City of Detroit, the Plymouth County Retirement System, and the State-Boston Retirement System in a suit alleging that SafeNet, Inc. ("SafeNet") and certain individual defendants misled investors by making misrepresentations and omissions to the investing public, which had the effect of artificially inflating SafeNet's stock price. On December 20, 2010, the Court granted final approval to the \$25 million settlement.

***Desert Orchid Partners, L.L.C. v. Transactions Systems Architects, Inc.,***  
Civ. No. 02 CV 533 (D. Neb.)

Labaton Sucharow represented the Genesee Employees' Retirement System as lead plaintiff in claims alleging violations of the federal securities laws. On March 2, 2007, the Court granted final approval to the settlement of this action for \$24.5 million in cash.

***In re Orbital Sciences Corp. Securities Litigation,***  
Civ. No. 99-197-A (E.D. Va.)

After cross-motions for summary judgment were fully briefed, defendants (and Orbital's auditor in a related proceeding) agreed to a \$23.5 million cash settlement, warrants, and substantial corporate governance measures.

***In re International Business Machines Corp. Securities Litigation,***  
Civ. No. 1:05-cv-6279 (AKH) (S.D.N.Y.)

Labaton Sucharow served as lead counsel in this action alleging that that International Business Machines Corp. ("IBM"), and its Chief Financial Officer, Mark Loughridge, made material misrepresentations and omissions concerning IBM's expected 2005 first quarter earnings, IBM's expected 2005 first quarter operational performance, and the financial impact of IBM's decision to begin expensing stock options on its 2005 first quarter financial statements. On September 9, 2008, the Court granted final approval of the \$20 million settlement.

***In re Take-Two Interactive Securities Litigation,***  
Civ. No. 06-CV-803-RJS (S.D.N.Y.)

Labaton Sucharow acted as lead counsel for lead plaintiffs New York City Employees' Retirement System, New York City Police Pension Fund and New York City Fire Department Pension Fund in a securities class action against Take-Two Interactive Software, Inc. ("Take-Two") and its officers and directors. Lead plaintiffs alleged that Take-Two, maker of the "Grand Theft Auto" video game series, improperly backdated stock options. On October 20, 2010, the Court granted final approval of the \$20.1 million settlement and significant corporate governance reforms.

***In re Just for Feet Noteholder Litigation,***  
Civ. No. CV-00-C-1404-S (N.D. Ala.)

Labaton Sucharow, as lead counsel, represented lead plaintiff Delaware Management and the Aid Association for Lutherans with respect to claims brought on behalf of noteholders. On October 21, 2005, Chief Judge Clemon of the U.S. District Court for the Northern District of Alabama preliminarily approved plaintiffs' settlement with Banc of America Securities LLC, the sole remaining defendant in the case, for \$17.75 million. During the course of the litigation, Labaton Sucharow obtained certification for a class of corporate bond purchasers in a ground-breaking decision, *AAL High Yield Bond Fund v. Ruttenberg*, 229 F.R.D. 676 (N.D. Ala. 2005), which is the first decision by a federal court to explicitly hold that the market for high-yield bonds such as those at issue in the action was efficient.

***In re American Tower Corporation Securities Litigation,***

Civ. No. 06 CV 10933 (MLW) (D. Mass.)

Labaton Sucharow represented the Steamship Trade Association-International Longshoreman's Association Pension Fund (STA-ILA) in claims alleging that certain of American Tower Corporation's current and former officers and directors improperly backdated the Company's stock option grants and made materially false and misleading statements to the public concerning the Company's financial results, option grant policies and accounting, causing damages to investors. On June 11, 2008, the Court granted final approval of the \$14 million settlement.

***In re CapRock Communications Corp. Securities Litigation,***

Civ. No. 3-00-CV-1613-R (N.D. Tex.)

Labaton Sucharow represented a prominent Louisiana-based investment adviser in claims alleging violations of the federal securities laws. The case settled for \$11 million in 2003.

***In re SupportSoft Securities Litigation,***

Civ. No. C 04-5222 SI (N.D. Cal.)

Labaton Sucharow secured a \$10.7 million settlement on October 2, 2007 against SupportSoft, Inc. The action alleged that the defendants had artificially inflated the price of the Company's securities by re-working previously entered into license agreements for the company's software in order to accelerate the recognition of revenue from those contracts.

***In re InterMune Securities Litigation,***

No. 03-2454 SI (N.D. Cal. 2005)

Labaton Sucharow commenced an action on behalf of its client, a substantial investor, against InterMune, a biopharmaceutical firm, and certain of its officers, alleging securities fraud in connection with InterMune's sales and marketing of a drug for off-label purposes. Notwithstanding higher pleading and proof standards in the jurisdiction in which the action had been filed, Labaton Sucharow utilized its substantial investigative resources and creative alternative theories of liability to successfully obtain an early, pre-discovery settlement of \$10.4 million. The Court complimented Labaton Sucharow on its ability to obtain a substantial benefit for the class in such an effective manner.

***In re HCC Insurance Holdings, Inc. Securities Litigation,***

Civ. No. 4:07-cv-801 (S.D. Tex.)

Labaton Sucharow served as lead counsel in this case alleging that certain of HCC's current and former officers and directors improperly backdated the Company's stock option grants and made materially false and misleading statements to the public concerning the Company's financial results, option grant policies and accounting, causing damages to investors. On June 17, 2008, the Court granted final approval of the \$10 million settlement.

***In re Adelphia Communications Corp. Securities & Derivative Litigation,***  
Civ. No. 03 MD 1529 (LMM) (S.D.N.Y.)

Labaton Sucharow represents the New York City Employees' Retirement System (and certain other New York City pension funds) and the Division of Investment of the New Jersey Department of the Treasury in separate individual actions against Adelphia's officers, auditors, underwriters, and lawyers. To date, Labaton Sucharow has fully resolved certain of the claims brought by New Jersey and New York City for amounts that significantly exceed the percentage of damages recovered by the class. New Jersey and New York City continue to prosecute their claims against the remaining defendants.

***STI Classic Funds v. Bollinger Industries, Inc.,***  
No. 96-CV-0823-R (N.D. Tex.)

Labaton Sucharow commenced related suits in both state and federal courts in Texas on behalf of STI Classic Funds and STI Classic Sunbelt Equity Fund, affiliates of the SunTrust Bank. As a result of Labaton Sucharow's efforts, the class of Bollinger Industries, Inc. investors, on whose behalf the bank sued, obtained the maximum recovery possible from the individual defendants and a substantial recovery from the underwriter defendants. Notwithstanding a strongly unfavorable trend in the law in the State of Texas, and strong opposition by the remaining accountant firm defendant, Labaton Sucharow has obtained class certification and continues to prosecute the case against that firm.

Among the institutional investor clients Labaton Sucharow represents and advises are:

- Arkansas Teacher Retirement System
- Baltimore County Retirement System
- Bristol County Retirement Board
- California Public Employees' Retirement System
- City of New Orleans Employees' Retirement System
- Connecticut Retirement Plans & Trust Funds
- Division of Investment of the New Jersey Department of the Treasury
- Genesee County Employees' Retirement System
- Illinois Municipal Retirement Fund
- Louisiana Municipal Police Employees' Retirement System
- Teachers' Retirement System of Louisiana
- Macomb County Employees Retirement System
- Metropolitan Atlanta Rapid Transit Authority
- Michigan Retirement Systems
- Middlesex Retirement Board
- Mississippi Public Employees' Retirement System
- New York City Pension Funds
- New York State Common Retirement Fund
- Norfolk County Retirement System

- Office of the Ohio Attorney General and several of its Retirement Systems
- Oklahoma Firefighters Pension and Retirement System
- Plymouth County Retirement System
- Office of the New Mexico Attorney General and several of its Retirement Systems
- Rhode Island State Investment Commission
- San Francisco Employees' Retirement System
- State of Oregon Public Employees' Retirement System
- State of Wisconsin Investment Board
- State-Boston Retirement System
- Steamship Trade Association/International Longshoremen's Association
- Virginia Retirement Systems

## Comments About Our Firm By The Courts

Many federal judges have commented favorably on the Firm's expertise and results achieved in securities class action litigation. Judge John E. Sprizzo complimented the Firm's work in *In re Revlon Pension Plan Litigation*, Civ. No. 91-4996 (JES) (S.D.N.Y.). In granting final approval to the settlement, Judge Sprizzo stated that:

*[t]he recovery is all they could have gotten if they had been successful. I have probably never seen a better result for the class than you have gotten here.*

Labaton Sucharow was a member of the executive committee of plaintiffs' counsel in *In re PaineWebber Limited Partnerships Litigation*, Master File No. 94 Civ. 8547 (SHS). In approving a class-wide settlement valued at \$200 million, Judge Sidney H. Stein of the Southern District of New York stated:

*The Court, having had the opportunity to observe first hand the quality of class counsel's representation during this litigation, finds that class counsel's representation of the class has been of high caliber in conferences, in oral arguments and in work product.*

In *In re Prudential-Bache Energy Income Partnerships Securities Litigation*, MDL No. 888 (E.D. La.), an action in which Labaton Sucharow served on the executive committee of



plaintiffs' counsel, Judge Marcel Livaudais, Jr., of the United States District Court for the Eastern District of Louisiana, observed that:

*Counsel were all experienced, possessed high professional reputations and were known for their abilities. Their cooperative effort in efficiently bringing this litigation to a successful conclusion is the best indicator of their experience and ability . . . . The executive committee is comprised of law firms with national reputations in the prosecution of securities class action and derivative litigation. The biographical summaries submitted by each member of the executive committee attest to the accumulated experience and record of success these firms have compiled.*

In *Rosengarten v. International Telephone & Telegraph Corp.*, Civ. No. 76-1249 (N.D.N.Y.), Judge Morris Lasker noted that the Firm:

*served the corporation and its stockholders with professional competence as well as admirable intelligence, imagination and tenacity.*

Judge Lechner, presiding over the \$15 million settlement in *In re Computron Software Inc. Securities Class Action Litigation*, Civ. No. 96-1911 (AJL) (D.N.J.), where Labaton Sucharow served as co-lead counsel, commented that:

*I think it's a terrific effort in all of the parties involved . . . , and the co-lead firms . . . I think just did a terrific job. You [co-lead counsel and] Mr. Plasse, just did terrific work in the case, in putting it all together . . . .*

In *Middlesex County Retirement System v. Monster Worldwide, Inc.*, No. 07-cv-2237 (S.D.N.Y.), Judge Rakoff appointed Labaton Sucharow as lead counsel, stating that “*the Labaton firm is very well known to courts for the excellence of its representation.*”

In addition, Judge Rakoff commented during a final approval hearing that “*the quality of the representation was superb*” and “[*this case is a*] good example of how [*the*] securities class action device serves laudatory public purposes.”

During a fairness hearing in the *In re American Tower Corporation Securities Litigation*, No. 06-CV-10933 (MLW) (D. Mass.), Chief Judge Mark L. Wolf stated:

*[t]he attorneys have brought to this case considerable experience and skill as well as energy. Mr. Goldsmith has reminded me of that with his performance today and he maybe educated me to understand it better.*

In *In re Satyam Computer Services Ltd. Securities Litigation*, No. 09-md- 2027 (S.D.N.Y.), Judge Jones commended lead counsel during the final approval hearing noting that the “. . . *quality of representation which I found to be very high . . .*.”

In *In re DG Fastchannel, Inc. Securities Litigation*, No. 10 Civ 6523 (RJS), Judge Sullivan remarked in the order granting attorneys’ fees and litigation expenses that “*Lead counsel conducted the litigation and achieved the settlement with skillful and diligent advocacy.*”

During the final approval hearing in *Bruhl, et al. v. PricewaterhouseCoopers, et al.*, No. 03-23044 (S.D. Fla.), Judge Kenneth Marra stated:

*I want to thank all of the lawyers for your professionalism. It’s been a pleasure dealing with you. Same with my staff. You’ve been wonderful. The quality of the work was, you know, top notch magnificent lawyering. And I can’t say that I’m sad to see the case go, but I certainly look forward to having all of you back in court with me again in some other matters. So thank you again for everything you’ve done in terms of the way you’ve handled the case, and I’m going to approve the settlement and the fees.*

## **In and Around The Community**

As a result of our deep commitment to the community, Labaton Sucharow stands out in areas such as *pro bono* legal work and public and community service.

### **Firm Commitments**

#### **The Lawyers’ Committee for Civil Rights Under Law**

Edward Labaton, Member, Board of Directors

The Firm is a long-time supporter of The Lawyers’ Committee for Civil rights Under Law, a nonpartisan, nonprofit organization formed in 1963 at the request of President John F.

Kennedy. The Lawyer's Committee involves the private bar in providing legal services to address racial discrimination.

Labaton Sucharow attorneys have contributed on the federal level to United States Supreme Court nominee analyses (analyzing nominees for their views on such topics as ethnic equality, corporate diversity and gender discrimination) and national voters' rights initiatives.

### ***Volunteer Lawyers For The Arts (VLA)***

Labaton Sucharow also supports Volunteer Lawyers for the Arts, working as part of VLA's *pro bono* team representing low-income artists and nonprofit arts organizations. VLA is the leading provider of educational and legal services, advocacy and mediation to the arts community.

### ***Change For Kids***

Labaton Sucharow supports Change for Kids and became its Lead School Partner as a Patron of P.S. 73 in the South Bronx.

## **Individual Attorney Commitments**

Labaton Sucharow attorneys serve in a variety of *pro bono* and community service capacities:

- *Pro bono* representation of mentally ill tenants facing eviction, appointed as Guardian ad litem in several housing court actions.
- Recipient of a Volunteer and Leadership Award from a tenants' advocacy organization for work defending the rights of city residents and preserving their fundamental sense of public safety and home.
- Board Member of the Ovarian Cancer Research Fund – the largest private funding agency of its kind supporting research into a method of early detection and, ultimately, a cure for ovarian cancer.

Our attorneys also participate in many charitable organizations, including:

- Big Brothers/Big Sisters of New York City
- Boys and Girls Club of America
- City Harvest

- City Meals-on-Wheels
- Cycle for Survival
- Cystic Fibrosis Foundation
- Dana Farber Cancer Institute
- Food Bank for New York City
- Fresh Air Fund
- Habitat for Humanity
- Lawyers Committee for Civil Rights
- Legal Aid Society
- The National Lung Cancer Partnership
- National MS Society
- National Parkinson Foundation
- New York Cares
- Peggy Browning Fund
- Sanctuary for Families
- Sandy Hook School Support Fund
- Save the Children
- The Sidney Hillman Foundation
- Special Olympics
- Williams Syndrome Association

## **Women's Initiative and Minority Scholarship**

Recognizing that opportunities for advancement and collaboration have not always been equitable to women in business, Labaton Sucharow launched its Women's Networking and Mentoring Initiative in 2007. The Firm founded a Women's Initiative to reflect our commitment to the advancement of women professionals. The goal of the Initiative is to bring professional women together to collectively advance women's influence in business. Each event showcases a successful woman role model as a guest speaker. We actively discuss our respective business initiatives and hear the guest speaker's strategies for success. Labaton Sucharow mentors and promotes the professional achievements of the young women in our ranks and others who join us for events. The Firm also is a member of the National Association of Women Lawyers (NAWL). For more information regarding Labaton Sucharow's

Women's Initiative, please visit <http://www.labaton.com/en/about/women/Womens-Initiative.cfm>

Further, demonstrating our commitment to diversity in law and to introduce minority students to Labaton Sucharow, in 2006, we established the Labaton Sucharow Minority Scholarship and Internship. The annual award – a grant and a summer associate position – is presented to a first-year minority student from a metropolitan New York law school who has demonstrated academic excellence, community commitment and personal integrity.

The Firm has also instituted a diversity internship in which we invite two students from Hunter College to join us each summer. These interns are rotated through our various departments, shadowing Firm partners and getting a feel for the inner workings of Labaton Sucharow.

## Attorneys

Among the attorneys at Labaton Sucharow who are involved in the prosecution of securities actions are partners Lawrence A. Sucharow, Martis Alex, Mark S. Arisohn, Christine S. Azar, Eric J. Belfi, Joel H. Bernstein, Javier Bleichmar, Thomas A. Dubbs, Joseph A. Fonti, Jonathan Gardner, David J. Goldsmith, Louis Gottlieb, James W. Johnson, Christopher J. Keller, Edward Labaton, Christopher J. McDonald, Jonathan M. Plasse, Ira A. Schochet, Michael W. Stocker, Jordan A. Thomas and Stephen W. Tountas; and of counsel attorneys Dominic J. Auld, Mark S. Goldman, Terri Goldstone, Thomas G. Hoffman, Jr., Richard T. Joffe, Barry M. Okun, Paul J. Scarlato and Nicole M. Zeiss. A short description of the qualifications and accomplishments of each follows.



**Lawrence A. Sucharow, Chairman**

*lsucharow@labaton.com*

With almost four decades of specialized experience, the Firm's Chairman, Lawrence Sucharow is an internationally recognized trial lawyer and a leader of the class action bar. Under his guidance, the Firm has earned its position as one of the top plaintiffs securities and antitrust class action litigation boutiques in the world. As Chairman, Larry focuses on counseling the Firm's large institutional clients, developing creative and compelling strategies to advance and protect clients' interests, and assist in the prosecution and resolution of many of the Firm's leading cases.

Over the course of his career, Larry has prosecuted hundreds of cases and the Firm has recovered more than \$4 billion in groundbreaking securities, antitrust, business transaction, product liability and other class actions. In fact, a landmark case tried in 2002 – *In re Real Estate Associates Limited Partnership Litigation* – was the very first securities action successfully tried to a jury verdict following the enactment of the Private Securities Litigation Reform Act (PSLRA). Experience such as this has made Larry uniquely qualified to evaluate and successfully prosecute class actions.

Other representative matters include: *In re CNL Resorts, Inc. Securities Litigation* (\$225 million settlement); *In re Paine Webber Incorporated Limited Partnerships Litigation* (\$200 million settlement); *In re Prudential Securities Incorporated Limited Partnerships Litigation* (\$110 million partial settlement); *In re Prudential Bache Energy Income Partnerships Securities Litigation* (\$91 million settlement); and *Shea v. New York Life Insurance Company* (over \$92 million settlement).

In recognition of his career accomplishments and standing at the Bar, in 2010, Larry was selected by *Law360* as one the Ten Most Admired Securities Attorneys in the United States. Further, he is one of a small handful of plaintiff's securities lawyers in the United States

independently selected by each of *Chambers and Partners USA*, *The Legal 500* and *Benchmark Plaintiff* for their respective highest rankings. Larry was honored by his peers by his election to serve a two-year term as President of the National Association of Shareholder and Consumer Attorneys, a membership organization of approximately 100 law firms that practice complex civil litigation including class actions. A longtime supporter of the Federal Bar Council, Larry serves as a trustee of the Federal Bar Council Foundation. He is a member of the Federal Bar Council's Committee on Second Circuit Courts, and the Federal Courts Committee of the New York County Lawyers' Association. He is also a member of the Securities Law Committee of the New Jersey State Bar Association and was the Founding Chairman of the Class Action Committee of the Commercial and Federal Litigation Section of the New York State Bar Association, a position he held from 1988-1994. In addition, Larry serves on the Advocacy Committee of the World Federation of Investors Corporation, a worldwide umbrella organization of national shareholder associations. In addition, Larry serves on the Advocacy Committee of the World Federation of Investors Corporation, a worldwide umbrella organization of national shareholder associations.

Larry has received a rating of AV Preeminent from the publishers of the Martindale-Hubbell directory for the past 25 years.

Larry is admitted to practice in the States of New York, New Jersey and Arizona, as well as before the Supreme Court of the United States, the United States Court of Appeals for the Second Circuit, and the United States District Courts for the Southern and Eastern Districts of New York, the District of New Jersey, and the District of Arizona.

### **Martis Alex, Partner**

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*malex@labaton.com*

Martis Alex concentrates her practice on prosecuting complex litigation on behalf of institutional investors. She has extensive experience litigating complex nationwide cases,

including securities class actions as well as product liability and consumer fraud litigation. She has successfully represented investors and consumers in cases that achieved cumulative recoveries of hundreds of millions of dollars for plaintiffs. Martis currently represents several foreign financial institutions, seeking recoveries of over a billion dollars in losses in their RMBS investments. She also currently represents domestic pension funds in securities related litigation.

Martis was lead trial counsel and Chair of the Executive Committee in the *Zenith Laboratories Securities Litigation*, a federal securities fraud class action which settled during trial and achieved a significant recovery for investors. She also was lead trial counsel in the *Napp Technologies Litigation*, where she won substantial recoveries for families and firefighters injured in a chemical plant explosion.

Martis played a key role in litigating *In re American International Group, Inc. Securities Litigation* (over \$1 billion in settlements, pending final approval). She was also an integral part of the team that successfully litigated *In re Bristol-Myers Squibb Securities Litigation*, which resulted in a \$185 million settlement for investors and secured meaningful corporate governance reforms that will affect future consumers and investors alike.

Martis served as co-lead counsel in several securities class actions that achieved substantial awards for investors, including *Cadence Design Securities Litigation*, *Halsey Drug Securities Litigation*, *Slavin v. Morgan Stanley*, *Lubliner v. Maxtor Corp.* and *Baden v. Northwestern Steel and Wire*. She also served on the Executive Committees in national product liability actions against the manufacturers of breast implants, orthopedic bone screws, and atrial pacemakers, and was a member of the Plaintiffs' Legal Committee in the national litigation against the tobacco companies.

Martis is the author of "Women in the Law: Many Mentors, Many Lessons: A Baby Boomer's Perspective," *New York Law Journal*, November 8, 2010 and the co-author of "Role of the Event Study in Loss Causation Analysis," *New York Law Journal*, August 20, 2009.

Prior to entering private practice, Martis was a trial lawyer with the Sacramento, California District Attorney's Office. She is a frequent speaker on various legal topics at national conferences and was an invited speaker at the Federal Judicial Conference. She was also an invited participant at the Aspen Institute Justice and Society Seminar and is a recipient of the American College of Trial Lawyers' Award for Excellence in Advocacy.

Martis is admitted to practice in the States of California and New York as well as before the Supreme Court of the United States, the United States Court of Appeals for the Second Circuit and the United States District Courts for the Western District of Washington, the Southern, Eastern and Western Districts of New York, and the Central District of California.

#### **Mark S. Arisohn, Partner**

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*marisohn@labaton.com*

Mark S. Arisohn concentrates his practice on prosecuting complex securities fraud cases on behalf of institutional investors. Mark is an accomplished litigator, with nearly 40 years of extensive trial experience in jury and non-jury matters in the state and federal courts nationwide. He has also argued in the New York Court of Appeals, the United States Court of Appeals for the Second Circuit and appeared before the United States Supreme Court in the landmark insider trading case of *Chiarella v. United States*.

Mark's wide-ranging practice has included prosecuting and defending individuals and corporations in cases involving securities fraud, mail and wire fraud, bank fraud and RICO violations. He has represented public officials, individuals and companies in the construction and securities industries as well as professionals accused of regulatory offenses and professional misconduct. He also has appeared as trial counsel for both plaintiffs and

defendants in civil fraud matters and corporate and commercial matters, including shareholder litigation, business torts, unfair competition and misappropriation of trade secrets.

Most recently, Mark was lead trial counsel in a securities class action against BankAtlantic Bancorp, Inc. and several of its highest officers. After a four-week trial in federal court, the jury found BankAtlantic and its two senior officers liable for securities fraud. This was only the tenth securities fraud class action to go to trial since passage of the Private Securities Litigation Reform Act in 1995 and is the first securities class action case arising out of the financial crisis to go to jury verdict. Litigation on aspects of the case is ongoing before the Eleventh Circuit Court of Appeals.

During his impressive career as a trial lawyer, Mark has also authored numerous articles including: "Electronic Eavesdropping," *New York Criminal Practice*, LEXIS - Matthew Bender, 2005; "Criminal Evidence," *New York Criminal Practice*, Matthew Bender, 1986; and "Evidence," *New York Criminal Practice*, Matthew Bender, 1987.

Mark is an active member of the Association of the Bar of the City of New York and has served on its Judiciary Committee, the Committee on Criminal Courts, Law and Procedure, the Committee on Superior Courts and the Committee on Professional Discipline. He serves as a mediator for the Complaint Mediation Panel of the Association of the Bar of the City of New York where he mediates attorney client disputes, and as a hearing officer for the New York State Commission on Judicial Conduct where he presides over misconduct cases brought against judges.

Recently, Mark was named to the Recommended List in the field of Securities Litigation by *The Legal 500* and recognized by *Benchmark Plaintiff* as a Local Securities Litigation Star. He has also received a rating of AV Preeminent from the publishers of the Martindale-Hubbell directory.



Mark is admitted to practice in the State of New York and the District of Columbia as well as before the Supreme Court of the United States, the United States Court of Appeals for the Second Circuit, and the United States District Courts for the Southern, Eastern and Northern Districts of New York, the Northern District of Texas, and the Northern District of California.

**Christine S. Azar, Partner**

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*cazar@labaton.com*

Christine S. Azar is the Partner in Charge of Labaton Sucharow's Wilmington, Delaware Office. A longtime advocate of shareholders' rights, Christine concentrates her practice on prosecuting complex merger and derivative litigation in the Delaware Court of Chancery and throughout the United States.

Christine's caseload represents some of the most sophisticated litigation in her field. Currently, she is acting as co-lead counsel in *In re El Paso Corporation Shareholder Litigation* in the Delaware Court of Chancery in which shareholders allege that acquisition of El Paso by Kinder Morgan, Inc. was improperly influenced by conflicted financial advisors and management. She is also a key member of the team representing Norfolk County Retirement System in *In re BJ's Wholesale Club Inc. Shareholder Litigation*, alleging a breach of fiduciary responsibility by BJ's board of directors related to a buyout by private equity firms. In *In re Synthes, Inc. Shareholder Litigation*, Christine represents shareholders of Synthes alleging the proposed merger between Synthes and Johnson & Johnson is not fair in terms of valuation and is the result of a flawed negotiating process by the controlling shareholder.

In recent years, Christine has worked on some of the most groundbreaking cases in the field of merger and derivative litigation. Acting as co-lead counsel in *In re RehabCare Group, Inc. Shareholders Litigation*, Christine was part of the team that structured a settlement that included a cash payment to shareholders as well as key deal reforms such as enhanced

disclosures and an amended merger agreement. Representing shareholders in *In re Compellent Technologies, Inc. Shareholder Litigation*, regarding the proposed acquisition of Compellent Technologies Inc. by Dell, Inc., Christine was integral in negotiating a settlement that included key deal improvements including elimination of the "poison pill" and standstill agreement with potential future bidders as well as a reduction of the termination fee amount.

Prior to joining Labaton Sucharow, Christine practiced corporate litigation at Blank Rome LLP with a primary focus on disputes related to corporate mismanagement in courts nationwide as well as in the Delaware Court of Chancery. Christine began her career at Grant & Eisenhofer, P.A., where she specialized in the representation of institutional investors in federal and state securities, corporate governance, and breach of fiduciary duty actions. There she served as counsel in *In re Hayes Lemmerz International Bondholder Litigation* and *In re Adelphia Communications Securities Litigation*.

Christine writes regularly on issues of shareholder concern in the national press and is a featured speaker on many topics related to financial reform. Most recently, she authored "Mitigating Risk in a Growing M&A Market," *The Deal*, June 12, 2012 and "Will 'Say on Pay' Votes Prompt Firms to Listen?," *American Banker*, May 1, 2012.

In recognition of her many accomplishments, Christine was recently featured on *The National Law Journal's* Plaintiffs' Hot List, recommended by *The Legal 500* and named a Local Securities Litigation Star in Delaware by *Benchmark Plaintiff*.

Christine received her J.D. and graduated *cum laude* from University of Notre Dame Law School and received a B.A. from James Madison University.

In addition to her active legal practice, Christine serves as a Volunteer Guardian Ad Litem in the Office of the Child Advocate. In this capacity, she has represented children in foster care in the state of Delaware to ensure the protection of their legal rights.

Christine is admitted to practice in the States of Delaware, New Jersey and Pennsylvania as well as before the United States Court of Appeals for the Third Circuit and the United States District Courts for the District of Delaware, the District of New Jersey, and the Eastern District of Pennsylvania.

**Eric J. Belfi, Partner**

*ebelfi@labaton.com*

Representing many of the world's leading pension funds and other institutional investors, Eric J. Belfi concentrates his practice on securities and shareholder litigation. Eric is an accomplished litigator with a wealth of experience in a broad range of commercial matters.

Eric is an integral member of numerous high-profile securities cases that have risen from the credit crisis, including the prosecution against Goldman Sachs. In *In re Goldman Sachs Group, Inc Securities Litigation*, he played a significant role in the investigation and drafting of the operative complaint.

Eric has had pivotal roles in securing settlements in international cases that serve as models for the application of U.S. securities law to international entities. In a case involving one of the most egregious frauds on record, *In re Satyam Computer Securities Services Ltd. Securities Litigation*, Eric was a key member of the team that represented the UK-based Mineworkers' Pension Scheme. He helped to successfully secure \$150.5 million in collective settlements and established that Satyam misrepresented the company's earnings and assets. Representing two of Europe's leading pension funds, Deka Investment GmbH and Deka International S.A., Luxembourg, in *In re General Motors Corp. Securities Litigation*, Eric was integral in securing a \$303 million settlement in a case regarding multiple accounting manipulations and overstatements by General Motors. Eric was also actively involved in securing a \$10.5 million partial settlement in *In re Colonial BancGroup, Inc. Securities Litigation*, regarding material misstatements and omissions in SEC filings by Colonial

BancGroup and certain underwriters. Currently, Eric is representing pension funds in a European litigation against Vivendi.

Eric's leadership in the Financial Products & Services Litigation Practice allows Labaton Sucharow to uncover and prosecute malfeasant investment bankers in cutting-edge securities litigations. He is currently litigating two cases which arose out of deceptive practices by custodial banks relating to certain foreign currency transactions; he serves as lead counsel to Arkansas Teachers Retirement System in a class action against the State Street Corporation and certain affiliated entities and he is also representing the Commonwealth of Virginia in its False Claims Act case against Bank of New York Mellon, Inc.

Eric's M&A and derivative experience includes noteworthy cases such as *In re NYSE Euronext Shareholder Litigation* and *In re Medco Health Solutions Inc. Shareholders Litigation*. In the *NYSE Euronext* shareholder case, Eric was a key member of the team that secured a proposed settlement which would have provided a special dividend of nearly a billion dollars to NYSE shareholders if the transaction was completed. In the Medco/Express Script merger, Eric was integrally involved in the negotiation of the settlement which included a significant reduction in the Termination Fee.

Eric's prior experience included serving as an Assistant Attorney General for the State of New York and as an Assistant District Attorney for the County of Westchester. As a prosecutor, Eric investigated and prosecuted white-collar criminal cases, including many securities law violations. He presented hundreds of cases to the grand jury and obtained numerous felony convictions after jury trials.

Eric is a frequent speaker on the topic of shareholder litigation and U.S. class actions in European countries. He also participated in a panel discussion on socially responsible investments for public pension funds during the New England Public Employees' Retirement Systems Forum. He co-authored "The Proportionate Trading Model: Real Science or Junk

Science?" 52 *Cleveland St. L. Rev.* 391 (2004-05) and "International Strategic Partnerships to Prosecute Securities Class Actions," *Investment & Pensions Europe*, May 2006.

Eric is admitted to practice in the State of New York as well as before the United States District Courts for the Southern and Eastern Districts of New York, the Eastern District of Michigan, the District of Colorado, the District of Nebraska, and the Eastern District of Wisconsin.

**Joel H. Bernstein, Partner**

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*jbernstein@labaton.com*

With more than 35 years of experience in complex litigation, Joel H. Bernstein concentrates his practice on the protection of investors who have been victimized by securities fraud and breach of fiduciary duty. His significant expertise in the area of shareholder litigation has resulted in the recovery of more than a billion dollars in damages to wronged investors.

As a recognized leader in his field, Joel advises large public pension funds, banks, mutual funds, insurance companies, hedge funds and other institutional and individual investors with respect to securities-related litigation in the federal and state courts as well as in arbitration proceedings before the NYSE, FINRA and other self-regulatory organizations.

Joel heads up the Firm's RMBS (Residential Mortgage-Backed Securities) team, representing large domestic and foreign institutional investors that invested more than \$5 billion in failed investments, which were at the heart of the current global economic crisis. The RMBS team is comprised of more than 20 attorneys and is currently prosecuting over 30 separate matters. Joel has developed significant experience with RMBS-related matters and served as lead counsel for one of the most prototypical cases arising from the financial crisis, *In re Countrywide Corporation Securities Litigation*. In this matter, he obtained a settlement



of \$624 million for co-lead plaintiffs, New York State Common Retirement Fund and the New York City Pension Funds.

Joel is currently lead counsel to a class of investors in Massey Energy Corporation stemming from the horrific 2010 mining disaster at the Company's Upper Big Branch coal mine. Joel is also currently litigating two cases which arose out of deceptive practices by custodial banks relating to certain foreign currency transactions; he serves as lead counsel to Arkansas Teachers Retirement System in a class action against the State Street Corporation and certain affiliated entities and he is also representing the Commonwealth of Virginia in its False Claims Act case against Bank of New York Mellon, Inc.

In the past, Joel has played a central role in numerous high profile cases including: *In re Paine Webber Incorporated Limited Partnerships Litigation* (\$200 million settlement); *In re Prudential Securities Incorporated Limited Partnerships Litigation* (\$130 million settlement); *In re Prudential Bache Energy Income Partnerships Securities Litigation* (\$91 million settlement); *Shea v. New York Life Insurance Company* (\$92 million settlement); and *Saunders et al. v. Gardner* (\$10 million—the largest punitive damage award in the history of the NASD at that time). In addition, Joel was instrumental in securing a \$117.5 million settlement in *In re Mercury Interactive Securities Litigation*, the largest settlement at the time in a securities fraud litigation based upon options backdating.

Given his depth of experience, Joel is frequently sought out by the press to comment on securities law and has also authored numerous articles on related issues, including "Stand Up to Your Stockbroker, Your Rights As An Investor." He is a member of the American Bar Association and the New York County Lawyers' Association.

Joel was recognized by *The Legal 500* in the Recommended List in the field of Securities Litigation and by *Benchmark Plaintiff* as a Securities Litigation Star. He was also featured in *The AmLaw Litigation Daily* as Litigator of the Week on May 13, 2010 for his work

on *In re Countrywide Financial Corporation Securities Litigation*. Joel has received a rating of AV Preeminent from the publishers of the Martindale-Hubbell directory.

He is admitted to practice in the State of New York as well as before the United States Courts of Appeals for the First, Second, Third and Ninth Circuits and the United States District Courts for the Southern and Eastern Districts of New York. He is a member of the American Bar Association and the New York County Lawyers' Association.

**Javier Bleichmar, Partner**

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*jbleichmar@labaton.com*

Javier Bleichmar concentrates his practice on prosecuting complex securities fraud cases on behalf of institutional investors. Since joining Labaton Sucharow, Javier was instrumental in securing a \$77 million settlement in the *In re St. Paul Travelers Securities Litigation II* on behalf of the lead plaintiff, the Educational Retirement Board of New Mexico. Most recently, Javier played a key role in litigating *In re Bear Stearns Companies, Inc. Securities Litigation* where the Firm secured a \$275 million settlement with Bear Stearns Companies, plus a \$19.9 million settlement with Deloitte & Touche LLP, Bear Stearns' outside auditor (pending Court approval).

Javier is very active in educating European institutional investors on developing trends in the law, particularly the ability of international investors to participate in securities class actions in the United States. Through these efforts, many of Javier's European clients were able to join the Foundation representing investors in the first securities class action settlement under a recently enacted Dutch statute against Royal Dutch Shell.

Prior to joining Labaton Sucharow, Javier practiced securities litigation at Bernstein Litowitz Berger & Grossmann LLP, where he prosecuted securities actions on behalf of institutional investors. He was actively involved in the *In re Williams Securities Litigation*, which

resulted in a \$311 million settlement, as well as securities cases involving Lucent Technologies, Inc., Consec, Inc. and Biovail Corp.

During his time at Columbia Law School, he was a managing editor of the *Journal of Law and Social Problems*. Additionally, he was a Harlan Fiske Stone Scholar. As a law student, Javier served as a law clerk to the Honorable Denny Chin, United States District Court Judge for the Southern District of New York.

After law school, Javier authored the article "Deportation As Punishment: A Historical Analysis of the British Practice of Banishment and Its Impact on Modern Constitutional Law,"<sup>14</sup> *Georgetown Immigration Law Journal* 115 (1999).

Javier is a native Spanish speaker and fluent in French.

Javier is admitted to practice in the State of New York as well as before the United States Courts of Appeals for the Second, Eighth and Ninth Circuits and the United States District Courts for the Southern and Eastern Districts of New York, the Northern District of Oklahoma, the Western District of Washington, the Southern District of Florida, the Eastern District of Missouri, and the Northern District of Illinois.

### **Thomas A. Dubbs, Partner**

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*tdubbs@labaton.com*

A recognized leader in securities-related litigation, Thomas A. Dubbs concentrates his practice on the representation of institutional investors in securities cases.

Tom has served as lead or co-lead counsel in some of the most important federal securities class actions in recent years, including those against American International Group, Goldman Sachs, the Bear Stearns Companies, Broadcom and WellCare. Tom has also played an integral role in securing significant settlements in several high-profile cases including: *In re American International Group, Inc. Securities Litigation* (settlements totaling more than \$1 billion pending final court approval); *In re Bear Stearns Companies, Inc. Securities Litigation*

(\$275 million settlement with Bear Stearns Companies, plus a \$19.9 million settlement with Deloitte & Touche LLP, Bear Stearns' outside auditor pending court approval); *In re HealthSouth Securities Litigation* (\$671 million settlement); *Eastwood Enterprises LLC v. Farha et al. (WellCare Securities Litigation)* (over \$200 million settlement); *In re Broadcom Corp. Securities Litigation* (\$160.5 million settlement and the case against the auditor, Ernst & Young, is ongoing); *In re St. Paul Travelers Securities Litigation* (\$144.5 million settlement); and *In re Vesta Insurance Group, Inc. Securities Litigation* (\$79 million settlement).

Representing an affiliate of the Amalgamated Bank, the largest labor-owned bank in the United States, a team led by Tom successfully litigated a class action against Bristol-Myers Squibb, which resulted in a settlement of \$185 million as well as major corporate governance reforms. He has argued before the United States Supreme Court and has argued ten appeals dealing with securities or commodities issues before the United States Courts of Appeals.

Due to his well-known expertise in securities law, Tom frequently lectures to institutional investors and other groups such as the Government Finance Officers Association, the National Conference on Public Employee Retirement Systems and the Council of Institutional Investors. He is also a prolific author of articles related to his field. His publications include: "Shortsighted?," *Investment Dealers' Digest*, May 29, 2009; "A Scotch Verdict on 'Circularity' and Other Issues," 2009 *Wis. L. Rev.* 455 (2009). He has also written several columns in U.K.-wide publications regarding securities class action and corporate governance. He is the co-author of the following articles: "In Debt Crisis, An Arbitration Alternative," *The National Law Journal*, March 16, 2009; "The Impact of the LaPerriere Decision: Parent Companies Face Liability," *Directors Monthly*, February 1, 2009; "Auditor Liability in the Wake of the Subprime Meltdown," *BNA's Accounting Policy & Practice Report*, November 14, 2009; and "U.S. Focus: Time for Action," *Legal Week*, April 17, 2008.

Prior to joining Labaton Sucharow, Tom was Senior Vice President & Senior Litigation Counsel for Kidder, Peabody & Co. Incorporated where he represented the company in many class actions, including the First Executive and Orange County litigations and was first chair in many securities trials. Before joining Kidder, Tom was head of the litigation department at Hall, McNicol, Hamilton & Clark, where he was the principal partner representing Thomson McKinnon Securities Inc. in many matters including the Petro Lewis and Baldwin-United class action litigations.

As a result of his many accomplishments, Tom has received the highest ranking from *Chambers and Partners*, an honor he shares with only five other plaintiffs' securities lawyers in the country. He appears on the Recommended List in the field of Securities Litigation and was one of four U.S. plaintiffs' securities lawyers to be named a Leading Lawyer by *The Legal 500*. He has also been recognized by *The National Law Journal*, *Lawdragon 500* and was listed in *Benchmark Plaintiff* as a Local Securities Litigation Star in New York. Tom has received a rating of AV Preeminent from the publishers of the Martindale-Hubbell directory.

He is a member of the New York State Bar Association, the Association of the Bar of the City of New York and is a Patron of the American Society of International Law.

Tom is admitted to practice in the State of New York as well as before the Supreme Court of the United States, the United States Courts of Appeals for the Second, Ninth and Eleventh Circuits, and the United States District Court for the Southern District of New York.

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**Joseph A. Fonti, Partner**

*jfonti@labaton.com*

Joseph A. Fonti concentrates his practice on prosecuting complex securities and investment-related matters on behalf of institutional investors.



Joseph's client commitment, advocacy skills, and results have earned him recognition as a *Law360* "Rising Star." Joseph was one of only five securities lawyers in the country—and the only investor-side securities litigator—to receive the distinction.

In recent years, Joseph has played a significant role in several high-profile cases at the center of the global financial crisis. For instance, he is responsible for prosecuting the shareholder suit against Morgan Stanley, relating to the bank's multi-billion trading loss on its sub-prime mortgage bets. Joseph also prosecuted the shareholder action against Fannie Mae, which was at ground-zero of the nation's financial collapse. He is also active in Labaton Sucharow's prosecution of claims on behalf of domestic and international private-sector investors with more than \$5 billion of residential mortgage-backed securities (RMBS).

With over a decade of experience in investor litigation, Joseph's career is marked by notable and historic success in the area of auditor liability and stock options backdating. Joseph represented shareholders in the \$671 million recovery in *In re HealthSouth Securities Litigation*. Particularly, Joseph played a significant role in recovering \$109 million from HealthSouth's outside auditor Ernst & Young LLP, one of the largest recoveries to date against an auditing firm. Joseph also contributed to securing a \$160.5 million settlement in *In re Broadcom Corp. Securities Litigation*, which, at the time, was the second largest cash settlement involving a company accused of options backdating. The case against the auditor, Ernst & Young, is ongoing.

In addition to representing several of the most significant U.S. institutional investors, Joseph has represented a number of Canada's most significant pension systems. Currently, Joseph is responsible for prosecuting the securities litigation against Computer Sciences Corporation on behalf of one of Canada's largest pension investors. Joseph also led the prosecution of *In re NovaGold Resources Inc. Securities Litigation*, which resulted in the largest settlement under Canada's securities class action laws.

Additionally, Joseph has achieved notable success as an appellate advocate. Joseph successfully argued before the Second Circuit Court of Appeals in *In re Celestica Inc. Securities Litigation*. The Second Circuit reversed an earlier dismissal, and turned the tide of recent decisions by realigning pleading standards in favor of investors. Joseph was also instrumental in the advocacy before the Ninth Circuit Court of Appeals in the *In re Broadcom Corp. Securities Litigation*. This appellate victory marked the first occasion a court sustained allegations against an outside auditor related to options backdating.

Prior to joining the Firm, Joseph practiced securities litigation at Bernstein Litowitz Berger & Grossmann LLP, where he prosecuted several high-profile matters involving WorldCom, Bristol-Myers, Omnicom and Biovail. Joseph's advocacy contributed to historic recoveries for shareholders, including the \$6.15 billion recovery in the WorldCom litigation and the \$300 million recovery in the Bristol-Myers litigation.

Joseph began his legal career at Sullivan & Cromwell, where he represented Fortune 100 corporations and financial institutions in complex securities litigations and in multi-faceted SEC investigations and enforcement actions.

During his time at New York University School of Law, Joseph served as a law clerk to the Honorable David Trager, United States District Court Judge for the Eastern District of New York. Joseph was also active in the Marden Moot Court Competition and served as a Student Senator-at-Large of the NYU Senate.

Joseph is a member of the New York State Bar Association and the Association of the Bar of the City of New York.

An active member of his legal and local community, Joseph has represented victims of domestic violence in affiliation with inMotion, an advocacy organization that provides pro bono legal services to indigent women.

Joseph is admitted to practice in the State of New York as well as before the Supreme Court of the United States, the United States Courts of Appeals for the Ninth and Eleventh Circuits, and the United States District Courts for the Southern and Eastern Districts of New York.

**Jonathan Gardner, Partner**

*[jgardner@labaton.com](mailto:jgardner@labaton.com)*

Jonathan Gardner concentrates his practice on prosecuting complex securities fraud cases on behalf of institutional investors. An experienced litigator, he has played an integral role in securing some of the largest class action recoveries against corporate offenders since the onset of the global financial crisis.

Jonathan has led the Firm's representation of investors in many recent high-profile cases including *Rubin v. MF Global Ltd., et al.*, which involved allegations of material misstatements and omissions in a Registration Statement and Prospectus issued in connection with MF Global's IPO in 2007. In November 2011, the case resulted in a recovery of \$90 million for investors. Jonathan also represented lead plaintiff City of Edinburgh Council as Administering Authority of the Lothian Pension Fund in *In re Lehman Brothers Equity/Debt Securities Litigation*, which resulted in settlements totaling \$516 million against Lehman Brothers' former officers and directors as well as most of the banks that underwrote Lehman Brothers' offerings. In representing lead plaintiff Massachusetts Bricklayers and Masons Trust Funds in an action against Deutsche Bank, Jonathan secured a \$32.5 million dollar recovery for a class of investors injured by the Bank's conduct in connection with certain residential mortgage-backed securities. Most recently, Jonathan was the lead attorney in *In re Carter's Inc. Securities Litigation* that was partially settled for \$20 million.

Jonathan has been responsible for prosecuting several of the Firm's options backdating cases, including *In re Monster Worldwide, Inc. Securities Litigation* (\$47.5 million

settlement); *In re SafeNet, Inc. Securities Litigation* (\$25 million settlement); *In re Semtech Securities Litigation* (\$20 million settlement); and *In re MRV Communications, Inc. Securities Litigation* (\$10 million settlement). He also was instrumental in *In re Mercury Interactive Corp. Securities Litigation*, which settled for \$117.5 million, a figure representing one of the largest settlements or judgments in a securities fraud litigation based upon options backdating.

Jonathan also represented the Successor Liquidating Trustee of Lipper Convertibles, a convertible bond hedge fund, in actions against the Fund's former independent auditor and a member of the Fund's general partner as well as numerous former limited partners who received excess distributions. He has successfully recovered over \$5.2 million for the Successor Liquidating Trustee from the limited partners and \$29.9 million from the former auditor.

Jonathan is the co-author of "Does 'Dukes' Require Full 'Daubert' Scrutiny at Class Certification," *New York Law Journal*, November 25, 2011 and "Pre-Confirmation Remedies to Assure Collection of Arbitration Rewards," *New York Law Journal*, October 12, 2010.

He is a member of the New York State Bar Association and the Association of the Bar of the City of New York.

Jonathan is admitted to practice in the State of New York as well as before the United States Court of Appeals for the Ninth and Eleventh Circuits and the United States District Courts for the Southern and Eastern Districts of New York, and the Eastern District of Wisconsin.

### **David J. Goldsmith, Partner**

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*[dgoldsmith@labaton.com](mailto:dgoldsmith@labaton.com)*

David J. Goldsmith has nearly 15 years of experience representing public and private institutional investors in a wide variety of securities and class action litigations. In recent years,

David's work has directly led to record recoveries against corporate offenders in some of the most complex and high profile securities class actions.

David was an integral member of the team representing the New York State Common Retirement Fund and New York City pension funds as lead plaintiffs in *In re Countrywide Financial Corporation Securities Litigation*, which settled for \$624 million. David currently represents these clients in an appeal brought by Countrywide's 401(k) plan in the Ninth Circuit concerning complex settlement allocation issues.

Current assignments include representations of a large German banking institution and a major Irish special-purpose vehicle in multiple actions alleging fraud in connection with residential mortgage-backed securities issued by Barclays, Credit Suisse, Goldman Sachs, Royal Bank of Scotland, and others; representation of a state pension fund in a notable action alleging deceptive acts and practices by State Street Bank in connection with foreign currency exchange trades executed for its custodial clients; and representation of a hedge fund and other investors with allegations of harm by the well-publicized collapse of four Regions Morgan Keegan closed-end investment companies.

David has regularly represented the Genesee County (Michigan) Employees' Retirement System in securities and shareholder matters, including pending or settled actions against CBeyond, Inc., Compellent Technologies, Inc., Merck & Co., Spectranetics Corporation, Stryker Corporation, and Transaction Systems Architects, Inc.

During law school, David was Managing Editor of the Cardozo Arts & Entertainment Law Journal and served as a judicial intern to the Honorable Michael B. Mukasey, then a United States District Judge for the Southern District of New York.

For many years, David has been a member of the AmorArtis Chamber Choir, a renowned choral organization with a repertoire ranging from Palestrina to Bach, Mozart to Bruckner, and Stravinsky to Bernstein.



He is admitted to practice in the States of New York and New Jersey as well as before the United States Courts of Appeals for the First, Second, Fifth, Eighth and Ninth Circuits and the United States District Courts for the Southern and Eastern Districts of New York, the District of New Jersey, the District of Colorado, and the Western District of Michigan.

**Louis Gottlieb, Partner**

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*lgottlieb@labaton.com*

Louis Gottlieb concentrates his practice on representing institutional and individual investors in complex securities and consumer class action cases. He has played a key role in some of the most high-profile securities class actions in recent history, securing significant recoveries for plaintiffs and ensuring essential corporate governance reforms to protect future investors, consumers and the general public.

Lou was integral in prosecuting *In re American International Group, Inc. Securities Litigation* (settlements totaling more than \$1 billion pending final court approval). He also helped lead major class action cases against the company and related defendants in *In re Satyam Computer Services, Ltd. Securities Litigation* (\$150.5 million settlement). He has led successful litigation teams in securities fraud class action litigations against Metromedia Fiber Networks and Pricesmart, as well as consumer class actions against various life insurance companies on behalf of the insured.

In the Firm's representation of the Connecticut Retirement Plans and Trust Funds in *In re Waste Management, Inc. Securities Litigation*, Lou's efforts were essential in securing a \$457 million settlement. The settlement also included important corporate governance enhancements, including an agreement by management to support a campaign to obtain shareholder approval of a resolution to declassify its board of directors, and a resolution to encourage and safeguard whistleblowers among the company's employees. Acting on behalf

of New York City pension funds in *In re Orbital Sciences Corporation Securities Litigation*, Lou helped negotiate the implementation of measures concerning the review of financial results, the composition, role and responsibilities of the Company's Audit and Finance committee, and the adoption of a Board resolution providing guidelines regarding senior executives' exercise and sale of vested stock options.

Lou was a leading member of the team in the *Napp Technologies Litigation* that won substantial recoveries for families and firefighters injured in a chemical plant explosion. Lou has had a major role in national product liability actions against the manufacturers of orthopedic bone screws and atrial pacemakers, and in consumer fraud actions in the national litigation against tobacco companies.

A well-respected litigator, Lou has made presentations on punitive damages at Federal Bar Association meetings and has spoken on securities class actions for institutional investors.

Lou brings a depth of experience to his practice from both within and outside of the legal sphere. He graduated first in his class from St. John's School of Law. Prior to joining Labaton Sucharow, he clerked for the Honorable Leonard B. Wexler of the Eastern District of New York, and he was a litigation associate with Skadden Arps Slate Meagher & Flom. He has also enjoyed successful careers as a public school teacher and as a restaurateur.

Lou is admitted to practice in the States of New York and Connecticut as well as before the United States Courts of Appeals for the Fifth and Seventh Circuits and the United States District Courts for the Southern and Eastern Districts of New York.

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**James W. Johnson, Partner**

*[jjohnson@labaton.com](mailto:jjohnson@labaton.com)*

James W. Johnson concentrates his practice on complex securities fraud cases. In representing investors who have been victimized by securities fraud and breach of fiduciary responsibility, Jim's advocacy has resulted in record recoveries for wronged investors.

A recognized leader in his field, Jim currently serves as lead or co-lead counsel in high-profile federal securities class actions against Goldman Sachs Group and the Bear Stearns Companies, among others.

In recent years, Jim has successfully litigated a number of complex securities and RICO class actions including: *In re Bear Stearns Companies, Inc. Securities Litigation* (\$275 million settlement with Bear Stearns Companies, plus a \$19.9 million settlement with Deloitte & Touche LLP, Bear Stearns' outside auditor; pending court approval); *In re HealthSouth Corp. Securities Litigation* (\$671 million settlement); *Eastwood Enterprises LLC v. Farha et al. (WellCare Securities Litigation)* (\$200 million settlement); *In re Vesta Insurance Group, Inc. Securities Litigation* (\$79 million settlement); *In re Bristol Myers Squibb Co. Securities Litigation* (\$185 million settlement), in which the court also approved significant corporate governance reforms and recognized plaintiff's counsel as "extremely skilled and efficient"; and *In re National Health Laboratories, Inc. Securities Litigation*, which resulted in a recovery of \$80 million in the federal action and a related state court derivative action.

In *County of Suffolk v. Long Island Lighting Co.*, Jim represented the plaintiff in a RICO class action, securing a jury verdict after a two-month trial that resulted in a \$400 million settlement. The Second Circuit, in awarding attorneys' fees to the plaintiff, quoted the trial judge, Honorable Jack B. Weinstein, as stating, "counsel [has] done a superb job [and] tried this case as well as I have ever seen any case tried." On behalf of Native Americans, he also assisted in prosecuting environmental damage claims resulting from the Exxon Valdez oil spill.

He is the co-author of "The Impact of the LaPerriere Decision: Parent Companies Face Liability," *Directors Monthly*, February 2009.

Jim is a member of the American Bar Association and the Association of the Bar of the City of New York, where he served on the Federal Courts Committee.

Jim has received a rating of AV Preeminent from the publishers of the Martindale-Hubbell directory. He is a Fellow in the Litigation Council of America.

He is admitted to practice in the States of New York and Illinois as well as before the Supreme Court of the United States, the United States Courts of Appeals for the Second, Third, Fourth, Fifth, Seventh and Eleventh Circuits, and the United States District Courts for the Southern, Eastern and Northern Districts of New York, and the Northern District of Illinois.

### **Christopher J. Keller, Partner**

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*ckeller@labaton.com*

Christopher J. Keller concentrates his practice in sophisticated complex securities litigation. His clients are institutional investors, including some of the largest public and private pension funds with tens of billions of dollars under management.

Chris has been instrumental in the Firm's appointments as lead counsel in some of the largest securities litigations to arise out of the financial crisis, such as actions against Morgan Stanley, Fannie Mae, Goldman Sachs, Countrywide (\$624 million settlement) and Bear Stearns (\$275 million settlement with Bear Stearns Companies, plus a \$19.9 million settlement with Deloitte & Touche LLP, Bear Stearns' outside auditor; pending court approval).

Chris was also a principal litigator on the trial team of *In re Real Estate Associates Limited Partnership Litigation*. The six-week jury trial resulted in a \$184 million plaintiffs' verdict, one of the largest jury verdicts since the passage of the Private Securities Litigation Reform Act.

In addition to his active caseload, Chris holds a variety of leadership positions within the Firm, including serving on the Firm's Executive Committee. In response to the evolving needs of our clients, Chris also established, and currently leads, the Case Evaluation Group, which is comprised of attorneys, in-house investigators, financial analysts and forensic accountants. The Group is responsible for evaluating clients' financial losses and analyzing

their potential legal claims both in and outside of the U.S. and track trends that are of potential concern to investors.

Educating institutional investors is a significant element of Chris' advocacy efforts for shareholder rights. He is regularly called upon for presentations on developing trends in the law and new case theories at annual meetings and seminars for institutional investors. He is also a prolific writer and his articles include: "The Benefits of Investor Protection," *Law360*, October 11, 2011; "SEC Contemplating Governance Reforms," *Executive Counsel*, January 2011; "Is the Shield Beginning to Crack?," *New York Law Journal*, November 15, 2010; "Say What? Pay What? Real World Approaches to Executive Compensation Reform," *Corporate Counsel*, August 5, 2010; "Reining in the Credit Ratings Industry," *New York Law Journal*, January 11, 2010; "Japan's Past Recession Provides a Cautionary Tale," *The National Law Journal*, April 13, 2009; and "Balancing the Scales: The Use of Confidential Witnesses in Securities Class Actions," *BNA's Securities Regulation & Law Report*, January 19, 2009.

He is a member of several professional groups, including the New York State Bar Association and the New York County Lawyers' Association.

He is admitted to practice in the State of New York as well as before the Supreme Court of the United States and the United States District Courts for the Southern and Eastern Districts of New York, the Eastern District of Wisconsin, and the District of Colorado.

### **Edward Labaton, Partner**

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*elabaton@labaton.com*

An accomplished trial lawyer and partner with the Firm, Edward Labaton has devoted 50 years of practice to representing a full range of clients in class action and complex litigation matters in state and federal court. Ed has played a leading role as plaintiffs' class counsel in a number of successfully prosecuted, high-profile cases, involving companies such as PepsiCo, Dun & Bradstreet, Financial Corporation of America, ZZZZ Best, Revlon, GAF Co., American



Brands, Petro Lewis and Jim Walter, as well as several Big Eight (now Four) accounting firms. He has also argued appeals in state and federal courts, achieving results with important precedential value.

Ed has been President of the Institute for Law and Economic Policy (ILEP) since its founding in 1996. Each year, the Institute co-sponsors at least one symposium with a major law school dealing with issues relating to the civil justice system. In 2010, he was appointed to the newly formed Advisory Board of George Washington University's Center for Law, Economics, & Finance (C-LEAF), a think tank within the Law School, for the study and debate of major issues in economic and financial law confronting the United States and the globe. Ed is also a member of the Advisory Committee of the Weinberg Center for Corporate Governance of the University of Delaware, a Director of the Lawyers' Committee for Civil Rights under Law, a member of the American Law Institute, and a life member of the ABA Foundation. In addition, he has served on the Executive Committee and has been an officer of the Ovarian Cancer Research Fund since its inception in 1996.

Ed is the past Chairman of the Federal Courts Committee of the New York County Lawyers Association, and was a member of the Board of Directors of that organization. He is an active member of the Association of the Bar of the City of New York, where he was Chair of the Senior Lawyers' Committee and served on its Task Force on the Role of Lawyers in Corporate Governance. He has also served on its Federal Courts, Federal Legislation, Securities Regulation, International Human Rights and Corporation Law Committees. He also served as Chair of the Legal Referral Service Committee, a joint committee of the New York County Lawyers' Association and the Association of the Bar of the City of New York. He has been an active member of the American Bar Association, the Federal Bar Council and the New York State Bar Association, where he has served as a member of the House of Delegates.

Ed is the co-author of "It's Time to Resuscitate the Shareholder Derivative Action," *The Panic of 2008: Causes, Consequences, and Implications for Reform*, Lawrence Mitchell and Arthur Wilmarth, Jr., eds., (Edward Elgar, 2010). For more than 30 years, he has lectured on many topics including federal civil litigation, securities litigation and corporate governance.

Ed has received a rating of AV Preeminent from the publishers of the Martindale-Hubbell directory.

He is admitted to practice in the State of New York as well as before the Supreme Court of the United States, the United States Courts of Appeals for the Second, Fifth, Sixth, Seventh, Ninth, Tenth and Eleventh Circuits, and the United States District Courts for the Southern and Eastern Districts of New York, and the Central District of Illinois.

### **Christopher J. McDonald, Partner**

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*cmcdonald@labaton.com*

Christopher J. McDonald concentrates his practice on prosecuting complex securities fraud cases. Chris also works with the Firm's Antitrust & Competition Litigation Practice, representing businesses, associations and individuals injured by anticompetitive activities and unfair business practices.

In the securities field, Chris is currently co-lead counsel in *In re Schering-Plough Corporation / ENHANCE Securities Litigation*, and lead counsel in *In re Amgen Inc. Securities Litigation*. He was also an integral part of the team that successfully litigated *In re Bristol-Myers Squibb Securities Litigation*, where Labaton Sucharow secured a \$185 million settlement, as well as significant corporate governance reforms, on behalf of Bristol-Myers shareholders. The settlement with Bristol-Myers is the largest ever obtained against a pharmaceutical company in a securities fraud case that did not hinge on a restatement of financial results.

In the antitrust field, Chris was most recently co-lead counsel in *In re TriCor Indirect Purchaser Antitrust Litigation*, obtaining a \$65.7 million settlement on behalf of the Class.

Chris began his legal career at Patterson, Belknap, Webb & Tyler LLP, where he gained extensive trial experience in areas ranging from employment contract disputes to false advertising claims. Later, as a senior attorney with a telecommunications company, Chris advocated before government regulatory agencies on a variety of complex legal, economic, and public policy issues. Since joining Labaton Sucharow, Chris' practice has developed a focus on life sciences industries; his cases often involve pharmaceutical, biotechnology or medical device companies accused of wrongdoing.

During his time at Fordham University School of Law, Chris was a member of the *Law Review*. He is currently a member of the New York State Bar Association and the Association of the Bar of the City of New York.

Chris is admitted to practice in the State of New York as well as before the United States Courts of Appeals for the Second, Third and Ninth Circuits and the United States District Courts for the Southern and Eastern Districts of New York, and the Western District of Michigan.

### **Jonathan M. Plasse, Partner**

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*[jplasse@labaton.com](mailto:jplasse@labaton.com)*

An accomplished litigator, Jonathan M. Plasse has more than 30 years of experience in the prosecution of complex cases involving securities class action, derivative, transactional and consumer litigation. He has played a key role in litigating many of the most high-profile securities class actions ever filed including architecting significant settlements and aggressive corporate governance reforms to protect the public and investors alike. Currently, he is prosecuting securities class actions against Schering-Plough, Fannie Mae and Morgan Stanley.

Most recently, Jon served as lead counsel in two related securities class actions brought against Oppenheimer Funds, Inc., and obtained a \$100 million global settlement. Jon was also an integral member of the team representing the New York State Common Retirement Fund and the New York City pension funds as Lead plaintiffs in *In re Countrywide Financial Corporation Securities Litigation*. The \$624 million settlement was the largest securities fraud settlement at the time. His other recent successes include serving as co-lead counsel in *In re General Motors Corp. Securities Litigation* (\$303 million settlement) and *In re El Paso Corporation Securities Litigation* (\$285 million settlement). Jon also acted as Lead Counsel in *In re Waste Management Inc. Securities Litigation*, where he represented the Connecticut Retirement Plans and Trusts Funds, and obtained a settlement of \$457 million.

Since 2010, Jon has served as the Chair of the Securities Litigation Committee of the Association of the Bar of the City of New York. In addition, he also regularly chairs and is a frequent speaker at programs, classes and continuing legal education seminars relating to securities class action litigation.

During his time at Brooklyn Law School, Jon served as a member of the *Brooklyn Journal of International Law*. An avid photographer, Jon has published three books, including *The Stadium*, a collection of black-and-white photographs of the original Yankee Stadium, released by SUNY Press in September 2011.

Jon has received a rating of AV Preeminent from the publishers of the Martindale-Hubbell directory.

He is admitted to practice in the State of New York as well as before the United States Court of Appeals for the Second Circuit and the United States District Courts for the Southern and Eastern Districts of New York.

**Ira A. Schochet, Partner**

*ischochet@labaton.com*

A seasoned litigator with three decades of experience, Ira A. Schochet concentrates his practice on class actions involving securities fraud. Ira has played a lead role in securing multi-million dollar recoveries and major corporate governance reforms in high-profile cases such as those against Countrywide Financial, Caterpillar, Spectrum Information Technologies, InterMune and Amkor Technology.

A longtime leader in the securities class action bar, Ira represented one of the first institutional investors acting as a lead plaintiff in a post-Private Securities Litigation Reform Act case and ultimately obtained one of the first rulings interpreting the statute's intent provision in a manner favorable to investors. His efforts are regularly recognized by the courts, including in *Kamarasy v. Coopers & Lybrand*, where the court remarked on "the superior quality of the representation provided to the class." Further, in approving the settlement he achieved in *In re InterMune Securities Litigation*, the court complimented Ira's ability to secure a significant recovery for the class in a very efficient manner, shielding the class from prolonged litigation and substantial risk.

From 2009-2011, Ira served as President of the National Association of Shareholder and Consumer Attorneys (NASCAT), a membership organization of approximately 100 law firms that practice class action and complex civil litigation. During this time, he represented the plaintiffs' securities bar in meetings with members of Congress, the Administration, and the SEC.

Since 1996, Ira has served as chairman of the Class Action Committee of the Commercial and Federal Litigation Section of the New York State Bar Association. During his tenure, he has served on the Executive Committee of the Section and authored important papers on issues relating to class action procedure including revisions proposed by both houses of Congress and the Advisory Committee on Civil Procedure of the United States



Judicial Conference. Examples include: "Proposed Changes in Federal Class Action Procedure"; "Opting Out On Opting In" and "The Interstate Class Action Jurisdiction Act of 1999." He also has lectured extensively on securities litigation at continuing legal education seminars.

Ira was featured in *The AmLaw Litigation Daily* as Litigator of the Week on September 13, 2012 for his work in *In re El Paso Corporation Shareholder Litigation*. He has also been awarded an AV Preeminent rating, the highest distinction, from the publishers of the Martindale-Hubbell directory.

He is admitted to practice in the State of New York as well as before the United States Court of Appeals for the Second Circuit and the United States District Courts for the Southern and Eastern Districts of New York, the Central District of Illinois, and the Northern District of Texas.

### **Michael W. Stocker, Partner**

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*mstocker@labaton.com*

Michael W. Stocker represents institutional investors in a broad range of class action litigation, corporate governance and securities matters.

A tireless proponent of corporate reform, Mike's caseload reflects his commitment to effect meaningful change that benefits his clients and the markets in which they operate. In *Eastwood Enterprises LLC v. Farha et al. (WellCare Securities Litigation)*, Mike was a core part of the legal team that prosecuted a complex securities matter against a major healthcare provider that had allegedly engaged in a massive Medicaid fraud and pervasive insider trading. The case settled for more than \$200 million with additional financial protections built into the settlement to protect shareholders from losses in the future.

Mike also was an instrumental part of the team that took on American International Group, Inc. and 21 other defendants in one of the most significant securities class actions of

the decade. In this closely watched case, the Firm negotiated a recovery of more than \$1 billion, the largest securities settlement of 2010. Most recently, Mike played a key role in litigating *In re Bear Stearns Companies, Inc. Securities Litigation* where the Firm secured a \$275 million settlement with Bear Stearns, plus a \$19.9 million settlement with Deloitte & Touche LLP, Bear Stearns' outside auditor (pending court approval).

In a case against one of the world's largest pharmaceutical companies, *In re Abbott Laboratories Norvir Antitrust Litigation*, Mike played a leadership role in litigating a landmark action arising at the intersection of antitrust and intellectual property law. The novel settlement in the case created a multi-million dollar fund to benefit nonprofit organizations serving individuals with HIV. In recognition of his work on *Norvir*, he was named to the prestigious Plaintiffs' Hot List by the *National Law Journal* and also received the 2010 Courage Award from the AIDS Resource Center of Wisconsin. Mike was also recognized by *Benchmark Plaintiff* as a Local Securities Litigation Star.

A prolific writer on issues relating to shareholder advocacy and corporate reform, Mike's articles have appeared in national publications including *Forbes.com*, *Institutional Investor*, *Pensions & Investments*, *Corporate Counsel* and the *New York Law Journal*. He is also regularly called upon for commentary by print and television media, including Fox Business, BBC4 Radio and the Canadian Broadcasting Corporation's Lang & O'Leary Exchange. Mike serves as the Chief Contributor to *Eyes On Wall Street*, Labaton Sucharow's blog on economics, corporate governance and other issues of interest to investors. Mike also directly participates in advocacy efforts such as his longtime work guiding non-profit consumer protection groups on many issues such as reform of the credit rating industry.

Earlier in his career, Mike served as a senior staff attorney with the United States Court of Appeals for the Ninth Circuit, and completed a legal externship with federal Judge Phyllis J. Hamilton, currently sitting in the U.S. District Court for the Northern District of California. He

earned a B.A. from the University of California, Berkeley, a Master of Criminology from the University of Sydney, and a J.D. from University of California's Hastings College of the Law. His educational background provides unique insight into white-collar crime, an issue at the core of many of the cases he litigates.

He is an active member of the National Association of Public Pension Plan Attorneys (NAPPA). He is also a member of the New York State Bar Association and the Association of the Bar of the City of New York.

He is admitted to practice in the States of California and New York as well as before the United States Courts of Appeals for the Second, Eighth and Ninth Circuits and the United States District Courts for the Northern and Central Districts of California and the Southern and Eastern Districts of New York.

#### **Jordan A. Thomas, Partner**

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*jthomas@labaton.com*

Jordan A. Thomas exclusively concentrates his practice on investigating and prosecuting securities fraud on behalf of whistleblowers and institutional clients. As Chair of the Firm's Whistleblower Representation practice, Jordan protects and advocates for whistleblowers throughout the world who have information about potential violations of the federal securities laws. He also is the Editor of SECwhistlebloweradvocate.com, a website dedicated to helping responsible organizations establish a culture of integrity and courageous whistleblowers to report possible securities violations—without personal or professional regrets.

A career public servant and seasoned trial lawyer, Jordan joined Labaton Sucharow from the Securities and Exchange Commission where he served as an Assistant Director and, previously, as an Assistant Chief Litigation Counsel in the Division of Enforcement. He had a leadership role in the development of the Commission's Whistleblower Program, including

leading fact-finding visits to other federal agencies with whistleblower programs, drafting the proposed legislation and implementing rules and briefing House and Senate staffs on the proposed legislation. He is also the principal architect and first National Coordinator of the Commission's Cooperation Program, an initiative designed to facilitate and incentivize individuals and companies to self-report securities violations and participate in its investigations and related enforcement actions. In recognition of his important contributions to these national initiatives, while at the Commission, Jordan was a recipient of the Arthur Mathews Award, which recognizes "sustained demonstrated creativity in applying the federal securities laws for the benefit of investors," and, on two occasions, the Law and Policy Award.

Throughout his tenure at the Commission, Jordan was assigned to many of the Commission's highest-profile matters such as those involving Enron, Fannie Mae, UBS, and Citigroup. He successfully investigated, litigated and supervised a wide variety of enforcement matters involving violations of the Foreign Corrupt Practices Act, issuer accounting fraud and other disclosure violations, audit failures, insider trading, market manipulations, offering frauds and broker-dealer, investment adviser and investment company violations. His cases resulted in monetary relief for harmed investors in excess of \$35 billion.

Prior to joining the Commission, Jordan was a Trial Attorney at the Department of Justice, where he specialized in complex financial services litigation involving the FDIC and Office of Thrift Supervision. He began his legal career as a Navy Judge Advocate on active duty and continues to serve as a senior officer in the Reserve Law Program. Earlier, Jordan worked as a stockbroker.

Throughout his career, Jordan has received numerous awards and honors. At the Commission, he was the recipient of four Chairman's Awards, four Division Director's Awards and a Letter of Commendation from the United States Attorney for the District of Columbia. He is also a decorated military officer, who has twice been awarded the Rear Admiral Hugh H.

Howell Award of Excellence—the highest award the Navy can bestow upon a reserve judge advocate.

Jordan is a sought-after writer, speaker and media commentator on securities enforcement and whistleblower issues.

Jordan is admitted to practice in the States of New York and New Mexico as well as the District of Columbia.

### **Stephen W. Tountas, Partner**

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*stountas@labaton.com*

Stephen W. Tountas concentrates his practice on prosecuting highly complex securities fraud cases on behalf of institutional investors. In recent years, Steve has developed a recognized expertise in auditor liability and has played a significant role in securing multi-million dollar recoveries in several high-profile cases.

Currently, Steve is actively involved in prosecuting *In re MF Global Holdings Ltd. Securities Litigation*; *In re Schering-Plough Corp. / ENHANCE Securities Litigation* and *In re Celestica Inc. Securities Litigation*.

Since joining Labaton Sucharow, Steve has been responsible for prosecuting several securities class actions arising from options backdating including: *In re Broadcom Corp. Securities Litigation* (\$160.5 million settlement and the case against the auditor, Ernst & Young LLP, is ongoing); *In re American Tower Corp. Securities Litigation* (\$14 million settlement); *In re Amkor Technologies Inc. Securities Litigation* (\$11.25 million settlement); and *In re HCC Insurance Holdings, Inc. Securities Litigation* (\$10 million settlement).

Steve was also a key member of the team responsible for representing the New York City Employees' Retirement System and the Division of Investment of the New Jersey Department of the Treasury in two individual actions arising from the massive fraud at Adelphi



Communications Corp., and was instrumental in prosecuting *In re VERITAS Software Corp. Securities Litigation*, which settled for \$21.5 million.

Steve also has substantial appellate experience and has successfully briefed several appeals before the U.S. Court of Appeals for the Ninth, Second and Third Circuits.

Prior to joining Labaton Sucharow, Steve practiced securities litigation at Bernstein Litowitz Berger & Grossmann LLP. There he prosecuted the *In re OM Group, Inc. Securities Litigation*, which resulted in a settlement of \$92.4 million. In addition, his work on the securities class action against Biovail Corp. contributed to obtaining a settlement of \$138 million.

During his time at Washington University School of Law, Steve served as Editor-in-Chief of the *Journal of Law & Policy* and was a finalist in the Environmental Law Moot Court Competition. Additionally, he worked as a research assistant to Joel Seligman, one of the country's foremost experts on securities regulation.

Steve serves as Secretary of the Securities Litigation Committee for the New York City Bar Association.

Steve is admitted to practice in the States of New York and New Jersey as well as before the United States Courts of Appeals for the Second, Third and Ninth Circuits and the United States District Courts for the Southern District of New York and the District of New Jersey.

### **Dominic J. Auld, Of Counsel**

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*dauld@labaton.com*

Dominic J. Auld has over a decade's worth of experience in prosecuting large-scale securities and investment lawsuits. He has also worked in the areas of environmental and antitrust litigation. Dominic is one of the leaders of the Client Monitoring and Case Evaluation Group, working with the team to identify and accurately analyze investment-related matters

on behalf of investors potentially damaged by the conduct at issue. In cases directly involving his buy-side investor clients, he takes an active role in the litigation. Dominic also leads the International Litigation Practice, in which he develops and manages the Firm's representation of institutional investors in securities and investment-related cases filed outside the United States. With respect to these roles, Dominic specializes in developing and managing the Firm's outreach to pension systems and sovereign wealth funds outside the United States and in that role he regularly advises clients in Europe, Australia, Asia and across his home country of Canada.

Dominic is a frequent speaker and panelist on topics such as Sovereign Wealth Funds, Corporate Governance, Shareholder Activism, Fiduciary Duty, Corporate Misconduct, SRI, and Class Actions. As a result of his expertise in these areas, he has become a sought-after commentator for issues concerning public pension funds, public corporations and federal regulations.

Dominic is a regular speaker at law and investment conferences, including most recently the IMF (Australia) Shareholder Class Action Conference in Sydney and the 2011 Annual International Bar Association meeting in Dubai. Additionally, Dominic is frequently quoted in newspapers such as *The Financial Times*, *The New York Times*, *USA Today*, *The Times of London*, *The Evening Standard*, *The Daily Mail*, *The Guardian*, and trade publications like *Global Pensions*, *OP Risk and Regulation*, *The Lawyer*, *Corporate Counsel*, *Investments and Pensions Europe*, *Professional Pensions* and *Benefits Canada*. Recently Dominic published an article on custodian bank fees and their impacts on pension funds globally in *Nordic Regions Pensions and Investment News* magazine and was interviewed by *Corporate Counsel* for a feature article on rogue trading. Dominic is on the front line of reforming the corporate environment, driving improved accountability and responsibility for the benefit of clients, the financial markets and the public as a whole.

Prior to joining Labaton Sucharow, Dominic practiced securities litigation at Bernstein Litowitz Berger & Grossmann LLP, where he began his career as a member of the team responsible for prosecuting the landmark *WorldCom* action which resulted in a settlement of more than \$6 billion. He also has a great deal of experience working directly with institutional clients affected by securities fraud; he worked extensively with the Ontario Teachers' Pension Plan in their actions *In re Nortel Networks Corporation Securities Litigation*, *In re Williams Securities Litigation* and *In re Biovail Corporation Securities Litigation* – cases that settled for a total of more than \$1.7 billion.

As a law student at Lewis and Clark Law School in Portland, Oregon, Dominic served as a founding member of the law review, *Animal Law*, which explores legal and environmental issues relating to laws such as the Endangered Species Act.

He is admitted to practice in the State of New York.

### **Mark S. Goldman, Of Counsel**

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*mgoldman@labaton.com*

Mark S. Goldman has 24 years of experience in commercial litigation, primarily litigating class actions involving securities fraud, consumer fraud and violations of federal and state antitrust laws.

Mark is currently prosecuting securities fraud claims on behalf of institutional and individual investors against hedge funds that misrepresented the net asset value of investors' shares, against a company in the video rental market that allegedly provided investors with overly optimistic guidance, and against the parent of a leading shoe retailer which was acquired by its subsidiary without fully disclosing the terms of the transaction or reasons that the transaction was in the minority investors' best interest. In addition, Mark is participating in litigation brought against international air cargo carriers charged with conspiring to fix fuel

and security surcharges, and domestic manufacturers of air filters, OSB, flat glass and chocolate, also charged with price-fixing.

Mark successfully litigated a number of consumer fraud cases brought against insurance companies challenging the manner in which they calculated life insurance premiums. He also prosecuted a number of insider trading cases brought against company insiders who, in violation of Section 16(b) of the Securities Exchange Act, engaged in short swing trading. In addition, Mark participated in the prosecution of *In re AOL Time Warner Securities Litigation*, a massive securities fraud case that settled for \$2.5 billion.

He is a member of the Philadelphia Bar Association.

Mark has been awarded an AV Preeminent rating, the highest distinction, from the publishers of the Martindale-Hubbell directory.

He is admitted to practice in the Commonwealth of Pennsylvania.

### **Terri Goldstone, Of Counsel**

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*tgoldstone@labaton.com*

Terri Goldstone concentrates her practice on prosecuting complex securities litigations on behalf of institutional investors.

Prior to joining Labaton Sucharow, Terri worked as an associate at Schwartz Goldstone & Campisi LLP. During her time there, she litigated personal injury cases and was the liaison to union members injured in the course of their employment.

Terri began her career as an Assistant District Attorney at the Bronx County District Attorney's Office.

Terri received a J.D. from Emory University School of Law, and she earned a B.A., *cum laude*, in Economics and Pre-Law, from American University.

Terri is admitted to practice in the State of New York.

**Thomas G. Hoffman, Jr., Of Counsel**

*thoffman@labaton.com*

Thomas G. Hoffman, Jr. concentrates his practice on prosecuting complex securities fraud cases on behalf of institutional investors.

Currently, Thomas is actively involved in prosecuting *In re Goldman Sachs, Inc. Securities Litigation*. Most recently, he was part of the Labaton Sucharow team that recovered more than \$1 billion (subject to court approval) in the six-year litigation against American International Group, Inc.

Prior to joining Labaton Sucharow, Thomas served as a litigation associate at Latham & Watkins LLP, where he practiced complex commercial litigation in federal and state courts. While at Latham & Watkins, his areas of practice included audit defense and securities litigation.

Thomas received a J.D. from UCLA School of Law, where he was Editor-in-Chief of the *UCLA Entertainment Law Review*, and served as a Moot Court Executive Board Member. In addition, he was a judicial extern to the Honorable William J. Rea, United States District Court for the Central District of California. Thomas earned a B.F.A., with honors, from New York University.

Thomas is admitted to practice in the State of New York as well as before the United States District Courts for the Southern and Eastern Districts of New York.

**Richard T. Joffe, Of Counsel**

*rjoffe@labaton.com*

Richard Joffe's practice focuses on class action litigation, including securities fraud, antitrust and consumer fraud cases. Since joining the Firm, Rich has represented such varied clients as institutional purchasers of corporate bonds, Wisconsin dairy farmers, and consumers who alleged they were defrauded when they purchased annuities. He played a key role in



shareholders obtaining a \$303 million settlement of securities claims against General Motors and its outside auditor.

Prior to joining Labaton Sucharow, Rich was an associate at Gibson, Dunn & Crutcher LLP, where he played a key role in obtaining a dismissal of claims against Merrill Lynch & Co. and a dozen other of America's largest investment banks and brokerage firms, who, in *Friedman v. Salomon/Smith Barney, Inc.*, were alleged to have conspired to fix the prices of initial public offerings.

Rich also worked as an associate at Fried, Frank, Harris, Shriver & Jacobson where, among other things, in a case handled *pro bono*, he obtained a successful settlement for several older women who alleged they were victims of age and sex discrimination when they were selected for termination by New York City's Health and Hospitals Corporation during a city-wide reduction in force.

He co-authored "Protection Against Contribution and Indemnification Claims" in *Settlement Agreements in Commercial Disputes* (Aspen Law & Business, 2000).

Long before becoming a lawyer, Rich was a founding member of the internationally famous rock and roll group, Sha Na Na.

He is admitted to practice in the State of New York as well as before the United States Courts of Appeals for the Second, Third, Ninth and Eleventh Circuits, and the United States District Courts for the Southern and Eastern Districts of New York.

### **Barry M. Okun, Of Counsel**

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*bokun@labaton.com*

Barry M. Okun is a seasoned trial and appellate lawyer with more than 30 years' experience in a broad range of commercial litigation. Currently, Barry is actively involved in prosecuting *In re Goldman Sachs Group, Inc. Securities Litigation*. Most recently, he was part of the Labaton Sucharow team that recovered more than \$1 billion (subject to court approval)

in the six-year litigation against American International Group, Inc. Barry also played a key role representing the Successor Liquidating Trustee of Lipper Convertibles, L.P. and Lipper Fixed Income Fund, L.P., failed hedge funds, in actions against the Fund's former auditors, overdrawn limited partners and management team. He helped recover \$5.2 million from overdrawn limited partners and \$30 million from the Fund's former auditors.

Barry has litigated several leading commercial law cases, including the first case in which the United States Supreme Court ruled on issues relating to products liability. He has argued appeals before the United States Court of Appeals for the Second and Seventh Circuits and the Appellate Divisions of three out of the four judicial departments in New York State. Barry has appeared in numerous trial courts throughout the country.

He received a J.D., *cum laude*, from Boston University School of Law, where he was the Articles Editor of the *Law Review*. Barry earned a B.A., with a citation for academic distinction, in History from the State University of New York at Binghamton.

Barry has been awarded an AV Preeminent rating, the highest distinction, from the publishers of the Martindale-Hubbell directory.

He is admitted to practice in the State of New York as well as before the Supreme Court of the United States, the United States Courts of Appeals for the First, Second, Seventh and Eleventh Circuits, and the United States District Courts for the Southern and Eastern Districts of New York.

### **Paul J. Scarlato, Of Counsel**

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*pscarlato@labaton.com*

Paul J. Scarlato has over 22 years of experience litigating complex commercial matters, primarily in the prosecution of securities fraud and consumer fraud class actions and shareholder derivative actions.

Most recently, Paul was a member of the co-lead counsel team that secured a settlement (still subject to court approval) for shareholders in *In re Compellent Technologies, Inc. Shareholder Litigation*.

Currently, he is prosecuting *Arkansas Teacher Retirement System v. State Street Corp.*

Paul has litigated numerous cases on behalf of institutional and individual investors involving companies in a broad range of industries, many of which involved financial statement manipulation and accounting fraud. Paul was one of three lead attorneys for the class in *Kaufman v. Motorola, Inc.*, a securities-fraud class action case that recovered \$25 million for investors just weeks before trial and, was one of the lead counsel in *Seidman v. American Mobile Systems, Inc.*, a securities-fraud class action case that resulted in a favorable settlement for the class on the eve of trial. Paul also served as co-lead counsel in *In re Corel Corporation Securities Litigation*, and as class counsel in *In re AOL Time Warner Securities Litigation*, a securities fraud class action that recovered \$2.5 billion for investors.

Paul received a J.D. from the Delaware Law School of Widener University. After law school, Paul served as law clerk to Judge Nelson Diaz of the Court of Common Pleas of Philadelphia County, and Justice James McDermott of the Pennsylvania Supreme Court. Thereafter, he worked in the tax department of a "Big Six" accounting firm prior to entering private practice. Paul earned a B.A. in Accounting from Moravian College.

Paul has received a rating of AV Preeminent from the publishers of the Martindale-Hubbell directory.

He is admitted to practice in the State of New Jersey and the Commonwealth of Pennsylvania.

**Nicole M. Zeiss, Of Counsel**

*nzeiss@labaton.com*

Nicole M. Zeiss has 16 years of litigation experience. Nicole focuses her practice on negotiating and documenting complex class action settlements and obtaining the required court approval of the settlements, notice procedures and payments of attorneys' fees. She has expertise in analyzing the fairness and adequacy of the procedures used in class action settlements.

Nicole was part of the Labaton Sucharow team that successfully litigated the \$185 million settlement in *Bristol-Myers Squibb*. She also played a significant role in *In re Monster Worldwide, Inc. Securities Litigation* (\$47.5 million settlement). Nicole has also litigated on behalf of investors who have been damaged by fraud in the telecommunications, hedge fund and banking industries.

Prior to joining Labaton Sucharow, Nicole worked for MFY Legal Services, practicing in the area of poverty law. She also worked at Gaynor & Bass practicing general complex civil litigation, particularly representing the rights of freelance writers seeking copyright enforcement.

Nicole maintains a commitment to *pro bono* legal services by continuing to assist mentally ill clients in a variety of matters—from eviction proceedings to trust administration.

She received a J.D. from the Benjamin N. Cardozo School of Law, Yeshiva University. Nicole earned a B.A. in Philosophy from Barnard College.

Nicole is a member of the Association of the Bar of the City of New York.

She is admitted to practice in the State of New York as well as before the United States District Courts for the Southern and Eastern Districts of New York.

# EXHIBIT 5



1 Christopher Kim (Bar No. 082080)  
christopher.kim@limruger.com  
2 Lisa J. Yang (Bar No. 208971)  
lisa.yang@limruger.com  
3 LIM, RUGER & KIM, LLP  
1055 West Seventh Street, Suite 2800  
4 Los Angeles, California 90017-2554  
Telephone: (213) 955-9500  
5 Facsimile: (213) 955-9511

6 Thomas A. Dubbs (*Pro Hac Vice*)  
tdubbs@labaton.com  
7 James W. Johnson (*Pro Hac Vice*)  
jjohnson@labaton.com  
8 Richard T. Joffe (*Pro Hac Vice*)  
rjoffe@labaton.com  
9 LABATON SUCHAROW LLP  
140 Broadway  
10 New York, New York 10005  
Telephone: (212) 907-0700  
11 Facsimile: (212) 818-0477

Allyn Z. Lite (*Pro Hac Vice*)  
alite@litedepalma.com  
Bruce D. Greenberg (*Pro Hac Vice*)  
bgreenberg@litedepalma.com  
LITE DePALMA GREENBERG, LLC  
Two Gateway Center, 12th Floor  
Newark, New Jersey 07102  
Telephone: (973) 623-3000  
Facsimile: (973) 623-0858

12 *Attorneys for Lead Plaintiff, the State of New Jersey, Department of Treasury,*  
13 *Division of Investment, Plaintiff International Brotherhood of Electrical Workers,*  
*Local 103, The Norfolk County Retirement System and Lead Counsel for the Class*

14 Thomas Bienert, Jr.  
tbienert@bmkattorneys.com  
BIENERT, MILLER & KATZMAN  
15 903 Calle Amanecer, Suite 350  
San Clemente, CA 92673  
16 Telephone: (949) 369-3700  
17 Facsimile: (949) 369-3701

Robert S. Green  
rsg@classcounsel.com  
GREEN & NOBLIN, P.C.  
700 Larkspur Landing Circle, Suite 275  
Larkspur, CA 94939  
Telephone: (415) 477-6700  
Facsimile: (415) 477-6710

*Attorneys for Plaintiff Mark Ripperda*

18  
19 **UNITED STATES DISTRICT COURT**  
20 **CENTRAL DISTRICT OF CALIFORNIA**  
21 **SOUTHERN DIVISION**

22 IN RE STEC, INC. SECURITIES  
LITIGATION

No. SACV 09-01304-JVS (MLGx)

23  
24 This Document Relates To:  
25 ALL ACTIONS

26 **DECLARATION OF ALLYN Z. LITE**  
27 **IN SUPPORT OF CLASS**  
28 **REPRESENTATIVES' COUNSEL'S**  
**APPLICATION FOR ATTORNEYS'**  
**FEES AND REIMBURSEMENT OF**  
**LITIGATION EXPENSES**

Hearing Date: May 20, 2013

Time: 1:30 p.m.

Judge: Honorable James V. Selna

Courtroom: 10C

1 Allyn Z. Lite, Esq., declares as follows pursuant to 28 U.S.C. § 1746:

2 1. I am a member of the law firm of Lite DePalma Greenberg, LLC, one  
3 of the Co-Lead Counsel in this matter. I submit this declaration in support of Co-  
4 Lead Counsel's motion for an award of attorneys' fees and payment of litigation  
5 expenses in the above-captioned action (the "Action") from inception through  
6 March 25, 2013 (the "Time Period").

7 2. My firm, which served as Co-Lead Counsel in the Action, was  
8 involved in all aspects of the litigation and settlement of the Action as set forth in  
9 the Declaration Of Thomas A. Dubbs In Support Of Class Representatives' Motion  
10 For Final Approval Of The Proposed Class Action Settlement, Plan Of Allocation  
11 And Award Of Attorneys' Fees And Expenses.

12 3. The principal tasks undertaken by my firm included all the functions  
13 of Co-Lead Counsel, including (in summary) preparation of pleadings, legal and  
14 factual research, preparation of briefs and other motion papers, negotiating a  
15 protective order, reviewing documents, and otherwise participating in discovery,  
16 appearing at all court events, attending all mediation sessions, and coordinating  
17 and interfacing with representatives of Lead Plaintiff.

18 4. The schedule attached hereto as Exhibit A is a summary indicating the  
19 amount of time spent by each attorney and professional support staff of my firm  
20 who was involved in the prosecution of the Action, and the lodestar calculation  
21 based on my firm's current billing rates. For personnel who are no longer  
22 employed by my firm, the lodestar calculation is based upon the billing rates for  
23 such personnel in his or her final year of employment by my firm. The schedule  
24 was prepared from contemporaneous daily time records regularly prepared and  
25 maintained by my firm, which are available at the request of the Court. Time  
26 expended in preparing this application for fees and payment of expenses has not  
27 been included in this request.  
28

1           5.     The hourly rates for the attorneys and professional support staff in my  
2 firm included in Exhibit A are the same as the regular rates charged for their  
3 services in non-contingent matters and/or which have been accepted in other  
4 securities or shareholder litigations.

5           6.     The total number of hours expended on this litigation by my firm  
6 during the Time Period is 3,967.8 hours. The total lodestar for my firm for those  
7 hours is \$2,254,357.50.

8           7.     My firm's lodestar figures are based upon the firm's billing rates,  
9 which rates do not include charges for expenses items. Expense items are billed  
10 separately and such charges are not duplicated in my firm's billing rates.

11          8.     As detailed in Exhibit B, my firm has incurred a total of \$323,865.65  
12 in unreimbursed expenses in connection with the prosecution of the Action. The  
13 expenses are reflected on the books and records of my firm. These books and  
14 records are prepared from expense vouchers, check records and other source  
15 materials and are an accurate record of the expenses incurred.

16          9.     With respect to the standing of my firm, attached hereto as Exhibit C  
17 is a brief biography of my firm as well as biographies of the firm's partners and of  
18 counsels.

19           I declare under penalty of perjury that the foregoing is true and correct.

20 Executed on April 5, 2013.



Allyn Z. Lite

# EXHIBIT A

**EXHIBIT A**

**IN RE STEC, INC. SECURITIES LITIGATION**

**LODESTAR REPORT**

**FIRM: Lite DePalma Greenberg, LLC**

**REPORTING PERIOD: INCEPTION THROUGH MARCH 25, 2013**

<b>PROFESSIONAL</b>	<b>STATUS*</b>	<b>HOURLY RATE</b>	<b>TOTAL HOURS TO DATE</b>	<b>TOTAL LODESTAR TO DATE</b>
Allyn Z. Lite	(P)	\$700	1008.7	\$706,090.00
Bruce D. Greenberg	(P)	\$700	865.7	\$605,990.00
Joseph J. DePalma	(P)	\$700	27.1	\$18,970.00
Katrina Carroll	(P)	\$625	420.8	\$263,000.00
Mayra V. Tarantino	(OC)	\$625	14.3	\$8,937.50
Albert G. Powell	(STA)	\$400	1409.8	\$563,920.00
Marv Jean Pizza	(STA)	\$400	149.6	\$59,840.00
Susana Cruz Hodge	(A)	\$500	15.7	\$7,850.00
Marissa L. Quigley	(A)	\$500	14.0	\$7,000.00
Danielle Y. Alvarez	(A)	\$350	26.7	\$9,345.00
Elvira Palomino	(PL)	\$225	8.3	\$1,867.50
Eric M. Henlev	(PL)	\$225	3.8	\$855.00
Amina B. Lee	(PL)	\$225	1.3	\$292.50
Alvaro Hasani	(LC)	\$200	2.0	\$400.00
<b>TOTAL</b>			<b>3967.8</b>	<b>\$2,254,357.50</b>

Partner (P)  
 Of Counsel (OC)  
 Short Term Attorney (STA)  
 Associate (A)  
 Paralegal (PL)  
 Law Clerk (LC)



# EXHIBIT B

**EXHIBIT B**

IN RE STEC, INC. SECURITIES LITIGATION

EXPENSE REPORT

FIRM: Lite DePalma Greenberg, LLC

REPORTING PERIOD: INCEPTION THROUGH MARCH 25, 2013

EXPENSE	TOTAL AMOUNT
Duplicating	\$422.86
Postage	\$.78
Telephone / Fax	
Messengers	
Filing Fees	\$390.00
Transcripts	
Computer Research Fees	\$71.11
Overnight Delivery Services	\$135.53
Expert Fees	
Transportation/Meals/Lodging	\$21,701.88
Court Reporters	
Contribution to Litigation Fund	\$301,143.49
<b>TOTAL</b>	<b>\$323,865.65</b>

# EXHIBIT C

**EXHIBIT C**

**FIRM BIOGRAPHY**

**LITE DEPALMA GREENBERG, LLC**

**APRIL 2013**

Lite DePalma Greenberg, LLC is a general practice law firm, with three offices in Newark, Chicago and Philadelphia. The firm specializes in commercial and complex litigation with a concentration in class action matters in the areas of securities, antitrust, consumer fraud and insurance sales practices. More detail about the firm and its attorneys appear on its Web site, [www.litedepalma.com](http://www.litedepalma.com).

**MEMBERS OF THE FIRM**

The following are brief sketches of the backgrounds of Lite DePalma Greenberg, LLC members:

**ALLYN Z. LITE** (Newark Office) specializes in class action and other complex commercial litigation. He was designated by the Judges of the United States District Court for the District of New Jersey as Clerk of that Court from 1982 to 1986. While in that position, Mr. Lite created the Court's alternative dispute resolution program and served on and was Reporter for the committee that drafted the current Local Rules of the United States District Court for New Jersey. He was a member of the committee that drafted the new Rules of the United States Bankruptcy Court for the District of New Jersey, and participated as one of ten original members of the United States District Court Lawyer's Advisory Committee, on which he served for 11 years.

Mr. Lite is the author of *New Jersey Federal Practice Rules* (Gann Law Books), a commentary and annotations to the United States District Court's Local Rules, published annually, and cited frequently by the judges of that Court. Among his other publications is his co-authorship, with Bruce D. Greenberg, of the chapter entitled "Class Action Litigation" in *New Jersey Federal Civil Procedure* (NJLJ Books 1<sup>st</sup> ed. 1999, 2d ed. 2010, and annual supplements).

Mr. Lite has more than 20 years of class action litigation experience, including serving as an expert on attorneys' fees. He has served in an active role as Lead, Co-Lead, or Liaison Counsel in over 100 cases, including major securities, derivative, antitrust, consumer fraud, and products liability matters, in New Jersey federal and state courts and in other jurisdictions. In three of those cases, Mr. Lite and LDG were Co-Lead Counsel for the State of New Jersey, Division of Investment, as Lead Plaintiff: *Reginald Newton v. Tenet Healthcare Corp.*, (Tenet Healthcare Securities Litigation), cv-02-8462-RSWL (C.D. Cal.) (\$281.5 million settlement with all defendants); *In re Motorola Securities Litig.*, Civ. No. 03-C-287 (N.D. Ill.), reported opinions, 505 F. Supp. 2d 501 (N.D. Ill. 2007), 2004 WL 2032769 (N.D. Ill. Sept. 9, 2004) (\$193 million settlement reached three business days before trial); *State of New Jersey and its Division of Investment v. Sprint Corp.*, Civil No. 03-2071-JWL (D. Kan.), reported opinions, 2008 WL 191780 (D. Kan. Jan. 23, 2008), 2004 WL 1960130 (D. Kan. Sept. 3, 2004), 314 F. Supp. 2d 1119 (D. Kan. 2004).

Other significant class action cases in which Mr. Lite has played an active role include *In re Bristol-Myers Squibb Securities Litigation*, Civil Action No. 00-1190(SRC), reported opinions, 2005 WL 2007004 (D.N.J. Aug. 17, 2005), 205 F.R.D. 437 (D.N.J. 2002) (Liaison Counsel) (\$185 million settlement after defeating defendants' summary judgment motion and



motions to exclude expert testimony); *In re Electrical Carbon Products Antitrust Litig.*, Master File No. 03-2182(JBS), reported opinion, 447 F. Supp. 2d 389 (D.N.J. 2006) (Co-Liaison Counsel) (\$21.9 million settlement); *In re Nazi Era Cases Against German Defendants Litigation*, Civil Action No. 98-4104(WGB), reported opinion, 198 F.R.D. 429 (D.N.J. 2000) (Liaison Counsel in 60 actions filed throughout the United States and consolidated in the District of New Jersey; \$5.2 billion settlement); *In re Prudential Insurance Company of America Sales Practices Litigation*, Master File No. 95-4704 (AMW), reported opinions, 962 F. Supp. 450 (D.N.J. 1997), *aff'd as to settlement approval*, 148 F.3d 283 (3d Cir. 1998) (Liaison Counsel) (settlement worth over \$4 billion); *Chin v. Chrysler Corp.*, Civil Action No. 95-5569 (JCL), reported opinion, 461 F. Supp.2d 279 (D.N.J. 2006) (Co-Lead Counsel) (catalyst for \$53 million in relief to class); *Weiss v. Mercedes-Benz of North America*, Master File No. 93-96 (JWB), reported opinion, 899 F. Supp. 1297 (D.N.J.), *aff'd*, 66 F.3d 314 (3d Cir. 1995) (\$75 million settlement); *Princeton Economics Group, Inc. v. American Telephone and Telegraph Co.*, Docket No. L-3221-91, Superior Court of New Jersey, Law Division (Mercer County) (Lead Counsel) (\$95 million settlement); *Garcia v. General Motors*, Docket No. L-4394-95, Superior Court of New Jersey, Law Division, Bergen County (Liaison Counsel) (\$25 million settlement); *Angelino v. DaimlerChrysler Corp.*, Case No. GIC 765729, Superior Court of California, San Diego Division.

In other areas of his practice in complex litigation, Mr. Lite established and coordinated procedures for the nationwide defense of a major manufacturer of safety products in asbestos litigation, and handled the defense of environmental matters involving discharge of petrochemicals with Federal EPA and the U.S. Coast Guard. Mr. Lite has worked for many

years alongside some of the nation's top intellectual property firms, serving as New Jersey counsel in major patent and trademark litigation, particularly in the pharmaceutical industry.

Mr. Lite served on the Lawyers' Advisory Committee for the United States Court of Appeals for the Third Circuit from 1992 through 1994, and as a member of the Third Circuit Task Force on Equal Treatment in the Courts, Gender Commission. He also chaired the United States District Court's Merit Selection Panel to recommend candidates for a newly authorized United States Magistrate position assigned to Newark, New Jersey. In addition to many years of service on the Board of Trustees of the Association of the Federal Bar of New Jersey, Mr. Lite was co-chair for four years of the New Jersey State Bar Association's Class Action Committee.

Mr. Lite was selected as a mediator for the United States District Court pursuant to that Court's plan under the Civil Justice Improvements Act of 1990. As a mediator, Mr. Lite participated in environmental litigation involving the nation's largest Superfund site, and a multi-plaintiff public sector discrimination lawsuit, among others.

Mr. Lite is a 1978 graduate of the Seton Hall University School of Law. He was named as a New Jersey Super Lawyer in the May 2005, May 2006, May 2007, May 2008, May 2009, May 2010, May 2011 and May 2012 issues of *New Jersey Monthly* magazine. He was also named to ALM's 2012 "New Jersey Top Rated Lawyers," listed under "Intellectual Property."

**JOSEPH J. DEPALMA** (Newark Office), the Firm's Managing Member, has a vast breadth of experience in many types of class action cases involving securities, ERISA, antitrust, product liability and consumer fraud. Mr. DePalma also handles shareholder derivative litigation, commercial litigation and transactional matters for the firm's corporate clients. He has

a Masters Degree in Business Administration and a J.D. degree from Seton Hall University School of Law.

Mr. DePalma and LDG have served as Co-Lead Counsel for the State of New Jersey, Division of Investment, as Lead Plaintiff in two prominent class actions that have resulted in significant recoveries: *Reginald Newton v. Tenet Healthcare Corp.*, (Tenet Healthcare Securities Litigation), cv-02-8462-RSWL (C.D. Cal.) (\$281.5 million settlement); *In re Motorola Securities Litig.*, Civ. No. 03-C-287 (N.D. Ill.) (\$193 million settlement reached three business days before trial).

Mr. DePalma has also played an active role in obtaining settlements in numerous recognized class actions comprising some of the largest settlements in the nation. Included in such cases are: *In re Prudential Ins. Co. of America Sales Practices Litig.*, 148 F.3d 283 (3d Cir. 1998) (over \$4 billion paid out in largest insurance sales practices settlement ever) (Liaison Counsel); *In re Lucent Technologies Securities Litig.*, Civil Action No. 00cv621(AJL) (D.N.J.), reported opinions, 2003 WL 25488395 (D.N.J. Dec. 15 2003), 2002 WL 32815233 (D.N.J. July 16, 2002), 217 F. Supp. 2d 529 (D.N.J. 2002), 2002 WL 32818345 (D.N.J., May 9, 2002), 221 F. Supp. 2d 463 (D.N.J. 2001), 221 F. Supp. 2d 472 (D.N.J. 2001)(approximate \$610 million settlement)(Liaison Counsel); *Galanti v. Goodyear*, Civil Action No. 03-209(SRC)(D.N.J.)( \$300 million product liability settlement)(Liaison Counsel); *In re Aremissoft Corp. Securities Litig.*, Civil Action No. 01-CV-2486 (JAP) (D.N.J.), reported opinion, 210 F.R.D. 109 (D.N.J. 2002)(over \$250 million recovered to date; case is ongoing)(Liaison Counsel); *In re Royal Dutch/Shell Transport Litigation*, Civil Action No. 04-1398(JWB)(D.N.J.), reported opinions, 404 F. Supp. 2d 605 (D.N.J. 2005), 380 F. Supp.2d 509 (D.N.J. 2005) (\$90 million ERISA settlement, the largest

settlement ever under ERISA) (Liaison Counsel); *P. Schoenfeld Asset Management, LLC v. Cendant Corp.*, Civil Action No. 98-4734(WHW) (\$26 million settlement after precedent-setting decision in same case, *Semerenco v. Cendant Corp.*, 223 F.3d 165 (3d Cir. 2000))(Liaison Counsel); *Steiner v. MedQuist*, Civil Action No. 04-CV-05487-JBS (D.N.J.), reported opinion, 2006 WL 2827740 (D.N.J. Sept. 29, 2006)(\$7.75 million)(Liaison Counsel); *In re Tellium Securities Litig.*, No. 02-CV-5878 (FLW) (D.N.J.), reported opinion, 2005 WL 1677467 (D.N.J. June 30, 2005)(\$5.5 million)(Liaison Counsel), and; *In re NUI Securities Litig.*, Civil Action No. 02-CV-5220 (MLC)(D.N.J.), reported opinion, 314 F. Supp. 2d 388 (D.N.J. 2004) (\$3.5 million)(liaison counsel).

Mr. DePalma's years of experience also include the following major matters: *In re Computron Software, Inc. Securities Litig.*, Civil Action No. 96-1911 (AJL)(approximate \$15 million settlement) (Liaison Counsel); *In re USA Detergents, Inc. Securities Litigation*, Master File No. 97-2459 (MTB), District of New Jersey (\$10 million settlement)(Liaison Counsel); *In re: The Children's Place Securities Litig.*, Master File No. 97-5021 (JCL), District of New Jersey, reported opinion, 1998 WL 35167284 (D.N.J. Sept. 4, 1998)(\$1.7 million settlement) (Liaison Counsel); *Arthur Fields, et al. v. Biomatrix, Inc., et al.*, Civil Action No. 00-CV-3541(WGB), District of New Jersey (\$2.45 million settlement) (Liaison Counsel), and *In re Atlas Mining Securities Litig.*; Civil Action No. 07-428-N-EJL (D. Idaho) (\$1.25 million) (Lead Counsel).

Some of Mr. DePalma's recent court approved class action and mass action settlements, all approved in 2010, involved product liability, takeover and ERISA matters. In a complex MDL mass action proceeding involving the illegal harvesting of body parts and the untested

surgical implanting of those parts, Mr. DePalma, along with a team of nationally recognized colleagues, achieved a global settlement in a case captioned *In re Human Tissue Product Liability Litig.*, (D.N.J.). Mr. DePalma achieved a settlement on behalf of shareholders in tender offer litigation, captioned *In re Alparma Shareholder Litigation*, (N.J. Superior Ct.). In a complex ERISA matter involving two appeals to the Third Circuit, Mr. DePalma obtained a settlement of \$8.5 million on behalf of a class of participants in a retirement plan alleging breaches of fiduciary duties. *In re Schering-Plough Corporation ERISA Litigation*, (D.N.J.).

Mr. DePalma has also achieved excellent results for clients in other areas of litigation. Among other things, he won large settlements for a condominium association on construction defect and legal malpractice claims, and has successfully handled securities arbitrations as well.

Mr. DePalma has lectured in the area of real estate law and in complex commercial litigation. He has also served as a member of the New Jersey Supreme Court's District Ethics Committee.

Mr. DePalma was named as a New Jersey Super Lawyer in the May 2007, May 2008, May 2009, May 2010, May 2011 and May 2012 issues of *New Jersey Monthly* magazine. He was also named to ALM's 2012 "New Jersey Top Rated Lawyers," listed under "Business & Commercial."

**BRUCE D. GREENBERG** (Newark Office) has served as Co-Lead Counsel and Liaison Counsel in major securities, antitrust and consumer fraud class action cases. He also handles sophisticated appellate, commercial and real estate litigation.



A number of Mr. Greenberg's class action cases have resulted in significant settlements. Among his federal court class action successes are a settlement worth more than \$750 million for a nationwide class in *Varacallo v. Massachusetts Mutual Life Ins. Co.*, 226 F.R.D. 207 (D.N.J. 2005) (Co-Lead Counsel), an insurance sales practices case, a highly valuable nationwide settlement in *In re Samsung DLP Television Class Action Litigation*, Civil Action No. 07-2141(GEB) (MCA), and partial settlements totaling over \$200 million for a nationwide class in the multidistrict antitrust litigation captioned *In re Insurance Brokerage Antitrust Litigation*, MDL No. 1663, Civil Action No. 04-5184(FSH) (District of New Jersey) (Liaison Counsel). His efforts as Co-Lead Counsel for certified classes in the United States District Court for the Western District of Pennsylvania (*Zeno v. Ford Motor Co.*, 238 F.R.D. 173 (W.D. Pa. 2006), and 480 F. Supp. 2d 825 (W.D. Pa. 2007)) and in the Superior Court of New Jersey, led to a four-state settlement that afforded full benefit of the bargain relief to consumers in *Pedersen v. Ford Motor Co.*, No. GIC 821797 (Cal. Super Ct.). Mr. Greenberg was also instrumental in *In re Motorola Securities Litig.*, Civ. No. 03-C-287 (N.D. Ill.), where LDG, as Co-Lead Counsel, achieved a \$193 million settlement just three business days before trial was to begin, and in *Reginald Newton v. Tenet Healthcare Corp.*, (Tenet Healthcare Securities Litigation), cv-02-8462-RSWL (C.D. Cal.), where LDG, again as Co-Lead Counsel, won a settlement for \$281.5 million.

Mr. Greenberg's New Jersey state court class actions include a \$100 million settlement for a nationwide consumer class in *Friedman v. Samsung Electronics America, Inc.*, Docket No. BER-L-7250-01 (Liaison Counsel), a comparably sized settlement for a nationwide consumer class in *Summer v. Toshiba America Consumer Products, Inc.*, Docket No. BER-L-7248-01

(Liaison Counsel), another nationwide consumer class settlement in *Barrood v. IBM*, Docket No. MER-L-843-98, that afforded class members full benefit of the bargain relief, (Co-Lead Counsel), a settlement for a New Jersey consumer class worth over \$7 million in *Delaney v. Enterprise Rent-A-Car Co.*, Docket No. OCN-L-1160-01 (Co-Lead Counsel), and a \$4.5 million settlement for a New Jersey consumer class in *DeLima v. Exxon*, Docket No. HUD-L-8969-96 (Co-Lead Counsel).

A 1982 graduate of the Columbia University School of Law, Mr. Greenberg clerked for Justice Daniel J. O'Hern of the Supreme Court of New Jersey for the 1982-83 Term. Before joining the firm, Mr. Greenberg was a partner at Greenbaum Rowe Smith & Davis, LLP, Woodbridge, New Jersey, one of New Jersey's largest law firms.

Mr. Greenberg appears regularly in the appellate courts. He has argued eight cases in the Supreme Court of New Jersey, two cases in the Third Circuit Court of Appeals, and several dozen in New Jersey's Appellate Division. Nearly 40 of his cases have been published, including significant cases on class actions, zoning and land use, restrictive employment covenants, real estate brokerage, and other topics.

Among his many other publications, Mr. Greenberg is the author of the chapter entitled "Supreme Court Review" in *New Jersey Appellate Practice Handbook* (New Jersey ICLE 2011 ed.), co-author, with Allyn Z. Lite, of the chapter entitled "Class Action Litigation" in *New Jersey Federal Civil Procedure* (NJLJ Books (1<sup>st</sup> ed. 1999, 2d ed. 2010, and annual supplements)), and author of "Keeping the Flies Out of the Ointment: Restricting Objectors to Class Action Settlements," 84 St. John's L. Rev. 949 (2010). Law review articles that he has written have been cited with approval by the Supreme Court of New Jersey and Appellate

Division. Mr. Greenberg has lectured on class actions for both New Jersey and Pennsylvania CLE, and has served as an expert witness on attorneys' fees in class actions. He has also spoken on civil trial preparation, appellate practice and other subjects.

Mr. Greenberg belongs to the New Jersey State Bar Association, and was Chair of the Association's Appellate Practice Committee from 2004-2006. He is currently Co-Chair of the NJSBA's Class Actions Committee, a position he has held since 2008. Mr. Greenberg is also a member of the Land Use Law Section, and Securities Litigation and Regulatory Enforcement Committee. From 1991-2006, Mr. Greenberg was a member of the Supreme Court of New Jersey Committee on Character. He was also one of the founding members, and a past Chairman, of the New Jersey Law Firm Group, a consortium of major law firms to advance hiring of minority lawyers.

Mr. Greenberg was named as a New Jersey Super Lawyer in the May 2005, May 2006, May 2007, May 2008, May 2009, May 2010, May 2011 and May 2012 issues of *New Jersey Monthly* magazine. He was also named to ALM's 2012 "New Jersey Top Rated Lawyers," listed under "Commercial Litigation."

**MICHAEL E. PATUNAS** (Newark Office) is an experienced litigator with broad experience in many types of complex civil litigation, including a major concentration in intellectual property litigation, commercial, class action, business torts, negligence, land use and real estate matters. Mr. Patunas has been involved extensively in many substantial litigations in the New Jersey state and federal courts.

Mr. Patunas also has substantial experience in the areas of real estate and land use law,

and has assisted many individual and corporate clients in acquiring real estate by lease or purchase and prosecuting applications for development approvals before numerous local boards, as well as the New Jersey Meadowlands Commission. Mr. Patunas has also worked closely with major real estate developers designated as redevelopers of blighted properties by municipalities and the New Jersey Meadowlands Commission. He has served as counsel to the Zoning Board of Adjustment of the Borough of Moonachie.

In the corporate area, Mr. Patunas has assisted clients in forming corporations, limited liability companies and other entities for various purposes, including the acquisition of existing businesses. In this role, he has closed multi-million dollar purchases of such businesses as automobile dealerships and manufacturing operations. Mr. Patunas has also represented corporate clients in drafting shareholder agreements, buy-sell agreements, restrictive covenants and other documents necessary to the proper functioning of closely-held New Jersey businesses.

Mr. Patunas was designated a Super Lawyer by *New Jersey Monthly* magazine in May 2010.

**VICTOR A. AFANADOR** (Newark Office) handles litigation and trials of civil and criminal cases. His experience includes public entity tort liability defense, employment related defense of CEPA and LAD matters, police related state and federal civil rights defense, condemnation and redevelopment law, complex commercial litigation, and criminal defense. In addition, Mr. Afanador served from September 1999 through May of 2005 as Deputy Director of Law for the City of Perth Amboy. In that capacity, he provided counsel to the Mayor, the City Council, and City department directors on legal matters.

Mr. Afanador has successfully tried to verdict jury and bench trials in civil rights and redevelopment law matters. He has also tried public entity employee termination hearings before the Office of Administrative Law and numerous matters of many types in Municipal Court. He also litigated and managed the condemnation of sixteen properties in a single municipality.

In addition to his trial work, Mr. Afanador has argued before the Superior Court of New Jersey, Appellate Division. His published opinions include *Deegan v. Perth Amboy Redevelopment Agency*, 374 N.J. Super. 80 (App. Div. 2005). Mr. Afanador has also applied his investigative skills in the class action area. He interviewed Spanish-speaking employees and prepared a report for the Court as part of the firm's responsibilities as Class Administrator for an employment discrimination class action.

Mr. Afanador clerked for Judges Mathias E. Rodriguez and Frederick P. DeVesa, Superior Court of New Jersey, Law Division Criminal Part, in Middlesex County from 1998-1999.

Mr. Afanador was appointed by the Essex County Executive in September of 2005 to serve as a Commissioner on the Essex County Board of Public Utilities. He is a member of the New Jersey State Bar Association, The Association of the Federal Bar of the State of New Jersey, Seton Hall University School of Law Alumni Association, the Essex County Bar Association, and the Hispanic Bar Association of New Jersey. He is a 2003 Graduate of the Leadership Newark Fellowship Program and has served on the African Globe Theatreworks Board of Directors, a professional theater company based in Newark, New Jersey.

Mr. Afanador was designated a Rising Star in the May 2006, May 2007, May 2008, May 2009, May 2010 and May 2011 issues of *New Jersey Monthly* magazine. He was also named to

the “40 Under 40” issue by the New Jersey Law Journal in 2010.

**KATRINA CARROLL** (Chicago Office), a member of the firm based in the firm’s Chicago office, has been actively involved in many of the firm's class actions, most prominently in the areas of securities, ERISA and anti-trust. Her successes at LDG have included *In re Motorola Securities Litigation*, Civ. No. 03-C-287 (N.D. Ill.), where LDG, as Co-Lead Counsel, achieved a \$193 million settlement just three business days before trial was to begin, and in *Reginald Newton v. Tenet Healthcare Corp.*, (Tenet Healthcare Securities Litigation), cv-02-8462-RSWL (C.D. Cal.), where LDG, again as Co-Lead Counsel, won a settlement of \$281.5 million.

Prior to re-joining LDG in 2007, Ms. Carroll worked in the class action group of Much Shelist Freed Deneberg Ament & Rubenstein, P.C., once known as Chicago’s premier class action firm. While at Much Shelist, Ms. Carroll concentrated her work on securities fraud class actions and derivative actions, and played a litigation role on the majority of that firm’s securities cases, including those in which the firm served in lead counsel positions. Such matters included the following class actions: *In re Hollinger International, Inc. Securities Litigation*, No. 04-c-834 (N.D. Ill.); *Ong v. Sears, Roebuck & Co.*, No. 03-C-4142 (N.D. Ill.), and *In re Sara Lee Corp. Securities Litigation*, No. 03-CV-3202 (N.D. Ill.).

Ms. Carroll has significant experience in all phases of other complex litigation and has worked on or managed a number of matters involving products and securities in industries as diverse as automobiles, chemicals, pharmaceuticals, software and technology. Outside of litigation, Ms. Carroll has also represented individuals, privately owned businesses and Fortune



500 clients before local, state and federal governments and enforcement agencies in a number of areas, helping clients secure temporary restraining orders and injunctions, structure entities, develop and document corporate resolutions, comply with securities-reporting requirements, and negotiate licensing agreements.

Ms. Carroll is a member of the American Bar Association and a former member of New Jersey's John C. Lifland American Inn of Court.

**MAYRA VELEZ TARANTINO** (Newark Office) as with the others, over 14 years of experience litigating complex commercial matters, including cases involving intellectual property disputes. Ms. Tarantino is also actively involved in the firm's class action practice. Several of the class action cases in which Ms. Tarantino litigated were resolved through favorable settlements, including *In re Samsung DLP Television Class Action Litigation*, Civil Action No. 07-2141(GEB) (MCA), and *In re Staples Inc. Wage and Hour Employment Practice Litigation*, Civil Action No. 08-5746 (KSH) (PS).

Prior to joining LDG, Ms. Tarantino was an associate with an international law firm for seven years. While continuing to litigate complex commercial matters, Ms. Tarantino expanded her practice into the energy field, drafting and negotiating various agreements for electric utility clients, including interconnection, power purchase, and parallel operation agreements. For example, Ms. Tarantino ensured a stable power supply for a major public utility by negotiating a 15-year power purchase agreement following the sale of a \$380 million nuclear power plant.

Ms. Tarantino also served as Law Clerk to Judge W. Hunt Dumont, Superior Court of New Jersey, Law Division, Civil Part, Passaic County in 1998-1999, and Magistrate Judge John

J. Hughes, United States District Court, District of New Jersey, 1999-2000.

Ms. Tarantino is a member of the New Jersey Federal Bar Association, the Hispanic National Bar Association, and the Hispanic Bar Association of New Jersey.

## **BIOGRAPHIES OF LDG ATTORNEYS**

### **MEMBERS OF THE FIRM**



**ALLYN Z. LITE** (Newark Office), born Detroit, Michigan, October 18, 1943. Admitted to bar, 1979, New Jersey, U.S. District Court, District of New Jersey and U.S. Court of Appeals, Third Circuit; 1980, U.S. Tax Court; 1983, U.S. District Court, Southern and Eastern Districts of New York; 1987, U.S. Supreme Court; 1998, U.S. District Court, Eastern District of Michigan. Education: University of Michigan (B.S., 1966); Rutgers University (M.F.A., 1968); Seton Hall Law School (J.D., cum laude, 1978). Member, Federal Court Clerks Association, 1981-1985. Author, *Another Attempt to Heal the Wounds of the Holocaust: 27 Human Rights No. 2*, (American Bar Association Spring 2000), *New Jersey Federal Practice Rules* (Gann Law Books, updated annually since 1991), "Class Action Litigation," Chapter 9 in *New Jersey Federal Civil Procedure* (New Jersey Law Journal Books updated annually since 1999) (with Bruce D. Greenberg); "Class Actions," *Federal Civil Practice Handbook* (N.J.ICLE 1992), "The Preaccusation Delay Dilemma," 10 *Seton Hall Review* 538 (1980). Adjunct Professor, Seton

Hall Law School, 1980-1984; New York Law School, 1984-1986. Lecturer, Federal Judicial Center, 1982-1985. Law Clerk, Hon. H. Curtis Meanor, U.S. District Court Judge, District of New Jersey, 1978-1979. Executive Assistant to Hon. Clarkson S. Fisher, Chief Judge, District of New Jersey, 1981-1982. Clerk of U.S. District Court, District of New Jersey, 1982-1986. Certified Mediator, U.S. District Court, District of New Jersey. Member: U.S. District Court Speedy Trial Planning Group, 1979; U.S. District Court Lawyers Advisory Committee, 1984-1995; U.S. Bankruptcy Court Committee on Local Rules, 1986; Third Circuit Automation Committee, 1984-1986; U.S. District Court Bicentennial Committee, 1985-1988. Trustee, U.S. District Court Historical Society, 1986-1997. Member, New Jersey Supreme Court District Ethics Committee, 1988-1991, Chair-District V Ethics Committee, 1990-1991. Member: Essex County, New Jersey State (Member, Section on Federal Practice and Procedure; Committee on Securities Regulation and Litigation; Co-Chair, Committee on Class Action Litigation 2003-2006) and American (Member, Section on Science and Technology, Committee on Technology and Court Systems) Bar Associations; Association of the Federal Bar of New Jersey (Member, 1984; Vice-President, 1985-2007). Selected reported opinions: *Gross v. German Foundation Industrial Initiative*, 456 F.3d 363 (3d Cir. 2006); *Yang v. Odom*, 392 F.3d 97 (3d Cir. 2004); *Kos Pharmaceuticals v. Andrx Corp.*, 369 F.3d 700 (3d Cir. 2004); *In re Prudential Ins. Co. of America Sales Practices Litig.*, 278 F.3d 175 (3d Cir. 2002); *In re Prudential Ins. Co. of America Sales Practices Litig.*, 148 F.3d 283 (3d Cir. 1998); *Aventis Pharmaceuticals v. Barr Laboratories*, 335 F. Supp. 2d 558 (D.N.J. 2004); *In re Electrical Carbon Products Antitrust Litig.*, 447 F. Supp. 2d 389 (D.N.J. 2006); *Varacallo v. Mass. Mut. Ins. Co.*, 226 F.R.D. 207 (D.N.J. 2005); *New Jersey v. Sprint Corp.*, 314 F. Supp. 2d 1119 (D. Kan. 2004); *In re Bristol-*

*Myers Squibb Securities Litig.*, 205 F.R.D. 437 (D.N.J. 2002); *In re Nazi Era Cases Against German Defendants Litig.*, 198 F.R.D. 429 (D.N.J. 2000); *Weiss v. Mercedes Benz of North America, Inc.*, 899 F. Supp. 1297 (D.N.J.), aff'd, 66 F.3d 314 (3d Cir. 1995); *Leon v. Rite Aid Corp.*, 340 N.J. Super. 462 (App. Div. 2001). Federal Practice; Class Actions; Complex Commercial Litigation.



**JOSEPH J. DEPALMA** (Newark Office), born Newark, New Jersey, June 29, 1956. Admitted to bar, 1982, New Jersey and U.S. District Court, District of New Jersey; 1984, U.S. Court of Appeals, Third Circuit, 1986; U.S. Court of Appeals, Sixth Circuit, 2010; U.S. Supreme Court, 1986. Education: Seton Hall University (B.S., 1978; J.D., cum laude, 1982; M.B.A., 1982). Lecturer: "Real Estate Law in New Jersey," National Business Institute. Lecturer: "Complex Commercial Litigation" NJ Institute for Continuing Legal Education. Member: New Jersey State Bar Association (Member, Committee on Class Actions) and American Bar Association (Member, Antitrust Section). Selected reported opinions: *In re Schering ERISA Litig.*, 420 F.3d 231 (3d Cir. 2005); *Semerenko v. Cendant Corp.*, 223 F.3d 165 (3d Cir. 2000); *In re Aremissoft Corp. Securities Litig.*, 210 F.R.D. 109 (D.N.J. 2002); *In re Computron Software, Inc. Securities Litig.*, 6 F. Supp. 2d 313 (D.N.J. 1998); *Brosious v. Children's Place Retail Stores*, 189 F.R.D. 138 (D.N.J. 1998). Class Actions; Complex Commercial Litigation.



**BRUCE D. GREENBERG** (Newark Office), born Newark, New Jersey, April 8, 1957. Admitted to bar, 1982, New Jersey and U.S. District Court, District of New Jersey; 1999, United States Court of Appeals for the Third Circuit; 2010, United States Supreme Court. Education: University of Pennsylvania (B.A., 1979); Columbia University (J.D., 1982), Harlan Fiske Stone Scholar. Author (selected publications): “Class Action Litigation,” Chapter 9 in *New Jersey Federal Civil Procedure* (New Jersey Law Journal Books updated annually since 1999) (with Allyn Z. Lite); “Supreme Court Review,” Chapter 4 in *New Jersey Appellate Practice Handbook* (New Jersey Institute for Continuing Legal Education, 5<sup>th</sup> through 9<sup>th</sup> Eds.); “Keeping the Flies Out of the Ointment: Restricting Objectors to Class Action Settlements,” 84 *St. John’s Law Review* 949 (2010); “25 Years of the New Jersey Antitrust Act,” 26 *Seton Hall Law Review* 637 (1996); “The Right to a Civil Jury Trial in New Jersey,” 47 *Rutgers Law Review* 1461 (1995); “Deflating the ‘Puffery’ Defense, 174 *New Jersey Law Journal* 295 (2003); “N.J. Doesn’t Need Rule 23(f),” 170 N.J.L.J. 23 (2002); “The Supreme Court Dials In,” 151 *New Jersey Law Journal* 1100 (1998); “A Towering Question is Settled,” 141 *New Jersey Law Journal* 1210 (1997); “Using Antitrust Law to Prevent Land Use ‘SLAPP Suits,’” 140 *New Jersey Law Journal* 1187 (1995); “Time to Curtail the ‘Time of Decision’ Rule,” 139 *New Jersey Law*

*Journal* 1008 (1995); “Rent Boards Deserve No Deference,” 126 *New Jersey Law Journal* 681 (1990); “New Jersey’s ‘Fairness and Rightness’ Doctrine,” 15 *Rutgers Law Journal* 927 (1984); “Probation Conditions and the First Amendment: When Reasonableness is not Enough,” 17 *Columbia Journal of Law and Social Problems* 45 (1981). Lecturer, “How to Handle Brokerage Commission Claims Against Successors-in-Title,” *New Jersey Institute of Continuing Legal Education*, January, 1995. Law Secretary, Hon. Daniel J. O’Hern, Associate Justice, New Jersey Supreme Court, 1982-1983. Special Land Use Counsel to Warren Township, New Jersey, 1998-1999. Chairman, New Jersey Law Firm Group (consortium of major private firms to further minority hiring), 1992-1993. Settlement Judge (Mediator), Essex County Superior Court, 1992-1999, 2008-date. Arbitrator, Essex County Superior Court Contract Arbitration Program, 1995-1999. Member, Supreme Court of New Jersey Committee on Character, 1990-2006. Member: New Jersey State Bar Association (Member: Appellate Practice Committee, Chair, 2004-2006; Class Actions Committee, co-Chair, 2008- date; Securities Litigation and Regulatory Enforcement Committee; Land Use Law Section). Selected reported opinions: *Weiss v. Regal Collections*, 385 F.3d 337 (3d Cir. 2004); *Wilson v. Quadramed Corp.*, 225 F.3d 350 (3d Cir. 2000); *Thompson v. American General Life Ins. Co.*, 404 F. Supp. 2d 1023 (M.D. Tenn. 2005); *Varacallo v. Mass. Mut. Ins. Co.*, 226 F.R.D. 207 (D.N.J. 2005); *New Jersey v. Sprint Corp.*, 314 F. Supp. 2d 1119 (D. Kan. 2004); *In re Prudential Ins. Co. of America Sales Practices Litig.*, 962 F. Supp. 450 and 572 (D.N.J. 1997); *McGrogan v. Till*, 167 N.J. 414 (2001); *Lamorte Burns & Co. v. Walters*, 167 N.J. 285 (2001); *Rivkin v. Dover Tp. Rent Leveling Bd.*, 143 N.J. 352 (1996); *Sica v. Wall Tp. Bd. of Adj.*, 127 N.J. 152 (1992); *North Bergen Action Group v. North Bergen Tp. Planning Bd.*, 122 N.J. 567 (1991); *Muise v. GPU, Inc.*, 371 N.J. Super. 13 (App. Div. 2004);



*Dunlea v. Belleville Tp.*, 349 N.J. Super. 506 (App. Div. 2002); *Leon v. Rite Aid Corp.*, 340 N.J. Super. 462 (App. Div. 2001); *Varacallo v. Mass. Mut. Life Ins. Co.*, 332 N.J. Super. 31 (App. Div. 2000); *Boardwalk Properties, Inc. v. BPHC Acquisition, Inc.*, 253 N.J. Super. 515 (App. Div. 1991); *Prudential Ins. Co. of America v. Guttenberg Rent Control Bd.*, 220 N.J. Super. 25 (App. Div. 1987); *Village Supermarket, Inc. v. Mayfair Super Markets, Inc.*, 269 N.J. Super. 224 (Law Div. 1993); *K. Hovnanian at Lawrenceville, Inc. v. Lawrence Tp.*, 234 N.J. Super. 422 (Law Div. 1988). Complex Commercial Litigation; Class Actions; Appellate Practice; Land Use Litigation.



**MICHAEL E. PATUNAS** (Newark Office), born Jersey City, New Jersey, January 4, 1967. Admitted to Bar, 1991, New Jersey and U.S. District Court, District of New Jersey; 2003, U.S. Court of Appeals for the Third Circuit. Education: Villanova University (B.A., cum laude, 1988); Seton Hall University School of Law (J.D., 1991). Member: American Bar Association (Section of Litigation). Reported opinions: *National Group for Communications and Computers, Ltd. v. Lucent Technologies*, 331 F. Supp. 2d 290 (D.N.J. 2004); *Ace Burlap & Bag Co., Inc. v. Sea-Land Service, Inc.*, 40 F. Supp. 2d 233 (D.N.J. 1999). Federal Practice, Civil Litigation; Real Estate Law; Land Use and Zoning Law; Corporate Law.



**VICTOR A. AFANADOR** (Newark Office), born Newark, New Jersey, May 30, 1973.

Admitted to bar, 1999, New Jersey and United States District Court for the District of New Jersey; New York 1999; Education: Drew University (B.A. 1995); Seton Hall University School of Law (J.D. 1998). Law clerk, Hon. Mathias E. Rodriguez and Hon. Frederick P. DeVesa, Superior Court of New Jersey, Law Division, Criminal Part, Middlesex County, 1998-1999. Reported opinion: *Deegan v. Perth Amboy Redevelopment Agency*, 374 N.J. Super. 80 (App. Div. 2005). Civil Litigation; Commercial Litigation; Criminal Law; Public Entity and Administrative Law.



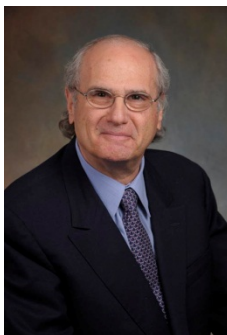
**KATRINA CARROLL** (Chicago Office), born Lvov, Ukraine, April 6, 1975. Admitted to bar, 2000, New Jersey and United States District Court for the District of New Jersey. Education: Northwestern University (B.A. 1997); Seton Hall University School of Law (J.D. 2000). Reported opinions: *In re Hollinger Int'l Securities Litig.*, 2006 WL 18063382 (N.D. Ill. June 28, 2006); *In re NUI Securities Litig.*, 314 F. Supp. 2d 388 (D.N.J. 2004). Civil Litigation;

Commercial Litigation; Class Action Litigation.



**MAYRA VELEZ TARANTINO** (Newark Office), born Newark, New Jersey, October 2, 1970. Admitted to bar, 1998, New Jersey and United States District Court for the District of New Jersey; 1999, New York; 2009, United States District Court for the Southern District of New York; 2010 United States Court of Appeals for the Second Circuit, Third Circuit and Sixth Circuit. Education: Fairleigh Dickinson University (B.S. 1992); Brooklyn Law School (J.D. 1998). Law Clerk to the Honorable W. Hunt Dumont, J.S.C., Superior Court of New Jersey, Law Division, Civil Part, Passaic County, 1998-1999; Law Clerk to the Honorable John J. Hughes, U.S.M.J., United States District Court, District of New Jersey, 1999-2000. Federal Practice; Complex Commercial Litigation; Civil Litigation; Class Actions.

**COUNSEL**



**STEVEN J. GREENFOGEL** (Philadelphia Office) is counsel to the firm and is resident in the firm's Philadelphia office. Throughout his nearly 40 year legal career, Mr. Greenfogel has specialized in class action antitrust litigation, including many of the most significant multidistrict class action price fixing cases of modern times. He has served as Co-Lead Counsel in *In re Chain Link Antitrust Litigation*, Master File CLF-1 (D.Md); *In re Industrial Silicon Antitrust Litigation*, 95-2104 (W.D.Pa) (which he tried to verdict), and *In re Isostatic Graphite Antitrust Litigation*, No. 2000-cv-4965 (E.D.Pa). Mr. Greenfogel also served as one of the main trial counsel as well as co-chairman in *In re High Pressure Laminates Antitrust Litigation*, No. 00-MD-1368(CLB) (S.D.N.Y.) (which was tried to verdict) and *In re Carbon Dioxide Antitrust Litigation*, MDL 940 (M.D. Fla) (which settled after jury selection). In addition to being Co-Chairman of Discovery in *In re Infant Formula Antitrust Litigation*, Master File No. MDL 878 (N.D. Fla), Mr. Greenfogel served as one of plaintiff's trial counsel (which settled after jury selection). He has served as a member of Plaintiffs' Executive Committee in numerous cases, including, *inter alia*, *In re Municipal Derivatives Antitrust Litigation*, MDL 1950 (S.D.N.Y. 2008), *In re Static Random Access Memory (SRAM) Antitrust Litigation*, cv-1819 (N.D. Cal 2007) and *In re Publication Paper Antitrust Litigation*, MDL 1631 (D. Ct 2004). Mr. Greenfogel has also played a major role in numerous other multidistrict antitrust class actions, including, *inter alia*, *O'Bannon v. National Collegiate Athletic Ass'n*, et al. cv-091967 cw (N.D. Cal 2009) (Co-chairman Discovery); *In re TFT-LCD (Flat Panel) Antitrust Litigation*, MDL 1827 (N.D. Cal 2006); *In re Direct Random Access Memory (DRAM) Antitrust Litigation*, No. 02-cv-01486-OHG (N.D. Cal 2002); *In re NASDAQ Market Makers Antitrust Litigation*, MDL 1023 (S.D.N.Y.) (Chairman of Discovery); *In re Brand Names Prescription Drugs Antitrust*

*Litigation*, MDL 997 (N.D. Ill.); *In re Commercial Tissue Antitrust Litigation*, MDL 1189 (N.D. Fla); *In re Infant Formula Antitrust Litigation*, Master File No. MDL 878 (N.D. Fla); *Cumberland Farms v. Browning Ferris Industries, Inc.*, A.A. No. 87-3717; *Superior Beverage/Glass Container Antitrust Litigation*, 89 C 5251 (N.D. Ill.); *In re Chlorine and Caustic Soda Antitrust Litigation*, 86-5428 (E.D.Pa); *In re Records and Tapes Antitrust Litigation* (N.D.Ill.); and *In re Broiler Chicken Antitrust Litigation* (N.D.Ga).

Earlier in his career from 1977 to 1980, Mr. Greenfogel served as an Assistant Attorney General in the Commonwealth of Massachusetts and was the first Chief of its Antitrust Division. He was the author of the Commonwealth's Antitrust Law (M.G.L. 93). During that time, he was a panelist at the New England Antitrust Conference in Boston as well as speaking on antitrust matters at various venues in Massachusetts.

Mr. Greenfogel has served as a member of the Board of Trustees of Camden County College since 2000, having been appointed to that position by Governors Whitman, McGreevy and Corzine. He is a Fellow of the Litigation Counsel of America, as Trial Lawyer Honorary Society. He has been selected eight times as one of the Top Attorneys in Pennsylvania by *Philadelphia Magazine* and has an "AV" rating from Martindale Hubbell.

**ASSOCIATES**



**SUSANA CRUZ HODGE** (Newark Office), born Belleville, New Jersey, February 17, 1979. Admitted to bar, 2006, New Jersey. Education: Boston College (B.A. in Sociology 2001); Boston College Law School (J.D. 2005). Law Clerk to Hon. Thomas LaConte, Superior Court of New Jersey, Passaic County. Adjunct Professor of Legal Writing at Seton Hall University Law School. Class Actions; Civil Litigation; Commercial Litigation; Criminal Law; Public Entity and Administrative Law.



**JEFFREY A. SHOOMAN** (Newark Office), born Long Branch, New Jersey, March 10, 1981. Admitted to bar 2006, New Jersey and U.S. District Court for the District of New Jersey, 2007, New York, 2010, United States Court of Appeals for the Second Circuit, 2012, United States District Courts for the Southern and Eastern Districts of New York. Education: New York University (B.A. in Politics 2003); Seton Hall University School of Law (J.D. 2006). Law Clerk



to the Hon. Esther Salas, U.S. District Court for the District of New Jersey 2008-2009. Class Actions; Civil Litigation; Commercial Litigation; Appellate Practice



**MAYLING C. BLANCO** (Newark Office), born Havana, Cuba, November 5, 1978. Admitted to bar, 2007, New Jersey and United States District Court for the District of New Jersey. Education: Cornell University (B.A. in Philosophy 2000); Seton Hall University School of Law (J.D. 2007). Law Clerk, Hon. Mathias E. Rodriguez, Superior Court of New Jersey, Law Division, Civil Part, Middlesex County, 2006-2007. Civil Litigation; Public Entity Law; Commercial Litigation; Class Actions.



**DANIELLE Y. ALVAREZ** (Newark Office), born Elizabeth, New Jersey, September 27, 1986. Admitted to bar, 2011, New Jersey. Application pending to New York bar. Education: New York University (B.A. in Politics 2008); Seton Hall University School of Law (J.D. 2011). Civil Litigation; Public Entity Law; Commercial Litigation; Class Actions.

# EXHIBIT 6

1 Thomas Bienert, Jr.  
tbienert@bmkattorneys.com  
2 BIENERT, MILLER & KATZMAN  
903 Calle Amanecer, Suite 350  
3 San Clemente, CA 92673  
Telephone: (949) 369-3700  
4 Facsimile: (949) 369-3701

Robert S. Green  
rsg@classcounsel.com  
GREEN & NOBLIN, P.C.  
700 Larkspur Landing Circle, Suite 275  
Larkspur, CA 94939  
Telephone: (415) 477-6700  
Facsimile: (415) 477-6710

5  
6 *Attorneys for Plaintiff Mark Ripperda*

7  
8  
9 **UNITED STATES DISTRICT COURT**  
10 **CENTRAL DISTRICT OF CALIFORNIA**  
11 **SOUTHERN DIVISION**

12 IN RE STEC, INC. SECURITIES  
LITIGATION

No. SACV 09-01304-JVS (MLGx)

13 This Document Relates To:  
14 ALL ACTIONS

15 } **JOINT DECLARATION OF THOMAS**  
16 } **H. BIENERT, JR. AND ROBERT S.**  
17 } **GREEN IN SUPPORT OF CLASS**  
18 } **REPRESENTATIVES' COUNSEL'S**  
19 } **APPLICATION FOR ATTORNEYS'**  
20 } **FEES AND REIMBURSEMENT OF**  
21 } **LITIGATION EXPENSES**

Hearing Date: May 20, 2013

Time: 1:30 p.m.

Judge: Honorable James V. Selna

Courtroom: 10C

22 I, Thomas H. Bienert, Jr. and I, Robert S. Green, declare as follows pursuant  
23 to 28 U.S.C. § 1746:

24 1. Tom Bienert is a Partner of the law firm of Bienert, Miller &  
25 Katzman, PLC. I submit this declaration in support of Co-Lead Counsel's motion  
26 for an award of attorneys' fees and payment of litigation expenses in the above-  
27 captioned action (the "Action") from inception through March 25, 2013.

28 2. Robert Green is a member of the law firm of Green & Noblin, P.C. I  
submit this declaration in support of Co-Lead Counsel's motion for an award of

1 attorneys' fees and payment of litigation expenses in the above-captioned action  
2 (the "Action") from inception through March 25, 2013 (the "Time Period").

3 3. Our firms which served as Counsel for Plaintiff Dr. Mark Ripperda  
4 and the class members who purchased in the public offering were involved in all  
5 aspects of the litigation and settlement of the Action after Mid-August, 2012, as set  
6 forth in the Declaration Of Thomas A. Dubbs In Support Of Class Representatives'  
7 Motion For Final Approval Of The Proposed Class Action Settlement, Plan Of  
8 Allocation And Award Of Attorneys' Fees And Expenses ("Dubbs Decl."); the  
9 Second Declaration of Mark Ripperda in Support of Motion for Preliminary  
10 Approval ("Ripperda Decl.") and the Declaration of Robert S. Green in Support of  
11 Amended Motion for Preliminary Approval ("12/13/12 Green Decl.").

12 4. The principal tasks undertaken by our firms included an extensive  
13 review of the record to determine the existence and strength of the Securities Act  
14 claims, including reviewing the pleadings, orders, discovery, expert reports and  
15 mock jury results. Prior to agreeing to represent Dr. Ripperda, we conducted due  
16 diligence on the nature of the claims, the procedural status of the claims and Dr.  
17 Ripperda's trading records and adequacy to represent the Securities Act claimants.  
18 In addition to reviewing documentation, we spoke with Lead Counsel, with Dr.  
19 Ripperda and with others regarding the nature of the representation. At the time  
20 that we were retained by Dr. Ripperda, there was an extensive, multi-year litigation  
21 record with which we had to become familiar in order to represent the interests of  
22 the Securities Act claimants. Examples of the pleadings and orders that we  
23 analyzed included multiple complaints, up through the Second Consolidated  
24 Amended Complaint, pleadings with regard to the West Virginia Laborers' Trust  
25 Fund ("West Virginia") motion for leave to intervene, multiple class certification  
26 motions and orders, the state court pleadings filed by West Virginia, the motions  
27 against the complaints and orders thereon and other related pleadings. See also  
28 Dubbs Decl. at 248-250; Ripperda Decl. at 1-6.

1           5.     A significant amount of time and work was spent by our respective  
2 firms in a short period of time in order to prepare for the mediation that we  
3 attended in New York on September 5, 2012. We spoke with the damages expert  
4 and the jury consultants, as well as Co-Lead Counsel to assess the issues presented  
5 by the Securities Act claims and the defenses thereto. We had several discussions  
6 with Dr. Ripperda regarding the litigation and settlement strategies and positions.  
7 *See* Ripperda Decl., ¶6. We also conducted our own original research into the  
8 claims asserted on behalf of the Securities Act claimants, the discovery conducted,  
9 and the nature of other recent settlements involving both Securities Act and  
10 Exchange Act claims.

11           6.     At the mediation, we negotiated with defense counsel over the total  
12 amount of their contribution and negotiated with Co-Lead Counsel over the  
13 allocation among the various purchaser time periods. We met separately prior to  
14 the mediation to develop our strategy for resolving the Securities Act claims,  
15 reviewed the proposed MOU and mediation statements. At the mediation, we met  
16 separately with Bernie Schneider and with Judge Layn Philips. We also  
17 participated in joint sessions with the mediators and defense counsel and with Co-  
18 Lead Counsel. *See* Dubbs Decl., ¶250. The amounts offered by Defendants during  
19 the mediation were not acceptable to us. The mediator subsequently made a  
20 proposal for a settlement amount that was higher than the amounts offered up to  
21 that point in time. We ultimately determined that the mediator's proposal  
22 represented a settlement that was in the best interests of the Securities Act  
23 claimants for a number of reasons, including those identified by Co-Lead Counsel.  
24 *See*, Dubbs Decl., ¶¶250-268. In particular, from Mr. Green's experience in other  
25 securities litigation and Mr. Bienert's experience trying cases in this District, we  
26 concluded that the amount recommended in the mediator's proposal was fair,  
27 reasonable and adequate under all the circumstances. Accordingly, we  
28 recommended that our client accept the mediator's proposal and he did. *See*

1 Ripperda Decl., ¶¶7-8. The process of resolving the amount of the settlement and  
2 documenting the terms of Defendant's contribution took several days of additional  
3 work after the mediation.

4 7. Once the amount of Defendant's contribution was resolved, we turned  
5 back to the issue we had begun to negotiate with Co-Lead Counsel at the  
6 September 5<sup>th</sup> mediation, which is the allocation between the shares traceable to  
7 the public offering on the one hand (the Securities Act claims) and the shares not  
8 traceable to the public offering (the Exchange Act claims). We conducted original  
9 research to review published opinions in cases that presented both claims in either  
10 a litigated fashion or in a settlement. We spoke to damages experts that we have  
11 used in other cases to determine their experiences and we spoke to the damages  
12 expert retained in this action, who was also working on a proposed plan of  
13 allocation, Dr. John D. Finnerty. Dr. Finnerty prepared a written Plan of  
14 Allocation that we analyzed for the appropriate level of compensation to the  
15 Securities Act claims. Ultimately, we concluded that a premium of 25% for the  
16 Securities Act claims is at the high end of the premiums obtained in similar cases.  
17 We negotiated for a 25% premium in this case, communicating that demand to Co-  
18 Lead Counsel, and in the course of further discussions mediated by Judge Philips.  
19 See Dubbs Decl., ¶¶252-54; Ripperda Decl., ¶¶9-10.

20 8. We spent significant time working on the documentation of the  
21 settlement that was reached and the Plan of Allocation of settlement proceeds, as  
22 well as two rounds of Preliminary Approval pleadings and hearings and Final  
23 Approval pleadings and the hearing set for May 20, 2013.

24 **Lodestar**

25 9. Robert Green spent 196.10 hours working on this case at the hourly  
26 rate of \$695 per hour for a total lodestar at Green & Noblin of \$136,289.50. These  
27 numbers were prepared from contemporaneous daily time records regularly  
28 prepared and maintained by the firm, which are available at the request of the



1 Court. Time expended in preparing this application for fees and payment of  
2 expenses has not been included in this request.

3 10. Tom Bienert spent 117.70 hours working on this case at the hourly  
4 rate of \$720 per hour; Ari Hawbecker spent 16.50 hours working on this case at an  
5 hourly rate of \$550 per hour; Anne Uyeda spent 5 hours working on this case at an  
6 hourly rate of \$490 per hour and our paralegal, Arlene Johnson, spent 1.10 hours  
7 working on this case at a rate of \$205 per hour for a total lodestar at Bienert, Miller  
8 & Katzman of \$96,494.50. These numbers were prepared from contemporaneous  
9 daily time records regularly prepared and maintained by the firm, which are  
10 available at the request of the Court. Time expended in preparing this application  
11 for fees and payment of expenses has not been included in this request.

12 11. The hourly rates for the attorneys and professional support staff in our  
13 firms included in paragraphs 9-10 are the same as the regular rates charged for  
14 services in non-contingent matters and/or which have been accepted in other  
15 securities or shareholder litigations.

16 12. The combined total number of hours expended on this litigation by  
17 our firms during the Time Period is 335.30 hours. The total lodestar for our firms  
18 for those hours is \$232,784.

19 13. Our firms' lodestar figures are based upon the firms' billing rates,  
20 which rates do not include charges for expenses items. Expense items are billed  
21 separately and such charges are not duplicated in my firm's billing rates.

22 **Expenses**

23 14. Bienert, Miller & Katzman incurred a total of \$1929.28 in  
24 unreimbursed expenses in connection with the prosecution of this case, all of  
25 which were for transportation, meals and lodging in connection with two  
26 preliminary approval hearings before the court and the mediation in New York.  
27 The expenses are reflected on the books and records of the firm. These books and  
28

1 records are prepared from expense vouchers, check records and other source  
2 materials and are an accurate record of the expenses incurred.

3 15. Green & Noblin incurred a total of \$2,615.94 in unreimbursed  
4 expenses in connection with the prosecution of this case, all of which were for  
5 transportation, meals and lodging in connection with two preliminary approval  
6 hearings before the court and the mediation in New York. The expenses are  
7 reflected on the books and records of the firm. These books and records are  
8 prepared from expense vouchers, check records and other source materials and are  
9 an accurate record of the expenses incurred.

10 **Firm Biographies**

11 16. With respect to the standing of Bienert, Miller & Katzman (BMK) and  
12 Green & Noblin (G&N), attached hereto as Exhibits A and B are brief biographies  
13 of the firms and the professionals employed there.

14 17. The attorneys at BMK have litigated more than 100 complex trials  
15 and appeals and are recognized as some of the best trial lawyers in Orange County.  
16 Tom Bienert is a member of the American College of Trial Lawyers and is a  
17 specialist in handling "white collar" crimes that include securities matters. BMK  
18 and Mr. Bienert provided a realistic and experienced approach to the issues in this  
19 case and the prospects and risks of taking the case to trial in this District. G&N  
20 have over 25 years of experience in litigating securities class action cases. Robert  
21 Green served as trial counsel in multiple securities class action cases. He has  
22 served as Lead Counsel in other national cases asserting claims under Section 11 of  
23 the Securities Act and has obtained appellate rulings in favor of securities  
24 purchasers and other class members from the Ninth Circuit, the Delaware Supreme  
25 Court, the California Supreme Court and various California Courts of Appeal.  
26 Further detail on Mr. Green's experience is set forth in the 12/13/12 Green  
27 Declaration.

1 I declare under penalty of perjury that the foregoing is true and correct.

2 Executed on April 8, 2013.

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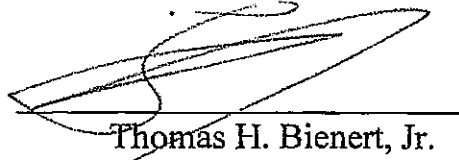
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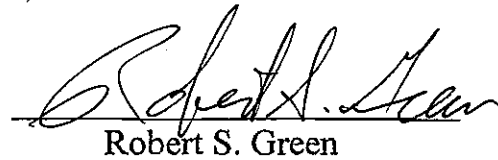
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Thomas H. Bienert, Jr.



Robert S. Green

## **EXHIBIT A**

## **BIENERT, MILLER & KATZMAN**

A Professional Law Corporation



Thomas H. Bienert, Jr.

Thomas H. Bienert, Jr. was recently admitted to the American College of Trial Lawyers and was also named Orange County's "White-Collar Lawyer of the Year" for 2011 by Best Lawyers, the oldest and most respected peer-review publication in the legal profession. Currently the Treasurer of the Orange County Bar Association, he was also elected to be President of the OCBA in 2014. He is a former Lawyer Delegate to the Ninth Circuit Judicial Conference and has been recognized as one of the "Top 50 Lawyers in Orange County" by Super Lawyers magazine.

A former Chief of the Orange County Office of the United States Attorney, Mr. Bienert specializes in white-collar criminal defense and complex civil litigation matters, representing both individuals and corporations in state and federal courts. In addition to his service with the U.S. Attorney's Office in Orange County, Mr. Bienert served as Chief of Criminal Complaints in the U.S. Attorney's Los Angeles Office and as Associate Independent Counsel in Washington, D.C., and practiced with Irell & Manella and Phelps Dunbar.

Mr. Bienert is a highly experienced trial attorney. His cases involve a wide variety of criminal and civil matters, including all types of fraud, civil rights violations, environmental crimes, health-care matters, public corruption, money laundering, contract disputes, copyright infringement, civil environmental matters, false advertising, trade secret violations, unfair competition and wrongful termination. He has worked on a number of high-profile matters, including the Independent Counsel investigation of President Clinton, the Orange County bankruptcy, the UCI fertility clinic matter, the Reginald Denny beating case during the 1992 Los Angeles riots, and the "Operation Big Spender" corruption investigation of L.A. Sheriff's Department deputies. His trials have included multi-million dollar civil verdicts and, in criminal matters, the acquittal of his physician client after a two-month Medicare fraud trial, a mistrial for his client in the Peregrine Systems criminal financial fraud trial and most recently, a government dismissal of all charges in the middle of trial in a human trafficking case.

An honors graduate of Tulane University School of Law, where he was an editor of the Law Review and a member of the Order of Barristers, Mr. Bienert has been an adjunct professor at Loyola Law School and a frequent lecturer on legal issues.

903 CALLE AMANECER, SUITE 350 . SAN CLEMENTE , CALIFORNIA 92673

Telephone 949.369.3700 Facsimile 949.369.3701 Toll Free 888.897.8794

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

**BIENERT, MILLER & KATZMAN**

A Professional Law Corporation

Ariana Seldman Hawbecker

Ms. Hawbecker specializes in business litigation and criminal defense. Her civil litigation experience includes representing clients in Federal and State court and arbitration proceedings in the areas of copyright, trademark, trade secret, real estate, employment, and general commercial litigation. Ms. Hawbecker is also a former Deputy District Attorney for the County of Humboldt. Prior to joining Bienert, Miller, Weitzel & Katzman, Ms. Hawbecker was associated with Wilson Sonsini Goodrich & Rosati and Donahue Gallagher Woods LLP in the San Francisco Bay Area.

**EDUCATION:**

Boalt Hall School of Law, University of California at Berkeley, J.D. (1997) Georgetown University, Bachelor of Science in Foreign Service (1991)

**ADMISSIONS:**

Supreme Court of California  
U.S. District Court, Southern District of California  
U.S. District Court, Central District of California  
U.S. District Court, Northern District of California  
U.S. District Court, Eastern District of California

**ACTIVITIES:**

Alameda County Bar Association  
Wiley Emanuel Award for Pro Bono Service from the Alameda County Bar Association



## **BIENERT, MILLER & KATZMAN**

A Professional Law Corporation

Anne Uyeda

Anne Uyeda specializes in business litigation and complex civil litigation matters. Her litigation experience includes representing public companies, counties, insurance companies and brokers, and general partnerships in contract disputes, shareholder derivative actions, bankruptcy matters, complex securities actions, and insurance bad faith actions.

Ms. Uyeda earned her law degree in 2004 from UCLA. While in law school, Ms. Uyeda received the Blanche H. Lyle Scholarship and the Distinguished Pro Bono Student Award. In 2001, she graduated cum laude from U.C. Irvine with a Bachelor of Arts degree in English and was elected as a member of Phi Beta Kappa.

Prior to joining Bienert, Miller & Katzman, Ms. Uyeda practiced with Musick, Peeler & Garrett in Los Angeles, and with Gibson, Dunn & Crutcher in Orange County.

### **Education**

UCLA School of Law, J.D., 2004  
University of California, Irvine, 2001

### **Admissions**

Supreme Court of California  
United States Court of Appeals, Ninth Circuit U.S. District Court, Central District of California

### **Activities**

Japanese American Bar Association  
Friends of Read Orange County (Board Member and Secretary)  
Orange Country Bar Association

## **EXHIBIT B**



G R E E N & N O B L I N, P. C.

## FIRM RESUME

Green & Noblin represents and advises public entities, institutional investors and individuals in complex civil litigation matters. The Firm's principals have decades of experience prosecuting large and sophisticated defendants in national and international actions for violations of state and federal laws in the fields of antitrust, securities, corporate governance and consumer protection, among other practice areas. Over the years, working independently and cooperatively with other firms, we have helped recover hundreds of millions of dollars for our clients, including:

- *In re TFT-LCD (Flat Panel) Antitrust Litigation.* The Firm served a critical role developing the evidence that lead to a \$1.1 billion settlement in this indirect purchaser antitrust class action in 2012. Members of the Firm were involved in all phases of the litigation over a five-year period, including the research and drafting of our initial complaint, subsequent motions and pleadings, managing document review and deposition preparation teams, and identifying and organizing exhibits and other evidence for trial.
- *In re Dynamic Random Access Memory (DRAM) Antitrust Litigation.* The Firm worked extensively on this indirect purchaser antitrust action, both in San Francisco Superior Court in a coordinated action, and in the federal antitrust action. Principals of the Firm were active in conducting depositions, such as Dell and Nanya executives among others, along with conducting legal and factual research, drafting significant pleadings and running document review teams. The case settled for in excess of \$300 million.
- *In re Static Random Access Memory (SRAM) Antitrust Litigation.* The Firm participated in all phases of this direct purchaser class action from researching and drafting complaints up through and including final trial preparations. The case settled for approximately \$75 million just days before trial.
- *In re Chase Bank USA, N.A. "Check Loan Litigation."* The Firm served on the Executive Committee running this national MDL proceeding in which JPMorgan Chase & Co., the nation's largest issuer of credit cards, agreed to settle for \$100 million. The case is a class action lawsuit charging that the bank acted improperly when it more than doubled the minimum monthly payment requirement for over 1 million customers who entered into balance transfer loans with "fixed" interest rates. The Court approved the final settlement on November 19, 2012. The Firm was active in prosecuting the action, from origination, through motions, fact discovery, expert discovery, summary judgment and trial preparation. *See In re: Chase Bank, USA, N.A. "Check Loan" Contract Litigation*, 274 F.R.D. 286 (N.D. Cal. 2011).

- *Hellum v. Breyer (Prosper Marketplace, Inc.) Unregistered Securities Litigation.* Green & Noblin serve as counsel for the class in this action asserting the sale of unregistered securities. The court certified a class of approximately 50,000 purchasers of loan notes from Prosper Marketplace, Inc. and the action is progressing toward trial. The Firm's work resulted in a ruling by the Court of Appeal clarifying the pleading requirements for controlling officers and directors under both California and federal securities laws. *See, Hellum v. Breyer*, 194 Cal.App.4th 1300 (2011).
- *In re Cathode Ray Tube (CRT) Antitrust Litigation.* The Firm has multiple professionals serving on document review and deposition preparation teams for this indirect purchaser class action case pending in the Northern District of California.
- *In re: Plasma Therapeutics Antitrust Litigation.* In this case, a class of hospitals and other healthcare suppliers allege that certain pharmaceutical companies agreed to restrict the supply of plasma therapies in order to drive up the price of those treatments. The Firm is assisting Co-Lead counsel with discovery in this matter, including briefing of discovery issues and taking depositions.
- *In re Textainer Partnership Securities Litigation.* Robert Green served as Lead Trial Counsel in these consolidated cases. The cases settled for \$10 million after Plaintiffs obtained a ruling in their favor at the conclusion of Phase 1 of the trial in San Francisco Superior Court. The Plaintiffs asserted breach of fiduciary duty claims in connection with a sale of assets transaction that resulted in the dissolution of six limited partnerships.
- *McKesson, Inc. Derivative Litigation.* McKesson-HBOC, Inc. lost \$9 billion in stock market capitalization in one day during April 1999 after announcing that prior financial statements would be restated due to accounting errors. Rather than pursuing the individuals and companies who participated in the conduct that led to the accounting restatements, the company sued its own shareholders in a case that was promptly dismissed by the Ninth Circuit U.S. Court of Appeals. As co-counsel for plaintiff shareholders seeking to recover money on behalf of the corporation from the wrongdoers, the Firm obtained an important decision from the Delaware Supreme Court expanding the rights of shareholders to obtain and inspect corporate documents where there is a proper purpose for investigating potential wrongdoing. *See Saito v. McKesson HBOC, Inc.*, 806 A.2d 113 (Del. Supr. 2002). A substantial settlement on behalf of the Company was approved by the Delaware Chancery Court on February 12, 2006.
- *In re Providian Credit Card Cases.* Robert Green was appointed co-lead counsel in this national class action brought on behalf of Providian credit card customers who were improperly charged late fees, higher interest rates on balance transfers, and fees for add-on products, including Credit Protection, PricePro, Drive Pro, HealthPro, and credit line increases. The San Francisco Superior Court approved a settlement for \$105 million, which covered restitution to Providian customers, "in-kind" payments to customers, and the costs and expenses of the litigation.

### Attorneys

**Robert S. Green** has practiced extensively in the fields of complex and class action litigation since 1988. He graduated with honors from the University of the Pacific, McGeorge School of Law in 1984. Mr. Green received his Masters of Business Administration degree from California State University-Sacramento in 1989 and his undergraduate degree with distinction from Oregon State University in 1981. He is an active member of the National Association of Consumer Attorneys (NACA) and is an Editorial Advisor for the Consumer Financial Services Law Report. Mr. Green also is a member of the Partners' Council for the National Consumer Law Center and is a former Chairman of the Board of Marin AIDS Interfaith Network.

**James Robert Noblin** has practiced complex business litigation since 1984, focusing primarily on antitrust and unfair competition cases. Mr. Rob Noblin graduated from Harvard Law School *cum laude* in 1983. He received his undergraduate degree *summa cum laude* from the University of Southern California in 1980. After graduating from law school, Mr. Noblin was a law clerk for the Honorable William A Norris of the United States Court of Appeals for the Ninth Circuit from 1983 - 1984.

Mr. Noblin has tried over 10 cases to a jury as either the lead or a principal trial lawyer, including the six-week trial resulting in a verdict of over \$ 70 million that was upheld in *Image Tech. Services, Inc. v. Eastman Kodak Co.*, 125 F.3d 1195 (9<sup>th</sup> Cir. 1997). His other representative cases include: *Newcal Indus., Inc. v. Ikon Office Solution*, 513 F.3d 1038, 1043 (9<sup>th</sup> Cir. 2008) *ABC Int'l Traders, Inc. v. Matsushita Elec. Corp.*, 14 Cal. 4th 1247, 931 P.2d 290 (1997); *Knevelbaard Dairies v. Kraft Foods, Inc.*, 232 F.3d 979 (9<sup>th</sup> Cir. 2000) *Brill Media Co., LLC v. TCW Group, Inc.*, 132 Cal. App. 4th 324, 33 Cal. Rptr. 3d 371 (2005); *Proctor v. Vishay Intertechnology Inc.*, 584 F.3d 1208 (9<sup>th</sup> Cir. 2009); *Am. Ad Mgmt., Inc. v. Gen. Tel. Co. of California*, 190 F.3d 1051, 1053 (9<sup>th</sup> Cir. 1999) *Consol. Credit Agency v. Equifax, Inc.*, CV-03-1229 CAS(CWX), 2005 WL 6218038 (C.D. Cal. Jan. 26, 2005); *Hanson v. Morgan Stanley Smith Barney, LLC*, 762 F. Supp. 2d 1201, 1209 (C.D. Cal. 2011); and *Lori Rubinstein Physical Therapy, Inc. v. PTPN, Inc.*, 148 Cal. App. 4th 1130, 56 Cal. Rptr. 3d 351 (2007).

He also contributed to Chapter 20, *California Antitrust and Unfair Competition Law, Revised Edition*, published by the California State Bar Antitrust and Unfair Competition Section and has published articles on antitrust topics, including *United States v. AMR Corp. and Judicial Hostility Toward Predatory Pricing Cases*, Antitrust Report (Jan. 2002); *The Tumult in State Antitrust Law: Cel-Tech and the California Example in Little FTC Act Cases*, Antitrust Report (June 1999); and *The Confluence of Muddied Waters: Antitrust Consequential Damages and the Interplay of Proximate Cause, Antitrust Injury, Standing and Disaggregation*, 13 St. John's Journal of Legal Commentary 145 (1998).

**Lesley Weaver** has extensive experience representing U.S. and international institutional investors and individuals in antitrust and securities class actions, as well as corporate governance matters and consumer class actions. With co-lead counsel, she is currently representing indirect plaintiffs in the *In re: Drywall Antitrust Litigation*, as well as assisting with substantive discovery in *In re: Plasma Therapeutics Antitrust Litigation*. She played key roles in the significant recoveries in *In re Marsh & McLennan Secs. Litig.* (\$400 million), *In re Cardinal Health Secs. Litig.* (\$600 million), *In re Cisco Secs. Litig.* (\$99 million), *In re Boeing Secs. Litig.* (\$92.5 million), and in landmark decisions such as *In re Copper Mountain Secs. Litig.* Lesley has also litigated complex consumer and antitrust class actions across the country, as well as

individual matters in state courts and in arbitration, including *In Re: Libor-Based Financial Instruments Antitrust Litigation*. Lesley was previously a Partner at Lerach Coughlin Stoia & Robbins, and later Senior Counsel at Grant & Eisenhofer. She graduated *magna cum laude* from Harvard University with an A.B. in Social Studies, an honors-only major, and from the University of Virginia School of Law.

In addition to her private practice, Lesley currently serves on the Board of the Women Lawyers of Alameda County, the Frameline Film Festival in San Francisco, and the Advisory Council of the East Bay Community Law Center. She is a past Co-Chair of Bay Area Lawyers for Individual Freedom, a past Co-Chair of the San Francisco LGBT Community Center, and past National Chair of the National Advisory Board for the National Center for Lesbian Rights. She has previously served on the boards of Equality California, the International Gay Lesbian Human Rights Commission, and the Alice B. Toklas Democratic Club.

**Shadi Z. Amundin** received her LLM in Transnational Business Practice from the University of the Pacific, McGeorge School of Law in 2001 and her JD from Golden Gate University School of Law in 2000. She has also studied and worked as a visiting attorney in Europe and Asia. Her practice focuses on antitrust, unfair competition, and consumer protection class actions. Additionally, she has a background in commercial litigation, corporate, and transactional law. Ms. Amundin is admitted to practice in California and before the U.S. Court of Appeals for the Ninth Circuit and the U.S. District Court for the Northern District of California.

### **Professionals**

**Brian Cullen** has over twenty years of experience in creating, managing, and employing document management systems and electronic discovery tools, primarily related to antitrust, securities, and environmental litigation. He received his undergraduate degree from Grinnell College and his JD, cum laude, from the University of San Francisco School of Law, where he externed for the Hon. Ming Chin of the California Supreme Court. Prior to joining Green & Noblin, Mr. Cullen worked as chief research assistant at the San Francisco Superior Court and as a project manager and research analyst for a leading electronic discovery vendor, where he served as its senior professional services representative in Asia. Since joining the Firm, Mr. Cullen has led teams of attorneys in developing documentary evidence of illegal conspiratorial and other antitrust behavior in the *TFT-LCD* and the pending *Cathode Ray Tube* actions.



# EXHIBIT 7

Christopher Kim (Bar No. 082080)  
christopher.kim@limruger.com  
Lisa J. Yang (Bar No. 208971)  
lisa.yang@limruger.com  
LIM, RUGER & KIM, LLP  
1055 West Seventh Street, Suite 2800  
Los Angeles, California 90017-2554  
Telephone: (213) 955-9500  
Facsimile: (213) 955-9511

Thomas A. Dubbs (*Pro Hac Vice*)  
tdubbs@labaton.com  
James W. Johnson (*Pro Hac Vice*)  
jjohnson@labaton.com  
Richard T. Joffe (*Pro Hac Vice*)  
rjoffe@labaton.com  
LABATON SUCHAROW LLP  
140 Broadway  
New York, New York 10005  
Telephone: (212) 907-0700  
Facsimile: (212) 818-0477

Allyn Z. Lite (*Pro Hac Vice*)  
alite@litedepalma.com  
Bruce D. Greenberg (*Pro Hac Vice*)  
bgreenberg@litedepalma.com  
LITE DePALMA GREENBERG, LLC  
Two Gateway Center, 12th Floor  
Newark, New Jersey 07102  
Telephone: (973) 623-3000  
Facsimile: (973) 623-0858

*Attorneys for Lead Plaintiff, the State of New Jersey, Department of Treasury,  
Division of Investment, Plaintiff International Brotherhood of Electrical Workers,  
Local 103, The Norfolk County Retirement System and Lead Counsel for the Class*

Thomas Bienert, Jr.  
tbienert@bmkattorneys.com  
BIENERT, MILLER & KATZMAN  
903 Calle Amanecer, Suite 350  
San Clemente, CA 92673  
Telephone: (949) 369-3700  
Facsimile: (949) 369-3701

Robert S. Green  
rsg@classcounsel.com  
GREEN & NOBLIN, P.C.  
700 Larkspur Landing Circle, Suite 275  
Larkspur, CA 94939  
Telephone: (415) 477-6700  
Facsimile: (415) 477-6710

*Attorneys for Plaintiff Mark Ripperda*

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

IN RE STEC, INC. SECURITIES  
LITIGATION

No. SACV 09-01304-JVS (MLGx)

This Document Relates To:  
  
ALL ACTIONS

**DECLARATION OF CHRISTOPHER  
KIM IN SUPPORT OF CLASS  
REPRESENTATIVES' COUNSEL'S  
APPLICATION FOR ATTORNEYS'  
FEES AND REIMBURSEMENTS OF  
LITIGATION EXPENSES**

Hearing Date: May 20, 2013  
Time: 1:30 p.m.  
Judge: Honorable James V. Selna  
Courtroom: 10C

1 Christopher Kim, Esq., declares as follows pursuant to 28 U.S.C. § 1746:

2 1. I am a partner at the law firm of Lim, Ruger & Kim, LLP. I submit  
3 this declaration in support of Co-Lead Counsel's motion for an award of attorneys'  
4 fees and payment of litigation expenses in the above-captioned action (the  
5 "Action") from inception through March 25, 2013 (the "Time Period").

6 2. My firm, which served as Liaison Counsel in the Action, was  
7 involved in various aspects of the litigation and settlement of the Action as set  
8 forth in the Declaration of Thomas A. Dubbs in Support of Class Representatives'  
9 Motion for Final Approval of Proposed Class Action Settlement, Plan of  
10 Allocation and Award of Attorneys' Fees and Expenses.

11 3. The principal tasks undertaken by my firm included: researching  
12 substantive and procedural areas of law specific to the United States District Court,  
13 Central District of California – Southern Division; attending hearings related to all  
14 matters of the Action; assisting in the preparation of pleadings and discovery in the  
15 Action; and providing local filing and staff support services to Co-Lead counsel.

16 4. The schedule attached hereto as Exhibit A is a summary indicating the  
17 amount of time spent by each attorney and professional support staff of my firm  
18 who was involved in the prosecution of the Action, and the lodestar calculation  
19 based on my firm's current billing rates. For personnel who are no longer  
20 employed by my firm, the lodestar calculation is based upon the billing rates for  
21 such personnel in his or her final year of employment by my firm. The schedule  
22 was prepared from contemporaneous daily time records regularly prepared and  
23 maintained by my firm, which are available at the request of the Court. Time  
24 expended in preparing this application for fees and payment of expenses has not  
25 been included in this request.

26 5. The hourly rates for the attorneys and professional support staff in my  
27 firm included in Exhibit A are the same as the regular rates charged for their  
28

1 services in non-contingent matters and/or which have been accepted in other  
2 securities or shareholder litigations.

3 6. The total number of hours expended on this litigation by my firm  
4 during the Time Period is 279.3 hours. The total lodestar for my firm for those  
5 hours is \$87,080.00.

6 7. My firm's lodestar figures are based upon the firm's billing rates,  
7 which rates do not include charges for expenses items. Expense items are billed  
8 separately and such charges are not duplicated in my firm's billing rates.

9 8. As detailed in Exhibit B, my firm has incurred a total of \$2,460.92 in  
10 unreimbursed expenses in connection with the prosecution of the Action. The  
11 expenses are reflected on the books and records of my firm. These books and  
12 records are prepared from expense vouchers, check records and other source  
13 materials and are an accurate record of the expenses incurred.

14 9. With respect to the standing of my firm, attached hereto as Exhibit C  
15 is a brief biography of my firm as well as biographies of the firm's partners and of  
16 counsels.

17 I declare under penalty of perjury that the foregoing is true and correct.  
18 Executed on April 3, 2013.

19  
20   
21 Christopher Kim, Esq.

# EXHIBIT A

**EXHIBIT A**

**IN RE STEC, INC. SECURITIES LITIGATION**

**LODESTAR REPORT**

**FIRM: LIM, RUGER & KIM, LLP**

**REPORTING PERIOD: INCEPTION THROUGH MARCH 2013**

<b>PROFESSIONAL</b>	<b>STATUS*</b>	<b>HOURLY RATE</b>	<b>TOTAL HOURS TO DATE</b>	<b>TOTAL LODESTAR TO DATE</b>
Christopher Kim	P	430	109.30	\$46,999.00
Lisa Yang	P	350	48	\$16,800.00
George Busu	A	240	3.6	\$864.00
Norma Nava	A	210	60.2	\$12,642.00
Jane Kespradit	A	200	32.1	\$6,420.00
Terence Woodsome	A	310	.5	\$155.00
Celeste Bucciarelli	PL	125	2.1	\$262.50
Leslie Garcia	PL	125	2.0	\$250.00
Julie Yu	Law Clerk	125	21.5	\$2,687.50
<b>TOTAL</b>			<b>279.3</b>	<b>\$87,080.00</b>

Partner (P)  
 Of Counsel (OC)  
 Associate (A)  
 Paralegal (PL)  
 Investigator (I)  
 Research Analyst (RA)



# EXHIBIT B

**EXHIBIT B**

IN RE STEC, INC. SECURITIES LITIGATION

EXPENSE REPORT

FIRM: LIM RUGER & KIM, LLP

REPORTING PERIOD: INCEPTION THROUGH MARCH 2013

EXPENSE	TOTAL AMOUNT
Duplicating	\$573.54
Postage	\$10.59
Telephone / Fax	
Messengers	\$1,267.35
Filing Fees	\$156.50
Transcripts	\$125.00
Computer Research Fees	\$65.64
Overnight Delivery Services	\$98.62
Expert Fees	
Transportation/Meals/Lodging	\$163.68
Court Reporters	
Contribution to Litigation Fund	
<b>TOTAL</b>	<b>\$2,460.92</b>

# EXHIBIT C

**LIMRUGER**

Uncompromising Quality & Efficiency

Los Angeles | San Francisco  
www.limruger.com

## Lim, Ruger & Kim, LLP

**Lim Ruger** specializes in complex litigation including commercial disputes, class actions, securities, employment, insolvency and creditor's rights. Lim Ruger is highly regarded for handling sophisticated corporate and real estate transactions including high-profile commercial developments, mergers and acquisitions, financing and international business transactions.

**We are your complete business law firm.** We have a team of highly experienced trial lawyers and corporate and real estate business lawyers with the kind of knowledge and experience to solve real business problems. We received multiple awards for outstanding service including the California Minority Counsel Program's "Minority-Owned Law Firm Client Services Award" and the Western Justice Center's "Builder of Peace Award."

**We are diverse.** Our multi-cultural and multi-lingual attorneys are able to connect with clients of various backgrounds. We speak nine different languages – Korean, Taiwanese, Mandarin, Spanish, Thai, Japanese, Macedonian, Romanian, and Farsi.

**We are community leaders.** Our attorneys serve as leaders on numerous civic and non-profit boards, commissions, and bar associations. Our Lim Ruger Foundation has been providing scholarships to minority and economically challenged students for many years.

### PRACTICE AREAS

Commercial Litigation | Business & Finance  
Real Estate | Intellectual Property  
Labor & Employment | Bankruptcy  
Regulatory Enforcement & White Collar Defense

### REPRESENTATIVE CLIENTS

AT&T  
Cypress Semiconductor  
East West Bank  
Del Monte  
Forever 21  
Hollywood Presbyterian Hospital  
Kumho Tire  
NBCUniversal

PG&E  
Plaza Mexico  
Restoration Hardware  
San Diego Gas & Electric  
Southern California Edison  
Superior Warehouse  
Toyota  
University of Southern California

**Contact:** Christopher Kim christopher.kim@limruger.com

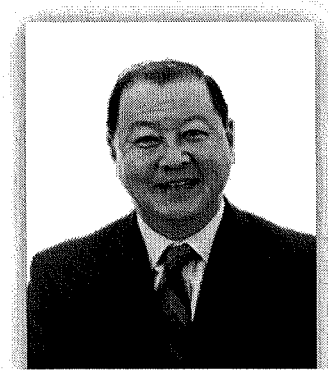
Los Angeles Office: 1055 W. 7<sup>th</sup> Street, Suite 2800, Los Angeles, CA 90017 | Tel. 213-955-9500  
San Francisco Office: One Maritime Plaza, Suite 825, San Francisco, CA 94111 | Tel. 415-599-2828

Arnold Barba  
George Busu  
Phillip K. Cha  
Justin S. Chang  
Sophia Chang  
Sebong Hong  
Traci M. Keith  
Jane Kespradit  
Christopher Kim  
Paul H. Kim  
Julie Kwun  
John Lim  
Marc J. Manason  
Norma Nava  
Samuel S. Oh  
Richard M. Ruger  
Sandy L. Sakamoto  
Bryan King Sheldon  
Phillip J. Wang  
Lisa J. Yang

Of Counsel:  
Tong Soo Chung

**Christopher Kim**  
Partner

(213) 955-9500 (Ext. 153)  
christopher.kim@limruger.com



**Christopher Kim** is a senior Partner in the Litigation Department and one of the firm's founders. A seasoned trial lawyer with over 34 years of experience, Mr. Kim has tried many cases involving substantial exposure and complex legal issues. Mr. Kim's admission to the American Board of Trial Advocates reflects his exceptional experience and achievement in handling jury trials. His exemplary record of success in high-value cases has earned him the respect of judges and opponents alike. Mr. Kim's trial work experience focuses on complex business litigation, including class actions. Mr. Kim's cases include:

- Successfully defended the Republic of Korea in a consolidated action brought for wrongful death and for catastrophic injury arising from a van that rolled over.
- Obtained a settlement of over \$200 million for the class plaintiff in a securities class action against Tenet Healthcare and a \$65 million settlement with the company's auditors.
- Represented a publicly-traded utility company in labor arbitrations involving union employees who were dismissed from their jobs.
- Successfully represented the Republic of Korea against a \$2 billion claim involving claims of unlawful conversion.
- Recovered approximately \$13 million for a Korean car parts manufacturer after an investment banker fraudulently induced the manufacturer to invest in a ponzi scheme.
- Successfully represented a local bank in a fraud action against a borrower who defrauded the bank of approximately \$10 million in connection with the purchase of car washes.

Mr. Kim is currently a Lawyer Representative to the Ninth Circuit Judicial Conference (by appointment), a Board Member of the Western Justice Center, an Associate with the American Board of Trial Advocates, Los Angeles Chapter. Mr. Kim previously has served on the boards of The East West Players, KYCC (formerly Korean Youth Foundation), UCLA Law School Alumni Association, and California's State Board of Registration of Geologists and Geophysicists (by appointment). Mr. Kim also served as the President of the Korean American Bar Association of Southern California in 1990. Mr. Kim has been named a Southern California Super Lawyers (2007- 2009, 2011 - 2013), has an AV Preeminent Rating by Martindale Hubbell®, the highest possible rating in both legal ability and ethical standards for over 20 years, and is a 2013 Top Rated Lawyer in Labor & Employment.

Mr. Kim received his J.D. from the UCLA School of Law in 1978 and his B.A. (with honors) in Anthropology from the University of California, Berkeley in 1974.

**Lisa J. Yang**  
Partner

(213) 955-9500 (Ext. 128)  
lisa.yang@limruger.com



Lisa Yang is a Partner in the Los Angeles office of Lim Ruger where her practice focuses on business litigation. In addition to handling complex commercial and contract disputes, Ms. Yang has significant experience with the defense of employment discrimination claims, wage and hour litigation, contests for corporate control, investment fraud, and commercial landlord-tenant disputes. Her practice spans both state and federal courts.

Ms. Yang is known as an effective communicator who earns the respect of her clients and opposing counsel through frank and firm advocacy. Ms. Yang speaks and reads Korean fluently. Her communication skills and sensitivity to cultural issues have helped her advocate for a diverse group of clients, including major U.S. corporations, the Republic of Korea, foreign corporations with business dealings in the United States, nonprofit religious entities, elderly victims of World War II atrocities and Korean War veterans. Ms. Yang's cases include:

- Defended employers from claims of wage and hour violations, sex, age, or national origin discrimination, and wrongful termination.
- Defended the Republic of Korea in a commercial claim for over \$200 million, resulting in a dismissal.
- Represented plaintiff in action involving cross-border investment fraud claims in excess of \$12 million, resulting in full recovery.
- Defended breach of contract and fraud claims in connection with cross-border supply contracts.
- Defended wrongful death and premises liability claims.

Ms. Yang has made presentations to various legal organizations on topics including: "Disclosure of Court Documents," presented to the Korean Bar Association in 2009; "The Role of Lawyers in a Global Society," presented to the International Association of Korean Lawyers in 2009; "Discovery in the US Courts - What to Expect," presented to the International Association of Korean Lawyers in 2010; and "Community Collaborations to Serve Asian/Pacific Islander Communities," presented to the National Asian Pacific American Bar Association in 2010.

Ms. Yang currently serves on the Board of Governors and was a former President of the Korean American Bar Association of Southern California, is currently the Vice President of Overseas Chapter of the International Association of Korean Lawyers, and an Honorary Board member of the Center for the Pacific Asian Family.

Ms. Yang received her J. D. from the University of San Diego, School of Law in 2000, and her B. A. in Economics from Occidental College in 1997.



**George Busu**  
Associate

(213) 955-9500 (Ext. 161)  
george.busu@limruger.com



George Busu is an Associate in the Los Angeles office, where he specializes in complex commercial litigation and intellectual property.

In the litigation arena, Mr. Busu has extensive experience in intellectual property disputes, complex business disputes, fraud, commercial real estate disputes, and state court appeals.

Mr. Busu's intellectual property counseling covers the spectrum of copyright and trademark matters with due consideration for the appropriate balance between practical business and legal concerns. He has in-depth experience in trademark risk analysis, registration and registration maintenance.

Mr. Busu is a graduate of Yale Law School where he also served as Senior Editor of the Yale Journal of International Law.

**Norma Nava**

Associate

(213) 955-9500 (Ext. 151)  
norma.nava@limruger.com



Norma Nava is an Associate in the Los Angeles office, where she specializes in complex commercial litigation. Ms. Nava has a broad-based litigation practice with a focus on commercial real estate litigation, unfair business practices, and contract litigation. Her practice includes issues relating to international sale of goods, international and domestic commercial property disputes, and breach of lease agreements. She has significant experience in all phases of civil trial practice, including pre-trial discovery and motion practice, mediations, and trial preparation.

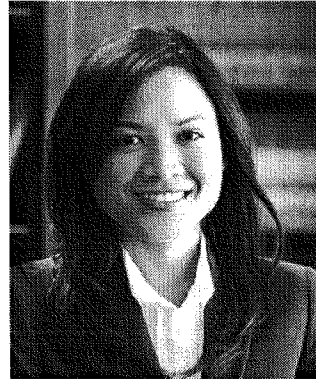
Ms. Nava graduated from the University of California, School of Law where she was managing editor of the Chicano/Latino Law Review. In 2005, Ms. Nava was the recipient of the 2005 Hewlett Foundation/ American Bar Association Environmental Justice Fellowship that funded her work on environmental litigation projects throughout the Los Angeles area. Prior to joining Lim Ruger, Ms. Nava was a legal fellow with the American Civil Liberties Union, where she worked on civil rights appellate advocacy in both state and federal courts.

Ms. Nava also serves as the Vice President and Board Member of For People of Color, Inc., a non-profit organization dedicated to providing free, high-quality law school admissions consulting services to prospective law students from underrepresented communities and communities of color.

Ms. Nava received her J.D. from University of California, Los Angeles, School of Law, and her B.A. in Political Science and Sociology from University of California, Los Angeles.

**Jane Kespradit**  
Associate

(213) 955-9500 (Ext. 152)  
jane.kespradit@limruger.com



Jane Kespradit is an Associate in Lim Ruger's Los Angeles office focusing on complex commercial litigation. Her experience includes representing corporations in copyright infringement, breach of contract, unfair business practices and bankruptcy matters. Ms. Kespradit also has assisted in defending employers in wage and hour disputes. Ms. Kespradit has cost-effectively resolved business disputes by participating in mediations and settlement negotiations.

Prior to joining Lim Ruger, Ms. Kespradit served as a judicial extern to the Honorable Judge Tomar Mason of the San Francisco Superior Court. During her externship, Ms. Kespradit participated in resolving complex litigation disputes, such as asbestos cases.

Ms. Kespradit served as co-chair to the Asian American Bar Association Law Student Council, board member of the USF Asian Pacific American Law Student Association, vice-president of the USF Equal Justice Society, and tutored the USF Academic Support Program. Continuing her professional and community activism, Ms. Kespradit helped incorporate the Thai American Bar Association, of which she is a founding and board member.

Ms. Kespradit received her J.D. from the University of San Francisco School of Law in 2009, with departmental honors in Business Law. She earned her B.A. in Classical Civilization and English from the University of California, Los Angeles.

# EXHIBIT 8

1 Christopher Kim (Bar No. 082080)  
christopher.kim@limruger.com  
2 Lisa J. Yang (Bar No. 208971)  
lisa.yang@limruger.com  
3 LIM, RUGER & KIM, LLP  
1055 West Seventh Street, Suite 2800  
4 Los Angeles, California 90017-2554  
Telephone: (213) 955-9500  
5 Facsimile: (213) 955-9511

6 Thomas A. Dubbs (*Pro Hac Vice*)  
tdubbs@labaton.com  
7 James W. Johnson (*Pro Hac Vice*)  
jjohnson@labaton.com  
8 Richard T. Joffe (*Pro Hac Vice*)  
rjoffe@labaton.com  
9 LABATON SUCHAROW LLP  
140 Broadway  
10 New York, New York 10005  
Telephone: (212) 907-0700  
11 Facsimile: (212) 818-0477

Allyn Z. Lite (*Pro Hac Vice*)  
alite@litedepalma.com  
Bruce D. Greenberg (*Pro Hac Vice*)  
bgreenberg@litedepalma.com  
LITE DePALMA GREENBERG, LLC  
Two Gateway Center, 12th Floor  
Newark, New Jersey 07102  
Telephone: (973) 623-3000  
Facsimile: (973) 623-0858

12 *Attorneys for Lead Plaintiff, the State of New Jersey, Department of Treasury,*  
13 *Division of Investment, Plaintiff International Brotherhood of Electrical Workers,*  
*Local 103, The Norfolk County Retirement System and Lead Counsel for the Class*

14 Thomas Bienert, Jr.  
tbienert@bmkattorneys.com  
BIENERT, MILLER & KATZMAN  
15 903 Calle Amanecer, Suite 350  
San Clemente, CA 92673  
16 Telephone: (949) 369-3700  
17 Facsimile: (949) 369-3701

Robert S. Green  
rsg@classcounsel.com  
GREEN & NOBLIN, P.C.  
700 Larkspur Landing Circle, Suite 275  
Larkspur, CA 94939  
Telephone: (415) 477-6700  
Facsimile: (415) 477-6710

*Attorneys for Plaintiff Mark Ripperda*

18  
19 **UNITED STATES DISTRICT COURT**  
20 **CENTRAL DISTRICT OF CALIFORNIA**  
21 **SOUTHERN DIVISION**

22 IN RE STEC, INC. SECURITIES  
23 LITIGATION

No. SACV 09-01304-JVS (MLGx)

24 This Document Relates To:

25 ALL ACTIONS

23 **DECLARATION OF PATRICK EGAN**  
24 **IN SUPPORT OF CLASS**  
25 **REPRESENTATIVES' COUNSEL'S**  
26 **APPLICATION FOR ATTORNEYS'**  
27 **FEES AND REIMBURSEMENT OF**  
28 **LITIGATION EXPENSES**

Hearing Date: May 20, 2013

Time: 1:30 p.m.

Judge: Honorable James V. Selna

Courtroom: 10C



1 Patrick Egan, Esq., declares as follows pursuant to 28 U.S.C. § 1746:

2 1. I am a partner of the law firm of Berman DeValerio. I submit this  
3 declaration in support of Co-Lead Counsel's motion for an award of attorneys' fees  
4 and payment of litigation expenses in the above-captioned action (the "Action")  
5 from inception through March 25, 2013 (the "Time Period").

6 2. My firm, which served as local counsel in *In re STEC, Inc. Securities*  
7 *Litigation*, Misc. No. 12-MC-91018-RGS (D. Mass.), was involved in all aspects  
8 of the litigation against EMC Corporation ("EMC") as set forth in Section V(C)(3)  
9 of the Declaration of Thomas A. Dubbs In Support Of Class Representatives'  
10 Motion For Final Approval Of The Proposed Class Action Settlement, Plan of  
11 Allocation And Award Of Attorneys' Fees And Expenses.

12 3. The principal tasks undertaken by my firm included prosecution of the  
13 discovery dispute against EMC in the District Court of Massachusetts and the  
14 Court of Appeals for the First Circuit under the direct supervision of Co-Lead  
15 Counsel. As local counsel, my firm was involved in preparing a motion to compel,  
16 a motion for reconsideration, notice of appeal and accompanying pleadings related  
17 to Lead Plaintiffs' discovery dispute with EMC. My firm also provided advice to  
18 Co-Lead Counsel concerning procedural and strategic issues in connection with  
19 their discovery action in Massachusetts federal court.

20 4. The schedule attached hereto as Exhibit A is a summary indicating the  
21 amount of time spent by each attorney and professional support staff of my firm  
22 who was involved in the prosecution of the discovery dispute, and the lodestar  
23 calculation based on my firm's current billing rates. The schedule was prepared  
24 from contemporaneous daily time records regularly prepared and maintained by  
25 my firm, which are available at the request of the Court. Time expended in  
26 preparing this application for fees and payment of expenses has not been included  
27 in this request.  
28



5. The hourly rates for the attorneys and professional support staff in my firm included in Exhibit A are the same as the regular rates charged for their services in non-contingent matters and/or which have been accepted in other securities or shareholder litigations.

6. The total number of hours expended on this litigation by my firm during the Time Period is 57.5 hours. The total lodestar for my firm for those hours is \$24,826.00.

7. My firm's lodestar figures are based upon the firm's billing rates, which rates do not include charges for expenses items. Expense items are billed separately and such charges are not duplicated in my firm's billing rates.

8. As detailed in Exhibit B, my firm has incurred a total of \$393.32 in unreimbursed expenses in connection with the prosecution of the discovery dispute against EMC. The expenses are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records and other source materials and are an accurate record of the expenses incurred.

9. With respect to the standing of my firm, attached hereto as Exhibit C is a brief biography of my firm as well as biographies of the firm's partners and of counsels.

I declare under penalty of perjury that the foregoing is true and correct.  
Executed on April 5, 2013.

Patrick T. Egan

# EXHIBIT A

**STEC SECURITIES**

**LODESTAR REPORT**

FIRM: Berman DeValerio

REPORTING PERIOD: Inception through October 19, 2012

PROFESSIONAL	STATUS	HOURLY RATE	TOTAL HOURS TO DATE	TOTAL LODESTAR TO DATE
Egan, Patrick	Partner	\$625.00	3.60	\$2,250.00
Sutter, John	Of Counsel	\$475.00	40.20	\$19,095.00
Eklof, Amber	Paralegal	\$230.00	0.20	\$46.00
Lugo, William	Paralegal	\$250.00	1.50	\$375.00
Wright, Stephen	Paralegal	\$255.00	12.00	\$3,060.00
<b>TOTAL</b>			<b>57.50</b>	<b>\$24,826.00</b>

# EXHIBIT B

**STEC SECURITIES**

**DISBURSEMENT REPORT**

FIRM: Berman DeValerio

REPORTING PERIOD: Inception through October 19, 2012

DISBURSEMENT	CURRENT AMOUNT	TOTAL AMOUNT TO DATE
Duplicating	\$35.84	\$35.84
Postage	\$11.40	\$11.40
Transportation/Meals/Lodging	\$75.60	\$75.60
Filing Fees	\$146.00	\$146.00
Computer Research	\$82.36	\$82.36
Federal Express/UPS	\$42.12	\$42.12
<b>TOTAL</b>	<b>\$393.32</b>	<b>\$393.32</b>

# EXHIBIT C





## BERMAN DEVALERIO

### The Firm

The law firm of Berman DeValerio prosecutes class actions nationwide on behalf of victims of securities and antitrust law violations. Founded in 1982, Berman DeValerio has 37 attorneys in Boston, San Francisco and South Florida. The firm holds leadership positions in securities and antitrust actions around the country.

The attorneys at Berman DeValerio have prosecuted hundreds of class actions on behalf of defrauded individuals and institutions, recovering billions of dollars overall for their clients and the classes they have represented. In addition to financial recoveries, the firm has achieved significant changes in corporate governance and business practices of defendant companies.

### Results

#### SECURITIES SETTLEMENTS

Berman DeValerio's securities litigation practice group has been selected as monitoring, evaluation and/or litigation counsel by approximately 100 institutional investors, including four of the five largest public pension funds in the nation and more than a third of all U.S. public funds with more than \$5 billion in defined-benefit assets under management.<sup>1</sup>

Since the Private Securities Litigation Reform Act of 1995 ("PSLRA") was enacted, the firm has acted as lead or co-lead counsel in approximately 100 shareholder lawsuits resulting in more than \$2.8 billion in recoveries. The following is a selection of significant results in securities litigation:

*Carlson v. Xerox Corp., et al.*, 00cv1621 (D. Conn.). Representing the Louisiana State Employees' Retirement System as co-lead counsel, Berman DeValerio negotiated a \$750 million settlement to resolve claims of securities fraud against Xerox, certain top officers and its auditor KPMG LLP. When it received final court approval in January 2009, the recovery was the 10th largest securities class action settlement of all time.

*In re Bristol-Myers Squibb Sec. Litig.*, 02cv2251 (S.D.N.Y.). Berman DeValerio represented the Fresno County Employees' Retirement Association and Louisiana State Employees' Retirement System as co-lead plaintiffs and negotiated a settlement of \$300 million in July 2004. At that time, the settlement was the largest by a drug company in a U.S. securities fraud case.

*In re The Bear Stearns Cos. Inc. Sec., Derivative and ERISA Litig.*, Master File No. 08-MDL No. 1963 / 08 Civ. 2793 (S.D.N.Y.). Berman DeValerio acted as co-lead counsel for court-appointed lead plaintiff the State of Michigan Retirement Systems in this case arising from investment losses suffered in the Bear Stearns Companies' 2008 collapse. The firm negotiated \$294.9

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<sup>1</sup> According to a January 2011 query of Standard & Poor's Money Market Directories. Asset valuation dates vary.



## BERMAN DEVALERIO

million in settlements, comprised of \$275 million from Bear Stearns and \$19.9 million from auditor Deloitte & Touche LLP. The settlement received final approval November 9, 2012.

*In re WorldCom, Inc. Sec. Litig.*, 02cv3288 (S.D.N.Y.). As counsel to court-appointed bondholder representatives, the County of Fresno, Calif. and the Fresno County Employees' Retirement Association, Berman DeValerio helped a team of lawyers representing the lead plaintiff, the New York State Common Retirement Fund, obtain settlements worth more than \$6.13 billion.

*In re El Paso Sec. Litig.*, H-02-2717 (S.D. Tex.). Representing the Oklahoma Firefighters Pension and Retirement System as co-lead plaintiff, Berman DeValerio helped negotiate a settlement totaling \$285 million, including \$12 million from auditors PricewaterhouseCoopers. The court granted final approval of the settlement in March 2007.

*In re Digital Lightwave Sec. Litig.*, 98-152cvT-24C (M.D. Fla.). As co-lead counsel, Berman DeValerio negotiated a settlement that included changing company management and strengthening the company's internal financial controls. The class received 1.8 million shares of freely tradable common stock that traded at just below \$4 per share when the court approved the settlement. At the time the shares were distributed to the members of the class, the stock traded at approximately \$100 per share, and class members received more than 200% of their losses after the payment of attorneys' fees and expenses. The total value of the settlement, at the time of distribution, was almost \$200 million.

*In re Symbol Technologies, Inc. Sec. Litig.*, 2:02cv01383 (E.D.N.Y.). Berman DeValerio represented the Louisiana Municipal Police Employees' Retirement System as co-lead plaintiff, obtaining a \$139 million partial settlement in June 2004. Subsequently, Symbol's former auditor, Deloitte & Touche LLP, agreed to pay \$24 million. The court granted final approval in September 2006.

*In re Lernout & Hauspie Sec. Litig.*, 00-11589 (D. Mass.), and *Quaak v. Dexia, S.A.*, 03-11566 (D. Mass.). As co-lead counsel, Berman DeValerio negotiated in December 2004 what was then the third-largest settlement ever paid by accounting firms in a securities class action – a \$115 million agreement with the U.S. and Belgian affiliates of KPMG International. The case stemmed from KPMG's work for Lernout & Hauspie Speech Products, a software company driven into bankruptcy by a massive fraud. In March 2005, the firm reached an additional settlement worth \$5.27 million with certain of Lernout & Hauspie's former top officers and directors. In the related Quaak case, the Firm negotiated a \$60 million settlement with Dexia Bank Belgium to settle claims stemming from the bank's alleged role in the fraudulent scheme at Lernout & Hauspie. The court granted final approval of the Dexia settlement in June 2007, bringing the total settlement value to more than \$180 million.

*In re Prison Realty Sec. Litig.*, 3:99cv0452 (M.D. Tenn.), (*In re Old CCA Sec. Litig.*, 3:99cv0458). The firm represented the former shareholders of Corrections Corporation of America, which





## BERMAN DEVALERIO

merged with another company to form Prison Realty Trust, Inc. The action charged that the registration statement issued in connection with the merger contained untrue statements. Overcoming arguments that the class' claims of securities fraud were released in prior litigation involving the merger, the firm successfully defeated the motions to dismiss. It subsequently negotiated a global settlement of approximately \$120 million in cash and stock for this case and other related litigation.

*Oracle Cases, Coordination Proceeding, Special Title (Rule 1550(b))* No. 4180 (Cal. Sup. Ct., SM Cty.). In this coordinated derivative action, Oracle Corporation shareholders alleged that the company's Chief Executive Officer, Lawrence J. Ellison, profited from illegal insider trading. Acting as co-lead counsel, the firm reached a settlement, pursuant to which Mr. Ellison would personally make charitable donations of \$100 million over five years in Oracle's name to an institution or charity approved by the company and pay \$22 million in attorneys' fees and expenses associated with the prosecution of the case. This innovative agreement, approved by a judge in December 2005, benefited Oracle through increased goodwill and brand recognition, while minimizing concerns that would have been raised by a payment from Mr. Ellison to the company, given his significant ownership stake. The lawsuit resulted in important changes to Oracle's internal trading policies that decrease the chances that an insider will be able to trade in possession of material, non-public information.

*In re International Rectifier Sec. Litig.*, 07cv2544 (C.D. Cal.). As co-lead counsel representing the Massachusetts Laborers' Pension Fund, the firm negotiated a \$90 million settlement with International Rectifier Corporation and certain top officers and directors. The case alleged that the company engaged in numerous accounting improprieties to inflate its financial results. The court granted final approval of the settlement in February 2010.

*In re State Street Bank & Trust Co. ERISA Litig.*, 07cv8488 (S.D.N.Y.). The firm acted as co-lead counsel in this consolidated class action case, which alleged that defendant State Street Bank and Trust Company and its affiliate, State Street Global Advisors, Inc., (collectively, "State Street") breached their fiduciary duties under the Employee Retirement Income Security Act of 1974 ("ERISA") by failing to prudently manage the assets of ERISA plans invested in State Street fixed income funds during 2007. After well over a year of litigation, during which Berman DeValerio and its co-counsel reviewed approximately 13 million pages of documents and took more than 30 depositions, the parties negotiated an all-cash \$89.75 million settlement, which received final approval in 2010.

*In re Philip Services Corp. Sec. Litig.*, 98cv0835 (S.D.N.Y.). As co-lead counsel, Berman DeValerio negotiated settlements totaling \$79.75 million with the bankrupt company's former auditors, top officers, directors and underwriters. The case alleged that Philip Services and its top officers and directors made false and misleading statements regarding the company's publicly reported revenues, earnings, assets and liabilities. The district court initially dismissed the claims on grounds of *forum non conveniens*, but the firm successfully obtained a reversal by the





## BERMAN DEVALERIO

Second U.S. Circuit Court of Appeals. The court granted final approval of the settlements in March 2007.

*In re Reliant Sec. Litig.*, 02cv1810 (S.D. Tex.). As lead counsel representing the Louisiana Municipal Police Employees' Retirement System, the firm negotiated a \$75 million cash settlement from the company and Deloitte & Touche LLP. The settlement received final approval in January 2006.

*In re KLA-Tencor Corp. Sec. Litig.*, 06cv04065 (N.D. Cal.). Representing co-lead plaintiff Louisiana Municipal Police Employees' Retirement System, Berman DeValerio negotiated a \$65 million agreement to settle claims that KLA-Tencor illegally backdated stock option grants, issued false and misleading statements regarding grants to key executives and inflated the company's financial results by understating expenses associated with the backdated options. The court granted final approval of the settlement in 2008.

*Ehrenreich v. Witter*, 95cv6637 (S.D. Fla.). The firm was co-lead counsel in this case involving Sensormatic Electronics Corp., which resulted in a settlement of \$53.5 million. When it was approved in 1998, the settlement was one of the largest class action settlements in the state of Florida.

*In re Thomas & Betts Sec. Litig.*, 2:00cv2127 (W.D. Tenn.). The firm served as co-lead counsel in this class action, which settled for more than \$51 million in 2004. Plaintiffs had accused the company and other defendants of issuing false and misleading financial statements for 1996, 1997, 1998, 1999 and the first two quarters of 2000.

*In re Enterasys Networks, Inc. Sec. Litig.*, C-02-071-M (D.N.H.). Berman DeValerio acted as sole lead counsel in a case against Enterasys Networks, Inc., in which the Los Angeles County Employees Retirement Association was lead plaintiff. The company settled in October 2003 for \$17 million in cash, stock valued at \$33 million and major corporate governance improvements that opened the computer networking company to greater public scrutiny. Changes included requiring the company to back a proposal to eliminate its staggered board of directors, allowing certain large shareholders to propose candidates to the board and expanding the company's annual proxy disclosures. The settlement received final court approval in December 2003.

*Giarraputo v. UNUMProvident Corp.*, 2:99cv00301 (D. Me.). As a member of the executive committee representing plaintiffs, Berman DeValerio secured a \$45 million settlement in a lawsuit stemming from the 1999 merger that created UNUMProvident. Shareholders of both predecessor companies accused the insurer of misleading the public about its business condition before the merger. The settlement received final approval in June 2002.

*In re UCAR International, Inc. Sec. Litig.*, 98cv0600 (D. Conn.). The firm represented the Florida State Board of Administration as the lead plaintiff in a securities claim arising from an



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accounting restatement. The case settled for \$40 million cash and the requirement that UCAR appoint an independent director to its board of directors. The settlement was approved in 2000.

*In re American Home Mortgage Sec. Litig.*, 07-MD-1898 (E.D.N.Y.). As co-lead counsel representing the Oklahoma Police Pension & Retirement System, the firm negotiated a \$37.25 million settlement – including \$4.75 million from auditors Deloitte & Touche and \$8.5 million from underwriters – despite the difficulties American Home’s bankruptcy posed to asset recovery. The plaintiffs contended that American Home had failed to write down the value of certain loans in its portfolio, which declined substantially in value as the credit markets unraveled. The settlement received final approval in 2010 and was distributed in 2011.

*In re SmartForce PLC d/b/a SkillSoft Sec. Litig.*, 02cv544 (D.N.H.). Representing the Teachers’ Retirement System of Louisiana as co-lead plaintiff, Berman DeValerio negotiated a \$30.5 million partial settlement with SkillSoft. Subsequently, the firm also negotiated an \$8 million cash settlement with Ernst & Young Chartered Accountants and Ernst & Young LLP, SkillSoft’s auditors at the time. The settlements received final approval in September 2004 and November 2005, respectively.

*In re Centennial Technologies Sec. Litig.*, 97cv10304 (D. Mass.). Berman DeValerio served as sole lead counsel in a class action involving a massive accounting scandal that shot down the company’s high-flying stock. Berman DeValerio negotiated a settlement that permitted a turnaround of the company and provided a substantial recovery for class members. The firm negotiated changes in corporate practice, including strengthening internal financial controls and obtaining 37% of the company’s stock for the class. The firm also recovered \$20 million from Coopers & Lybrand, Centennial’s auditor at the time. In addition, the firm recovered \$2.1 million from defendants Jay Alix & Associates and Lawrence J. Ramaekers for a total recovery of more than \$35 million for the class.

*In re Avant, Sec. Litig.*, 96cv20132 (N.D. Cal.). Avant!, a software company, was charged with securities fraud in connection with its alleged theft of a competitor’s software code, which Avant! incorporated into its flagship software product. Serving as lead counsel, the firm recovered \$35 million for the class. The recovery resulted in eligible class claimants receiving almost 50% of their losses after attorneys’ fees and expenses.

*In re Sykes Enterprises, Inc. Sec. Litig.*, 8:00cv212-T-26F (M.D. Fla.). The firm represented the Florida State Board of Administration as co-lead plaintiff. Sykes Enterprises was accused of using improper means to match the company’s earnings with Wall Street’s expectations. The firm negotiated a \$30 million settlement, which received final approval in March 2003.

*In re Valence Sec. Litig.*, 95cv20459 (N.D. Cal.). Berman DeValerio served as co-lead counsel in this action against a Silicon Valley-based company for overstating its performance and the





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development of an allegedly revolutionary battery technology. After the Ninth Circuit reversed the District Court's decision to grant summary judgment in favor of defendants, the case settled for \$30 million in Valence common stock.

*In re Sybase II, Sec. Litig.*, 98cv0252-CAL (N.D. Cal.). Sybase was charged with inflating its quarterly financial results by improperly recognizing revenue at its wholly owned subsidiary in Japan. Acting as co-lead counsel, the firm obtained a \$28.5 million settlement.

*In re Force Protection Inc. Sec. Litig.*, 08-cv-845 (D.S.C.). As co-lead counsel representing the Laborers' Annuity and Benefit System of Chicago, the firm negotiated a \$24 million settlement in a securities class action against armored vehicle manufacturer Force Protection, Inc. The settlement addressed the claims of shareholders who accused the company and its top officers of making false and misleading statements regarding financial results, failing to maintain effective internal controls over financial reporting, and failing to comply with government contracting standards.

*In re ICG Communications Inc. Sec. Litig.*, 00cv1864 (D. Colo.). As co-lead counsel representing the Strategic Marketing Analysis Fund, the firm negotiated an \$18 million settlement with ICG Communications Inc. The case alleged that ICG executives misled investors and misrepresented growth, revenues and network capabilities. The court granted final approval of the settlement in January 2007.

*In re Critical Path, Inc. Sec. Litig.*, 01cv0551 (N.D. Cal.). The firm negotiated a \$17.5 million recovery to settle claims of accounting improprieties at a California software development company. Representing the Florida State Board of Administration, the firm was able to obtain this recovery despite difficulties arising from the fact that Critical Path teetered on the edge of bankruptcy. The settlement was approved in June 2002.

*In re Sunrise Senior Living, Inc. Sec. Litig.*, 07cv00102 (D.D.C.). A federal judge granted final approval of a \$13.5 million settlement between Oklahoma Firefighters Pension and Retirement System, represented by Berman DeValerio, and Sunrise Senior Living Inc.

*Hallet v. Li & Fung, Ltd., et al.*, 95cv08917 (S.D.N.Y.). Cyrk Inc. was charged with misrepresenting its financial results and failing to disclose that its largest customer was ending its relationship with the company. In 1998, Berman DeValerio successfully recovered more than \$13 million for defrauded investors.

*In re Warnaco Group, Inc. Sec. Litig.*, 00cv6266 (S.D.N.Y.). Representing the Fresno County Employees' Retirement Association as co-lead plaintiff, the firm negotiated a \$12.85 million settlement with several current and former top officers of the company.





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*Gelfer v. Pegasystems, Inc., et al.*, 98cv12527 (D. Mass.). As co-lead counsel, Berman DeValerio negotiated a settlement valued at \$12.5 million, \$4.5 million in cash and \$7.5 million in shares of the company's stock or cash, at the company's option.

*Sand Point Partners, L.P. v. Pediatrix Medical Group, Inc.*, 99cv6181 (S.D. Fla.). Berman DeValerio represented the Florida State Board of Administration, which was appointed co-lead plaintiff along with several other public pension funds. The complaint accused Pediatrix of Medicaid billing fraud, claiming that the company illegally increased revenue and profit margins by improperly coding treatment rendered. The case settled for \$12 million on the eve of trial in 2002.

*In re Molten Metal Technology Inc. Sec. Litig.*, 1:97cv10325 (D. Mass.), and *Axler v. Scientific Ecology Group, Inc., et al.*, 1:98cv10161 (D. Mass.). As co-lead counsel, Berman DeValerio played a key role in settling the actions after Molten Metal and several affiliates filed a petition for bankruptcy reorganization in Massachusetts. The individual defendants and the insurance carriers in Molten Metal agreed to settle for \$11.91 million. After the bankruptcy, a trustee objected to the use of insurance proceeds for the settlement. The parties agreed to pay the trustee \$1.325 million of the Molten Metal settlement. The parties also agreed to settle claims against Scientific Ecology Group for \$1.25 million, giving Molten Metal's investors \$11.835 million.

*In re CHS Electronics, Inc. Sec. Litig.*, 99-8186-CIV (S.D. Fla.). The firm helped obtain an \$11.5 million settlement for co-lead plaintiff Warburg, Dillon, Read, LLC (now UBS Warburg).

*In re Summit Technology Sec. Litig.*, 96cv11589 (D. Mass.). Berman DeValerio, as co-lead counsel, negotiated a \$10 million settlement for the benefit of the class.

*In re Exide Corp. Sec. Litig.*, 98cv60061 (E.D. Mich.). Exide was charged with having altered its inventory accounting system to artificially inflate profits by reselling used, outdated or unsuitable batteries as new ones. As co-lead counsel for the class, Berman DeValerio recovered more than \$10 million in cash for class members.

*In re Fidelity/Micron Sec. Litig.*, 95cv12676 (D. Mass.). The firm recovered \$10 million in cash for Micron investors after a Fidelity Fund manager touted Micron while secretly selling the stock.

*In re Interspeed, Inc. Sec. Litig.*, 00cv12090-EFH (D. Mass.). Berman DeValerio served as co-lead counsel and negotiated a \$7.5 million settlement on behalf of the class. The settlement was reached in an early stage of the proceedings, largely as a result of the financial condition of Interspeed and the need to salvage a recovery from its available assets and insurance.



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*In re Abercrombie & Fitch Co. Sec. Litig.*, M21-83 (S.D.N.Y). As a member of the executive committee in this case, the firm recovered more than \$6 million on behalf of investors. The case alleged that the clothing company misled investors with respect to declining sales, which affected the company's financial condition. The court granted final approval of the settlement in January 2007.





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### ANTITRUST SETTLEMENTS

Over the past two decades, Berman DeValerio has held leadership roles in scores of complex antitrust cases, negotiating substantial settlements for its clients. These include:

*In re Reformulated Gasoline (RFG) Antitrust and Patent Litigation*, MDL 05-1671 (C.D. Cal.). Berman DeValerio, as one of four co-lead counsels in the case, negotiated a \$48 million settlement with Union Oil Company and Unocal. The agreement settled claims that the defendants manipulated the California gas market for summertime reformulated gasoline and increased prices for consumers. The settlement is noteworthy because it delivers to consumers a combination of clean air benefits and the prospect of funding for alternative fuel research. The settlement received final court approval in November 2008.

*In re Foreign Currency Conversion Fee Antitrust Litig.*, MDL 1409 (S.D.N.Y.). Berman DeValerio, as head of discovery against defendant Citigroup Inc., played a key role in reaching a \$336 million settlement. The agreement settled claims that the defendants, which include the VISA, MasterCard and Diners Club networks and other leading bank members of the VISA and MasterCard networks, violated federal and state antitrust laws in connection with fees charged to U.S. cardholders for transactions effected in foreign currencies.

*Sullivan et. al. v. DB Investments, Inc. et. al.*, Case No. 04-02819 (D.N.J.). Berman DeValerio represented the class in this case, alleging that the De Beers group of companies unlawfully monopolized the worldwide supply of diamonds in a scheme to overcharge resellers and consumers. In May 2008, a federal judge approved the settlement, which included a cash payment to class members of \$295 million, an agreement by DeBeers to submit to the jurisdiction of the United States court to enforce the terms of the settlement and a comprehensive injunction limiting DeBeers' ability to restrict the worldwide supply of diamonds in the future. This case is significant not only because of the large cash recovery, but also because previous efforts to obtain jurisdiction over DeBeers in both private and government actions had failed. On August 27, 2010, the Third U.S. Circuit Court of Appeals agreed to hear arguments over whether to uphold a district court's certification of the class. By agreeing to schedule an *en banc* appeal before the full Court, the Third Circuit vacated a July 13, 2010 ruling by a three-judge panel of the appeals court that, in a 2-to-1 decision, had ordered a remand of the case back to the district court, which may have required substantial adjustments to the original settlement. The settlement funds remain in an escrow account awaiting final disposition.

*In re DRAM Antitrust Litig.*, M:02cv01486 (N.D. Cal). As liaison counsel, the firm actively participated in this Multi-District Litigation, which ultimately resulted in significant settlements with some of the world's leading manufacturers of Dynamic Random Access Memory ("DRAM") chips. The defendant chip-makers allegedly conspired to fix prices of the DRAM memory chips





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sold in the United States during the class period. The negotiated settlements totaled nearly \$326 million.

*In re Sorbates Direct Purchaser Antitrust Litig.*, C 98-4886 CAL (N.D. Cal.). The firm served as lead counsel alleging that six manufacturers of Sorbates, a food preservative, violated antitrust laws through participation in a worldwide conspiracy to fix prices and allocations to customers in the United States. The firm negotiated a partial settlement of \$82 million with four of the defendants in 2000. Following intensive pretrial litigation, the firm achieved a further \$14.5 million settlement with the two remaining defendants, Japanese manufacturers, in 2002. The total settlement achieved for the class was \$96.5 million.

*In re Disposable Contact Lens Antitrust Litig.*, MDL 1030 (M.D. Fla.). Attorneys in the Florida office acted as co-lead counsel and chief trial counsel. Representing both a national class and the State of Florida, the firm helped secure settlements from defendants Bausch & Lomb and the American Optometric Association before trial and from Johnson & Johnson after five weeks of trial. The settlements were valued at more than \$92 million and also included significant injunctive relief to make disposable contact lenses available at more discount outlets and more competitive prices.

*In re Cardizem CD Antitrust Litig.*, 99-01278 (E.D. Mich.). In another case involving generic drug competition, Berman DeValerio, as co-lead counsel, helped secure an \$80 million settlement from French-German drug maker Aventis Pharmaceuticals and the Andrx Corporation of Florida. The payment to consumers, state agencies and insurance companies settled claims that the companies conspired to prevent the marketing of a less expensive generic version of the blood pressure medication Cardizem CD. The state attorneys general of New York and Michigan joined the case in support of the class.

*In re Toys "R" Us Antitrust Litig.*, MDL 1211 (E.D.N.Y.). The California office negotiated a \$62 million settlement to answer claims that the retailer violated laws by colluding to cut off or limit supplies of popular toys to stores that sold the products at lower prices. The case developed the antitrust laws with respect to a "hub and spoke" conspiracy, where a downstream power seller coerces upstream manufacturers to the detriment of consumers. One component of the settlement required Toys "R" Us to donate \$40 million worth of toys to needy children throughout the United States over a three-year period.

*In re New Motor Vehicles Canadian Export Antitrust Litigation*, 03-md-1532 (D. Me). Berman DeValerio is lead counsel and represents car buyers in litigation against automobile manufacturers and dealer associations. The litigation includes a federal multidistrict action in the U.S. District Court for the District of Maine as well as state court actions in Arizona, California, Florida, New Mexico, Tennessee and Wisconsin. The lawsuits allege that the defendants conspired to reduce competition in the U.S. car market by preventing cheaper, yet virtually identical, cars from being exported from Canada to the United States during the 2000



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to 2003 time period. Plaintiffs reached partial settlements with Toyota and the Canadian Automobile Dealers' Association for a total of \$35.7 million, which are pending final approval in the District of Maine. The federal court granted summary judgment to the remaining non-settling defendants. Litigation continues, however, against certain automakers in the related state court actions, such as *In re Automobile Antitrust Cases I and II*, JCCP Nos. 4298 and 4303, pending in the Superior Court of California for the County of San Francisco.

*In re NASDAQ Market-Makers Antitrust Litig.*, 94cv3996 (S.D.N.Y.). The firm played a significant role in one of the largest antitrust settlements on record in a case that involved alleged price-fixing by more than 30 NASDAQ Market-Makers on about 6,000 NASDAQ-listed stocks over a four-year period. The settlement was valued at nearly \$1 billion.

*In re Buspirone Antitrust Litig.*, MDL 1413 (S.D.N.Y.). Berman DeValerio attorneys played a key role in obtaining a \$535 million agreement from Bristol-Myers Squibb Co. to partially settle claims that the drug company illegally blocked generic competition for its anxiety medication, BuSpar.

*In re Abbott Laboratories Norvir Antitrust Litig.*, 04-1511, 04-4203, (N.D. Cal.). Berman DeValerio acted as co-lead counsel in a case on behalf of indirect purchasers alleging that the defendant pharmaceutical company engaged in an illegal leveraged monopoly in the sale of its AIDS boosting drug known as Norvir (or Ritanovir). Plaintiffs were successful through summary judgment, including the invalidation of two key patents based on prior art, but were reversed on appeal in the Ninth Circuit as to the leveraged monopoly theory. The case settled for \$10 million, which was distributed net of fees and costs on a *cy pres* basis to 10 different AIDS research and charity organizations throughout the United States.

*Automotive Refinishing Paint Antitrust*, J.C.C.P. No. 4199 (Sup. Cal.). In this class action, indirect purchaser-plaintiffs brought suit in California State Court against five manufacturers of automotive refinishing coatings and chemicals alleging that they violated California law by unlawfully conspiring to fix paint prices. Settlements were reached with all defendants totaling \$9.4 million, 55% of which was allocated among an End-User Class consisting of consumers and distributed on a *cy pres*, or charitable, basis to thirty-nine court-approved organizations throughout California, and the remaining 45% of which was distributed directly to a Refinishing Class consisting principally of auto-body shops located throughout California.

### **Leadership Roles**

The firm currently acts as lead or co-lead counsel in dozens of high-profile securities and antitrust class actions and also represents investors in individual actions, ERISA cases and derivative cases.





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### SECURITIES CLASS ACTIONS

The following is a representative list of active securities class action cases in which the firm serves as lead or co-lead counsel or as executive committee member.

- *In re BP, PLC Sec. Litig.*, 10-md-2185 (S.D. Tex.) – Co-lead Counsel.
- *In re General Electric Sec. Litig.*, 09-cv-1951 (S.D.N.Y.) – Lead Counsel.
- *In re IndyMac Mortgage-Backed Litig.*, 09-cv-4583 (S.D.N.Y.) – Lead Counsel.
- *In re Fannie Mae 2008 Sec. Litig.*, 08-cv-7831 (S.D.N.Y.) – Co-lead Counsel.
- *In re Par Pharmaceutical Sec. Litig.*, 06cv03226 (D.N.J.) – Member of the Executive Committee.
- *In re Bank United Sec. Litig.*, 08 CIV 22572 (S.D. Fla.) – Lead Counsel.
- *City of Brockton Retirement System v. Avon Products, Inc., et al.*, 11 Civ. 4665 (PGG) (S.D.N.Y.) – Lead Plaintiff's Executive Committee.

### INDIVIDUAL SECURITIES CASES

The following are individual securities cases in which the firm acts as plaintiffs' counsel for major institutional investors.

- *California Public Employees' Retirement System v. Moody's Corp.*, CGC-09-490241 (Cal. Super. Ct., SF Cty.) – Plaintiff's Counsel.
- *Florida State Bd. Of Admin. v. American Int'l Group, Inc.*, 05-CIV-7886 (S.D.N.Y.) – Plaintiffs' Counsel.





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### ANTITRUST CLASS ACTIONS

The following is a list of active antitrust/unfair competition class action cases in which the firm serves as lead or co-lead counsel or as an executive committee member.

- *In re Optical Disk Drive Antitrust Litigation*, 3:10-MD-02143-RS (N.D. Cal.) – Co-lead Counsel.
- *Carlin v. DairyAmerica, Inc.*, 09-CV-00430 (E.D. Cal.) – Member of the Interim Executive Committee and Liaison Counsel.
- *In re New Motor Vehicles Canadian Export Antitrust Litig.*, 03-MD-1532-P-H (D. Me.) – Lead Counsel.
- *In re Online DVD Rental Antitrust Litig.*, 09-MD-2029 (N.D. Cal.) – Co-lead Counsel.

### ***Trial Experience***

The firm has significant experience taking class actions to trial. Over the years, Berman DeValerio's attorneys have tried cases against pharmaceutical companies in courtrooms in New York and Boston, a railroad conglomerate in Delaware, one of the nation's largest trustee banks in Philadelphia, a major food retailer in St. Louis and the top officers of a failed New England bank.

The firm has been involved in more trials than most of the firms in the plaintiffs' class action bar. Our partners' trial experience includes:

- *In re MetLife Demutualization Litig.*, 00-Civ-2258 (E.D.N.Y.). This case settled for \$50 million after the jury was empanelled.
- *White v. Heartland High-Yield Municipal Bond Fund*, 00-C-1388 (E.D. Wis.). Firm attorneys conducted three weeks of a jury trial against final defendant, PwC, before a settlement was reached for \$8.25 million. The total settlement amount was \$23.25 million.
- *In re Disposable Contact Lens Antitrust Litig.*, MDL 1030 (M.D. Fla.). Settled for \$60 million with defendant Johnson & Johnson after five weeks of trial.
- *Gutman v. Howard Savings Bank*, 2:90cv02397 (D.N.J.). Jury verdict for plaintiffs after three weeks of trial in individual action. The firm also obtained a landmark opinion allowing investors to pursue common law fraud claims arising out of their decision to



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retain securities as opposed to purchasing new shares. *See Gutman v. Howard Savings Bank*, 748 F. Supp. 254 (D.N.J. 1990).

- *Hurley v. Federal Deposit Insurance Corp.*, 88cv940 (D. Mass.). Bench verdict for plaintiffs.
- *Levine v. Fenster*, 2cv895131 (D.N.J.). Plaintiffs' verdict of \$3 million following four-week trial.
- *In re Equitec Sec. Litig.*, 90cv2064 (N.D. Cal.). Parties reached a \$35 million settlement at the close of evidence following five-month trial.
- *In re ICN/Viratek Sec. Litig.*, 87cv4296 (S.D.N.Y.). Hung jury with 8-1 vote in favor of plaintiffs; the case eventually settled for over \$14.5 million.
- *In re Biogen Sec. Litig.*, 94cv12177 (D. Mass.). Verdict for defendants.
- *Upp v. Mellon*, 91-5219 (E.D. Pa.). In this bench trial, tried through verdict in 1992, the court found for a class of trust beneficiaries in a suit against the trustee bank and ordered disgorgement of fees. The Third Circuit later reversed based on lack of jurisdiction.

### OUR ATTORNEYS

#### *Partners*

#### **DANIEL E. BARENBAUM**

A partner in the firm's San Francisco office, Daniel Barenbaum focuses his practice on securities litigation. His current cases include a landmark lawsuit brought by the California Public Employees' Retirement System against the major credit rating agencies in connection with the marketing of one of the largest, most complex structured finance securities ever devised, and a case against Fannie Mae and certain executives relating to misrepresentations regarding the amount of subprime and Alt-A on the company's books and the lack of adequate risk controls used and disclosed to manage those types of loans.

Mr. Barenbaum was formerly a partner at a San Francisco law firm where he represented clients in securities and antitrust litigation, as well as in mass tort and employment class actions and in multidistrict litigation. With a business degree in finance in addition to his law degree, Mr. Barenbaum has also worked for a financial services company, assisting clients with investment planning and risk mitigation.





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Mr. Barenbaum earned his J.D. and M.B.A. degrees in 2000 from Emory University, where he received the business school award for Most Outstanding Academic Accomplishment. He obtained his B.A. in English from Tufts University in 1994. Mr. Barenbaum was Notes and Comments Editor for the Emory Bankruptcy Developments Journal for 1999-2000. He is the author of "Delineating Covered Class Actions Under SLUSA," *Securities Litigation Report* (December-January 2005), and Contributing Author to *California Class Actions Practice and Procedures* (Elizabeth J. Cabraser, Editor-in-Chief, 2003). Having successfully obtained his Series 7 and 66 licenses, he was previously registered with the Securities and Exchange Commission as both a broker-dealer representative and an investment advisor.

Mr. Barenbaum is admitted to practice law in the State of California.

### NORMAN BERMAN

In 1982, Norman Berman co-founded Berman DeValerio & Pease LLP, a predecessor to Berman DeValerio. He focuses his practice principally on complex securities and antitrust litigation.

During the course of his career, Mr. Berman has litigated numerous cases to successful resolution, recovering many millions of dollars on behalf of defrauded investors. He was among the lead attorneys in the *Philip Services, Corp.* and *ICG Communications, Inc.* class actions. In the case against Philip Services, Mr. Berman assisted in recovering a \$79.75 million settlement. To date, that settlement includes the largest recovery ever obtained from a Canadian auditor. In the class action against ICG Communications, he helped to successfully secure an \$18 million settlement. Co-lead plaintiffs in the case alleged that ICG executives misled investors and misrepresented ICG's growth, revenues and network capabilities throughout the class period.

Mr. Berman was also part of the team that achieved a \$750 million recovery in *Carlson v. Xerox Corp.*, in which the firm represented the Louisiana State Employees' Retirement System as co-lead counsel. Mr. Berman coordinated and conducted discovery, including a massive document review, in that international fraud class action. The Xerox recovery ranked 10th among all securities class action settlements when it received final approval in 2009.

Mr. Berman has acted as trial counsel in a number of successful cases, including *Hurley et al v. Federal Deposit Insurance Corp.*, where the court entered an \$18 million judgment against the failed First Service Bank for Savings, and *ICN Securities Litigation*, which settled after trial for more than \$14.5 million in 1996. The trial team's work in *ICN* prompted positive judicial comment. Mr. Berman also acted as a senior member of the trial team in the case of *In re Biogen Securities Litigation*, and as a member of the trial team in *In re Zila Inc. Securities Litigation*, which settled during trial preparation, *Poughkeepsie Savings Bank v. Morash et al.*, and other matters.



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Prior to co-founding Berman DeValerio & Pease, LLP in 1982, Mr. Berman was associated with the Boston-based general practice firms Barron & Stadfeld, P.C. and Harold Brown & Associates.

Mr. Berman graduated from Boston University in 1970 and from Suffolk University Law School in 1974. While in law school, he was a member of the Public Defenders Group and, following law school, was an intern with the Massachusetts Defenders Committee.

Mr. Berman is co-author of a chapter on expert testimony in a handbook on Massachusetts Evidence published by Massachusetts Continuing Legal Education. He is AV rated by Martindale-Hubbell.

He is admitted to practice law in the Commonwealth of Massachusetts, the State of Connecticut and before the U.S. Supreme Court, as well as the District Courts of Arizona, Colorado, Connecticut, the Eastern District of Wisconsin and the Northern District of California.

### **GLEN DEVALERIO**

Glen DeValerio was a co-founder in 1982 of Berman DeValerio & Pease, LLP, one of the law firms that formed Berman DeValerio in 2001. He is also the managing partner of the firm's Boston office and oversees some of the firm's most important cases. As one of the lead attorneys in *Carlson v. Xerox Corp.*, he helped negotiate a \$750 million settlement, which ranked as the 10th largest securities class action settlement of all time when it received court approval in January 2009.

Mr. DeValerio is a primary point of contact for many of the firm's public fund clients, including the Massachusetts Pension Reserves Investment Management Board, the Louisiana State Employees' Retirement System, the Oklahoma Firefighters Pension & Retirement System, and the Pennsylvania State Employees' Retirement System. He has extensive trial experience, serving as trial counsel in *In re Katy Indus. Sec. Litig.*, 85-CV-459 (D. Del.); *Hurley et al. v. Federal Deposit Insurance Corp.*, 88-cv-1940 (D. Mass.); *Poughkeepsie Savings Bank, F.S.B. v. Morash et al.*, 89-civ-1778 (S.D.N.Y.); *Advisors Bancorp., et al. v. Painewebber, Inc.*, 90-cv-11301 (D. Mass.); and *Schofield et al. v. First Commodity Corp. of Boston*, 83-4137-Z (D. Mass.), among others.

Mr. DeValerio has prosecuted federal securities law violations, chiefly class and derivative actions, since the early 1970s. A 1969 graduate of the University of Rhode Island, he received his law degree in 1973 from the Catholic University Law School and served on the *Catholic University Law Review's* editorial board for two years. In 1973 and 1974, he worked as a law clerk to the Honorable June L. Green, U.S. District Court for the District of Columbia.





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A frequent lecturer on complex securities litigation issues, Mr. DeValerio speaks at continuing legal education seminars sponsored by groups such as PLI, ALI-ABA and the Boston Bar Association. He served as the President of the National Association of Securities and Commercial Law Attorneys (NASCAT) from 1996 through 1998.

Mr. DeValerio has been admitted to practice law in the Commonwealth of Massachusetts as well as the U.S. Districts Courts for the District of Columbia, Massachusetts, Delaware, New Hampshire and Connecticut. He has also been admitted to practice in the First and Fourth Circuit Courts of Appeals. He is AV rated by Martindale-Hubbell.

### KATHLEEN M. DONOVAN-MAHER

Kathleen M. Donovan-Maher became a partner at the firm in 1999 and focuses her work in Berman DeValerio's securities practices.

Ms. Donovan Maher is currently representing investors in a number of complex cases, including *In re General Electric Co. Securities Litigation*, *Gaer v. Education Management Corp.* and *In re BankUnited Securities Litigation*.

Ms. Donovan-Maher was a principal attorney in a securities class action involving American Home Mortgage, in which Berman DeValerio acted as co-lead counsel on behalf of the Oklahoma Police Pension and Retirement System. The firm negotiated a \$37.25 million settlement in that case, despite the complications posed by bankruptcy. The settlement received final approval in 2010.

During her career, Ms. Donovan-Maher has successfully helped to prosecute numerous class actions. She served as discovery captain in the *NASDAQ Antitrust Litigation* and was a member of the trial team in the *ICN/Viratek Sec. Litig.*, which settled for \$14.5 million when the jury deadlocked at the conclusion of the 1996 trial. Other cases in which Ms. Donovan-Maher has played a chief role include, but are not limited to, *Enterasys Networks* and *SkillSoft*. In both cases, Ms. Donovan-Maher's efforts helped achieve significant financial recoveries for representing public retirement systems, the Los Angeles County Employees Retirement Association and the Teachers' Retirement System of Louisiana, respectively.

In addition to a monetary award, the *Enterasys Networks* settlement also included corporate governance improvements, requiring the company to back a proposal to eliminate its staggered board of directors, allow certain large shareholders to propose candidates to the board and expand the company's annual proxy disclosures.

Ms. Donovan-Maher graduated from Suffolk University *magna cum laude* in 1988, receiving a B.S. degree in Business Administration and earning an award for maintaining the highest grade point average among students with concentrations in Finance. She graduated from Suffolk



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University Law School three years later after serving two years on the *Transnational Law Review*.

A member in good standing of the state bar of Massachusetts, Ms. Donovan-Maher is admitted to practice law in the U.S. District Court of Massachusetts and the U.S. Court of Appeals, First Circuit. She is AV rated by Martindale-Hubbell. Ms. Donovan-Maher is a frequent author on continuing legal education issues for such groups as ALI-ABA and PLI. She is also a member of Phi Delta Phi, Delta Mu Delta National Honor Society in Business Administration and Omicron Delta Epsilon International Honor Society of Economics.

### PATRICK T. EGAN

A partner in Boston, Patrick T. Egan focuses his practice on securities litigation. Mr. Egan has litigated numerous cases to successful resolution, recovering hundreds of millions of dollars on behalf of defrauded investors.

Mr. Egan was one of the firm's lead attorneys representing the Michigan State Retirement Systems in the *Bear Stearns Companies* litigation stemming from the 2008 collapse of the company. Plaintiffs successfully recovered \$294.9 million for former Bear Stearns shareholders.

Mr. Egan has worked on a number of important cases, including *Lernout & Hauspie* and the related case, *Quaak v. Dexia, S.A.* Those cases stem from a massive accounting fraud scheme at Lernout & Hauspie Speech Products, N.V., a bankrupt Belgian software company. As co-lead counsel, the firm recovered more than \$180 million on behalf of former Lernout & Hauspie shareholders.

Prior to joining the firm in 1999 and being named partner in 2006, Mr. Egan worked at the U.S. Department of Labor, where he served as an attorney advisor for the Office of Administrative Law Judges.

Mr. Egan received a B.A. in Political Science *cum laude* from Providence College in 1993. In 1997, he graduated *cum laude* from Suffolk University Law School.

While at Suffolk, Mr. Egan served on the editorial board of the *Suffolk University Law Review* and authored a note entitled, "Virtual Community Standards: Should Obscenity Law Recognize the Contemporary Community Standard of Cyberspace" 30 Suffolk University L. Rev. 117 (1996).

Mr. Egan is admitted to practice law in the states of Massachusetts, Connecticut and New York, as well as the U.S. District Court of Massachusetts and the U.S. District Court for the Southern District of New York. He is also admitted to practice before the U.S. Courts of Appeals in the First and Fourth Circuits.





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**CHRISTOPHER T. HEFFELFINGER**

Christopher T. Heffelfinger focuses on antitrust and securities cases and has litigated class actions in the high-tech, real estate, pharmaceutical, gasoline and manufacturing industries.

Cases that Mr. Heffelfinger has litigated include the following:

- Co-lead counsel in *In re Reformulated Gasoline & Patent Litigation*. The court granted final approval of a \$48 million settlement in a case alleging that Unocal violated the Cartwright Act by entering into unlawful combinations with standard-setting organizations, refiners and independent contractors by manipulating the California Air Resources Board rule-making proceedings regarding emissions standards for reformulated gasoline. The court approved the settlement on a *cy pres* basis to be applied toward: (1) a California statewide automobile repair and scrap program to reduce emissions of hydrocarbons, oxides of nitrogen and particulate matter; and (2) an open-grant program for projects demonstrating fuel or clean air emissions benefits.
- Liaison counsel in *In re LDK Solar Company Securities Litigation* (N.D. Cal.), alleging an inventory accounting fraud by LDK Solar Company and its principal officers involving the accounting treatment of different grades of poly silicon used in the production of solar panels. Actively participated in all phases of discovery including, but not limited to, deposition practice in Hong Kong, expert work, summary judgment and trial preparation. The Honorable William H. Alsup gave final approval to a settlement totaling \$16 million.
- One of two co-lead counsel on behalf of OpenTV shareholders in Federal Court (San Francisco) who challenged a proposed buyout transaction (the "Transaction"), initiated by the controlling shareholders. Co-lead counsel negotiated a settlement that, among other things, obtained additional disclosures and removed coercive elements from the Transaction. The Honorable Marilyn H. Patel gave final approval to the settlement on November 15, 2010.
- Lead Counsel for reseller indirect purchasers in *In re Static Random Access Memory (SRAM) Antitrust Litigation* in settlement fund allocation proceedings.
- Executive committee member and liaison counsel in *In re Dynamic Random Access Memory (DRAM) Antitrust Litigation*. This antitrust case alleged a conspiracy by major manufacturers of dynamic random access memory chips to fix prices over a four-year period. Settlements totaling \$320 million were approved by the court.
- Co-Lead counsel in *In re Norvir Antitrust Litigation*, (N.D. Cal.), a case on behalf of indirect purchasers alleging that the defendant pharmaceutical company had engaged in



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an illegal leveraged monopoly in the sale of its AIDS boosting drug known as Norvir (or Ritanovir). Plaintiffs were successful through summary judgment, including the invalidation of two key patents based on prior art, but were reversed on appeal in the Ninth Circuit as to the leveraged monopoly theory. The case settled for \$10 million, which was distributed net of fees and costs on a *cy pres* basis to 10 different AIDS research and charity organizations throughout the United States.

- Co-lead counsel in *In re Warnaco Securities Litigation*. This securities fraud case alleged that defendants had issued materially false and misleading financial statements by vastly overstating the value of inventory that should have been written off in accordance with Generally Accepted Accounting Principles. The case settled for \$12 million following a reversal in the Second Circuit in favor of plaintiffs.
- Co-lead counsel in *In re: Toys"R"Us Antitrust Litigation*. The firm represented toy-purchaser consumers in multidistrict litigation alleging that Toys 'R Us conspired with certain toy manufacturers, in contravention of federal antitrust laws and various state unfair competition statutes, not to sell certain popularly promoted toys to deep discount retailers, such as Costco. A settlement with a combined value of \$56 million consisted of a cash component of \$20 million and a *cy pres* component of \$36 million in toys distributed to charitable organizations and needy children in each of the 50 states by the Marine Corps Toys for Tots Foundation.
- Co-lead counsel in *In re Valence Technology Securities Litigation*. This securities fraud case alleged that Valence Technology failed to disclose material facts concerning the energy densities and performance characteristics of a new solid polymer lithium battery. A settlement of \$20.5 million in cash and stock was achieved.
- Co-lead counsel for auto-body shops in *In re Autopaint Antitrust Litigation*. The California antitrust unfair business practices case alleged a price-fixing conspiracy among paint manufacturers, and settlements totaling \$10 million were achieved.
- Co-lead counsel in *In re Itron Securities Litigation*. This securities fraud case in the Eastern District of Washington alleged that Itron had failed to disclose material facts concerning the performance of its encoder-receiver-transmitter devices. A settlement of \$13 million was achieved.

Prior to joining the firm, Mr. Heffelfinger practiced securities and bankruptcy/commercial litigation for nine years with law firms in San Francisco and in Marin County, California.

Mr. Heffelfinger is a 1984 graduate of the University of the San Francisco School of Law, where he was a member of the *University of San Francisco Law Review*. He graduated from Claremont Men's College in 1977 with a B.A. in Economics. He has lectured periodically on discovery





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matters, including electronically stored information, deposition practice, and evidentiary foundations in commercial litigation. For 2009-2013, Mr. Heffelfinger was named a Super Lawyer by *Northern California Super Lawyers Magazine*. He has an AV® Preeminent rating from Martindale-Hubbell.

### NICOLE LAVALLEE

Nicole Lavallee, the Managing Partner in the San Francisco office, focuses her practice on securities and derivative litigation and is an integral member of the firm's New Case Investigations Team for institutional clients. The team investigates potential securities law violations to determine whether a case meets the firm's exacting standards. Ms. Lavallee is also a member of the Firm's executive committee.

Ms. Lavallee is also a contact for a number of the firm's institutional clients, including the Los Angeles County Employees Retirement Association, the Arizona State Retirement System, the Arizona Public Safety Personnel Retirement System, the San Mateo County Employees' Retirement System, the Wyoming Retirement System and the Wyoming State Treasurer.

She is currently one of the lead attorneys prosecuting the *IndyMac Mortgage-Backed Securities Litigation* and has prosecuted a number of the firm's high-profile securities fraud cases. For example, she was a lead attorney representing the Massachusetts Laborers' Pension Fund as co-lead plaintiff in a class action alleging that *International Rectifier Corp.* and certain of its former officers and directors manipulated the company's financial results. The case settled for \$90 million in 2009 and was granted final court approval in February 2010. Ms. Lavallee was also the lead attorney representing the Louisiana Municipal Police Employees' Retirement System as co-lead plaintiff in the *KLA-Tencor Corp.* options-backdating class action, which recently settled for \$65 million. At the conclusion of the case, Judge Charles R. Breyer praised plaintiffs' counsel for "working very hard" in exchange for an "extraordinarily reasonable" fee. "I appreciate the fact that you've done an outstanding job, and you've been entirely reasonable in what you've done," he said. Ms. Lavallee was also the partner responsible for the day-to-day prosecution of a derivative insider trading action against Lawrence J. Ellison, the Chief Executive Officer of Oracle Corporation, which led to changes to the company's insider trading policies. As part of the 2005 settlement negotiated by plaintiffs' counsel, Mr. Ellison agreed to make \$100 million in charitable donations in Oracle's name and pay plaintiffs' attorneys' fees and expenses. At the hearing on summary judgment, the judge praised Ms. Lavallee's work, stating: "Ms. Lavallee, I just wanted to tell you I thought your brief was excellent."

Ms. Lavallee also represented, as local counsel, the state employee retirement systems of Colorado, Minnesota and Utah in a successful opt-out action against McKesson/HBOC brought in San Francisco Superior Court. Though the details of the settlement are confidential, these clients obtained results that far exceed their pro-rata share of the corresponding class action.



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Ms. Lavallee is a 1989 graduate of the French Civil Law School at Université de Montréal in Montreal and obtained her Common Law degree from Osgoode Hall Law School in Toronto. She is a member of the State Bar of California and admitted to practice in all the district courts of California and the Ninth Circuit. She is AV Preeminent rated by Martindale-Hubbell.

### KRISTIN J. MOODY

Kristin J. Moody is a Partner in the firm's Boston office, where she focuses her practice on securities litigation. She has successfully litigated numerous class actions that have resulted in substantial settlements for defrauded investors.

Ms. Moody currently represents the lead plaintiff in *In re General Electric Co. Securities Litigation*. She investigated and drafted the consolidated amended complaint, drafted a successful opposition to defendants' motion to dismiss and is currently conducting discovery. Ms. Moody also managed litigation, coordinated and conducted discovery, counseled clients and participated in mediation in *In re Force Protection Securities Litigation*, which settled for \$24 million in 2011. She also coordinated and conducted discovery, counseled the client and participated in mediation in litigation against *International Rectifier Corp.* and several of its former officers and directors, which settled for \$90 million. In addition, Ms. Moody participated in the motion to dismiss briefing and mediation in *In re American Home Mortgage Securities Litigation*, which settled for \$37.25 million, despite the difficulties American Home's bankruptcy posed to asset recovery.

Prior to joining Berman DeValerio, Ms. Moody practiced at Holland & Knight, LLP in Boston and Morrison & Foerster, LLP in San Francisco. While at Morrison & Foerster, Ms. Moody represented clients in complex commercial litigation matters with a focus on securities litigation. At Holland & Knight, she represented clients in a range of white-collar criminal matters, government and regulatory investigations and complex civil litigation, including securities litigation. Ms. Moody has also represented clients in a number of *pro bono* matters, including discrimination and political asylum cases.

Ms. Moody has taught business law courses at Fisher College and sits on the Fisher College Advisory Board. She has also published several articles in the areas of accounting fraud, securities class actions and derivative suits.

Ms. Moody earned an LL.M. from New York University School of Law in 2003, a J.D. *cum laude* from Boston College Law School in 1999, and a B.A. in English and Legal Studies *cum laude* from Bucknell University in 1995. While in law school, she was Notes and Comments Editor of the *Boston College International and Comparative Law Review* and was active in the Women's Law Center.





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Ms. Moody is a member in good standing of the state bars of Massachusetts and California and is also admitted to practice in U.S. District Court of Massachusetts and the U.S. Courts of Appeals for the First Circuit, the Federal Circuit and the Third Circuit.

### **MATTHEW D. PEARSON**

A Partner in the San Francisco office, Matthew D. Pearson focuses his practice on securities and antitrust litigation.

Mr. Pearson is currently working on several antitrust cases, including the *In re New Motor Vehicles Canadian Export Antitrust Litigation*, an action alleging that major auto manufacturers unlawfully conspired to stop the export of cheaper new Canadian vehicles into the United States for use or resale. The case has partially settled with Toyota Motor Sales, U.S.A., Inc. for \$35 million. The settlement requires court approval.

Prior to joining Berman DeValerio in 2005, Mr. Pearson earned a B.A. in Political Science in 1999 from the University of California, Los Angeles, and a J.D. from the University of California, Davis, School of Law in 2004.

While in law school, Mr. Pearson completed the King Hall Public Service Law Program and worked as a legal intern assigned to a felony trial team at the Sacramento County District Attorney's Office.

Mr. Pearson has been admitted to practice law in the State of California, as well as the United States District Courts for the Northern, Central and Southern Districts of California.

### **MICHAEL J. PUCILLO**

The managing partner of the firm's Florida office, Michael J. Pucillo was a founding partner of Burt & Pucillo, one of the law firms that formed Berman DeValerio in 2001. Mr. Pucillo advises a number of institutional and individual clients on securities law matters.

Mr. Pucillo has been a member of the Florida Bar since 1978, and is admitted to practice before the United States Courts of Appeal for the Fifth and Eleventh Circuits and the United States District Courts for the Southern and Middle Districts of Florida.

Mr. Pucillo is a member of the Southern District of Florida Trial Bar. During 1989-1990, he served as President of the Gold Coast Chapter of the Federal Bar Association.

He has served from 1994 to 1997 as Chairman of the Palm Beach County Bar Association Federal Court Practice Committee.



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He is a graduate of Williams College (1975) and Georgetown University Law School (1978).

Mr. Pucillo has lectured frequently on class actions and litigation. In 1994, Mr. Pucillo became a member of the faculty of the College of Advanced Judicial Studies, where he taught "Managing the Complex Civil Case" to Florida Circuit Court judges, in 1994, 1996 and 2002. He has been an educational sustainer of the Council of Institutional Investors since 1999 and has lectured at several Council meetings on securities litigation issues.

He also appeared on the PBS Nightly Business Report on issues relating to investor fraud.

From 1978 to 1979, Mr. Pucillo served as law clerk to the Honorable Charles B. Fulton, United States District Judge for the Southern District of Florida. From 1979 to 1981, Mr. Pucillo served as law clerk to the Honorable William J. Campbell, Senior United States District Judge for the Northern District of Illinois. In 1983 and 1984 he was an attorney in the Division of Enforcement of the SEC in Washington, D.C.

Mr. Pucillo, as counsel to court-appointed bond purchaser class representatives, was one of the attorneys who prosecuted bond purchaser claims in the *WorldCom Securities Litigation* in the Southern District of New York. That litigation resulted in a \$6.13 billion settlement.

Mr. Pucillo also represented the Florida State Board of Administration in its lead plaintiff application in the *Enron Securities Litigation*.

As part of a settlement of the *UCAR International Securities Litigation* in 1999, on behalf of lead plaintiff the Florida State Board of Administration, Mr. Pucillo negotiated significant corporate governance changes that included the appointment of an outside director by the lead plaintiff, in addition to a significant monetary recovery.

Mr. Pucillo has prosecuted several securities cases arising out of energy trading. He served as co-lead and lead counsel in the *El Paso Securities Litigation* and the *Reliant Securities Litigation*, both in the Southern District of Texas. Those cases settled for \$285 million and \$75 million, respectively.

### **TODD A. SEAVER**

A partner in the San Francisco office, Todd A. Seaver litigates both antitrust and securities matters, with a primary focus on antitrust litigation. He is a member of the antitrust practice group's new case development team, which investigates potential antitrust violations to determine whether a case has merit.

Mr. Seaver is currently involved in several cases, including *In re New Motor Vehicles Canadian Export Antitrust Litigation*, in which Berman DeValerio is lead counsel. The case alleges that





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major auto manufacturers unlawfully conspired to stop the export of cheaper new Canadian vehicles into the United States for use or resale. The case has partially settled with Toyota Motor Sales U.S.A. for \$35 million, pending court approval. Mr. Seaver is one of the lead counsel in *Online DVD Rental Antitrust Litigation* and also worked on a number of the firm's high-profile cases including *Cardizem CD*, still the leading generic drug competition case, which settled in 2003 for \$80 million.

Mr. Seaver is also extensively involved in a case against major credit rating agencies, *CalPERS v. Moody's Corp.* The case, filed on behalf of the nation's largest state pension fund, the California Public Employees' Retirement System, is landmark litigation that seeks to hold the rating agencies financially responsible for alleged negligent misrepresentations in rating structured investment vehicles.

Mr. Seaver was previously associated with the law firm Devine, Millimet & Branch, P.A., where he practiced commercial litigation. He was also an adjunct Professor of Law with the New England School of Law in 2003.

Mr. Seaver graduated *magna cum laude* from Boston University in 1994 with a B.A. in International Relations. He earned a M.Sc. from the London School of Economics in 1995 and graduated *cum laude* from the American University Washington College of Law in 1999.

While in law school, Mr. Seaver served as a law clerk at the Federal Trade Commission's Bureau of Competition and as a judicial extern for the Honorable Ricardo M. Urbina, U.S. District Court for the District of Columbia.

Mr. Seaver has been admitted to practice law in the states of California, Massachusetts and New Hampshire. He is also a member of the American Bar Association's Antitrust Section.

## **LESLIE R. STERN**

A partner in Boston, Leslie R. Stern heads the New Case Investigations Team for institutional clients. The team investigates possible securities law violations, gauging clients' damages and evaluating the merits of cases to determine the best course of legal action.

In her role with the New Case Investigations Team, Ms. Stern oversees a portfolio monitoring program that combines the power of an online loss calculation system with the hands-on work of a dedicated group of attorneys, investigators and financial analysts. Her case development duties include preparing detailed case analyses and recommendations, and advising clients on their legal options.

Ms. Stern is also the primary contact for several public and union funds, including the Brockton Contributory Retirement System, the Massachusetts Laborers' Pension Fund, the Employees



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Retirement System of the City of St. Louis and the Louisiana School Employees' Retirement System. She is a seasoned litigator with more than a decade of experience on cases such as *Carlson v. Xerox Corp.*, in which Berman DeValerio represented the Louisiana State Employees' Retirement System as co-lead counsel. Upon approval in January 2009, the \$750 million Xerox settlement ranked as the 10th largest securities class action recovery of all time. Ms. Stern also worked on *In re Bristol Myers-Squibb Sec. Litig.*, which settled for \$300 million, and *In re Zila Inc. Sec. Litig.*, which settled for \$5.75 million.

Prior to joining Berman DeValerio in 1998 and being named partner in 2003, Ms. Stern practiced general civil litigation. She earned a B.S. degree in Finance from American University in 1991 and graduated *cum laude* from Suffolk University Law School in 1995.

While at Suffolk, Ms. Stern served on the Suffolk University Law Review's editorial board and authored three publications.

Ms. Stern has been admitted to practice law in the Commonwealth of Massachusetts and the U.S. District Court of Massachusetts. She has also been admitted to practice in the First and Fourth Circuits of the U.S. Courts of Appeals.

### JOSEPH J. TABACCO, JR.

Joseph J. Tabacco, Jr., the founding member of Berman DeValerio's San Francisco office, actively litigates antitrust, securities fraud, commercial high tech and intellectual property matters.

Mr. Tabacco is a primary point of contact for many of Berman DeValerio's institutional clients, including the California Public Employees' Retirement System, the California State Teachers' Retirement System, the Offices of the Attorneys General of Alaska, Michigan and other states.

Prior to 1981, Mr. Tabacco served as senior trial attorney for the U.S. Department of Justice, Antitrust Division in both the Central District of California and the Southern District of New York. In that capacity, he had major responsibility for several criminal and civil matters, including the antitrust trial of *U.S. v. IBM*. Since entering private practice in the early 1980s, Mr. Tabacco has served as trial or lead counsel in numerous antitrust and securities cases and has been involved in all aspects of state and federal litigation. In private practice, Mr. Tabacco has also tried a number of securities cases, each of which resolved successfully at various points during or after trial, including *In re MetLife Demutualization Litig.* (settled after jury empanelled), *Gutman v. Howard Savings Bank* (plaintiffs' verdict after six-week trial), *In re Equitec Sec. Litig.* (settled after six months of trial) and *In re Ramtek Sec. Litig.*

Mr. Tabacco is currently overseeing a number of securities and antitrust cases, as well as *CalPERS v. Moody's Corp.*, No. CGC-09-490241 (Super. Ct. San Francisco), a pioneering attempt





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to hold credit rating agencies financially responsible for their alleged negligence in rating structured investment vehicles, and *In re General Electric Co. Securities Litigation*, 09 Civ. 1951 (S.D.N.Y.), a case stemming from GE's alleged misrepresentations regarding substantial credit risks with its financial services unit, GE Capital.

Since 2008, Mr. Tabacco has served as an independent member of the Board of Directors of Overstock.com, a publicly traded company internet retailer. He is Chair of the Board's Corporate Governance Committee and also serves as a member of the Board's Audit and Compensation Committees. He also frequently lectures and authors articles on securities and antitrust law issues and is a member of the Advisory Board of the Institute for Consumer Antitrust Studies at Loyola University Chicago School of Law. Mr. Tabacco is also a former teaching fellow of the Attorney General's Advocacy Institute in Washington, D.C., and has served on the faculty of ALI-ABA on programs about U.S.-Canadian business litigation and trial of complex securities cases.

Mr. Tabacco was most recently named to two committees of the United States District Court for the Northern District of California by the Court's Chief Judge: (1) the Magistrate Judge Merit Selection Panel for the Northern District of California; and (2) the Northern District of California Model Protective Order Revision Committee.

For the sixth year in a row, he has been among the top U.S. securities litigators ranked by *Chambers USA 2007-2012* and is also AV rated by Martindale-Hubbell. Mr. Tabacco has been recognized and featured by the *Daily Journal* as one of California's top 30 securities litigators, a group chosen from both the plaintiff and defense bars. Additionally, for nine consecutive years, Mr. Tabacco has been named a Super Lawyer by *Northern California Super Lawyer Magazine*, which features the top 5 percent of attorneys in the region. Recently, Mr. Tabacco was singled out by a top defense attorney for exemplifying "the finest tradition of the trial bar."

Mr. Tabacco has been admitted to practice law in the states of California, Massachusetts, New York and the District of Columbia (currently inactive).

## **BRYAN A. WOOD**

A partner in Boston, Bryan A. Wood focuses his practice on securities litigation and is a member of the firm's New Case Investigations Team for institutional clients.

Mr. Wood is currently overseeing a number of securities cases, including *Fannie Mae*, and *Massachusetts Mutual Life Insurance Company*, which alleges that the insurance company failed to protect investors in hedge funds it controls from losses in Bernard L. Madoff's Ponzi scheme.



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He also worked extensively on the *Carlson v. Xerox Corp.* litigation. In this case, representing the Louisiana State Employees' Retirement System, Berman DeValerio received final court approval for a \$750 million settlement in January 2009. Mr. Wood was responsible for managing and supervising the firm's discovery process in the *Xerox* case.

Mr. Wood joined Berman DeValerio as an associate in 2002 and became a partner in 2009.

Prior to joining the firm, Mr. Wood was a litigation associate at both Montgomery, McCracken, Walker & Rhoads, LLP in Philadelphia and Schnader Harrison Segal & Lewis in Boston. As an associate at those firms, he represented corporations and directors in shareholder and other class action lawsuits. He also represented businesses and municipalities in general contract and employment discrimination cases.

Mr. Wood graduated *cum laude* from the University of Massachusetts in 1991 with a B.A. in Sociology. In 1995, he earned an M.S. *summa cum laude* in Public Policy from the Eagleton Institute of Politics at Rutgers University and graduated *cum laude* from the Temple University Beasley School of Law in 1998. While in law school, he was the Managing Editor of the *Temple Law Review* and a board member of the Temple Law Moot Court Honor Society. In addition, Mr. Wood completed a one-year internship for the Honorable Edward R. Becker, then Chief Judge for the U.S. Court of Appeals for the Third Circuit. In 2007, *Massachusetts Super Lawyers* magazine named him a "Rising Star" in recognition of his expertise and work in securities litigation.

Mr. Wood is admitted to practice law in the Commonwealths of Massachusetts and Pennsylvania (voluntarily inactive as of 2005).

He is also admitted to the U.S. District Courts for the Districts of Massachusetts, Colorado and Eastern Pennsylvania, as well as the U.S. Court of Appeals for the First Circuit. Additionally, Mr. Wood is a member of the Boston Bar Association and the American Bar Association.

### **Associates**

#### **DARYL DEVALERIO ANDREWS**

Daryl DeValerio Andrews, an associate in the Boston office, focuses her practice on securities litigation. Her work is currently focused on the firm's cases against *Bank United*, *BP plc*, *General Electric*. She is also involved in a case against major credit rating agencies, *CalPERS v. Moody's Corp.* The case, filed on behalf of the nation's largest state pension fund, the California Public Employees' Retirement System, is landmark litigation that seeks to hold the rating agencies financially responsible for alleged negligent misrepresentations in rating structured investment vehicles.





## **BERMAN DEVALERIO**

Prior to joining the firm as an associate in 2009, Ms. Andrews was a litigation associate at Sherin and Lodgen LLP, where she practiced civil litigation with an emphasis on bankruptcy and real estate litigation, and employment law.

After graduating from Boston University School of Law in 2003, Ms. Andrews clerked for Judge Michael A. Ponsor, U.S. District Court, District of Massachusetts. During law school, she served on the Public Interest Law Journal and was a legal intern for the U.S. Attorney's Office, Civil Division, where she drafted dispositive motions for a variety of cases and researched legal issues for briefs and motions. She also interned for two years at Shelter Legal Services, assisting low-income clients on legal matters such as housing, credit, employment and family law issues.

Ms. Andrews earned a B.A. in Education from Smith College in 1997.

Ms. Andrews was named a "Rising Star" in 2007 and 2008 by *Massachusetts Super Lawyers Magazine*.

Ms. Andrews is admitted to practice law in the Commonwealth of Massachusetts and the U.S. District Court of Massachusetts.

### **STEVEN J. BUTTACAVOLI**

An associate in the firm's Boston office, Steven J. Buttacavoli focuses his practice on securities litigation.

At Berman DeValerio, Mr. Buttacavoli has helped coordinate lead plaintiff's investigation and analysis of securities fraud claims against the General Electric Co., draft the consolidated amended complaint in a class action against the company, and draft lead plaintiff's opposition to defendants' motions to dismiss and subsequent briefing with the court. He also helped coordinate lead plaintiff's investigation and analysis of securities fraud claims against the former top executives of BankUnited, draft the consolidated amended complaint and opposition to defendants' motions to dismiss, and draft materials prepared in connection with the mediation and proposed settlement of the BankUnited matter.

Prior to joining Berman DeValerio in 2009, Mr. Buttacavoli worked as an associate at Foley Hoag LLP in Boston, where he defended securities class actions and Securities and Exchange Commission enforcement actions, conducted internal investigations, responded to criminal investigations by the United States Attorney's Office and advised clients in connection with litigation risk analysis and mitigation strategies.

Mr. Buttacavoli earned an A.B. in International Relations from the College of William & Mary and a Master of Public Policy degree from Georgetown University. In 2001, he earned his J.D., *magna cum laude*, from the Georgetown University Law Center, where he was a member of the





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Order of the Coif. Mr. Buttacavoli was also a Senior Articles and Notes Editor for the *American Criminal Law Review*.

Mr. Buttacavoli is admitted to practice in the state and federal courts of the Commonwealth of Massachusetts and the United States Court of Appeals for the First Circuit.

### **EMILY ST. JOHN COHEN**

Emily St. John Cohen conducts research and analysis of potential new securities lawsuits as a member of the New Case Investigations Team, determining whether the merits of each case meet the firm's exacting standards for legal action.

Ms. Cohen joined the firm as an associate in 2012 after seven years as a litigating attorney at two San Francisco law firms. She came to the firm from the Law Offices of Mayor Joseph Alioto and Angela Alioto, where she managed 10 lawyers and participated in all aspects of litigation, including investigation, briefing, motion practice, discovery, settlement negotiation and trial preparation. Prior to that, she spent six years as an associate in the Litigation Group of Fenwick & West LLP, a national technology and life sciences law firm. There, she defended issuers, underwriters, officers and directors in securities class actions, derivative litigation and regulatory proceedings.

Ms. Cohen received her J.D. from the University of California Hastings College of Law in 2005 and a Bachelor of Journalism degree, cum laude, from the University of Missouri in 1999. She is a member of the State Bar of California, the San Francisco Bar Association, the Queen's Bench and the Association of Bay Area Trial Lawyers.

Ms. Cohen has written publications and made presentations on the Foreign Corrupt Practices Act, discovery practice and procedure, and SEC whistleblower rules, among other topics. She was a judicial extern for Magistrate Judge James Larson of the U.S. District Court, Northern District of California, in 2005. Before going to law school, she worked as a journalist for SFGate.com.

### **KYLE G. DEVALERIO**

An associate in the firm's Florida office, Kyle G. DeValerio is a member of the antitrust practice's new case development team, which investigates potential antitrust violations to determine the merits of potential cases.

In addition to serving as a member of the new case development team, Mr. DeValerio works on antitrust and securities litigation. He was part of the team in *Carlson v. Xerox Corp.*, which settled for \$750 million.



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Prior to joining the firm as an associate in 2004, Mr. DeValerio worked as a legal intern in the Civil Division of the U.S. Attorney's Office in Boston.

Mr. DeValerio is a 1999 graduate of Colby College, where he earned a B.A. in Government. He also studied European Politics at the London School of Economics and Political Science. He received his J.D. in 2004 from the Suffolk University School of Law. In 2010, *Florida Super Lawyers* magazine named him a "Rising Star."

Mr. DeValerio is admitted to practice law in the Commonwealth of Massachusetts, the State of Florida and the U.S. District Court of Massachusetts. He is also a member of the Palm Beach County Bar Association.

### **VICTOR S. ELIAS**

An associate in the firm's San Francisco office, Victor S. Elias focuses his practice on securities fraud litigation. Prior to joining Berman DeValerio in 2012, Mr. Elias worked as an associate at a San Francisco Bay Area-based law firm where he represented plaintiffs in multidistrict antitrust and securities fraud class actions and also represented clients in matters involving complex business, consumer protection, personal injury, False Claims Act, unfair competition and civil rights litigation. Mr. Elias previously served for two years as a judicial law clerk for the Honorable Micaela Alvarez at the United States District Court for the Southern District of Texas.

While in law school, Mr. Elias served as an extern for the Honorable Anthony W. Ishii at the U.S. District Court for the Eastern District of California, and as an extern for the late Honorable Paul Boland at the California Court of Appeal, Second District. Before attending law school, Mr. Elias worked as a law clerk for Disability Rights Advocates, a California-based class action litigation firm.

Mr. Elias earned a J.D. from University of Southern California Gould School of Law in 2008 and a B.A. from University of California, Los Angeles in 2004.

Mr. Elias is admitted to practice law in the state of California.

### **NATASHA KESWANI**

Natasha Keswani, an associate in the firm's San Francisco office, focuses her practice on securities litigation.

Before joining the firm in 2011, Ms. Keswani worked as a contract attorney for several prominent national and international law firms. She also worked as in-house counsel and contract manager for a Silicon Valley startup. While in law school, Ms. Keswani served as a certified law clerk for the San Diego Office of the Public Defender, advocating for jail inmates at





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bail hearings and arraignments.

Ms. Keswani received her J.D. from California Western School of Law in 2007. She earned a Bachelor of Arts, with honors, from the University of California at Berkeley in 2004, a Master of Arts in Government Studies from the John Hopkins University in 2005 and a Master of Science in Financial Regulation, with honors, from the London School of Economics in 2008.

She is admitted to practice law in the state of California.

### **SARAH KHORASANEE MCGRATH**

An associate in the firm's San Francisco office, Sarah Khorasanee McGrath focuses her practice on antitrust litigation. Ms. McGrath joined Berman DeValerio in 2010 after working as a contract attorney for the Department of Justice, Antitrust Division. Prior to that, she was an attorney volunteer with the City and County of San Francisco Office of the Public Defender and the Eviction Defense Center.

Ms. McGrath earned a B.A. in Communications from the University of California at San Diego in 2002 and a J.D. from the New England School of Law in 2008.

While in law school, Ms. McGrath worked as a judicial extern to the Honorable Eric Taylor, Superior Court of California, County of Los Angeles.

Northern California Super Lawyers Magazine named Ms. McGrath a "Rising Star" for 2013.

She is admitted to practice in the State of California.

### **NATHANIEL L. ORENSTEIN**

An associate in the firm's Boston office, Nathaniel L. Orenstein focuses his practice on securities and antitrust litigation. He is currently working on antitrust cases, including *LCD Flat Panel* and on a consumer privacy case, *AOL*, against the online company.

In addition to Mr. Orenstein's legal practice at Berman DeValerio, he is on the Board of Directors for the Center for Insurance Research.

Prior to joining Berman DeValerio, Mr. Orenstein was a staff attorney for the Securities Division of the Office of the Secretary of the Commonwealth of Massachusetts. While there, he monitored companies, investigated matters and pursued enforcement actions to detect and prevent fraud at hedge funds and related companies. Mr. Orenstein was also the lead attorney on many investigations and actions against broker-dealers, investment advisors and others.



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Prior to obtaining his J.D. from the New York University School of Law in 2005, Mr. Orenstein served as a member of the mutual fund and insurance brokerage investigation teams for the Office of the New York State Attorney General's Investment Protection Bureau. As a legal intern, he assisted with the Bureau's investigation work including, case planning, discovery and settlement negotiation.

In addition to his work for the Commonwealth and for New York State, Mr. Orenstein was a policy analyst, and was subsequently promoted to associate director, for the Center for Insurance Research, a consumer advocacy organization. In these roles, he participated in complex litigation matters. He also testified in regulatory and legislative proceedings on behalf of policyholders concerning market conduct and insurance rate setting.

Mr. Orenstein is admitted to practice law in the Commonwealth of Massachusetts.

### **ANTHONY D. PHILLIPS**

An associate in the firm's San Francisco office since 2008, Anthony D. Phillips focuses his practice on securities and consumer protection litigation.

Mr. Phillips currently works on several securities and consumer protection cases, including *In re IndyMac MBS Litigation*, *In re Apple In-App. Purchase Litigation*, and *Carlin v. DairyAmerica, Inc.*

Mr. Phillips received a combined honors B.A. in History and Politics from the University of York in the United Kingdom. In 2008, he graduated cum laude from the University of San Francisco School of Law. During law school, Mr. Phillips served as a judicial extern for the Honorable Joanne C. Parrilli at the California Court of Appeal. Prior to attending law school, Mr. Phillips spent eight years working in the logistics and software industries.

In 2011, 2012, and again in 2013, Northern California Super Lawyers Magazine named Mr. Phillips a "Rising Star."

Mr. Phillips is admitted to practice in the State of California, in the United States District Courts for the Northern, Central, and Eastern Districts of California, and in the United States Court of Appeals for the Ninth Circuit.

### **BING ZHANG RYAN**

An associate in the firm's San Francisco office, Bing Zhang Ryan focuses her practice on securities and antitrust litigation. She is a member of the team litigating securities class actions *LDK Solar Company Ltd.* and *In re Bear Stearns Companies Inc. Securities, Derivative and "ERISA" Litigation*.





## **BERMAN DEVALERIO**

Prior to joining Berman DeValerio in June 2009, Ms. Ryan gained broad-based civil litigation experience, with an emphasis on securities class actions, at another plaintiffs' firm in San Francisco. She was a member of the litigation teams for high-profile securities cases, such as *WorldCom*, *America West* and *Household International*.

Ms. Ryan attended China Youth College for Politics, where she received a Bachelor of Laws (equivalent to U.S. Juris Doctor) in 1991. She went on to receive her M.B.A., with a concentration in Finance and Accounting, from Loyola University of Chicago in 1996. Ms. Ryan received her J.D. in May 2003 from the University of California at Berkeley Law School. She is fluent in Mandarin, Cantonese and Shanghainese.

Ms. Ryan is also a Certified Public Accountant and is admitted to practice law in the State of California. Ms. Ryan has been appointed the Commissioner of the City of Orinda's Finance Advisory Board and is a board member of The Chinese American Lawyers of Bay Area.

### **JUSTIN N. SAIF**

An associate in the firm's Boston office, Justin N. Saif focuses his practice on securities litigation. He is currently working on the *In re Fannie Mae 2008 Securities Litigation*, which alleges that Fannie Mae and two individual defendants made material misrepresentations regarding and failed to disclose (a) that an enormous volume of mortgages on its books were "subprime" and "Alt-A" as defined internally by the company and throughout the industry, and (b) that defendants had inadequate internal controls to manage the significant risks created by the company's purchases of those types of loans.

Justin also participated in drafting of amended complaint and opposition to motion to dismiss in the litigation against Bear Stearns & Co. and oversaw initial document review team.

Prior to joining Berman DeValerio in 2008, Mr. Saif worked as an associate at Foley Hoag LLP in Boston, where he focused on complex civil litigation including securities litigation and professional liability matters involving lawyers and accountants.

Mr. Saif earned an A.B. in Psychology from Harvard University in 1999 graduating *cum laude*. In 2004 he earned a J.D. from the University of Chicago. While in law school, he worked at the MacArthur Justice Center, an impact litigation firm and legal clinic focused on reforming the criminal justice system.

Mr. Saif is admitted to practice law in state and federal courts in Massachusetts and the U.S. Court of Appeals, First Circuit. He is a member of the American and Boston Bar Associations.





## BERMAN DEVALERIO

### MARIE FOLEY WATSON

Marie Foley Watson, who focuses her practice on antitrust and securities litigation, joined Berman DeValerio in September 2010 after developing a broad range of legal expertise as a contract attorney at several prominent Boston firms. Prior to that, she was a senior associate handling civil and banking litigation at a general practice law firm and a corporate consultant for a national rental company.

Ms. Watson received a B.A. in Politics *magna cum laude* from Saint Anselm College in 1995. In 1998, she graduated from Boston University School of Law, where she also earned a Certificate in Litigation and Dispute Resolution.

Ms. Watson is admitted to practice law in the Commonwealth of Massachusetts and the U.S. District Court of Massachusetts.

### *Special Counsel*

### KEVIN SHELLEY

Kevin Shelley, special counsel to the firm, is a former California Secretary of State and State Assembly leader recognized as an advocate for working people, consumers and investors.

Mr. Shelley's political involvement began in 1978 as a staff member to U.S. Representatives Phil and Sala Burton. He then played a key role in electing their successor, current Speaker of the U.S. House of Representatives Nancy Pelosi, in 1987. His own political career began in 1990, when he won a seat on the San Francisco Board of Supervisors.

Elected to the California State Assembly in 1996, he championed the rights of workers and fought to protect civil rights. Among his accomplishments, he improved conditions at nursing homes, drafted new corporate accountability requirements and created a restitution fund for victims of corporate fraud.

Mr. Shelley, who spent five of his six years in the State Assembly as Majority Leader, won election for Secretary of State in November 2002. As the state's Chief Election Officer, he is credited with improving voter participation, calmly overseeing the historic recall election, and decertifying problematic electronic voting machines.

Since 2005, Mr. Shelley has been representing consumers and plaintiffs in civil litigation.

He began working with Berman DeValerio in 2006. He earned a B.A. in Political Science from the University of California, Davis in 1978 and a law degree from the University of California



## BERMAN DEVALERIO

Hastings College of the Law in 1983. A member of the California Bar, he is the son of Jack Shelley, a former San Francisco mayor, U.S. congressman and California state senator.

### *Of Counsel*

#### **C. OLIVER BURT, III**

For decades, C. Oliver Burt has worked to defend the interests of investors and fight against corporate fraud.

During the course of his extensive career, Mr. Burt has taken a number of cases to trial and appeal to obtain recoveries for defrauded investors.

In *White v. Heartland High-Yield Municipal Bond Fund*, for example, following three weeks of trial against the funds' auditors, PricewaterhouseCoopers, Mr. Burt and the case team obtained an \$8.25 million settlement – an aggregate settlement of \$23.25 million for the class. Mr. Burt was also trial co-counsel for plaintiffs in *Peil v. Speiser*, a securities class action tried to verdict in 1986, and argued the appeal. In its landmark opinion, the Third Circuit Court of Appeals adopted the "fraud-on-the-market" presumption of reliance as the law of the Circuit. He was plaintiffs' lead trial counsel in *Kumpis v. Wetterau* and in *Upp v. Mellon Bank*. In addition, *Upp v. Mellon Bank*, a class action which involved an alleged breach of trust by a bank trustee, was tried to verdict in August 1992.

He has argued appeals in class action cases in the Third, Eighth, Ninth and Eleventh Circuits and the Delaware Supreme Court.

Prior to co-founding his firm in West Palm Beach in January 1994, Mr. Burt was a partner at a Philadelphia law firm and in private practice from 1977 to 1993. During that period of time, he tried many cases and was engaged in commercial litigation including antitrust, securities litigation, unfair competition, white-collar criminal cases and general business litigation, as well as plaintiffs' class actions.

Mr. Burt's tried cases included *Callan, et al. v. State Chemical Manufacturing Company*, *The Mader Group, Inc. v. Gekoski*, *Beta Consultants & Administrators v. Centennial Life Ins. Co.* and *U.S. v. Natale*, a criminal RICO case, among others.

From 1971 to 1977, Mr. Burt was an Assistant U.S. Attorney for the Eastern District of Pennsylvania. He was appointed Chief of the Civil Division of that office in 1973. In that role, he managed and tried many matters including the Grand Jury investigation concerning the bankruptcy of the Penn Central Railroad, *U.S. v. Rosenbaum*. That case was tried by Mr. Burt for approximately six weeks in a United States District Court in Philadelphia in the winter of 1977. Before being promoted to Chief, Mr. Burt was an Assistant U.S. Attorney for several





## BERMAN DEVALERIO

years, during which he prosecuted white-collar and other criminal cases involving securities fraud, mail fraud, wire fraud, "check-kiting," embezzlement of bank funds, interstate transportation of stolen motor vehicles, income tax evasion, bank robbery, drug trafficking and other offenses. During that time period, among other cases, he also prosecuted *U.S. v. Bertram Lazar*, a Ponzi scheme.

In addition to his case work, Mr. Burt has been actively involved in a number of associations, authored materials and lectured on a variety of legal topics. From 1972 through 1985, he was Chairman of the Criminal Law Committee of the Philadelphia Bar Association Young Lawyers' Section Basic Legal Practice Course. He was an author and lecturer on various legal topics including co-authoring materials on Punitive Damages in the Class Action context and lecturing on that subject at the seminar "Litigating Punitive Damages" presented by the American Conference Institute in New York in May 1995.

Mr. Burt graduated from Swarthmore College with a B.A. in History and earned his J.D. from the University of Pennsylvania Law School.

He is a member of the Florida and Pennsylvania Bars, and is admitted to practice before the U.S. Supreme Court, the Third, Eighth, Ninth and Eleventh Circuit Court of Appeals and various U.S. District Courts. He is AV rated by Martindale-Hubbell.

Mr. Burt co-founded Burt & Pucillo LLP, one of the firms that merged to form Berman DeValerio in 2001. After serving as a partner in the firm's Florida office, he became Of Counsel to the firm in January 2009.

### JAY ENG

Jay Eng is of counsel in the firm's Florida office, where he focuses his practice on securities litigation. Mr. Eng rejoined the firm in 2012 after working on FINRA arbitration matters dealing with customer-broker disputes for another Florida firm. He had previously worked at the firm from 2002 until 2008. During that time he worked on numerous securities class action matters, including *Wyatt v. El Paso Corp.*, which settled for \$285 million, and *In re Reliant Securities Litigation*, which settled for \$75 million.

Before joining the firm in 2002, Mr. Eng practiced at a large law firm in Florida where he represented corporate clients in a variety of business and commercial litigation matters. Prior to that, he served as a law clerk to United States Magistrate Judge, Ann Vitunac, managing the court's civil docket. He also worked as a trial court law clerk at the Fifteenth Judicial Circuit, advising circuit court judges in the civil and criminal divisions of the court.

Mr. Eng received a J.D. from Tulane Law School in 1998 and earned a B.S. in Economics from Florida State University in 1994. Mr. Eng is a member of the State Bar of Florida, the U.S.



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District Court for the Southern, Middle, and Northern Districts of Florida, the U.S. District Court for the Eastern District of Wisconsin, the U.S. Court of Appeals for the Eighth Circuit, the U.S. Court of Appeals for the Eleventh Circuit, and the United States Supreme Court.

### **MARC J. GREENSPON**

Marc J. Greenspon became Of Counsel to the firm in 2009 and concentrates his practice in the area of antitrust litigation.

Mr. Greenspon, formerly an associate with the firm from 2003 to 2007, worked on significant antitrust, consumer and securities class actions before starting an independent law practice counseling corporate clients. He maintains his independent law practice, which is not affiliated with the firm.

Mr. Greenspon earned an LL.M. in Securities and Financial Regulation from the Georgetown University Law Center in 2003, a J.D. from Nova Southeastern University in 2002, and a B.A. from the State University of New York at Buffalo in 1999. He co-authored "Securities Arbitration: Bankrupt, Bothered & Bewildered," 7 *Stan. J.L. Bus. & Fin.* 131 (2002).

Mr. Greenspon is admitted to practice law in the State of Florida, as well as in the U.S. District Courts for the Southern District of Florida, Middle District of Florida and Northern District of Florida. Mr. Greenspon is a member of the American Bar Association Section of Antitrust Law and the American Bar Association Committee on Derivatives and Futures Law.

### **ANNE F. O'BERRY**

Since joining the firm in 2000, Anne F. O'Berry has specialized primarily in securities class action litigation, helping to achieve substantial recoveries for institutional investors in cases such as *El Paso*, *Lernout & Hauspie*, *Reliant*, *International Rectifier Corp.*, *Sykes* and *WorldCom*.

She has also assisted in several of the firm's antitrust, consumer protection, and ERISA cases, including *Canadian Motor Vehicles*, *Citrus Canker*, *LCD Flat Panel*, *Marine Hose*, *State Street Bank and Trust Co.*, and *Bear Stearns* which received final approval in 2012 for a settlement of \$294.9 million. She is currently involved in the securities class action *Fannie Mae*.

Ms. O'Berry began her legal career as a commercial litigation associate at the New York firm of Debevoise & Plimpton, and thereafter worked as a staff attorney for a federally funded agency representing indigent death row inmates in state and federal post-conviction litigation, as co-director of a non-profit agency representing incarcerated battered women seeking executive clemency, as a central staff attorney at Florida's Fourth District Court of Appeal, and as an adjunct professor at St. Thomas University Law School.





## **BERMAN DEVALERIO**

Ms. O'Berry has also served on several law-related committees, including serving as Secretary of the Civil Rights Committee of the Association of the Bar of the City of New York.

She obtained her B.A. from the University of Pennsylvania in 1983, graduating *summa cum laude* and *Phi Beta Kappa*, and earned her J.D. from New York University School of Law in 1986, where she was the director of the Women in Prison Project at Riker's Island, a member of the Civil Rights Litigation Clinic, and an Articles Editor on the *Annual Survey of American Law*, where she published the article, "Prisoners' Rights: Judicial Deference to Prison Administrators," 1985 *Annual Survey of American Law* 325.

While in law school, Ms. O'Berry interned for Judge Abraham D. Sofaer, U.S. District Court for the Southern District of New York and for Judge A. Leon Higginbotham, Jr., U.S. Court of Appeals for the Third Circuit.

Following law school, Ms. O'Berry served as a law clerk to Judge Dickinson R. Debevoise, U.S. District Court for the District of New Jersey, and then as a research and teaching associate to Judge Higginbotham, with whom she co-authored: "The 'Law Only As An Enemy': The Legitimization of Racial Powerlessness Through the Colonial and Antebellum Criminal Laws of Virginia," 70 N.C. L. Rev. 969 (1992).

Ms. O'Berry is admitted to practice before the New York and Florida Bars, the U.S. Supreme Court and the U.S. District Courts for the Southern and Eastern Districts of New York and the Southern District of Florida.

### **JOHN H. SUTTER**

John H. Sutter focuses on securities litigation. He joined Berman DeValerio as Of Counsel in early 2010 after working with the firm for several years as a contract attorney.

Mr. Sutter participated in a number of the firm's important cases, drafting investigative memoranda and mediation statements in the Xerox litigation, which resulted in a \$750 million recovery for plaintiffs from the company and its auditor, KPMG. He also participated in extensive document review and discovery preparation in the *State Street Bank ERISA* litigation and the *Nortel II* litigation, each of which resulted in a substantial recovery for plaintiffs.

Before working with Berman DeValerio, Mr. Sutter was both a corporate and litigation associate for two prominent Boston law firms. He also served as an in-house assistant general counsel with Biogen, Inc., focusing in particular on securities and compliance issues.

Mr. Sutter graduated second in a class of nearly 400 from Boston University School of Law, *summa cum laude*, in 1995. He served on the *Boston University Law Review* and was a charter member of the *Phi Delta Phi* Legal Fraternity. He also was a distinguished scholar for all three





## **BERMAN DEVALERIO**

years and was the recipient of the William L. and Lillian Berger Award for Distinguished Academic Achievement. He graduated from Suffolk University in 1992 with a B.A. in English Literature.

He is admitted to practice law in the Commonwealth of Massachusetts and the U.S. District Court of Massachusetts.

### ***Project Attorneys***

#### **RICKY L. BROWN**

A project attorney in the firm's Boston office, Ricky L. Brown is a member of the document discovery team, which helps uncover and compile evidence to prove our cases.

Mr. Brown joined the firm in 2011 after working as a contract attorney for several major law firms in the Boston area.

Mr. Brown earned a J.D. from Boston College Law School in 1999 and a B.S. in English Literature from SUNY College at Oneonta in 1996. He is a member of the State Bar of Massachusetts.

#### **GRACE C. BYRNE**

A project attorney in the firm's Boston office, Grace C. Byrne is a member of the document discovery team, which helps uncover and compile evidence to prove our cases.

Ms. Byrne joined the firm in 2011 after working as a contract attorney for several Boston-area law firms.

She earned a J.D. from Suffolk University Law School in 2000 and a B.S. in Management with a concentration in finance from the University of Massachusetts in 1992.

Ms. Byrne's professional background also includes working in the financial services industry. Most notably, she worked as an accountant for the Federal Home Loan Bank of Boston, where she became familiar with accounting principles and standards. She also became knowledgeable about financial instruments, such as equities, debt, and over-the-counter and exchange-traded derivatives.

Ms. Byrne is admitted to practice law in the state of Massachusetts.



## BERMAN DEVALERIO

### LILLIAN H. DO

A project attorney in the firm's San Francisco office, Lillian H. Do is a member of the document discovery team, which helps uncover and compile evidence to prove our cases. Ms. Do joined the firm in 2011 after working as a contract attorney for a number of international law firms in the San Francisco Bay Area.

While in law school, Ms. Do served as a member and as Articles Editor of the *Whittier Law Journal of Child & Family Advocacy*. She has also served as a judicial extern for the Honorable John N. T. Nguyen of the Orange County Superior Court West Justice Center and as a law clerk for the San Francisco City Attorney's Office, Code Enforcement Team.

Ms. Do earned her J.D. from Whittier Law School in 2009. She participated in Loyola Law School's Summer Abroad Program in 2007, and received a B.A. in Legal Studies from University of California, Berkeley in 2004.

Ms. Do is admitted to practice law in the State of California.

### LAURA M. FALARDEAU

A project attorney in the firm's Boston office, Laura M. Falardeau is a member of the document discovery team, which helps uncover and compile evidence to prove our cases.

Ms. Falardeau joined the firm in 2011 after working as a contract attorney for several major law firms. Earlier in her career, Ms. Falardeau served as an associate attorney at a law firm in the Boston area.

At Northeastern University School of Law, Ms. Falardeau interned for Judge Peter W. Agnes, Jr. of the Massachusetts Superior Court. During law school Ms. Falardeau also represented victims of domestic violence at Greater Boston Legal Services and served as a Hearings Officer at the Boston Public Health Commission.

Ms. Falardeau is admitted to practice law in the Commonwealth of Massachusetts. She is a member of the Women's Bar Association.

### EZRA J. REINSTEIN

A project attorney in the firm's Boston office, Ezra J. Reinstein is a member of the document discovery team, which helps uncover and compile evidence to prove our cases.

Mr. Reinstein joined the firm in 2011 after working as a contract attorney and a litigation associate for several law firms. Mr. Reinstein also served as independent corporate and





## **BERMAN DEVALERIO**

litigation counsel, and was the founding director of the litigation department for the oldest pro-Israel organization in the United States.

Mr. Reinstein received his J.D. from Harvard Law School in 1998 and an A.B. in Philosophy *cum laude* from Harvard College in 1994.

He is admitted to practice in the states of Massachusetts and New York.

### ***Other Key Personnel***

#### **RONALD J. KEATING, DIRECTOR OF INVESTIGATIONS**

Based in the firm's Boston office, Ronald J. Keating is a fraud investigator and forensic accountant with nearly three decades of field experience, including 21 years as a Special Agent for the Federal Bureau of Investigation.

A Certified Public Accountant and licensed Private Investigator, Mr. Keating joined the firm in 2008. He devotes his skills and energies to uncovering evidence of fraud, often non-public information obtained through interviews with former employees at suspect companies.

Mr. Keating served as a Special Agent in the FBI's Boston office from 1979-1988 and again from 1995-2007. While with the Bureau, he directed all aspects of complex financial fraud investigations, including securities fraud, Ponzi schemes, financial institution fraud, financial statement fraud and economic crimes. Cases that Mr. Keating investigated in conjunction with federal and state regulators -- including the Securities Exchange Commission and the Financial Industry Regulatory Authority (formerly the National Association of Securities Dealers) -- resulted in criminal penalties, multi-million-dollar settlements and asset forfeiture.

From 1993 to 1995, Mr. Keating served as Senior Special Investigator for the Board of Governors of the Federal Reserve System in Washington D.C., where he directed investigations related to violations of federal money laundering, bank fraud and bank secrecy laws.

Mr. Keating became a CPA in 1979. He is a Massachusetts-licensed Private Investigator and a Certified Anti-Money Laundering Specialist. He earned a Master of Science in Taxation from Bentley College in 1988 and a B.S. in Accounting from Northeastern University in 1976.

#### **VAN C. KHANG, FORENSIC ACCOUNTANT**

A forensic accountant working out of the firm's Boston office, Van C. Khang has worked on many cases that have resulted in significant client recoveries, including suits against *Symbol Technologies*, *ICG Communications* and *Philip Services*.



## **BERMAN DEVALERIO**

Prior to her arrival at Berman DeValerio, Ms. Khang worked as a manager in the Global Investigations and Dispute Advisory Services Group for the accounting firm of Ernst & Young and, previously, as a senior consultant and staff auditor.

Ms. Khang graduated from the University of Massachusetts in 1998 with a B.S in Accounting and Finance. In 1993, she earned a B.S. in Molecular Biology from the University of Connecticut. Ms. Khang is a Certified Public Accountant in Massachusetts and a Certified Financial Examiner.

### **RICHARD LORANT, DIRECTOR OF MARKETING AND CLIENT RELATIONS**

The firm's Director of Marketing and Client Relations, Richard Lorant helps implement Berman DeValerio's business development plan and works with the firm's lawyers to deliver outstanding client service through its portfolio monitoring program.

A former journalist and public relations professional, Mr. Lorant joined Berman DeValerio in 2000. He has been a key player in increasing the firm's representation of institutional investors and raising its public profile.

Mr. Lorant works directly with a number of clients, including the Fire and Police Pension Association of Colorado, the Oklahoma Firefighters Pension and Retirement System, the Oklahoma Police Pension and Retirement System, the Wyoming State Retirement System and the Wyoming State Treasurer's Office.

Mr. Lorant assisted public fund clients in establishing a settlement claim filing program after a custodial switch left potential gaps in coverage at the firm. He also developed the firm's client communications program and is responsible for its content. Mr. Lorant managed the transition to a state-of-the-art portfolio monitoring system in 2005. He handles media relations and has placed op-ed articles in Pensions & Investments, The Boston Globe and other publications. In addition, Mr. Lorant has overseen multiple redesigns of firm website and print materials.

Before joining Berman DeValerio, Mr. Lorant was an account manager for a Boston-area public relations firm. His clients included Fidelity Investments, Phoenix Investment Partners and Fleet Bank. Prior to that, he spent 15 years as a journalist in the United States and Spain, most of it with The Associated Press, where he worked as a reporter, a correspondent and a desk supervisor.

Mr. Lorant is the firm's representative to numerous organizations, including the Council of Institutional Investors, the National Association of State Retirement Administrators, the National Conference on Public Employee Retirement Systems and the National Council on Teacher Retirement. He served as a member of the National Association of State Treasurers' Corporate Affiliate Advisory Board from 2009 through 2011.



## **BERMAN DEVALERIO**

Mr. Lorant graduated from Oberlin College with a B.A. in Communications Studies and a minor in European History in 1982.

### **JEANNINE M. SCARSCIOTTI, SENIOR PORTFOLIO ANALYST**

Jeannine M. Scarsciotti is Berman DeValerio's senior portfolio analyst and oversees portfolio monitoring, data analysis, and loss calculations for the firm's institutional clients.

She is also the firm's senior paralegal and, as such, oversees and coordinates paralegal projects. She joined the firm in 1995. Ms. Scarsciotti attended Bentley College, graduating *summa cum laude* in 1995. She earned a B.S. in Professional Studies and an ABA-Accredited Certificate of Paralegal Studies.





**BERMAN DEVALERIO**

**OFFICES**

**MASSACHUSETTS**

One Liberty Square  
Boston, MA 02109  
Phone: (617) 542-8300  
Fax: (617) 542-1194

**FLORIDA**

3507 Kyoto Gardens Drive, Suite 200  
Palm Beach Gardens, FL 33410  
Phone: (561) 835-9400  
Fax: (561) 835-0322

**CALIFORNIA**

One California Street, Suite 900  
San Francisco, CA 94111  
Phone: (415) 433-3200  
Fax: (415) 433-6382

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# EXHIBIT 9

Christopher Kim (Bar No. 082080)  
christopher.kim@limruger.com  
Lisa J. Yang (Bar No. 208971)  
lisa.yang@limruger.com  
LIM, RUGER & KIM, LLP  
1055 West Seventh Street, Suite 280  
Los Angeles, California 90017-2554  
Telephone: (213) 955-9500  
Facsimile: (213) 955-9511

Thomas A. Dubbs (*Pro Hac Vice*)  
tdubbs@labaton.com  
James W. Johnson (*Pro Hac Vice*)  
jjohnson@labaton.com  
Richard T. Joffe (*Pro Hac Vice*)  
rjoffe@labaton.com  
Thomas G. Hoffman, Jr. (*Pro Hac Vice*)  
thoffman@labaton.com  
LABATON SUCHAROW LLP  
140 Broadway  
New York, New York 10005  
Telephone: (212) 907-0700  
Facsimile: (212) 818-0477

Allyn Z. Lite (*Pro Hac Vice*)  
alite@litedepalma.com  
Bruce D. Greenberg (*Pro Hac Vice*)  
bgreenberg@litedepalma.com  
Katrina Carroll  
kcarroll@litedepalma.com  
LITE DEPALMA GREENBERG, LLC  
Two Gateway Center, 12th Floor  
Newark, New Jersey 07102  
Telephone: (973) 623-3000  
Facsimile: (973) 623-0858

*Attorneys for Lead Plaintiff the State of New Jersey, Department of Treasury,  
Division of Investment, Plaintiffs International Brotherhood of Electrical Workers,  
Local 103 and Norfolk County Retirement System and Lead Counsel for the Class*

*(Caption continued on following page)*

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

IN RE STEC, INC. SECURITIES LITIGATION  <hr/> This Document Relates to  ALL ACTIONS.	) No. SACV 09-01304-JVS (MLGx) ) ) <b>DECLARATION OF MICHAEL</b> ) <b>PATRICK DONOVAN IN SUPPORT</b> ) <b>OF FINAL APPROVAL OF</b> ) <b>SETTLEMENT AND</b> ) <b>REIMBURSEMENT OF</b> ) <b>REPRESENTATIVE PLAINTIFF'S</b> ) <b>REASONABLE COSTS AND</b> ) <b>EXPENSES RELATING TO ITS</b> ) <b>REPRESENTATION OF THE CLASS</b> ) ) Judge: Hon. James V. Selna ) Court: 10C ) Date: May 20, 2013 ) Time: 1:30 p.m.
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1 Thomas Bienert, Jr.  
tbienert@bmkattorneys.com  
2 BIENERT, MILLER & KATZMAN  
903 Calle Amanecer, Suite 350  
3 San Clemente, CA 92673  
Telephone: (949) 369-3700  
4 Facsimile: (949) 369-3701

Robert S. Green  
rsg@classcounsel.com  
GREEN & NOBLIN, P.C.  
700 Larkspur Landing Circle, Suite 275  
Larkspur, CA 94939  
Telephone: (415) 477-6700  
Facsimile: (415) 477-6710

5 *Attorneys for Plaintiff Mark V. Ripperda*  
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1 I, MICHAEL PATRICK DONOVAN, declare, pursuant to 28 U.S.C. §  
2 1764, as follows:

3 1. I am the Chief Financial Officer of the Electrical Workers Pension  
4 Fund, Local 103, I.B.E.W. ("Local 103"), a Representative Plaintiff in this Action.  
5 Since approximately March 2011, my responsibilities have included monitoring  
6 and supervising the conduct of this Action.

7 2. Prior to my involvement in this Action, the monitoring and  
8 supervision role was performed by Richard Gambino, the Administrator of Local  
9 103.

10 3. I have personal knowledge of the facts contained in this declaration  
11 that relate to the time period beginning as of approximately March, 2011. I have  
12 knowledge of events prior to that date from documents in the files of Local 103.  
13 Without waiving the attorney-client privilege, if called as a witness, I could and  
14 would competently testify to the following:

15 4. Local 103 participated diligently in this matter under the direction of  
16 Lead Counsel, the State of New Jersey, Division of Investment. Based on my  
17 involvement with the prosecution of this Action and conversations with counsel,  
18 Local 103 strongly endorses the settlement. Local 103 also approves the Plan of  
19 Allocation as a fair, reasonable and appropriate means of valuing the claims of  
20 class members and apportioning the settlement fund among them.

21 5. In light of the result obtained by Plaintiffs' Counsel, and the quality of  
22 work which counsel performed, Local 103 believes that a fee of 16.07% of the  
23 Settlement Fund, plus any accrued interest, and reimbursement of Plaintiffs'  
24 Counsel's litigation expenses, plus any accrued interest, is fair and reasonable.  
25 However, Local 103 understands that the matter of the total award of attorneys'  
26 fees for litigating this action is ultimately left to the sound discretion of the Court.

27 6. Local 103 is aware that the Private Securities Litigation Reform Act  
28 ("PSLRA") permits a representative plaintiff to apply for reimbursement of its



1 reasonable costs and expenses (including lost wages) directly relating to the  
2 representation of the class. I have determined the unreimbursed costs and expenses  
3 that Local 103 has incurred, including the time expended by personnel of Local  
4 103. Those unreimbursed costs and expenses through March 30, 2013 total  
5 \$2,750.0, as detailed in the chart below:

6

<u>Name</u>	<u>Hours</u>	<u>Charge</u>
7 Richard Gambino 8 (Administrator, Local 103)	20.0	\$1,044.00
9 Michael Patrick Donovan 10 (CFO, Local 103)	31.5	\$1,706.04
11 Total	51.5	\$2,750.04

12 I declare, under penalty of perjury, that the foregoing facts are true and  
13 correct.

14 Executed at Boston, Massachusetts, this 2 day of April, 2013.

15  
16   
17 MICHAEL PATRICK DONOVAN

# EXHIBIT 10

Christopher Kim (Bar No. 082080)  
christopher.kim@limruger.com  
Lisa J. Yang (Bar No. 208971)  
lisa.yang@limruger.com  
LIM, RUGER & KIM, LLP  
1055 West Seventh Street, Suite 2800  
Los Angeles, California 90017-2554  
Telephone: (213) 955-9500  
Facsimile: (213) 955-9511

Thomas A. Dubbs (*Pro Hac Vice*)  
tdubbs@labaton.com  
James W. Johnson (*Pro Hac Vice*)  
jjohnson@labaton.com  
Richard T. Joffe (*Pro Hac Vice*)  
rjoffe@labaton.com  
LABATON SUCHAROW LLP  
140 Broadway  
New York, New York 10005  
Telephone: (212) 907-0700  
Facsimile: (212) 818-0477

Allyn Z. Lite (*Pro Hac Vice*)  
alite@litedepalma.com  
Bruce D. Greenberg (*Pro Hac Vice*)  
bgreenberg@litedepalma.com  
LITE DePALMA GREENBERG, LLC  
Two Gateway Center, 12th Floor  
Newark, New Jersey 07102  
Telephone: (973) 623-3000  
Facsimile: (973) 623-0858

*Attorneys for Lead Plaintiff, the State of New Jersey, Department of Treasury,  
Division of Investment, Plaintiff International Brotherhood of Electrical Workers,  
Local 103, The Norfolk County Retirement System and Lead Counsel for the Class*

Thomas Bienert, Jr.  
tbienert@bmkattorneys.com  
BIENERT, MILLER & KATZMAN  
903 Calle Amanecer, Suite 350  
San Clemente, CA 92673  
Telephone: (949) 369-3700  
Facsimile: (949) 369-3701

Robert S. Green  
rsg@classcounsel.com  
GREEN & NOBLIN, P.C.  
700 Larkspur Landing Circle, Suite 275  
Larkspur, CA 94939  
Telephone: (415) 477-6700  
Facsimile: (415) 477-6710

*Attorneys for Plaintiff Mark Ripperda*

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

IN RE STEC, INC. SECURITIES  
LITIGATION

No. SACV 09-01304-JVS (MLGx)

**DECLARATION OF LAYN R.  
PHILLIPS**

This Document Relates To:

**ALL ACTIONS**

Hearing Date: May 20, 2013  
Time: 1:30 p.m.  
Judge: Honorable James V. Selna  
Courtroom: 10C

1 I, LAYN R. PHILLIPS, declare as follows:

2 1. I submit this Declaration in my capacity as the mediator in connection  
3 with the proposed Settlement of the claims asserted by the class against STEC, Inc.  
4 (“STEC”), Manouch Moshayedi, Mark Moshayedi and Raymond Cook  
5 (collectively, the “STEC Defendants”).

6 2. I am a former United States District Judge, currently employed as a  
7 partner with the firm of Irell & Manella LLP. I am based in the firm’s Newport  
8 Beach, California office.

9 3. While serving as a United States Attorney in Oklahoma, I personally  
10 tried many cases and oversaw the trials of numerous other cases before I was  
11 nominated by President Reagan to serve as a United States District Judge in the  
12 Western District of Oklahoma. During my tenure as a Federal Judge, I presided  
13 over trials in all three districts of Oklahoma (Northern, Western and Eastern), and  
14 sat by designation on the United States Court of Appeals for the Tenth Circuit. I  
15 also presided over cases in federal Districts in Texas, New Mexico and Colorado.  
16 I left the bench in 1991, and joined Irell & Manella shortly thereafter.

17 4. I devote virtually all my professional time to serving as a mediator  
18 and arbitrator in connection with large, complex cases such as this. I have  
19 successfully mediated numerous complex commercial cases, including dozens of  
20 securities class action cases. Due to my efforts as a mediator, I have been  
21 nationally recognized by the International Institute for Conflict Prevention and  
22 Resolution (“IICPR”). I also serve on the IICPR’s National Panel of Distinguished  
23 Neutrals. Last year in 2012, I concluded settlements totaling more than \$6 billion  
24 mostly in the financial services and securities litigations arena.

25 5. In the fall of 2011, Labaton Sucharow LLP and Lite DePalma  
26 Greenberg, LLC (“Co-Lead Counsel”) and Latham & Watkins LLP, counsel for  
27 the STEC Defendants (the “STEC Defendants’ Counsel”), contacted me to request  
28

1 my assistance in mediating this case. After ensuring that no conflicts existed, I  
2 agreed to do so. A formal, day-long mediation session was scheduled for January  
3 5, 2012 in New York, NY. Having mediated other cases with Co-Lead Counsel  
4 and STEC Defendants' Counsel, I had seen first-hand the professional and  
5 vigorous advocacy these experienced securities litigators were capable of and I  
6 anticipated (and expected) that both sides would present their positions clearly,  
7 concisely and accurately. In advance of this session, Co-Lead Counsel and STEC  
8 Defendants' Counsel submitted detailed, comprehensive mediation statements.

9 6. Based on my review of the respective mediation statements, it was  
10 clear to me that counsel were well-versed in the relative merits of their claims and  
11 defenses, and in the evidence and theories that supported each side's position. It  
12 was also apparent that there was a very large and significant gap between the  
13 parties' settlement positions, and that achieving a settlement would be difficult.

14 7. During the January 2012 mediation session, I engaged in numerous  
15 discussions with Co-Lead Counsel and STEC Defendants' Counsel in an effort to  
16 find common ground between the parties' respective positions. This session was  
17 attended by representatives from both Lead Plaintiff, the State of New Jersey,  
18 Department of Treasury, Division of Investment ("New Jersey"), and by the  
19 General Counsel of STEC, both of whom actively participated in the mediation  
20 discussions. The session ended without a resolution, after it became apparent that  
21 the gulf between the parties' positions was simply too wide to bridge at that time.

22 8. The parties then ceased all mediation discussions, deciding to pursue  
23 discovery. During this time, I was generally kept apprised of the litigation,  
24 including the progress of discovery.

25 9. Then, in May 2012, I was contacted by Co-Lead Counsel and STEC  
26 Defendants' Counsel and agreed that further formal mediation in the wake of the  
27 completion of extensive fact discovery might prove fruitful. We scheduled a  
28 formal one-day mediation for July 30, 2012 in Newport Beach, CA. In advance of



1 this session, Co-Lead Counsel and STEC Defendants' Counsel submitted new and  
2 even more detailed, comprehensive mediation statements, informed by their  
3 extensive mutual discovery.

4 10. During the July 2012 mediation, it became apparent to me that both  
5 parties had a clearer understanding of the strengths and weaknesses of their  
6 respective cases and of the risks inherent in proceeding with further litigation. It  
7 was clear to me that both sides were prepared to try the case if necessary. This  
8 mediation session was also attended by client representatives from the parties,  
9 including a representative from New Jersey and the General Counsel of STEC. I  
10 was impressed by the deep involvement of the Lead Plaintiff's representative in  
11 overseeing the prosecution of the case, and with his commitment to that obligation  
12 as well as the intimate involvement of STEC Defendants' representative. Each of  
13 these client representatives was actively involved in the discussions.

14 11. During the mediation in July 2012, the parties were not able to reach  
15 an agreement.

16 12. During the July 2012 mediation, the STEC Defendants required that  
17 any settlement of this federal action encompass and resolve the Section 11 claims.

18 13. In early August 2012, the parties informed me that an additional party,  
19 Dr. Mark Ripperda, who had retained wholly-independent counsel, would be a  
20 representative for the interests of the Section 11 class members and, in the event of  
21 a settlement, would advocate for the allocation of the settlement between the  
22 Section 10(b) claimants and the Section 11 class members.

23 14. We thereafter scheduled a third day of mediation, which was held on  
24 September 5, 2012 in New York, NY.

25 15. The mediation was attended by counsel for Lead Plaintiff and  
26 Defendants, client representatives from New Jersey and the General Counsel of  
27 STEC, and counsel for Dr. Ripperda, Thomas Bienert and Robert Green ("Section  
28 11 Counsel"). My ADR colleague, Bernie Schneider, with whom I have

1 conducted many mediations, began the mediation with the respective parties. Mr.  
2 Schneider was fully informed of the issues relevant to the case and the mediation.  
3 I arrived a few hours later and jointly conducted and concluded the mediation with  
4 Mr. Schneider.

5 16. Throughout the day, the parties made progress. During the mediation,  
6 I had several separate sessions with Section 11 Counsel and defense counsel and  
7 Section 11 Counsel and Co-Lead Counsel. Mr. Bienert and Mr. Green argued  
8 strenuously on behalf of the Section 11 claims. At the close of the third full day of  
9 negotiations, the parties had narrowed their areas of dispute, but there was no  
10 agreement reached. In the following two days, through further communications,  
11 the parties reached an agreement in principle. The issue of allocation among Class  
12 members was not yet resolved. A memorandum of understanding was executed,  
13 which set forth, subject to the preparation of formal stipulations of settlement, the  
14 material terms and conditions of the \$35.75 million settlement.

#### 15 The Allocation Mediation

16 17. In early October 2012, Co-Lead Counsel informed me that Lead  
17 Counsel and Section 11 Counsel requested that I conduct a mediation on the proper  
18 allocation. Defendants did not participate in this process.

19 18. I spoke with counsel concerning their respective positions and their  
20 suggested allocation of the settlement amount.

21 19. On October 22, 2012, I held a telephonic conference call with New  
22 Jersey and Co-Lead Counsel solely on the issue of allocation, which was resolved.

#### 23 The State Court Action

24 20. During the course of this mediation, I was aware of the pending action  
25 in the Superior Court of Orange County styled *West Virginia Laborers' Trust Fund*  
26 *v. STEC, Inc.*, No. 30-2011-089022-C-SL-CXC (Cal. Super Ct. filed July 1, 2011)  
27 (the "State Court Action"). I was not retained as a mediator in the State Court  
28 Action and I take no position regarding any objection and/or fee request made in

1 this action by Bernstein Litowitz Berger & Grossman LLP, plaintiff's counsel in  
2 the State Court Action.

3 Conclusion

4 21. In sum, from my involvement as the mediator in this case, I observed  
5 first-hand that this was a hard-fought litigation and that the mediation sessions  
6 involved vigorous negotiations, which resulted in significant recoveries for the  
7 classes and fair and equitable settlements for all involved. The settlement here was  
8 the product of extensive arm's-length negotiations conducted after more than a  
9 year of targeted and efficient litigation. There was no collusion whatsoever in  
10 reaching the terms of the settlement.

11 22. The advocacy on both sides of the Case was stellar. I have had  
12 experience with the principal attorneys working on the cases for Lead Plaintiff  
13 from other cases I mediated and litigated, and I was familiar with the effort,  
14 creativity, and zeal they put into their work. I expected that they would represent  
15 their clients and the classes in the same manner here, as they did. Similarly, the  
16 advocacy from counsel representing Dr. Ripperda and Defendants was of the  
17 highest caliber and consistent with my experience and expectations from other  
18 matters. All displayed the highest level of professionalism in carrying out their  
19 duties on behalf of their respective clients. I believe the settlement is the result of  
20 all counsels' experience, reputation and ability in these type of cases.

21 23. Accordingly, in my view, the settlement is eminently fair, reasonable,  
22 and adequate.

23 Respectfully submitted on this 8th day of April, 2013.

24  
25  
26   
27 Layn R. Phillips  
28

# **Exhibit 11**

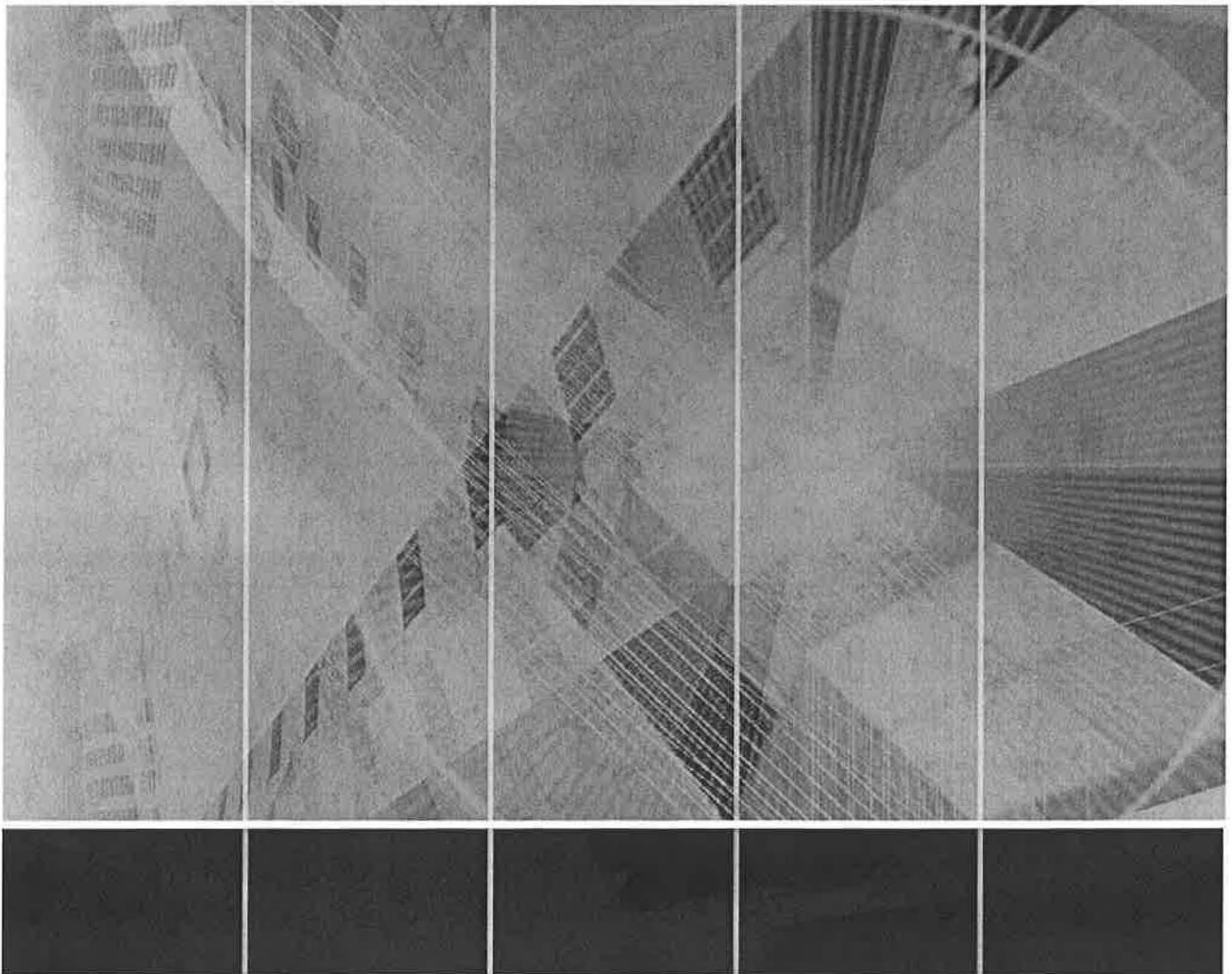
# CORNERSTONE RESEARCH

ECONOMIC AND FINANCIAL CONSULTING AND EXPERT TESTIMONY

## Securities Class Action Settlements

### 2012 Review and Analysis

Ellen M. Ryan  
Laura E. Simmons





For more than twenty-five years, Cornerstone Research staff have provided economic and financial analysis in all phases of commercial litigation and regulatory proceedings.

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Reports like this one are purposely brief, often summarizing published works or other research by Cornerstone Research staff and affiliated experts. The views expressed herein are solely those of the authors, who are responsible for the contents of this report, and do not necessarily represent the views of Cornerstone Research.

## KEY FINDINGS

In this report, we explore underlying causes and implications of the findings summarized below and discuss additional observations related to securities class action settlements in 2012. We also introduce new analyses related to the stage to which the litigation had progressed at the time of settlement.

- Fourteen-year low in the number of settlements approved (page 2)
- Total settlement dollars increased by more than 100 percent from 2011 due in part to an increased number of “mega-settlements” (settlements in excess of \$100 million) (page 2)
- Mega-settlements accounted for nearly 75 percent of all settlement dollars in 2012—the highest proportion in the last five years (page 4)
- Median “estimated damages,” a simplified measure of damages that is the single most important factor in determining settlement amounts, at an all-time high among post-Reform Act settlements (page 7)
- Settlement amounts in relation to “estimated damages” at a post-Reform Act low (page 8)
- Cases progressing to more advanced litigation stages settle for higher dollar amounts (page 9)
- The proportion of settlements involving a public pension plan as lead plaintiff continues to increase, reaching almost 50 percent in 2012 (page 14)

## RESEARCH SAMPLE

Our database focuses on cases alleging fraudulent inflation in the price of a corporation’s common stock (i.e., excluding cases with alleged classes of only bondholders, preferred stockholders, etc., and excluding cases alleging fraudulent depression in price). Our sample is limited to cases alleging Rule 10b-5, Section 11, and/or Section 12(a)(2) claims brought by purchasers of a corporation’s common stock. These criteria are imposed to ensure data availability and to provide a relatively homogeneous set of cases in terms of the nature of the allegations. Our current sample includes 1,325 securities class actions filed after passage of the Reform Act (1995) and settled from 1996 through 2012. These settlements are identified based on a review of case activity collected by Securities Class Action Services, LLC (SCAS).<sup>1</sup> The designated settlement year, for purposes of our study, corresponds to the year in which the hearing to approve the settlement was held.<sup>2</sup> Cases involving multiple settlements are reflected in the year of the most recent partial settlement, provided certain conditions are met.<sup>3</sup>

## 2012 REVIEW AND ANALYSIS

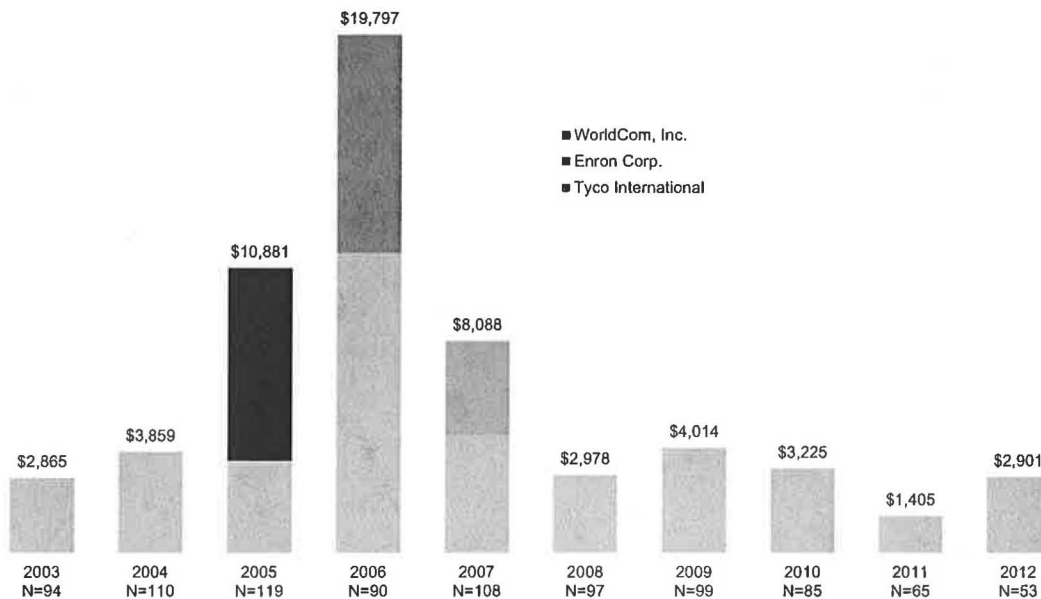
For 2012, we report 53 court-approved settlements, representing a 14-year low in the number of settlements. Since cases historically have taken several years to reach settlement, the decline in the number of settlements in 2012 may be due in part to the relatively low number of securities class actions filed in 2009 and 2010 (e.g., an average of approximately 148 cases per year during those two years compared with an average of approximately 200 cases filed per year during 2007 and 2008).<sup>4</sup>

Despite the decrease in the number of cases settled, total settlement dollars increased by more than 100 percent in 2012 from 2011 (Figure 1). This was due in large part to a number of mega-settlements (settlements in excess of \$100 million) with settlement hearing dates in 2012.

**FIGURE 1: TOTAL SETTLEMENT AMOUNTS**

**2003–2012**

*Dollars in Millions*



Settlement dollars adjusted for inflation; 2012 dollar equivalent figures used.

Reversing the decrease observed in 2011, the median settlement amount increased from \$5.9 million (the inflation-adjusted 2011 median) to \$10.2 million in 2012—an increase of more than 70 percent (Figure 2).

The average reported settlement amount also dramatically increased in 2012 from the prior year. This increase was in excess of 150 percent (from the inflation-adjusted amount of \$21.6 million in 2011 to \$54.7 million in 2012). Excluding the top three post-Reform Act settlements (WorldCom, Enron, and Tyco), the average settlement amount of \$54.7 million in 2012 is well above the historical average of \$36.8 million.

**FIGURE 2: SETTLEMENT SUMMARY STATISTICS**

*Dollars in Millions*

	<b>2012</b>	<b>1996–2011</b>	<b>Excluding Top Three Settlements 1996–2011</b>
Minimum	\$0.5	\$0.1	\$0.1
Median	\$10.2	\$8.3	\$8.1
Average	\$54.7	\$55.2	\$36.8
Maximum	\$822.6	\$8,325.1	\$2,878.5
Total Amount	\$2,901.5	\$70,181.0	\$46,687.6

Settlement dollars adjusted for inflation; 2012 dollar equivalent figures used.



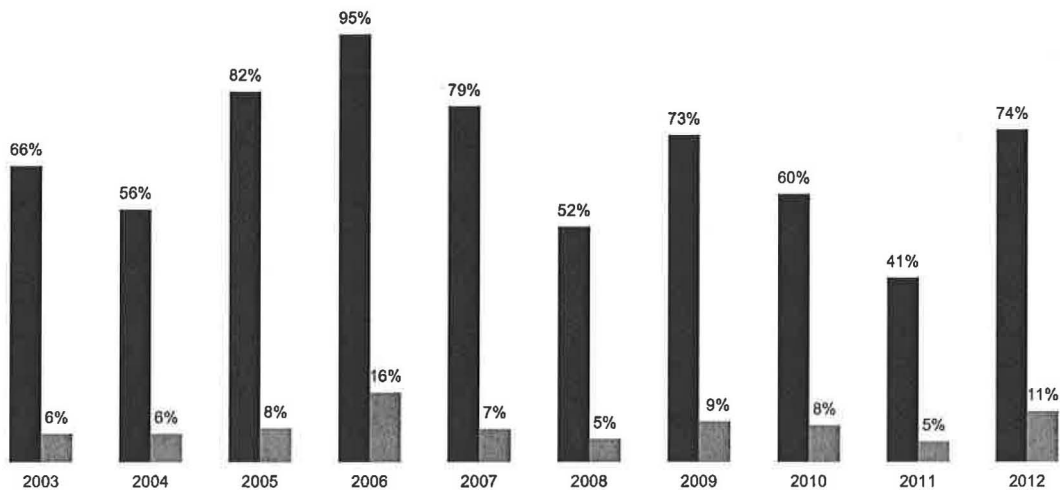
### MEGA-SETTLEMENTS

Mega-settlements (settlements in excess of \$100 million) accounted for nearly 75 percent of all settlement dollars in 2012—the highest proportion in the last five years (Figure 3). The number of mega-settlements has fluctuated substantially over time—for example, there were 14 such settlements in 2006, three in 2011, and six in 2012.

The average settlement dollar amount among 2012 mega-settlement cases increased more than 90 percent from the 2011 mega-settlement average, further contributing to the increase in the combined total dollar value of 2012 settlements.

**FIGURE 3: MEGA-SETTLEMENTS**

- Total Mega-Settlement Dollars as a Percentage of All Settlement Dollars
- Number of Mega-Settlements as a Percentage of All Settlements



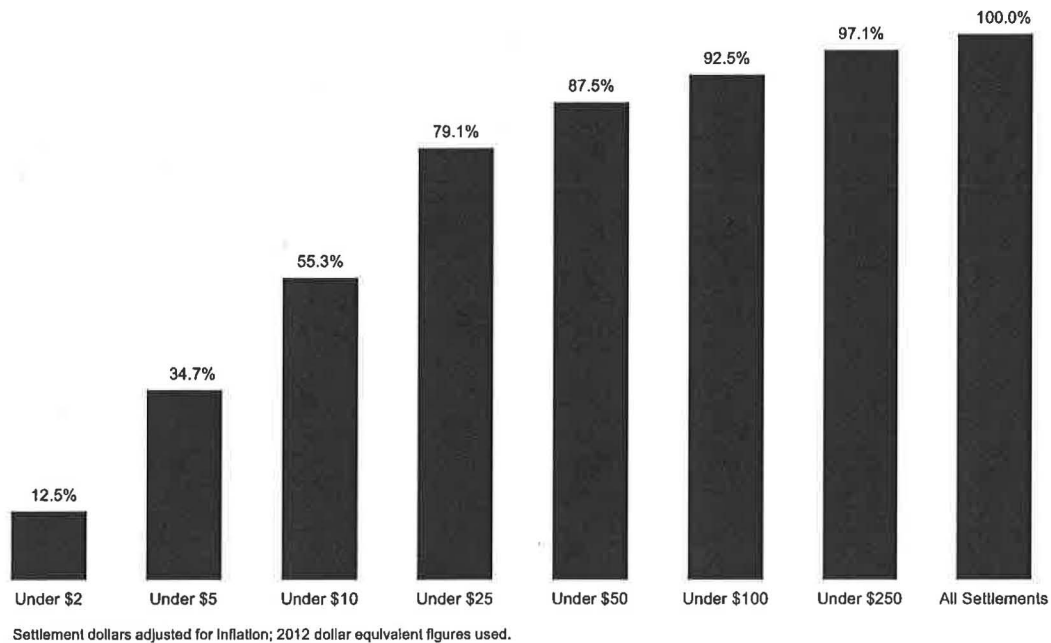
### SETTLEMENT SIZE

More than half of post-Reform Act cases that have reached a settlement have settled for less than \$10 million. However, in 2012, fewer than 50 percent of settlements were less than \$10 million, reflecting a possible shift in the typical case size. Despite the publicity that often accompanies mega-settlements, relatively few cases have settled for more than \$100 million (fewer than 8 percent) (Figure 4).

**FIGURE 4: CUMULATIVE DISTRIBUTION OF SETTLEMENT AMOUNTS**

**1996–2012**

*Dollars in Millions*



Settlement dollars adjusted for inflation; 2012 dollar equivalent figures used.

Using publicly available information from settlement materials and issuer filings,<sup>5</sup> we observed that less than 60 percent of settlements in 2012 were funded entirely by Directors and Officers (D&O) insurance proceeds, compared with almost 80 percent in 2011. This apparent decrease in the proportion of settlement amounts covered by D&O insurance policies may be due to the higher settlement amounts that occurred in 2012.

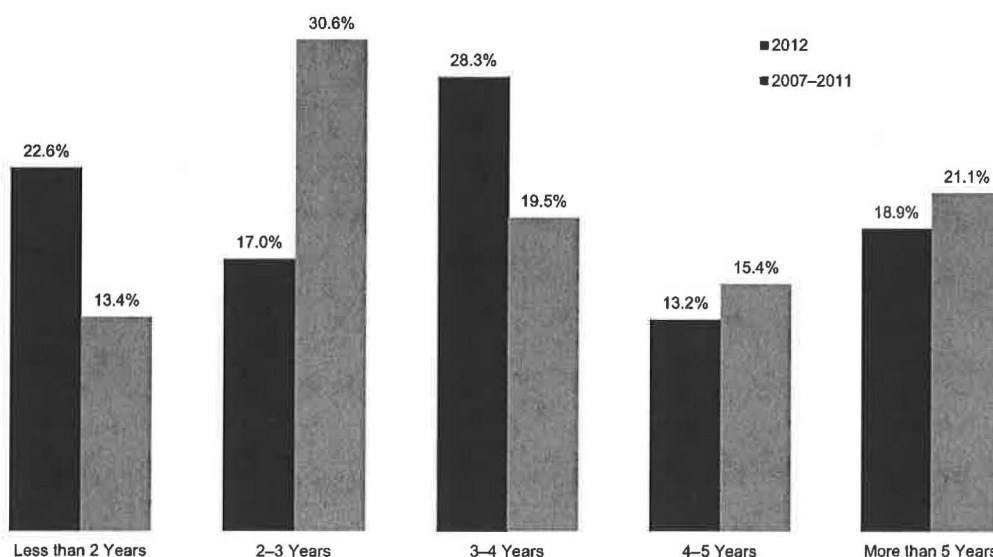
### TIME TO SETTLEMENT

For cases settled in recent years (2007–2011), the median time to reach settlement was 3.3 years. In 2012, there was a substantial increase in the proportion of cases settling within two years of the filing date (Figure 5). Of the cases that settled in 2012 within two years of filing, the median asset size for these issuer defendant firms was approximately \$175 million compared with median assets of more than \$2.5 billion for the rest of the sample. The median settlement amount for cases settling within two years of the filing date was only \$2.9 million compared with a median of \$18 million for cases settling after two years.

Not only was there a decrease in the time from filing to settlement for a subset of 2012 cases, but cases settling in 2012 moved through the court system somewhat more quickly once tentative settlements were publicly announced. Specifically, public announcements of preliminary settlements are often made in the media well in advance of the actual hearing to approve the settlement. In 2012, on average, more than half of the cases were heard in court within six months of a public announcement of settlement terms—up nearly 10 percent from the average speed at which 2011 settlements were heard.

Overall, larger cases tend to take longer to reach settlement. Not surprisingly, these larger cases may be more complex to litigate as evidenced by the average number of docket entries. In 2012, the average number of docket entries for cases settled within two years of the filing date was 112; the average number of docket entries for cases settling within three to four years was almost double this figure.

**FIGURE 5: DURATION FROM FILING DATE TO SETTLEMENT HEARING DATE**



Litigation stage at the time of settlement is also closely tied to the duration of the case. Among all post-Reform Act settlements, we found that 28 percent of cases settled prior to a ruling on motion to dismiss, 64 percent settled after a ruling on a motion to dismiss but prior to a ruling on motion for summary judgment, and approximately 7 percent settled after a ruling on motion for summary judgment.<sup>6</sup> On average, these cases took 2.3 years, 3.5 years, and 4.9 years, respectively, to reach settlement. Further discussion of litigation stage attributes can be found on page 9.

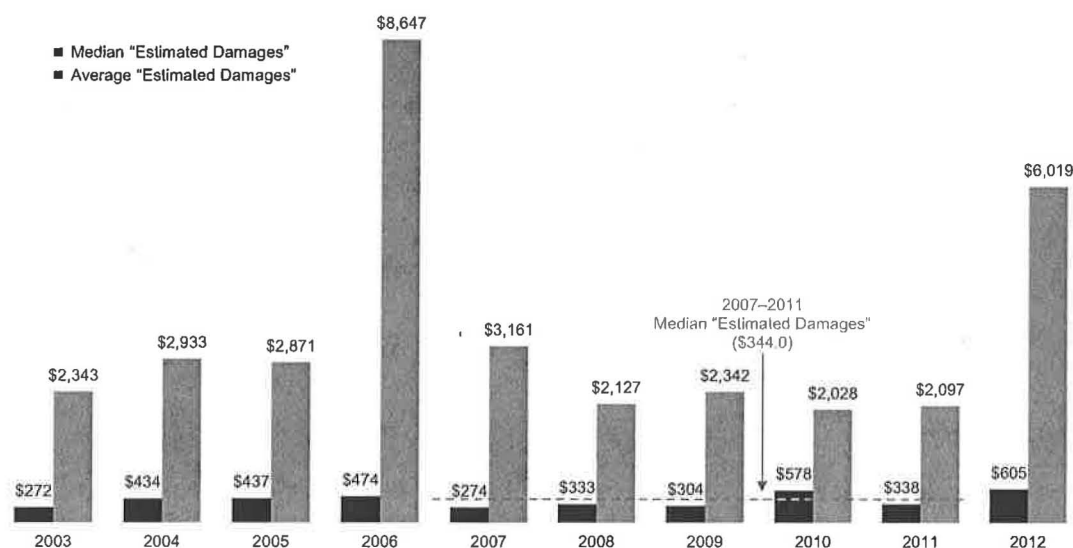
## SETTLEMENTS AND DAMAGES ESTIMATES

As we have noted in prior reports, a measure of shareholder losses is the single most important factor in determining settlement amounts. For purposes of our research, we use a highly simplified approach to calculate these losses, which we refer to as “estimated damages.” This measure is based on a modified version of a calculation method historically used by plaintiffs in securities class actions.<sup>7</sup> We make no attempt to link these simplified calculations of shareholder losses to the allegations included in the associated court pleadings. Accordingly, we do not intend for any damages estimates presented in this report to be indicative of actual economic damages borne by shareholders. Various models and alternative calculations could be used to assess defendants’ potential exposure in securities class actions, but our application of a consistent method allows us to identify and examine trends.<sup>8</sup>

While median “estimated damages” decreased substantially for settlements in 2011 from 2010, we observed a nearly 80 percent year-over-year increase in median “estimated damages” in 2012. In fact, the median “estimated damages” for 2012 is an all-time high among post-Reform Act settlements. Since “estimated damages” is the most important factor in determining settlement amounts, this increase was the major contributor to the higher settlement amounts in 2012 (Figure 6).

**FIGURE 6: MEDIAN AND AVERAGE “ESTIMATED DAMAGES”  
2003–2012**

*Dollars in Millions*

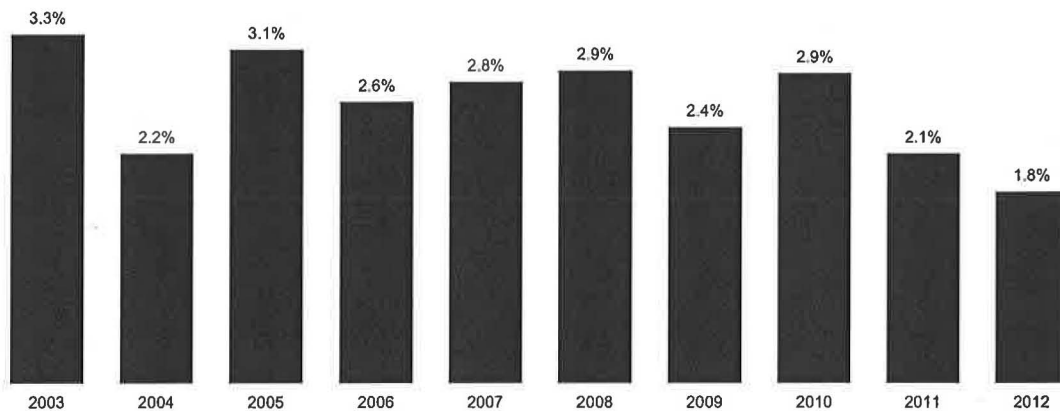


\*Estimated damages are adjusted for inflation based on class period end dates.

Average “estimated damages” for 2012 reached a six-year high and was the second highest average in the post-Reform Act era. This increase was driven by a number of extremely large cases, a significant portion of which were related to the credit crisis.

In 2012, the median settlement as a percentage of “estimated damages” was substantially lower than for earlier post-Reform Act settlements. In fact, the median of 1.8 percent for cases settled in 2012 was a historic low among all post-Reform Act years (Figure 7). Credit-crisis cases, as well as an increase in mega-settlements, which have traditionally settled for a smaller proportion of “estimated damages,” are contributing factors.

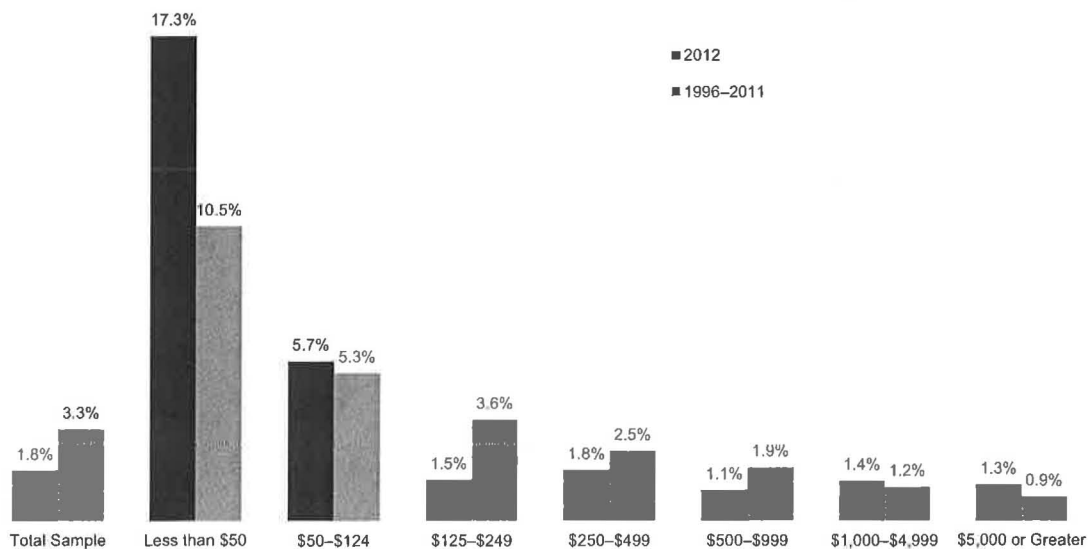
**FIGURE 7: MEDIAN SETTLEMENTS AS A PERCENTAGE OF “ESTIMATED DAMAGES” BY YEAR  
2003–2012**



Settlement amounts generally increase as “estimated damages” increase; however, settlements as a percentage of “estimated damages” typically decrease as “estimated damages” increase. In 2012, in cases with “estimated damages” of less than \$50 million, the median settlement amount as a percentage of “estimated damages” was 17.3 percent, whereas the median was 1.3 percent for cases with “estimated damages” in excess of \$5 billion (Figure 8).

**FIGURE 8: MEDIAN SETTLEMENTS AS A PERCENTAGE OF “ESTIMATED DAMAGES” BY DAMAGES RANGES**

*Dollars in Millions*





## LITIGATION STAGE

This year we introduce analyses related to the stage to which the litigation had progressed at the time of settlement. We study three stages: Stage 1—settlement prior to a ruling on motion to dismiss; Stage 2—settlement after a ruling on motion to dismiss but prior to a ruling on motion for summary judgment; and Stage 3—settlement after a ruling on motion for summary judgment.

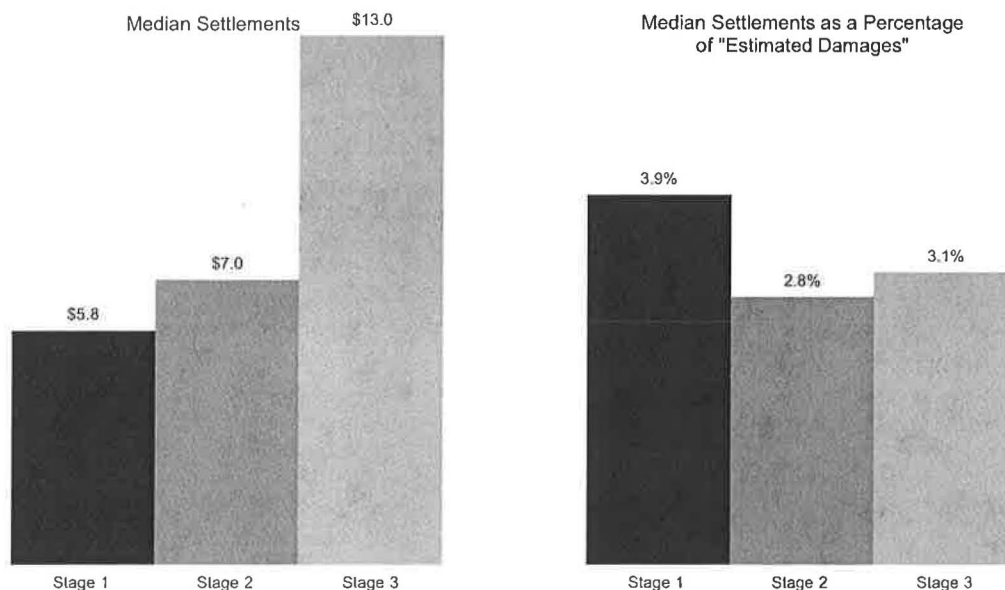
Settlement amounts are slightly higher for cases that progress to Stage 2 and substantially higher for cases that advance to Stage 3 (Figure 9). It might be expected that cases that progress to more advanced stages in the litigation process would settle for higher amounts either because the case may be more meritorious (having survived a motion to dismiss) or because plaintiff counsel have more invested in litigating these cases.

However, when considered in relation to “estimated damages,” the positive relation between settlements and case progression is not supported. Specifically, cases settling in Stage 1 settled for the highest percentage of “estimated damages,” and there was virtually no difference in the percentage between cases settling in Stage 2 versus Stage 3. These results are likely due in part to differences in the size of shareholder losses associated with cases settling at the different stages. The sample of cases reaching Stage 3 had median “estimated damages” more than two and a half times the median “estimated damages” of cases settling in Stage 1. In other words, larger cases (as measured by “estimated damages”) tend to settle at more advanced stages of litigation. This is consistent with our previous observation that larger cases tend to take longer to reach settlement.

We have tested the relationship between settlement size and litigation stage using a regression model that simultaneously controls for many factors affecting settlement amounts. We find that settlement stage is highly correlated not only with case size, but also with other factors related to the complexity of the case.

**FIGURE 9: MEDIAN SETTLEMENTS AS A PERCENTAGE OF “ESTIMATED DAMAGES” AND LITIGATION STAGE**

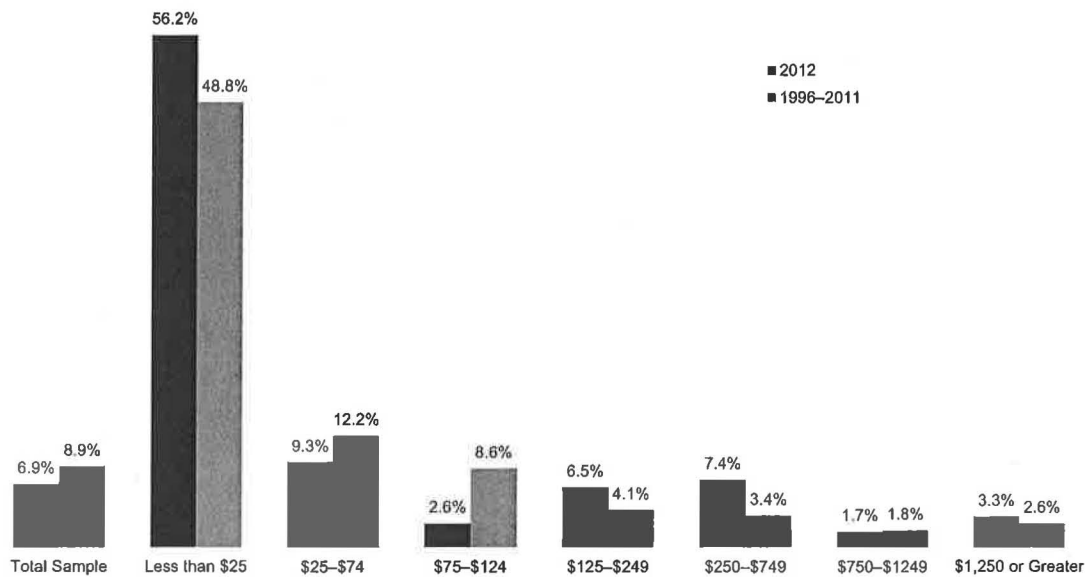
*Dollars in Millions*



**DISCLOSURE DOLLAR LOSS**

Disclosure Dollar Loss (DDL) is another simplified measure of shareholder losses. DDL is calculated as the decline in the market capitalization of the defendant firm from the trading day immediately preceding the end of the class period to the trading day immediately following the end of the class period.<sup>9</sup> DDL captures the price reaction—using closing prices—of the disclosure that resulted in the first filed complaint. As in the case of “estimated damages,” we do not attempt to link DDL to the allegations included in the associated court pleadings. This measure also does not incorporate additional stock price declines during the alleged class period that may affect certain purchasers’ potential damages claims. Thus, as this measure does not isolate movements in the defendant’s stock price that are related to case allegations, it is not intended to represent an estimate of damages.

The median DDL associated with settled cases in 2012 increased more than 60 percent from 2011, to \$174 million. With settlements as a percentage of DDL declining as DDL increases, the relationship between settlements and DDL is similar to that between settlements and “estimated damages” (Figure 10).

**FIGURE 10: MEDIAN SETTLEMENTS AS A PERCENTAGE OF DDL BY DDL RANGE***Dollars in Millions*

## ANALYSIS OF SETTLEMENT CHARACTERISTICS

In addition to “estimated damages” and DDL, there are a number of important determinants of settlement outcomes that we have identified from the more than 60 variables related to each case that we collected and analyzed as part of our research. We describe several of these factors below.

### NATURE OF CLAIMS

A small portion of the settled cases involved only Section 11 and/or Section 12(a)(2) claims (i.e., they do not include Rule 10b-5 claims). Nearly half of these were settled in 2009 through 2011; however, there were only three of this case type among 2012 settlements. The decrease in cases alleging only Section 11 and/or Section 12(a)(2) claims is tied to the significant slowdown in the IPO market in 2008 and 2009. However, as has been widely reported, the U.S. IPO market has improved in recent years, and cases of this type may return to the mix of settlements over the next few years.<sup>10</sup>

The median settlement amount of \$3.3 million for cases from 1996 through 2012 involving only Section 11 and/or Section 12(a)(2) claims was lower than the median settlement amount for cases involving Rule 10b-5 claims, while median settlements as a percentage of “estimated damages” were higher at 7.5 percent. “Estimated damages” tended to be smaller for cases involving only Section 11 claims, and therefore we expect these cases to have higher median settlement as a percentage of “estimated damages” compared with cases with only Rule 10b-5 claims (Figure 11).

For 2012 settlements, Section 11 claims were included in fewer cases (whether alone, or in conjunction with Rule 10b-5 claims) compared with recent years.

**FIGURE 11: SETTLEMENTS BY NATURE OF CLAIM**

**1996–2012**

*Dollars in Millions*

	<b>Number of Cases</b>	<b>Median Settlement</b>	<b>Median Settlement as a Percentage of “Estimated Damages”</b>
Section 11 and/or 12(a)(2) Only	71	\$3.3	7.5%
Both Rule 10b-5 and Section 11 and/or 12(a)(2)	238	\$11.0	3.5%
Rule 10b-5 Only	997	\$6.8	2.9%
All Post-Reform Act Settlements	1,306	\$7.0	3.2%

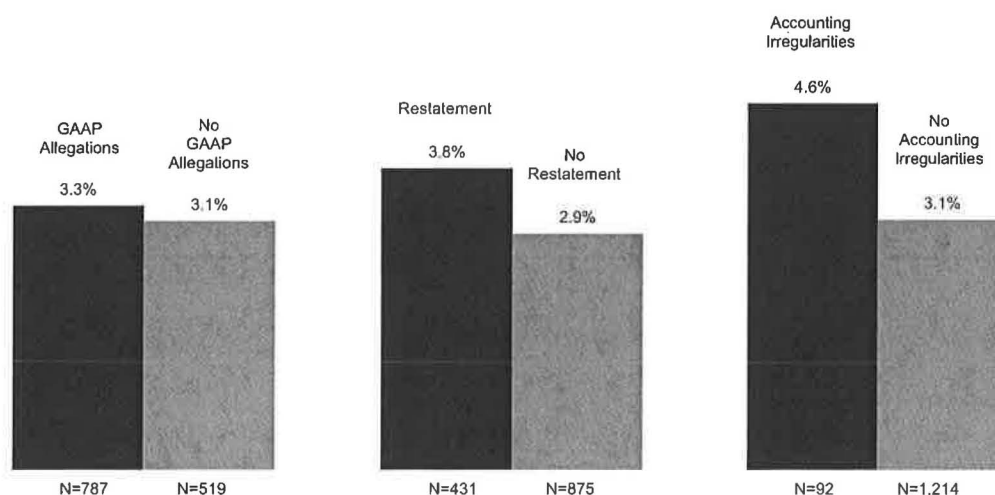
### ACCOUNTING ALLEGATIONS

Accounting allegations play a central role in many securities class actions and are typically associated with higher settlement amounts, as well as higher settlements as a percentage of “estimated damages.” The degree of association between accounting allegations and higher settlements varies based on the allegations (Figure 12).

- Settlements of cases involving generally accepted accounting principles (GAAP) allegations that are not accompanied by announcements of financial statement restatements (or possible restatements) settled for only a slightly higher percentage of “estimated damages,” compared with cases not involving GAAP allegations.
- Cases involving a restatement of the financial statements settled for a higher percentage of “estimated damages,” compared with GAAP cases not involving restatements.
- Settlements were even higher in cases in which the defendant has reported the occurrence of accounting irregularities (intentional misstatements or omissions) in its financial statements.

In 2012, allegations related to violations of GAAP were included in about 60 percent of settled cases compared with only 45 percent of settled cases in 2011. Allegations related to a restatement of financials were largely unchanged from 2011 and continued to be noticeably less frequent than in earlier years. As we have observed in the past, it is possible that declines in restatements in recent years may be a function of improved corporate governance following the passage of the Sarbanes-Oxley Act of 2002. Additionally, the percentage of credit-crisis cases involving GAAP violations is significantly higher than in other types of cases, while the percentage of credit-crisis cases involving financial restatements is significantly lower.

**FIGURE 12: MEDIAN SETTLEMENTS AS A PERCENTAGE OF “ESTIMATED DAMAGES” AND ACCOUNTING ALLEGATIONS  
1996–2012**





### THIRD-PARTY DEFENDANTS

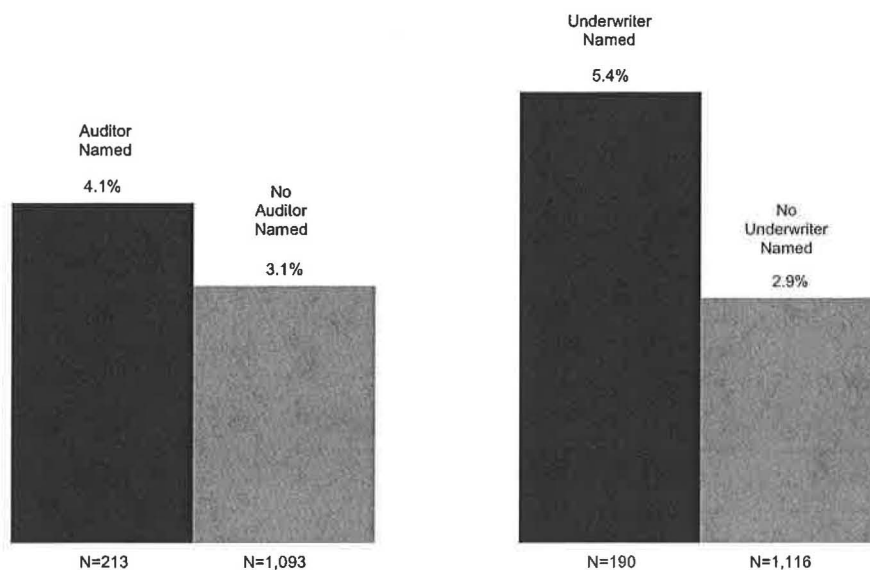
The presence of third-party defendants is also associated with higher settlements as a percentage of “estimated damages.” Third parties are often named as codefendants in larger, more complex cases and provide an additional source of settlement funds.

The inclusion of third-party defendants is closely related to the type of allegations involved in the case. Historically, outside auditors have been named in approximately 30 percent of cases involving restatements of financial statements, and this level was slightly lower, at 25 percent, in 2012 settlements. Cases in which an outside auditor was named as a defendant have settled for relatively higher percentages of “estimated damages” compared with cases not involving auditor defendants (Figure 13).

The presence of underwriter defendants is highly correlated with the inclusion of Section 11 claims. The percentage of settlements involving underwriters in 2012 was slightly less than 15 percent—similar to the rate for all post-Reform Act years. In our sample, an underwriter may be an investment bank engaged in a public offering by the issuer or in some other advisory function.

In addition to the presence of additional funding that may be available when a third-party defendant is involved, the presence of an underwriter may indicate a more complex matter or a matter including purchasers of securities in addition to common stock as potential claimants. All of these factors could contribute to the higher settlement as a percentage of “estimated damages.”

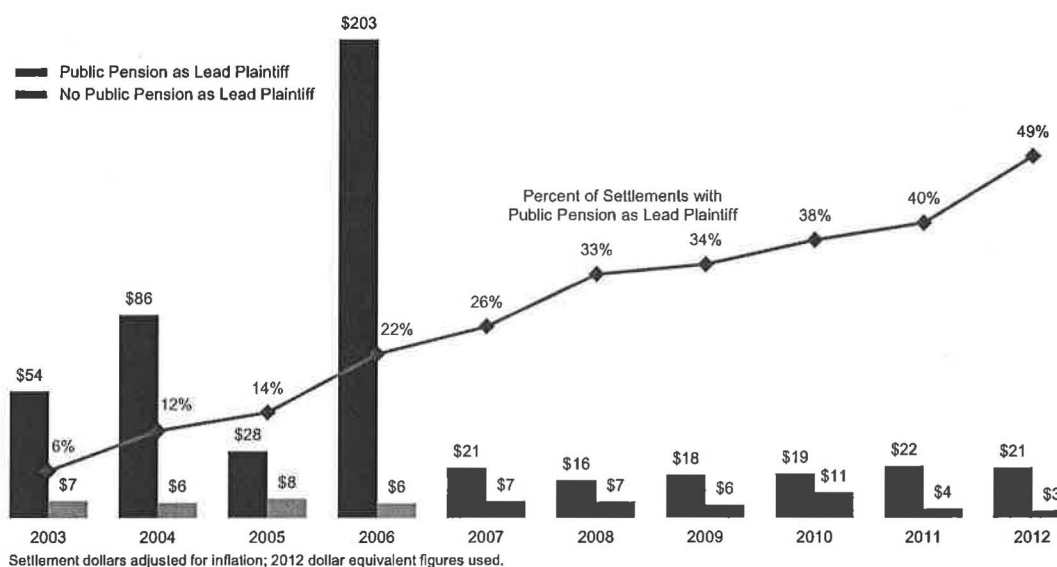
**FIGURE 13: MEDIAN SETTLEMENTS AS A PERCENTAGE OF  
“ESTIMATED DAMAGES” AND THIRD-PARTY DEFENDANTS  
1996–2012**





**INSTITUTIONAL INVESTORS**

Institutional investors play an active role as lead plaintiffs in post-Reform Act class actions. Since 2006, more than half of the settlements in our sample in any given year have involved institutional investors as lead plaintiffs with an increasing presence from public pensions. In 2012, public pensions served as lead plaintiff in 49 percent of settled cases compared with only 6 percent in 2003 (Figure 14).

**FIGURE 14: MEDIAN SETTLEMENT AMOUNTS AND PUBLIC PENSIONS****2003–2012***Dollars in Millions*

In our analysis of institutional investors, we continued to find that the presence of public pensions as lead plaintiffs is associated with significantly higher settlement amounts.<sup>11</sup> The median “estimated damages” for settlements involving public pensions in 2012 was five times the median “estimated damages” figure for settlements without a public pension as lead plaintiff.

As relatively sophisticated investors, public pensions could choose to participate in stronger cases and/or tend to be involved in larger cases that may have the potential for larger claims. However, our analysis of the association between settlement amounts and participation of public pensions as lead plaintiffs showed that even when controlling for “estimated damages” (a proxy for case size) and other observable factors that affect settlements, the presence of a public pension as a lead plaintiff continued to be associated with a statistically significant increase in settlement size.<sup>12</sup> (A list of control variables used in this analysis can be found on page 20.) Accordingly, it is possible that the association between higher settlements and the presence of a public pension plan lead plaintiff is due to public pension plans’ greater bargaining power.

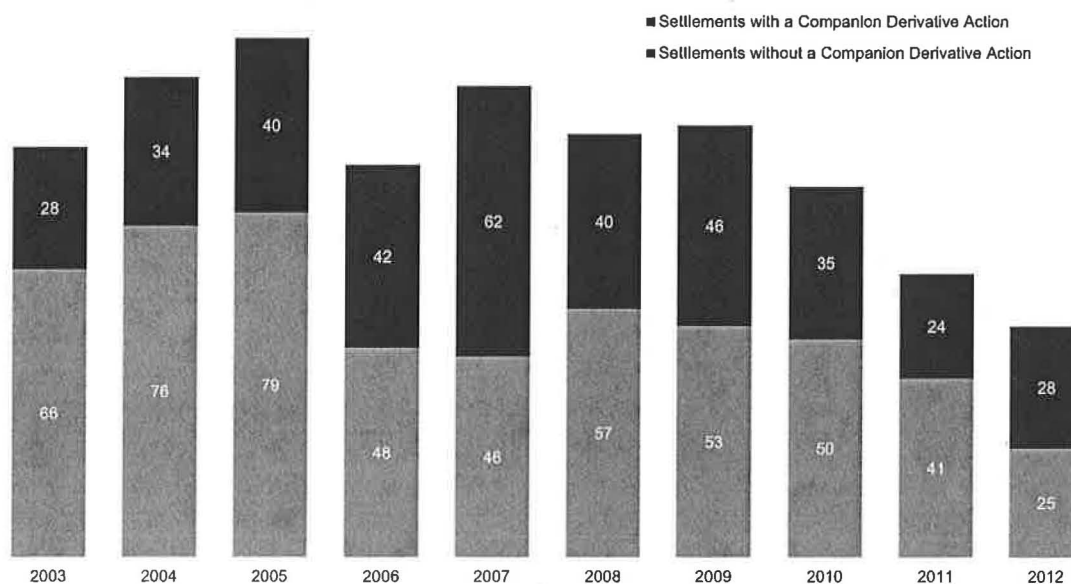
### COMPANION DERIVATIVE ACTIONS

More than 50 percent of cases settled in 2012 were accompanied by a derivative action filing, compared with an average of approximately 30 percent of such cases in prior post-Reform Act years (Figure 15). Although settlement of a derivative action does not necessarily result in a cash payment,<sup>13</sup> settlement amounts for class actions that are accompanied by derivative actions are significantly higher than those for cases without companion derivative actions. This is true whether or not the settlement of the derivative action coincides with the settlement of the underlying class action, or occurs at a different time.

When considered as a percentage of “estimated damages,” settlements for cases with accompanying derivative actions are typically lower than settlements for cases with no identifiable derivative action. This lower percentage reflects the larger “estimated damages” that are associated with these cases. In fact, overall, the median “estimated damages” for cases involving derivative actions is more than two and a half times larger than for cases without an accompanying derivative action.

Accompanying derivative actions were filed in the state of Delaware for 10 percent of settled cases in our sample. Median “estimated damages” associated with these cases is more than two and a half times the median “estimated damages” for cases that had accompanying derivative actions filed in other states. Consistent with the higher median “estimated damages,” our data indicated that a case with a companion derivative action filed in Delaware is associated with higher settlement amounts compared with a case with a companion derivative action filed elsewhere.

**FIGURE 15: FREQUENCY OF COMPANION DERIVATIVE ACTIONS  
2003–2012**



It is important to analyze the relationship between companion derivative actions and class action settlement amounts in a multivariate context (i.e., allowing multiple variables to be considered simultaneously) because of the potential confounding effects of these factors. Using regression analysis to control for “estimated damages” and other observable factors that influence securities class action settlements, we found that cases involving companion derivative actions continued to be associated with significantly higher settlement amounts. In addition to their correlation with higher “estimated damages,” class actions accompanied by derivative actions tend to be associated with other factors discussed in this

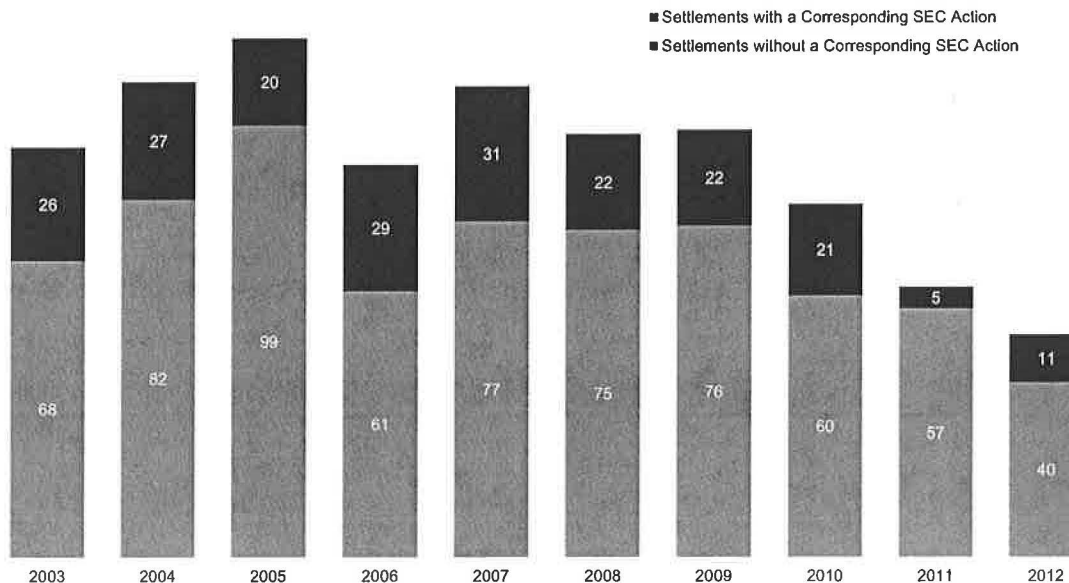
report, including accounting allegations, corresponding actions brought by the Securities and Exchange Commission (SEC), and public pensions as lead plaintiffs—factors that we have consistently found to be important determinants of settlement amounts.

#### CORRESPONDING SEC ACTIONS

The percentage of settled cases that involved a corresponding SEC action (evidenced by the filing of a litigation release or administrative proceeding) prior to the settlement of the class action was more than 20 percent in 2012, up considerably from 2011 but still at a relatively low level compared with earlier years. As SEC enforcement activity has continued at a strong pace in the last few years, including two consecutive years of record enforcement actions filed in 2011 and 2012,<sup>14</sup> we expect an increase in the percentage of class action settlements with corresponding SEC actions as these enforcement actions are resolved (Figure 16).

Cases that involve corresponding SEC actions are associated with significantly higher settlement amounts and have higher settlements as a percentage of “estimated damages.” It could be that the merits in such cases are stronger, or simply that the presence of an accompanying SEC action provides plaintiffs with increased leverage when negotiating a settlement. For settlements through 2012, the median settlement amount (\$13 million) for cases involving corresponding SEC actions was more than twice the median (\$6 million) for cases without such regulatory actions.

**FIGURE 16: FREQUENCY OF CORRESPONDING SEC ACTIONS  
2003–2012**





### TIERED ESTIMATED DAMAGES

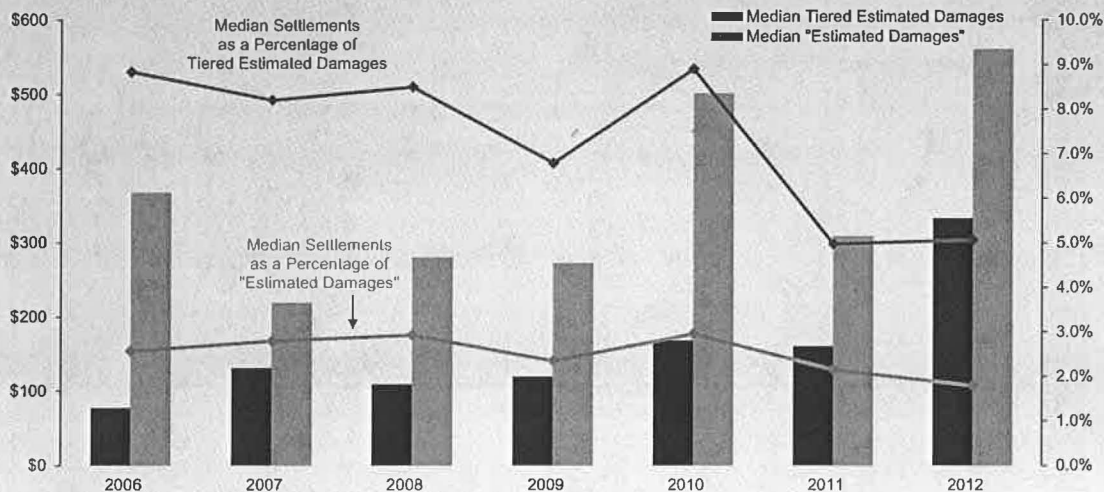
The landmark decision in 2005 by the U.S. Supreme Court in *Dura Pharmaceuticals v. Broudo* (*Dura*) determined that plaintiffs must show a causal link between alleged misrepresentations and the subsequent actual losses suffered by plaintiffs. As a result of this decision, damages cannot be attributed to shares sold before information regarding the alleged fraud reaches the market. *Dura* has had considerable influence on securities class action damages calculations, and we have analyzed its effect in our settlements research. Using a sub-sample of settlements—namely, cases filed subsequent to 2005—we have tested an alternative damages measure that we refer to as tiered estimated damages. This alternative measure is based on the stock-price drops on alleged corrective disclosure dates per the complaint. It utilizes a single value line when there is only one alleged corrective disclosure date (at the end of the class period) or a tiered value line when there are multiple alleged corrective disclosure dates (Figure 17).

While the tiered estimated damages measure has not yet surpassed our traditional measure of “estimated damages” as a predictor of settlement outcomes (see page 20 for a related discussion), it is highly correlated with settlement amounts and provides an alternative measure of investor losses for more recent securities class action settlements.

**FIGURE 17: TIERED ESTIMATED DAMAGES**

2006–2012

Dollars in Millions



**SETTLEMENTS BY JURISDICTION**

The Second and Ninth Circuits continue to dominate in terms of securities class action activity.<sup>15</sup> The relative activity levels for these two circuits are related in part to the concentrations of cases by industry sector (i.e., technology firms in the Ninth Circuit and financial-sector firms in the Second Circuit). Accordingly, the prevalence of litigation against financial institutions in recent years contributed to the large number of cases settled in the Second Circuit in 2012 (Figure 18).

**FIGURE 18: SETTLEMENTS BY COURT CIRCUIT***Dollars in Millions*

Circuit	Number of Cases		Median Settlements	
	2012	1996–2011	2012	1996–2011
First	—	74	—	\$7.1
Second	14	239	\$28.8	10.5
Third	2	122	24.3	8.5
Fourth	2	44	15.5	7.4
Fifth	3	98	1.5	6.9
Sixth	2	61	98.6	15.8
Seventh	5	64	1.5	9.0
Eighth	2	41	2.6	10.1
Ninth	17	324	7.0	8.7
Tenth	2	49	2.3	8.6
Eleventh	3	115	10.5	5.3
DC	—	4	—	27.8
State Courts	1	37	7.3	5.0
All Cases	53	1,272	\$10.2	\$8.3



**SETTLEMENTS BY INDUSTRY**

Approximately one-third of settlements in 2012 were for issuers in the financial industry. The next most prevalent industry sectors, in terms of the number of cases settled, were technology and pharmaceuticals.

The financial industry continues to rank the highest in median settlement value across all post-Reform Act years (Figure 19). However, industry sector is not a significant determinant of settlement amounts when controlling for other variables (such as “estimated damages,” asset size, and the presence of third-party defendants) that influence settlement outcomes.

**FIGURE 19: SETTLEMENTS BY INDUSTRY SECTOR**  
**1996–2012**  
*Dollars in Millions*

<b>Industry</b>	<b>Median Settlements</b>	<b>Median "Estimated Damages"</b>	<b>Median Settlements as a Percentage of "Estimated Damages"</b>
Financial	\$13.4	\$567.8	3.1%
Telecommunications	8.4	372.6	2.4%
Pharmaceuticals	8.0	413.4	2.4%
Healthcare	6.3	212.1	3.5%
Technology	5.9	224.0	3.0%
Retail	5.8	183.2	4.3%

## CORNERSTONE RESEARCH'S SETTLEMENT PREDICTION ANALYSIS

Features of securities cases that may affect settlement outcomes are often correlated. Regression analysis makes it possible to examine the effects of these factors simultaneously. Accordingly, as part of our ongoing research on securities class action settlements, we applied regression analysis to study factors associated with settlement outcomes. Analysis performed on our sample of post-Reform Act cases settled through December 2012 revealed that the variables that were important determinants of settlement amounts included the following:<sup>16, 17</sup>

- “Estimated damages”
- DDL
- Most recently reported total assets of the defendant firm
- Number of entries on the lead case docket
- The year in which the settlement occurred
- Whether intentional misstatements or omissions in financial statements were reported by the issuer
- Whether a restatement of financials related to the alleged class period was announced
- Whether there was a corresponding SEC action against the issuer or whether other defendants are involved
- Whether an auditor is a named codefendant
- Whether an underwriter is a named codefendant
- Whether a companion derivative action is filed
- Whether a public pension is a lead plaintiff
- Whether noncash components, such as common stock or warrants, make up a portion of the settlement fund
- Whether securities other than common stock are alleged to be damaged
- Whether criminal charges/indictments were brought with similar allegations to underlying class action
- Whether Section 11 claims accompanied Rule 10b-5 claims
- Whether the issuer traded on a non-major exchange

Settlements were higher when “estimated damages,” DDL, defendant asset size, or number of docket entries were larger. Settlements were also higher in cases involving: intentional misstatements or omissions in financial statements reported by the issuer, a restatement of financials, a corresponding SEC action, an underwriter and/or auditor was named as codefendant, a corresponding derivative action, a public pension involved as lead plaintiff, a noncash component to the settlement, criminal charges were filed, or securities other than common stock alleged to be damaged. Settlements were lower if the settlement occurred in 2004 or later, and if the issuer traded on a non-major exchange.

While our primary approach is designed toward understanding and predicting the total settlement amount, we also are able to estimate the probabilities associated with reaching alternative settlement levels. These probabilities can be a useful analysis for our clients in considering the different layers of insurance coverage available and likelihood of contributing to the settlement fund. Regression analysis can also be used to explore hypothetical scenarios, including but not limited to the effects on settlement amounts given the presence or absence of particular factors that we have found to significantly affect settlement outcomes.

## CONCLUDING REMARKS

Last year's report, *Securities Class Action Settlements—2011 Review and Analysis*, predicted an increase in the total value of cases settled in 2012. The materialized total value of 2012 settlements surpassed 2011 by more than 100 percent, in spite of a substantial decline in the number of settlements approved.

We observed broad-based increases in settlement amounts in 2012, as evidenced by higher levels for both the median and average settlement amounts. These increases were likely due to greater shareholder losses associated with cases settled in 2012. In fact, "estimated damages" reached an all-time high in 2012.

As a result, median settlements as a percentage of "estimated damages" in 2012 were the lowest among all post-Reform Act years. This low level of settlement amounts in relation to "estimated damages" was likely due to several different factors. First, larger cases tend to settle for smaller proportions of shareholder losses. In addition, in 2012 there was a decrease in the presence of several qualitative factors that are typically associated with higher settlements in relation to "estimated damages." Specifically, we observed declines in the number of settlements of cases involving only Section 11 and/or Section 12(a)(2) claims, as well as below-average instances of accompanying SEC actions and financial statement restatements.

We often look to characteristics of cases filed in recent years to anticipate settlement trends in future years. Although we expect that the extremely low number of settlements reached in 2012 is unlikely to persist, it may be some time before we see the settlement counts from the prior decade. It is also difficult to project future trends related to settlement values. This is due to the fact that shareholder losses associated with case filings in recent years have fluctuated substantially.

## DATA SOURCES

In addition to SCAS, data sources include Dow Jones Factiva, Bloomberg, Center for Research in Security Prices (CRSP) at University of Chicago Booth School of Business, Standard & Poor's Compustat, court filings and dockets, SEC registrant filings, SEC litigation releases and administrative proceedings, LexisNexis, and public press.



## ENDNOTES

- 1 Available on a subscription basis.
- 2 Movements of partial settlements between years can cause differences in amounts reported for prior years from those presented in earlier reports.
- 3 Our categorization is based on the timing of the settlement approval. If a new partial settlement equals or exceeds 50 percent of the then-current settlement fund amount, the entirety of the settlement amount is recategorized to reflect the settlement hearing date of the most recent partial settlement. If a subsequent partial settlement is less than 50 percent of the then-current total, the partial settlement is added to the total settlement amount, but the settlement hearing date is not changed.
- 4 See *Securities Class Action Filings—2012 Year in Review*, Stanford Law School Securities Class Action Clearinghouse in cooperation with Cornerstone Research, 2013. Our sample excludes merger and acquisition cases since those cases do not meet our sample criteria.
- 5 Since reporting the amount of D&O insurance contributed towards a settlement is an optional disclosure by firms, we caveat these results with the observation that they could be affected by firms' disclosure choices in any given year.
- 6 Litigation stage data obtained from Stanford Law School's Securities Class Action Clearinghouse. Sample does not add to 100 percent as there is a small sample of cases with other litigation stage classifications.
- 7 Our simplified "estimated damages" model is applied to common stock only. For all cases involving Rule 10b-5 claims, damages are determined from a market-adjusted, backward-pegged value line. For cases involving only Section 11 and/or Section 12(a)(2) claims, damages are determined from a model that caps the purchase price at the offering price. Volume reduction assumptions are based on the location of the exchange on which the issuer's common stock traded. Finally, no adjustments for institutions, insiders, or short sellers are made to the float.
- 8 We exclude 19 settlements out of the 1,325 cases in our sample from calculations involving simplified "estimated damages" due to stock data availability issues. The WorldCom settlement was also excluded from these calculations because most of the settlement in that matter related to liability associated with bond offerings (and our research does not compute damages related to securities other than common stock).
- 9 The DDL calculation also does not apply a model of investors' share-trading behavior to estimate the number of shares damaged.
- 10 See "IPO Outlook Promising," *CFO Magazine*, February 7, 2013. The U.S. IPO table reported by Renaissance Capital indicates the number of IPOs in 2010 was nearly three times the number of new issuances in 2009. IPOs in 2011 and 2012 were approximately 200 percent of 2009 issuances.
- 11 The extraordinarily high median settlement amount for public-pension-led settlements in 2006 was driven by six separate settlements in excess of \$1 billion.
- 12 This regression analysis may not control for the potential endogeneity in the choice by public pension plans to participate in a class action.
- 13 Derivative cases are often resolved with changes made to the issuer's corporate governance practices, accompanied by little or no cash payment; this continues to be true despite the increase in corporate controls introduced after the passage of the Sarbanes-Oxley Act of 2002. For purposes of the analyses in this report, a derivative action—generally a case filed against officers and directors on behalf of the issuer corporation—must have allegations similar to the class action in nature and time period to be considered an accompanying action.
- 14 *Fiscal Year 2012 Agency Financial Report*, U.S. Securities and Exchange Commission, <https://www.sec.gov/about/secpar/secafr2012.pdf>.
- 15 *Securities Class Action Filings—2012 Year in Review*, Stanford Law School Securities Class Action Clearinghouse in cooperation with Cornerstone Research, 2013.
- 16 Our settlement database includes publicly available and measurable information about settled cases. Nonpublic or nonmeasurable factors, such as relative case merits or the limits of available insurance, are not reflected in the model to the extent that such factors are not correlated with the variables that are accessible to us (i.e., publicly available and measurable factors).
- 17 Due to the presence of a small number of extreme observations in the data, we apply logarithmic transformations to all continuous variables.

## ABOUT THE AUTHORS

Ellen M. Ryan

M.B.A., American Graduate School of International Management  
B.A., Saint Mary's College

Ellen Ryan is a manager in the securities practice in Cornerstone Research's Boston office. She has consulted on economic and financial issues in a variety of cases, including securities class action lawsuits, financial institution breach of contract matters, and antitrust litigation. Ms. Ryan also has worked with testifying witnesses in corporate governance and breach of fiduciary duty matters. Prior to joining Cornerstone Research, Ms. Ryan worked for Salomon Brothers in New York and Tokyo. Currently Ms. Ryan focuses on post-Reform Act settlement research as well as general practice area business and research.

Laura E. Simmons

Ph.D., University of North Carolina at Chapel Hill  
M.B.A., University of Houston  
B.B.A., University of Texas at Austin

Laura Simmons is a senior advisor at Cornerstone Research. She is a certified public accountant and has nearly 20 years of experience in accounting practice and economic and financial consulting. Her consulting experience has focused on damages and liability issues in securities litigation, as well as accounting issues arising in a variety of complex commercial litigation matters. She has served as a testifying expert in cases involving accounting analyses, securities case damages, and research on securities lawsuits.

Dr. Simmons's research on pre- and post-Reform Act securities litigation settlements has been published in a number of reports and is frequently cited in the public press and legal journals. She has spoken at various conferences and appeared as a guest on CNBC addressing the topic of securities case settlements. She has also published in academic journals, with recent research focusing on the intersection of accounting and securities litigation. Dr. Simmons was previously an accounting faculty member at the Mason School of Business at the College of William & Mary. From 1986 to 1991, she was an accountant with Price Waterhouse.

The authors acknowledge the research efforts and significant contributions of their colleagues at Cornerstone Research. Please direct any questions and requests for additional information to the settlement database administrator at [settlement.database@cornerstone.com](mailto:settlement.database@cornerstone.com). The authors request that you reference Cornerstone Research in any reprint of the charts and tables included in this study and include a link to the report: [www.cornerstone.com/post\\_reform\\_act\\_settlements](http://www.cornerstone.com/post_reform_act_settlements).

Additional information about our research and analysis in securities class action filings and settlements can be found at [www.cornerstone.com/securities](http://www.cornerstone.com/securities).



**Boston**

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**Chicago**

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415.229.8100

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## EXHIBIT 12

## COMPENDIUM OF DOCKETED CASES

*In re Bristol-Myers Squibb Sec. Litig.*,  
No. 00-1990 (SRC) (D.N.J. May 11, 2006)

*In re Broadcom Corp. Class Action Litig.*,  
No. CV-06-5036-R (CWx) (C.D. Cal. Dec. 4, 2012)

*Grasso v. Vitesse Semiconductor Corp.*,  
No. 06-CV-02639-R (C.D. Cal. Nov. 17, 2008)

*In re Kla-Tencor Corp. Sec. Litig.*,  
No. C-06-04065-CRB (N.D. Cal. Sept. 26, 2008)

*In re Semtech Corp. Sec. Litig.*,  
2:07-cv-07114-CAS (FMOx) (C.D. Cal. June 27, 2011)

*Thomas & Thomas Rodmakers Inc. v.  
Newport Adhesives and Composites, Inc.*,  
No. CV-99-07796-FMC (RNBx) (C.D. Cal. Oct. 18, 2005)



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

IN RE BRISTOL-MYERS SQUIBB SECURITIES  
LITIGATION

RECEIVED

Civil Action No. 00-1990 (SRC)

MAY 11 2006

AT 8:30

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WILLIAM T. WALSH

**ORDER APPROVING ATTORNEYS' FEES AND EXPENSES  
AND LEAD PLAINTIFF'S COSTS DIRECTLY RELATED  
TO ITS REPRESENTATION OF THE CLASS**

WHEREAS, the Court, having considered the Stipulation And Agreement Of Settlement by and among Lead Plaintiff, Amalgamated Bank as trustee of the LongView Collective Investment Fund ("LongView" or "Lead Plaintiff"), and Defendants Bristol-Myers Squibb Company, Peter Dolan, Charles Heimbold and Peter Ringrose, and plaintiffs' counsel's application for attorneys' fees and reimbursement of their expenses, and LongView's application for reimbursement of its costs; and

WHEREAS, the Court, having conducted a Settlement Hearing concerning the fairness of the proposed Settlement, and plaintiffs' counsel's application for attorneys' fees and reimbursement of their expenses, and LongView's application for reimbursement of its costs; and

WHEREAS, the Court, having reviewed the entire record of the action, including the declarations submitted on behalf of Lead Plaintiff detailing the cost of its lost working time directly resulting from its representation of the Class,

THE COURT FINDS that:

Based on such factors as the successful result obtained for the Class, the percentage fee awarded in similar cases, the fact that the fee has been entirely contingent, the time, labor and



skill that has been required on the part of plaintiffs' counsel and the considerable experience, reputation and ability of Lead Counsel, Labaton Sucharow & Rudoff LLP, and of Liaison Counsel, Lite DePalma Greenberg & Rivas, LLC, plaintiffs' counsel should be awarded attorneys' fees of 19.77% of the gross Settlement Fund, or \$36,587,824, plus interest earned thereon until disbursed, at the same rate as that earned on the Settlement Fund; and

Plaintiffs' counsel's litigation expenses, in the total amount of \$3,607,925.92, are reasonable expenses of the kind customarily charged to clients, and were necessarily incurred to obtain the Settlement herein; and

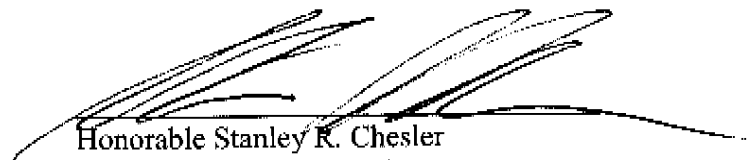
Pursuant to the Private Securities Litigation Reform Act (the "PSLRA"), 15 U.S.C. § 78u-4(a)(4), the expenses that Lead Plaintiff requests to be reimbursed, in the amount of \$58,948.64.00, directly relate to its representation of the Class, and are reasonable; and therefore,

IT IS HEREBY ORDERED that:

1. Lead Counsel shall be awarded a fee of 19.77% of the gross Settlement Fund, or \$36,587,824.00, and reimbursed \$3,607,925.92 from the Settlement Fund for litigation expenses and the cost of giving notice to the Class, plus interest earned thereon until disbursed, at the same rate as that earned on the Settlement Fund; and

2. Pursuant to the PSLRA, 15 U.S.C. § 78u-4(a)(4), Lead Plaintiff LongView shall be reimbursed \$58,948.64.00 for its costs directly relating to its representation of the Class, plus interest earned thereon until disbursed, at the same rate as that earned on the Settlement Fund.

Dated: Trenton, New Jersey  
May 4/2006

  
Honorable Stanley R. Chesler  
United States District Judge



JOSEPH J. TABACCO, JR. #75484  
Email: jtabacco@bermandevalerio.com  
NICOLE LAVALLEE #165755  
Email: nlaallee@bermandevalerio.com  
**BERMAN DeVALERIO**  
One California Street, Suite 900  
San Francisco, CA 94111  
Telephone: (415) 433-3200  
Facsimile: (415) 433-6382

*Liaison Counsel for Class Representative  
New Mexico State Investment Council and the Class*

THOMAS A. DUBBS (admitted *pro hac vice*)  
Email: tdubbs@labaton.com  
JOSEPH A. FONTI (admitted *pro hac vice*)  
Email: jfonti@labaton.com  
STEPHEN W. TOUNTAS (admitted *pro hac vice*)  
Email: stountas@labaton.com  
**LABATON SUCHAROW LLP**  
140 Broadway  
New York, New York 10005  
Telephone: (212) 907-0700  
Facsimile: (212) 818-0477

*Class Counsel for Class Representative  
New Mexico State Investment Council and the Class*

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

In re BROADCOM CORPORATION )  
CLASS ACTION LITIGATION ) Lead Case No.: CV-06-5036-R (CWx)

) **ORDER AWARDING CLASS  
COUNSEL ATTORNEYS' FEES  
AND REIMBURSEMENT OF  
LITIGATION EXPENSES**

)  
) Date: December 3, 2012  
) Time: 10:00 a.m.  
) Before: The Hon. Manuel L. Real

1       **THIS MATTER** having come before the Court on Class Counsel's  
2 Unopposed Motion for Attorneys' Fees and Reimbursement of Litigation Expenses  
3 and Memorandum of Points and Authorities in Support Thereof; the Court having  
4 considered all papers filed and proceedings had therein, having found the  
5 settlement of this action to be fair, reasonable, and adequate and otherwise being  
6 fully informed;

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

8       1. All of the capitalized terms used herein shall have the same meanings  
9 as set forth in the Stipulation and Agreement of Settlement with Ernst & Young  
10 LLP, dated as of September 27, 2012 (the "Stipulation"), and filed with the Court.

11       2. This Court has jurisdiction over the subject matter of this application  
12 and all matters relating thereto, including all Members of the Class who have not  
13 timely and validly requested exclusion.

14       3. The Court hereby awards Class Counsel attorneys' fees of 18.5% of  
15 the Settlement Fund, plus reimbursement of litigation expenses in the amount of  
16 \$\_\_\_\_\_, together with the interest earned thereon for the same  
17 time period and at the same rate as that earned on the Settlement Fund until paid.  
18 The Court finds that the amount of fees awarded is appropriate and is fair and  
19 reasonable under the "percentage-of-the-recovery" method, given the results  
20 obtained for the Class, the substantial risks of non-recovery, the time and effort  
21 involved, and the quality of Class Counsel's work. *See Vizcaino v. Microsoft*  
22 *Corp.*, 290 F.3d 1043 (9th Cir. 2002).

23       4. The fees shall be allocated among counsel for the Class  
24 Representatives by Class Counsel in a manner that reflects each such counsel's  
25 contribution to the institution, prosecution, and resolution of the captioned action.

26       5. The awarded attorneys' fees and expenses, and interest earned  
27 thereon, shall be paid to Class Counsel subject to the terms, conditions, and  
28

obligations of the Stipulation, and pursuant to the timing set forth in ¶12 thereof, which terms, conditions and obligations are incorporated herein.

6. The Court hereby awards Class Representative New Mexico State Investment Council, as Class Representative, reimbursement of its reasonable lost wages directly relating to its representation of the Class, pursuant to the Private Securities Litigation Reform Act of 1995 ("PSLRA"), 15 U.S.C. §78u-4(a)(4). The Court awards Class Representative the requested amount of \$21,087, which may be paid upon entry of this Order.

**IT IS SO ORDERED.**

DATED: Dec. 4, 2012, 2012

---

THE HONORABLE MANUEL L. REAL  
UNITED STATES DISTRICT JUDGE





PAUL R. KIESEL (SBN 119854)  
KIESEL BOUCHER LARSON LLP  
8648 Wilshire Boulevard  
Beverly Hills, California 90211-2910  
Telephone: 310/854.4444  
310/854.0812 (fax)

Liaison Counsel

HORWITZ, HORWITZ & PARADIS  
Attorneys at Law  
PAUL O. PARADIS  
28 West 44th Street, 16th Floor  
New York, NY 10036  
Telephone: 212/404-2200  
212/404-2226 (fax)

Lead Counsel for the Rodriguez Lead Plaintiff Group

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

LOUIS GRASSO, individually and on behalf of all others similarly situated,

Plaintiff,

vs.

VITESSE SEMICONDUCTOR CORPORATION, DR. VINCENT CHAN, PH.D., JAMES A. COLE, ALEX DALY, MOSHE GAVRIELOV, JOHN C. LEWIS, DR. LOUIS TOMASETTA, PH.D., YATIN MODY, EUGENE F. HOVANEK, EDWARD ROGAS, JR., and KPMG LLP.

Defendants.

No. CV 06-02639

CLASS ACTION

**[PROPOSED] ORDER  
AWARDING ATTORNEYS' FEES  
AND REIMBURSEMENT OF  
EXPENSES**

**[PROPOSED] ORDER AWARDING ATTORNEYS' FEES  
AND REIMBURSEMENT OF EXPENSES**

1 WHEREAS, this consolidated class action entitled *Grasso v. Vitesse*  
2 *Semiconductor*, Case No. 06-2639R(CTx) (the “Litigation”), is pending before the  
3 Court;

4 WHEREAS, pursuant to the Final Judgment and Order of Dismissal dated  
5 April 7, 2008, the Court finally approved the partial settlement of the Litigation  
6 against defendants Vitesse Semiconductor Corporation (“Vitesse”), Dr. Vincent  
7 Chan, Ph.D., James A. Cole, Alex Daly, Moshe Gavrielov, John C. Lewis, Dr.  
8 Louis Tomasetta, Ph.D., Yatin Mody, Eugene F. Hovanec, Edward Rogas, Jr.  
9 (collectively, the “Individual Defendants”), pursuant to which these defendants  
10 caused to be paid into a settlement fund for the benefit of the Class \$10,200,000 in  
11 cash and 3,922,669 shares of Vitesse common stock (the “Vitesse Settlement  
12 Fund”);

13  
14 WHEREAS, pursuant to a Final Judgment and Order of Dismissal dated  
15 November 17, 2008, the Court finally approved the settlement of the Litigation  
16 against defendant KPMG LLP, pursuant to which KPMG paid into a settlement  
17 fund for the benefit of the Class \$7.75 million in cash (the “KPMG Settlement  
18 Fund”);

19 WHEREAS, this matter having come before the Court on November 17,  
20 2008 on the motion of Lead Plaintiff for an award of attorneys’ fees and  
21 reimbursement of expenses incurred, the Court having considered all proceedings  
22 conducted herein and papers filed, including Lead Plaintiff’s Memorandum of Law  
23 in Support of Lead Plaintiff’s Motion for an Award of Attorneys’ Fees and  
24 Reimbursement of Expenses, the Declarations of the Rodriguez Lead Plaintiff  
25 Group in support thereof, the Declaration of Hon. Dickran Tevrizian (Retired) in  
26 Support of Lead Counsel’s Motion for Final Approval of KPMG Settlement and  
27 Application for an Award of Attorneys’ Fees and Reimbursement of Expenses, the  
28 Declaration of Howard B. Wiener in Support of Lead Counsel’s Application for an

Award of Attorneys' Fees and Reimbursement of Expenses, and having found the Vitesse Partial Settlement and the KPMG Settlement of this Litigation to be fair, reasonable and adequate, and otherwise being fully informed in the premises and good cause appearing,

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The Court hereby awards Plaintiffs' Counsel:

- a. attorneys' fees in the amount of 25% of the \$17,950,000 cash portion of the Settlement Fund; and 25% of the 3,922,669 shares of Vitesse common stock from the Vitesse Settlement Fund (or the cash equivalent thereof if said shares are sold pursuant to an order of the Court), together with interest on the cash portions thereon for the same period and at the same rate as that earned by the Vitesse Settlement Fund and KPMG Settlement Fund until paid, plus
- b. reimbursement of litigation expenses incurred in the amount of \$591,989.46, which amounts the Court finds to be fair and reasonable.

2. In accordance with the terms of the Vitesse and KPMG Stipulations of Settlement, the attorneys' fees and expenses shall be paid to Lead Counsel from the KPMG Settlement Fund and Vitesse Settlement Fund held by the Escrow Agents. Lead Counsel shall allocate the attorneys' fees among Plaintiffs' Counsel in a manner in which Lead Counsel in good faith believes reflects the contributions of counsel to the prosecution and resolution of the Litigation.

3. In making this award of attorneys' fees and reimbursement of expenses to be paid from the KPMG and Vitesse Settlement Funds, the Court has considered and found that: (a) the Settlements will create a fund of approximately \$20 million in cash, plus interest thereon, and that numerous Class members who

1 submit valid Proofs of Claim will benefit from the Settlements created by Lead  
2 Counsel; (b) over 150,000 copies of each of the Vitesse and KPMG Settlement  
3 Notices were disseminated to putative Class Members indicating that Lead  
4 Counsel were moving for attorneys' fees in an amount of approximately twenty-  
5 eight percent (28%) of the amount of the KPMG and Vitesse Settlement Funds; (c)  
6 Lead Counsel have conducted the litigation and achieved the Settlements with  
7 skill, perseverance and diligent advocacy; (d) the Litigation involves complex  
8 factual and legal issues and was actively prosecuted over two years and, in the  
9 absence of a settlement, would have involved further lengthy proceedings with  
10 uncertain resolution of the complex factual and legal issues; (e) had Lead Counsel  
11 not achieved the Settlements, there would remain a significant risk that Lead  
12 Plaintiff and the Class might have recovered less or nothing from the Defendants;  
13 (f) the requested fee award is based on a percentage that was negotiated by the  
14 Lead Plaintiff; (g) Plaintiffs' Counsel have devoted over 5,917 hours, with a  
15 lodestar of over \$3,538,157, to achieve the Settlements; and (h) the amount of  
16 attorneys' fees awarded and expenses reimbursed from the Settlement Funds are  
17 fair and reasonable and consistent with awards in similar cases.

18  
19 4. The Court hereby awards Dr. Ernesto Rodriguez of the Rodriguez  
20 Lead Plaintiff Group \$15,900.00 in order to compensate him for his reasonable  
21 costs and expenses incurred in connection with the representation of the Class in  
22 this action.

23 5. The Court hereby awards Mr. Mark Coleman of the Rodriguez Lead  
24 Plaintiff Group \$16,802.50 in order to compensate him for his reasonable costs and  
25 expenses incurred in connection with the representation of the Class in this action.

26 6. The Court hereby awards Mr. Syed Hasan of the Rodriguez Lead  
27 Plaintiff Group \$4,187.15 in order to compensate him for his reasonable costs and  
28 expenses incurred in connection with the representation of the Class in this action.



1           7.     The awarded attorneys' fees and expenses and interest earned thereon  
2 are to be paid 45 days after entry of this Order, subject to the terms, conditions and  
3 obligations of the Stipulations of Settlement herein.

4           8.     Exclusive continuing jurisdiction is hereby retained over the parties  
5 and the Class for all matters relating to this Litigation, including the administration  
6 of the Settlements and any application for fees and expenses.

7           9.     There is no reason for delay in entry of this Order Awarding  
8 Attorneys' Fees and Expenses and immediate entry by the Clerk of the Court is  
9 expressly directed pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

10           IT IS SO ORDERED.

11  
12 DATED: \_November 17,  
13 2008\_\_\_\_\_



14  
15 \_\_\_\_\_  
16 THE HONORABLE MANUEL L. REAL  
17 UNITED STATES DISTRICT JUDGE  
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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

IN RE KLA-TENCOR CORP. SECURITIES  
LITIGATION

) Master File No. C-06-04065-CRB

) CLASS ACTION

) **ORDER AWARDING ATTORNEYS' FEES  
AND EXPENSES**

THIS DOCUMENT RELATES ONLY TO:

Case No. 06-4065 CRB  
Case No. 06-4709 CRB  
Case No. 06-5225 CRB

1 THIS MATTER having come before the Court on September 26, 2008 on the motion of  
2 Lead Plaintiffs for an award of attorneys' fees and reimbursement of expenses incurred, the Court,  
3 having considered all papers filed and proceedings conducted herein, having found the settlement of  
4 this action to be fair, reasonable and adequate and otherwise being fully informed in the premises  
5 and good cause appearing therefore, IT IS HEREBY ORDERED, ADJUDGED AND DECREED  
6 that:

7 1. The Court hereby awards Lead Plaintiffs' Counsel attorneys' fees in the amount of  
8 \$10,688,700.00, together with interest earned thereon for the same period and at the same rate as  
9 that earned on the Settlement Fund until paid, plus reimbursement of litigation expenses incurred in  
10 the amount of \$219,291.71 and also awards \$6,060.00 to Lead Plaintiff Louisiana Municipal Police  
11 Employees Retirement System for reasonable costs and expenses incurred in the representation of  
12 the Class. The Court finds that the amount of fees awarded is fair and reasonable under the  
13 "percentage-of-the-recovery" method and that the costs and expenses were reasonably incurred in  
14 connection with the pursuit of this litigation and are reasonable in amount.

15 2. The awarded attorneys' fees and expenses and interest earned thereon may be paid  
16 immediately after the date this Order is entered, subject to the terms, conditions and obligations of  
17 the Stipulation of Settlement.

18 3. There is no reason for delay in the entry of this Order Awarding Attorneys' Fees and  
19 Expenses and immediate entry by the Clerk of the Court is expressly directed pursuant to Rule  
20 54(b) of the Federal Rules of Civil Procedure.

21 IT IS SO ORDERED.

22 Dated: September 26, 2008

23 \_\_\_\_\_/S/  
24 THE HONORABLE CHARLES R. BREYER  
25 UNITED STATES DISTRICT JUDGE  
26  
27  
28





MARK I. LABATON (SB# 159555)  
(mlabaton@kreindler.com)  
MOTLEY RICE LLP  
707 Wilshire Blvd., Suite 4100  
Los Angeles, CA 90017  
Telephone: (213) 622-6469  
Facsimile: (213) 622-6019

J. ALLEN CARNEY  
(acarney@carneywilliams.com)  
RANDALL K. PULLIAM  
(rpulliam@carneywilliams.com)  
CARNEY WILLIAMS BATES  
BOZEMAN & PULLIAM, PLLC  
11311 Arcade Drive, Suite 200  
P.O. Box 25438  
Little Rock, AR 72212  
Telephone: (501) 312-8500  
Facsimile: (501) 312-8505

*Local and Liaison Counsel for Plaintiff  
and the Class*

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

IN RE SEMTECH CORPORATION  
SECURITIES LITIGATION

CASE NO. 2:07-cv-07114-CAS (FMOx)  
ORDER AWARDING ATTORNEYS'  
FEES AND REIMBURSEMENT OF  
EXPENSES

1 This matter having come before the Court on June 27, 2011, on the application of  
2 Plaintiffs' Counsel for an award of attorneys' fees and reimbursement of expenses  
3 incurred in the Litigation, the Court, having considered all papers filed and  
4 proceedings conducted herein, having found the Settlement in this Litigation to be  
5 fair, reasonable and adequate and otherwise being fully informed in the premises  
6 and good cause appearing therefor;

9 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

10 1. This Order incorporates by reference the definitions in the Stipulation  
11 and Agreement of Settlement ("Stipulation"), and all terms used herein shall have  
12 the same meaning as set forth in the Stipulation.

14 2. This Court has jurisdiction over the subject matter of this Litigation  
15 and over all parties to the Litigation, including all Class Members who have not  
16 timely and validly requested exclusion.

18 3. The Court finds that the amount of fees awarded is appropriate and  
19 that the amount of fees awarded are fair and reasonable upon consideration of the  
20 relevant factors set forth in *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043 (9th Cir.  
21 2002). More specifically, the Court finds that the percentage of recovery obtained  
22 in the proposed Settlement compares favorably with other settlements approved in  
23 securities class actions within this Circuit, supporting the fairness and adequacy of  
24 the Settlement. Moreover, the risks imbued in further litigation, the skill required  
25 and the quality of work provided by Lead Plaintiff and Plaintiffs' Counsel further

1 support the award of the requested fee. Additionally, the contingent nature of the  
2 fee and the financial burden carried by Plaintiffs' Counsel throughout this  
3 Litigation also weigh in favor of the requested fee of 17%, which is well below the  
4 Ninth Circuit's benchmark of 25%.

5  
6 4. Accordingly, the Court hereby awards Plaintiffs' Counsel attorney fees  
7 of 17%, or \$3.4 million.

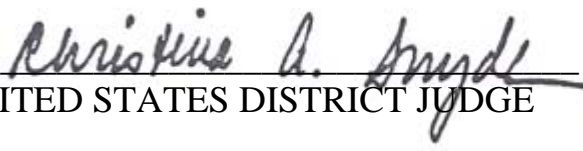
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9 5. In addition, the Court finds the expenses incurred by Plaintiffs'  
10 Counsel are reasonable and were necessarily incurred to achieve the significant  
11 benefit obtained. As such, the Court hereby awards Plaintiffs' Counsel  
12 reimbursement of litigation expenses in the amount of \$350,000.

13  
14 6. The awarded attorneys' fees and expenses shall immediately be paid to  
15 Plaintiffs' Counsel subject to the terms and conditions of the Stipulation.

16  
17 7. In addition, Lead Plaintiff Mississippi Employees Retirement System  
18 is awarded reimbursement of costs and expenses in the amount of \$28,341, which  
19 were incurred as a result of Lead Plaintiff's active participation in this Litigation  
20 and representation of the Class.

21  
22 IT IS SO ORDERED.

23  
24 DATED: June 27, 2011

25   
26 UNITED STATES DISTRICT JUDGE  
27  
28

Submitted by:

CARNEY WILLIAMS BATES  
BOZEMAN & PULLIAM, PLLC  
J. ALLEN CARNEY  
RANDALL PULLIAM  
CARNEY WILLIAMS BATES  
BOZEMAN & PULLIAM, PLLC  
11311 Arcade Drive, Suite 200  
P.O. Box 25438  
Little Rock, AR 72212  
Telephone: (501) 312-8500  
Facsimile: (501) 312-8505

-And-

BARON & BUDD, P.C.  
BURTON LEBLANC  
3102 Oak Lawn Avenue, Suite 1100  
Dallas, Texas 75219  
Telephone: (214) 521-3605  
Facsimile: (214) 520-1181





1 LERACH COUGHLIN STOLA GELLER  
2 RUDMAN & ROBBINS LLP  
3 JOY ANN BULL (138009)  
4 BONNY E. SWEENEY (176174)  
5 DAVID W. MITCHELL (199706)  
6 401 B Street, Suite 1600  
7 San Diego, CA 92101  
8 Telephone: 619/231-1058  
9 619/231-7423 (fax)

6 BARRACK, RODOS & BACINE  
7 STEPHEN R. BASSER (121590)  
8 402 West Broadway, Suite 850  
9 San Diego, CA 92101  
10 Telephone: 619/230-0800  
11 619/230-1874 (fax)

12 Co-Lead Counsel for Plaintiffs

13 UNITED STATES DISTRICT COURT  
14 CENTRAL DISTRICT OF CALIFORNIA  
15 WESTERN DIVISION

14 THOMAS & THOMAS RODMAKERS, )  
15 INC., et al., On Their Own Behalf and )  
16 On Behalf of All Others Similarly )  
17 Situated, )

18 Plaintiffs,

19 vs.

18 NEWPORT ADHESIVES AND  
19 COMPOSITES, INC., et al.,

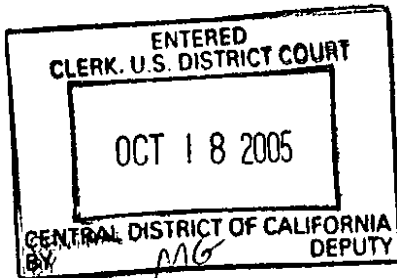
20 Defendants.

Case No. CV-99-07796-FMC(RNBx)  
(Consolidated)

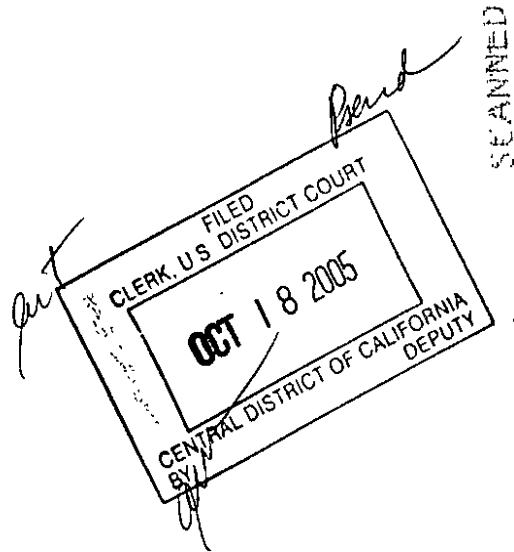
CLASS ACTION

**ORDER AWARDING  
ATTORNEYS' FEES,  
REIMBURSEMENT OF EXPENSES,  
AND SERVICE AWARDS FOR  
REPRESENTATIVE PLAINTIFFS**

DATE: August 11, 2005  
TIME: 2:30 p.m.  
CTRM: The Honorable  
Florence-Marie Cooper



THIS CONSTITUTES NOTICE OF ENTRY  
AS REQUIRED BY FRCP, RULE 77(d).



802

1 THIS MATTER having come before the Court on August 11, 2005, on the  
2 application of Co-Lead Counsel for an award of attorneys' fees, reimbursement of  
3 unpaid expenses incurred in the Litigation, and service awards for the Representative  
4 Plaintiffs, the Court, having considered all papers filed and proceedings conducted  
5 herein, having found the settlements of this Litigation with BP Amoco Polymers, Inc.,  
6 Hercules Incorporated, Mitsubishi Rayon Co., Ltd., Grafil, Inc., and Newport  
7 Adhesives and Composites, Inc. to be fair, reasonable and adequate and otherwise  
8 being fully informed in the premises and good cause appearing therefor;

9 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

10 1. This Court has jurisdiction over the subject matter of this application and  
11 all matters relating thereto, including all Members of the Class who have not timely  
12 and validly requested exclusion.


13 2. The Court hereby awards attorneys' fees of \$12,009,882.40  
14 (approximately 33.13% of the current settlement proceeds of \$36,250,000) and  
15 reimbursement of unpaid expenses in an aggregate amount of \$2,490,117.60. Said  
16 fees and expenses shall be allocated among Representative Plaintiffs' Counsel by Co-  
17 Lead Counsel in a manner which, in their good-faith judgment, reflects the value of  
18 each counsel's contribution to the institution, prosecution and resolution of the  
19 Litigation. The Court finds that the amount of fees awarded is fair and reasonable  
20 under the "percentage-of-recovery" method.

21 3. The awarded attorneys' fees and expenses shall be paid to Co-Lead  
22 Counsel from the settlement proceeds, subject to the terms, conditions, and obligations  
23 of: (a) the Stipulation of Settlement with BP Amoco Polymers, Inc. dated as of April  
24 1, 2005; (b) the Stipulation of Settlement with Hercules Incorporated dated as of May  
25 24, 2005; and (c) the Stipulation of Settlement with Mitsubishi Rayon Co., Ltd.,  
26 Grafil, Inc., and Newport Adhesives and Composites, Inc. dated as of March 30, 2005.

1           4.    The Court hereby awards the sum of \$25,000 to each of the  
2 Representative Plaintiffs: Thomas & Thomas Rodmakers, Inc., Lamiglas, Inc.,  
3 Cannondale Corporation, Gold Tip, Inc., and Royal Precision, Inc.

4           IT IS SO ORDERED.

5 DATED: 10/17/05

  
6 THE HONORABLE FLORENCE-MARIE COOPER  
7 UNITED STATES DISTRICT JUDGE

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## EXHIBIT 13

**NERA**  
ECONOMIC CONSULTING

24 July 2012



## **Recent Trends in Securities Class Action Litigation: 2012 Mid-Year Review**

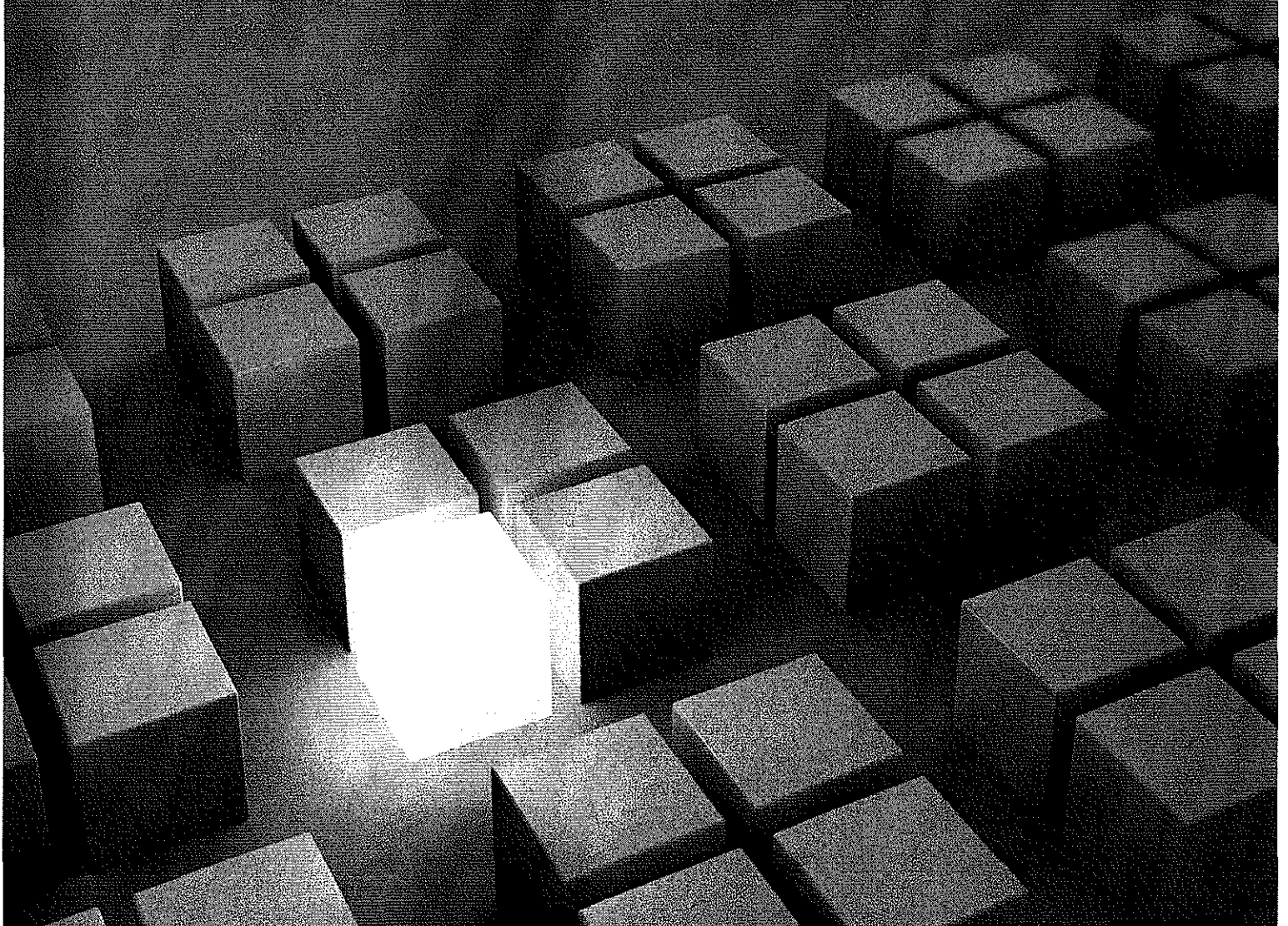
Settlements bigger, but fewer

By Dr. Renzo Comolli, Dr. Ron Miller, Dr. John Montgomery, and Svetlana Starykh

Insight in Economics™



**The pace of “standard”  
filings and the total  
value of potential claims  
are rising compared  
with the last three years.**



## **Recent Trends in Securities Class Action Litigation: 2012 Mid-Year Review**

Settlements bigger, but fewer

By Dr. Renzo Comolli, Dr. Ron Miller, Dr. John Montgomery, and Svetlana Starykh

24 July 2012

### **Mid-2012 Highlights in Filings**

- Filings on track to be as high or higher than in any of the last three years
- Merger objection suits continue to be a large proportion of filings
- No new filings with accounting codefendants

### **New Analysis of Motions**

- Of the cases that settled, 90% had a motion to dismiss filed and 42% had motion for class certification filed
- Settlements amounts depend on the litigation stage at which settlement is reached

### **Mid-2012 Highlights in Settlements**

- Settlement pace slowing down markedly
- Average settlement amounts rebound to levels close to the all-time high



## Introduction and Summary<sup>1</sup>

Securities class actions filed in Federal court have continued to be filed at their historical pace so far in 2012, but their composition has changed significantly. Last year, a wave of filings against Chinese companies, often involving reverse mergers, made the news. This year, those cases have greatly decreased in number. Merger objection cases continue to be a major portion of total filings, as they have since 2010.

The targets of litigation have been changing. Financial sector firms' share of filings in 2012 is smaller than it has been since 2005 while filings in the technology and health care sectors have risen. Accounting firms had frequently been named as codefendants in securities class actions in the past and had figured prominently in some of the largest settlements. However, since 2010 there have been relatively few accounting firms named and so far this year there have been none at all.

While filings have continued at their typical rate, settlements have not kept pace. The rate of settlements this year is on track to make 2012 the slowest year for settlement activity since 1999 and many of the settlements that have been reached do not include monetary compensation for investors.

Although the number of cases settled this year is low, the cases that have settled are relatively big ones. The average settlement value is more than double last year's level and higher than the recent historical average.

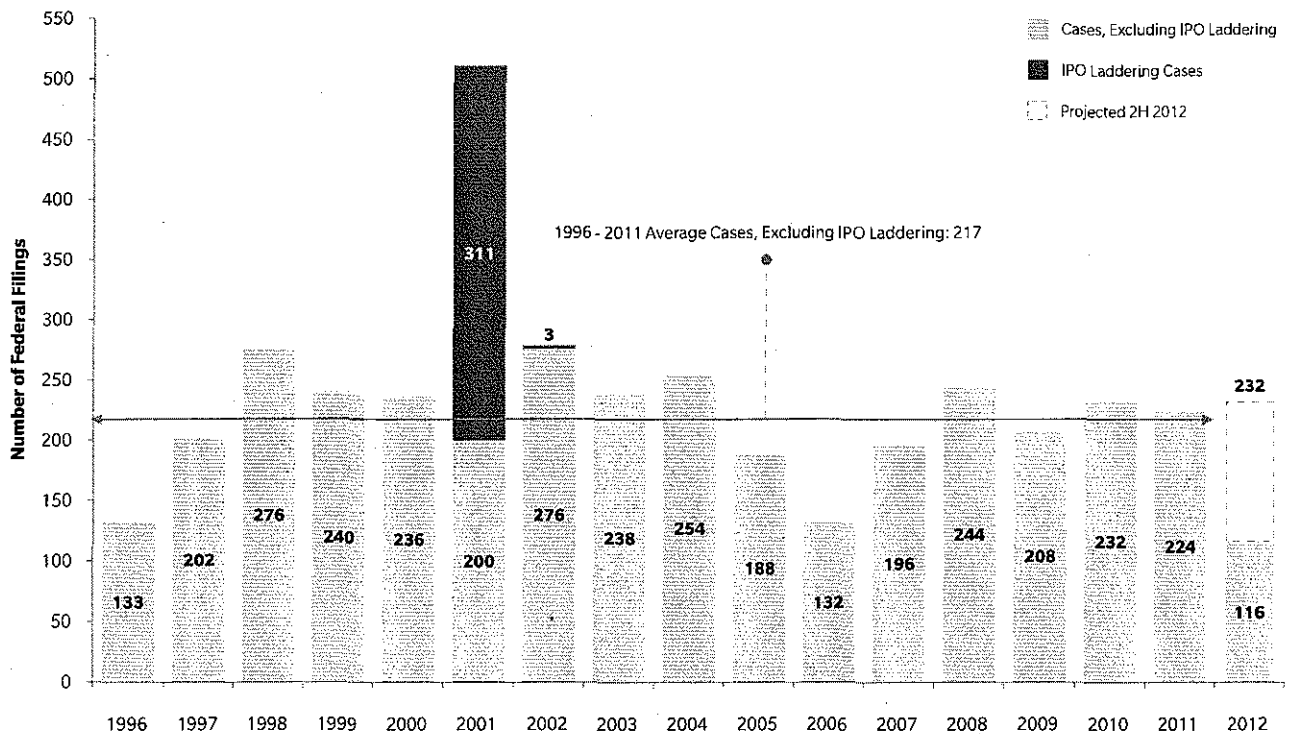
We also report newly-compiled statistics on the settlement value by status of the motions filed in those cases. Among other things, we find that most settlements occur after a motion to dismiss has been filed but before a motion for class certification has been decided.

## Trends in Filings<sup>2</sup>

### Rate of Filings

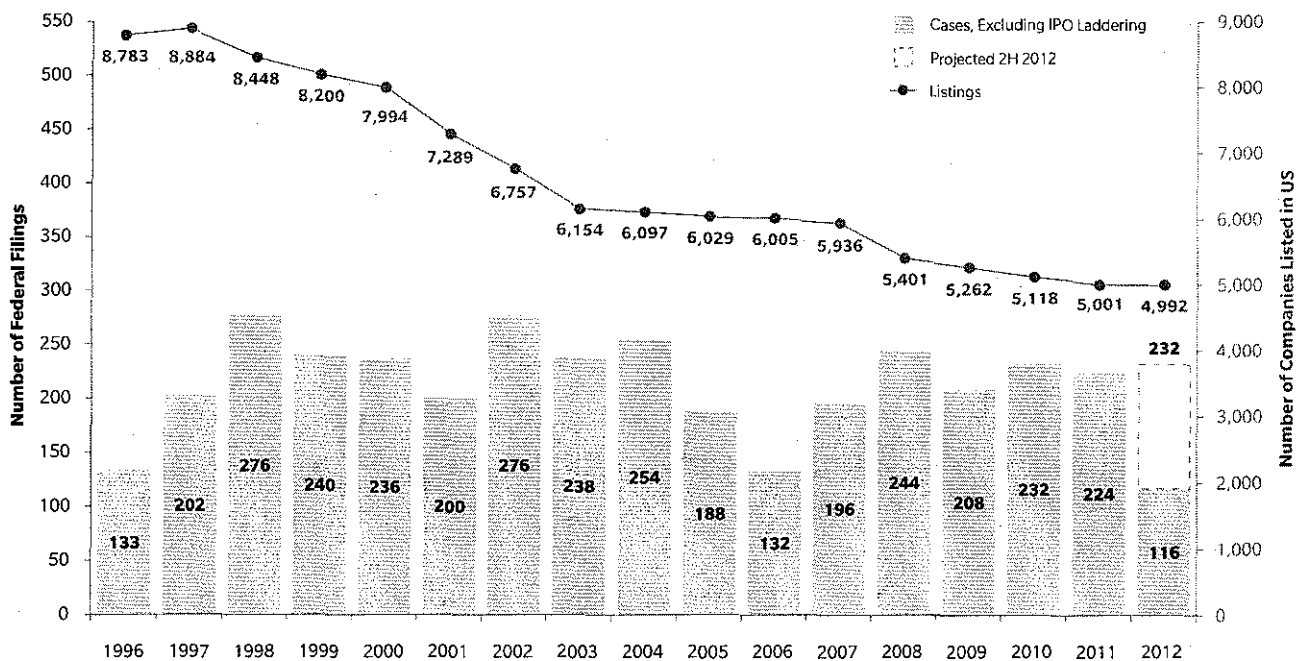
Federal filings of securities class actions are keeping up with the average pace since the passage of the Private Securities Litigation Reform Act (PSLRA) in 1995. In the first half of this year, 116 such actions were filed. At this pace, there will be 232 class actions filed in 2012 as a whole; for comparison, on average, 217 class actions were filed annually, between 1996 and 2011.<sup>3</sup> Although the number of class actions since 1996 has fluctuated from year to year, the longer-term average has remained substantially stable over time. See Figure 1.

Figure 1. **Federal Filings**  
January 1996 – June 2012



In contrast, the number of companies listed in the US has decreased markedly, by about 43% since 1996. Thus, the average company listed in the US is significantly more likely to be the target of a securities class action now than it was in 1996. See Figure 2.

Figure 2. **Federal Filings and Number of Companies Listed in United States**  
January 1996 – June 2012



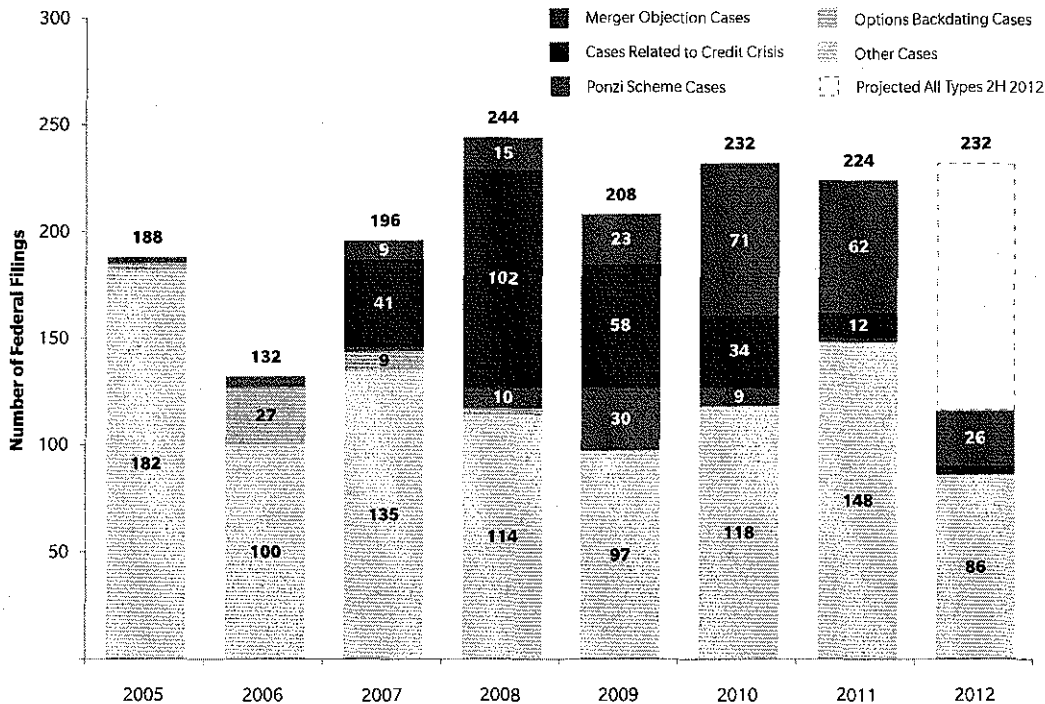
Note: Number of companies listed in US is from Meridian Securities Markets.



### Filings by Type

Filings for the first half of 2012 included 26 merger objection cases and 83 cases alleging the violation of at least one of the following: Section 10b of the Securities and Exchange Act (including Rule 10b-5), Section 11, or Section 12 of the Securities Act. Credit crisis cases are becoming rarer as the events of 2008 fade into the past.<sup>4</sup> Only four credit crisis-related cases have been filed so far in 2012. See Figures 3 and 4.

Figure 3. **Federal Filings by Type of Case**  
January 2005 – June 2012



#### Merger objection cases

There continued to be a relatively large number of merger and acquisition objection cases (merger objection cases) in recent years. Merger objection cases first represented an important component of federal filings in 2010, when they amounted to 31% of filings. These cases are brought on behalf of shareholders of a target company in a merger or acquisition, and typically rest on allegations that the directors of the target company breached their fiduciary duty to shareholders either by accepting a price for the shares that was too low or by providing insufficient disclosures about the value of the deal. These cases differ in many ways from the more traditional securities class actions, including legal aspects, dismissal rates, settlement amounts, and the speed with which they are typically resolved. Some of these differences are discussed below.

The merger objection cases differ in another important way from other recent waves of securities litigation such as IPO ladder, options backdating, credit crisis-related cases, and Chinese reverse mergers. To generalize, these earlier waves of litigation originated with particular actions, or alleged actions, of issuers that ended soon after the litigation began, either because of the litigation itself or because of the end of the underlying issue. Because of that quick end to the source of the litigation issue, a defined pool of companies that could be sued was created and the wave ended naturally when the pool was exhausted. Not so for the merger objection cases, where the litigated issues could potentially relate to any merger or acquisition. As such, the merger objection cases may continue indefinitely, in the absence of substantial changes in the legal environment, their number fluctuating with market cycles in M&A activity.

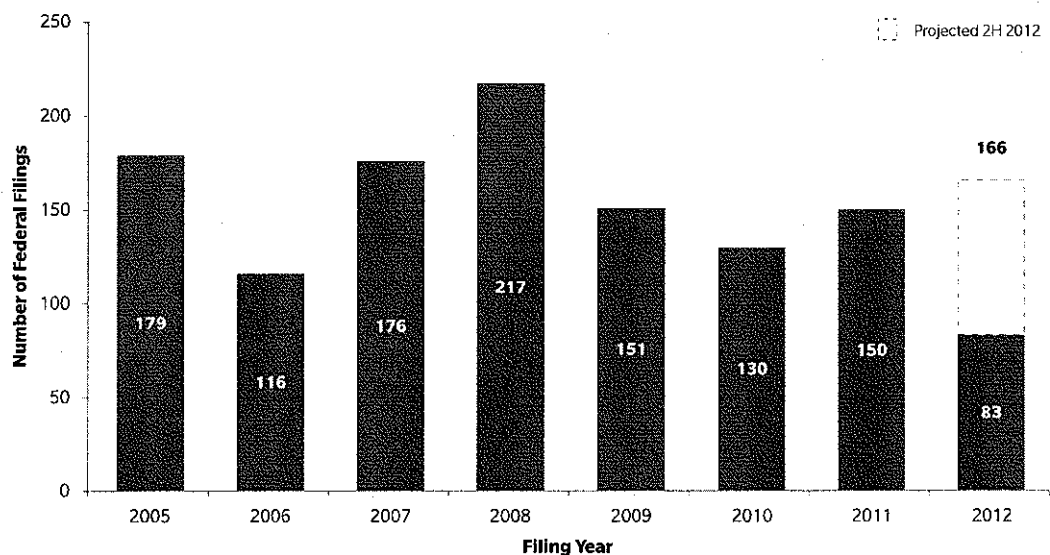
The decline in the number of companies listed in the US, discussed above, may be contributing to the shift towards less traditional types of securities class actions, such as merger objection cases. The reduction in traditional targets may give plaintiffs' firms an incentive to innovate in the kinds of cases that they bring.

It is also worth noting that the merger objection cases depicted in figure 3 are only the federal securities class action cases. Many more merger objection cases are filed in state courts or as derivative actions. In fact, almost three times as many deals have been the target of state class actions as have been subject to federal securities class actions.<sup>5</sup>

#### *Rule 10b-5, Section 11, and Section 12*

Class actions alleging violations of Rule 10b-5, Section 11, and/or Section 12 historically have represented a large majority of federal securities class actions filed and are sometimes viewed as the "standard" type of securities class action.<sup>6</sup> Figure 4 depicts such cases for the period 2005 to today. These "standard" filings peaked in 2008 with the credit crisis. So far this year, 83 such securities class actions have been filed. If filings continue at this pace, by the end of the year, 166 class actions will have been filed—more than in any of the last three years, but well below the 2008 peak.

Figure 4. **Federal Filings Alleging Violation of Any of: Rule 10b-5, Section 11, or Section 12**  
By Filing Year; January 2005 – June 2012



New filings in 2012 also represent a larger total dollar volume of potential claims than in the last few years. We gauge potential claims with NERA's investor losses measure. This is a proxy for the aggregate amount that investors lost from buying the defendant's stock during the class period relative to investing in the broader market; it is also a rough proxy for the size of plaintiffs' potential claims. Aggregate investor losses are simply total investor losses across all cases for which investor losses are computed.<sup>7</sup> At their current rate of accumulation, aggregate investor losses by the end of 2012 would be larger than those in any of the previous three years. See Figure 5. Aggregate investor losses are up not only because the number of cases has grown but also because investor losses for a typical case has grown. The median investor losses in the first six months of 2012 have been more than twice the median investor losses in 2010 or 2011. See Figure 6.

Figure 5. **Aggregate Investor Losses for Federal Filings with Alleged Violations of Rule 10b-5, Section 11, or Section 12**  
By Filing Year; January 2005 – June 2012

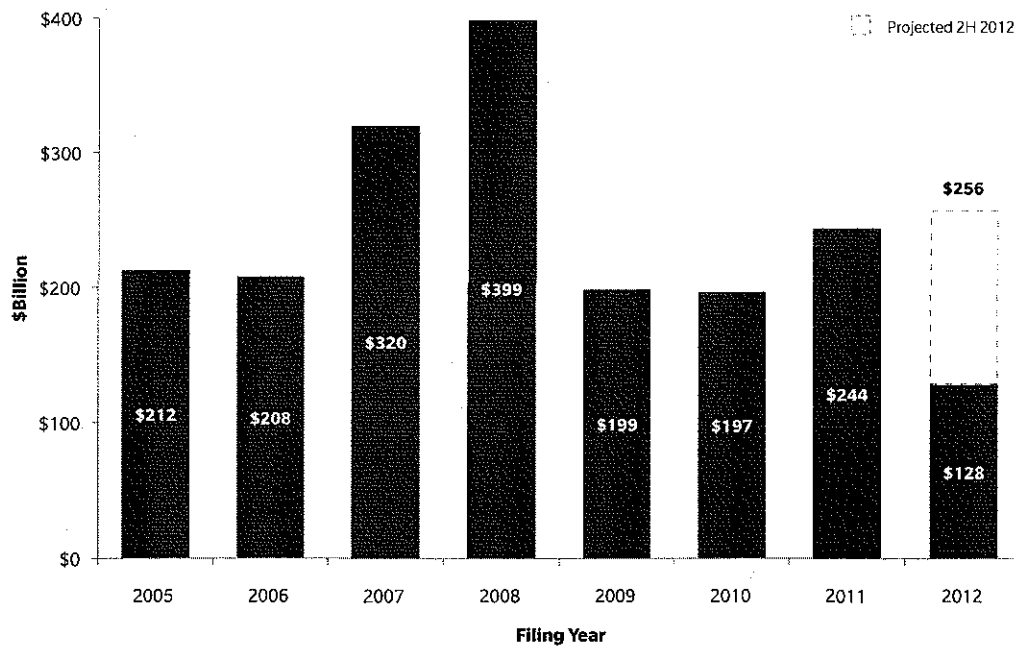
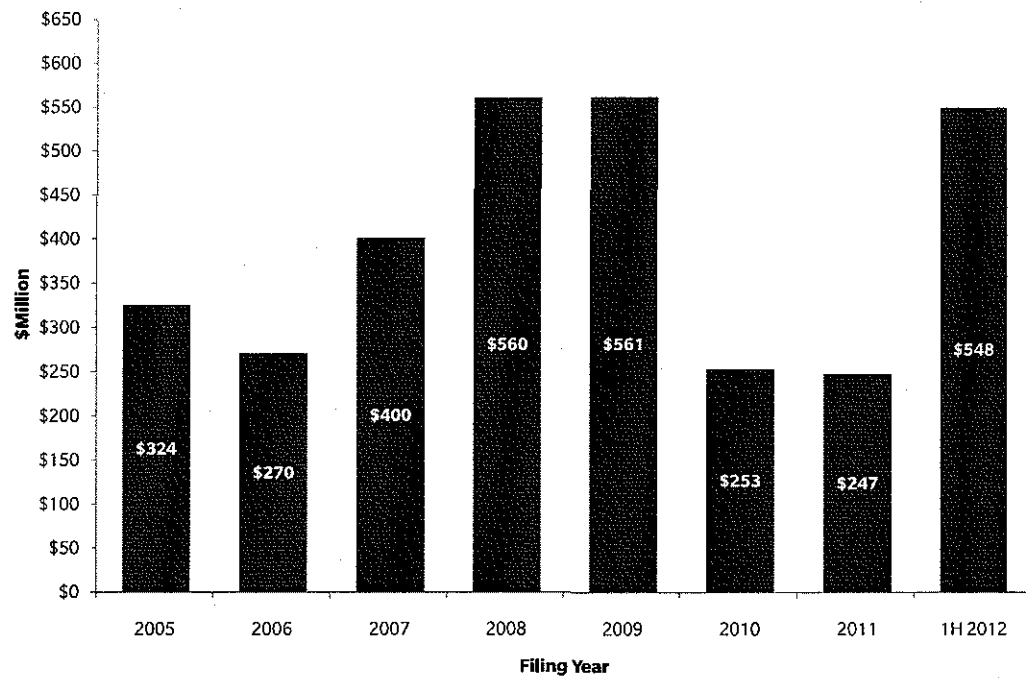


Figure 6. **Median Investor Losses for Federal Filings with Alleged Violations of Rule 10b-5,  
Section 11, or Section 12**  
By Filing Year; January 2005 – June 2012

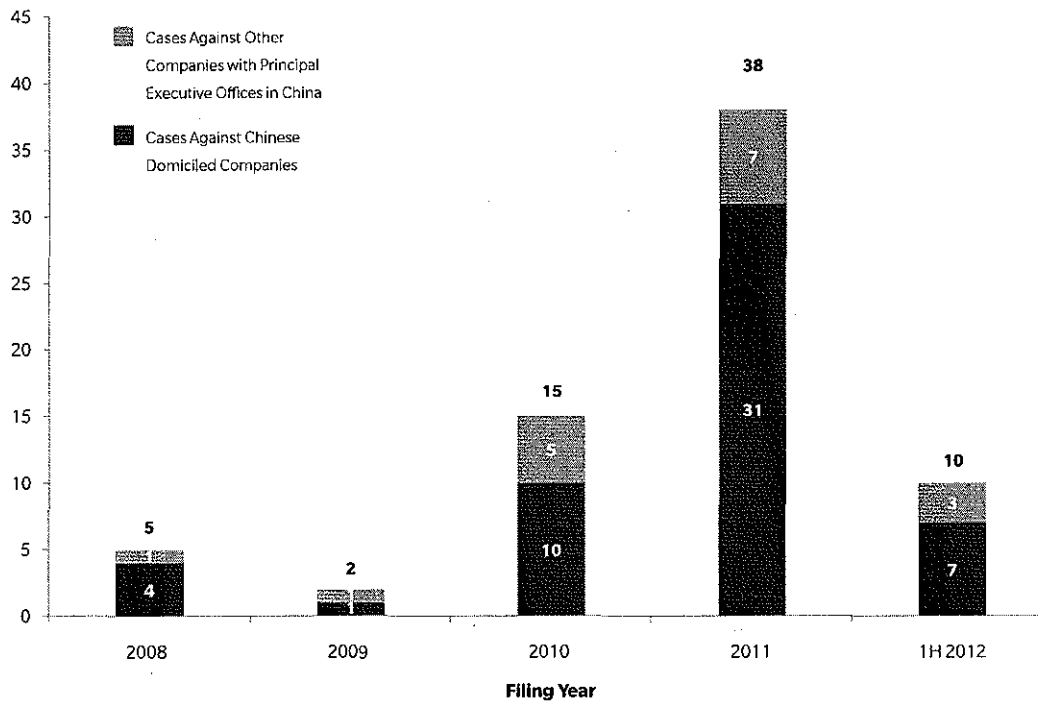


### Filings by Issuer's Country of Domicile<sup>8</sup>

Last year, the big story for securities class action filings was the wave of cases involving Chinese companies listed in the US. This wave of litigation also has been referred to as the "Chinese reverse merger litigation" because of the way many such companies were listed in the US.<sup>9</sup>

This year, the number of these cases has dropped dramatically. Only 10 cases against Chinese companies listed in the US have been filed so far in 2012, less than half of the 2011 filing rate. See Figure 7. The reduced pace of filings against Chinese companies has at least two potential explanations. First, requirements for listing in the US through the reverse merger process have been tightened.<sup>10</sup> Second, the flurry of filings against Chinese companies may have made US listings less attractive for Chinese companies, because of increased potential legal costs.

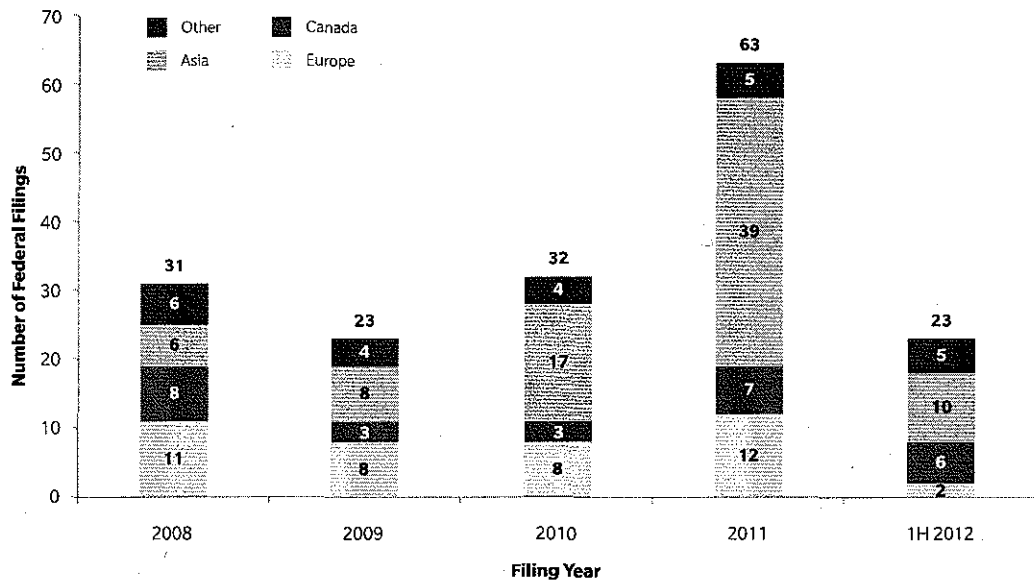
Figure 7. **Number of Federal Filings Against Chinese Companies**  
January 2008 – June 2012





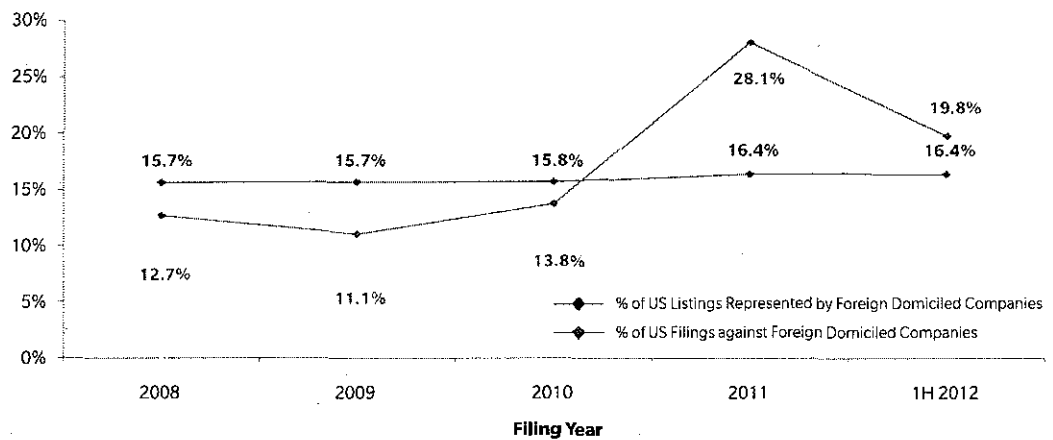
The number of cases filed against all foreign-domiciled companies is decreasing too, due to the decrease in filings against Chinese companies. See Figure 8. With the fall in filings against Chinese issuers, the rate of securities class actions filings against foreign companies listed in the US has now reverted to a level only slightly above the rate for US companies. In the first half of 2012, the proportion of securities class actions involving foreign companies was approximately the same as the proportion of foreign companies among issuers. See Figure 9.

Figure 8. **Filings by Company Domicile and Year**  
January 2008 – June 2012



Note: Companies with principal executive offices in China are included in the totals for Asia.

Figure 9. **Foreign Domiciled Companies: Share of Filings and Share of All Companies Listed in United States**  
January 2008 – June 2012



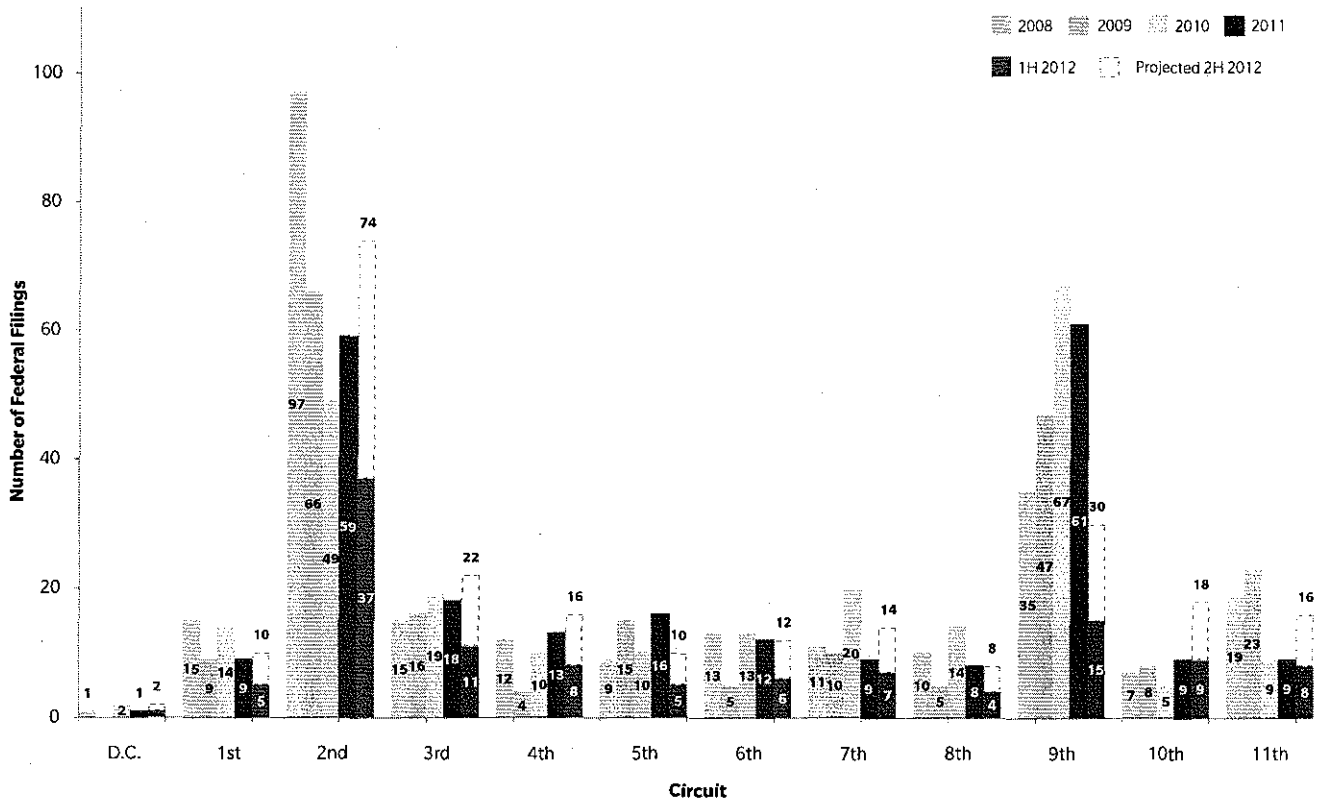
Note: Companies with principal executive offices in China are included in the counts of foreign companies. Listings data are from Meridian Securities Markets. 2008 – 2011 data are as of respective year end, 2012 data are as of April.

### Filings by Circuit

Filings remain concentrated in two circuits: the Second (encompassing New York, Connecticut, and Vermont), and the Ninth (including California, Washington, and certain other Western states and territories). However, in the first half of 2012 the balance between these two circuits was substantially different from that in previous years.

During the first half of this year, filings in the Second Circuit have been made at a higher pace than in any recent year except 2008. Filings in the Ninth Circuit, by contrast, have decreased substantially. At their current pace, there will be only 30 filings in the Ninth Circuit this year, which would be the lowest total since the passage of the PSLRA in 1995. See Figure 10.

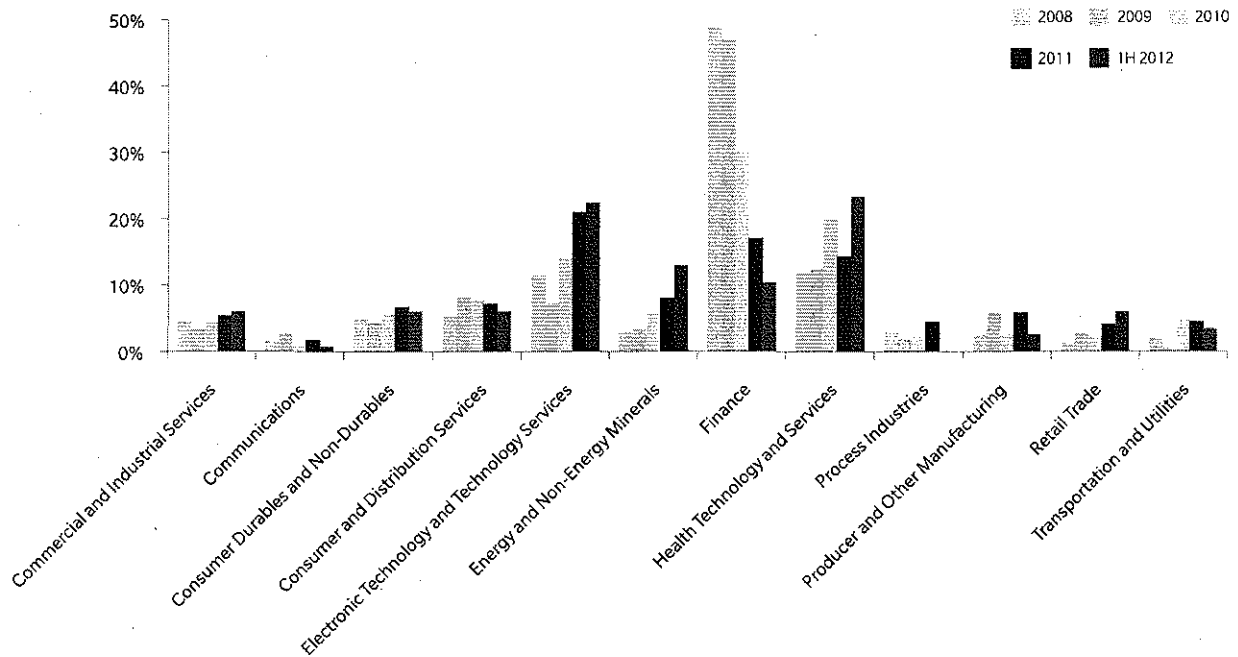
Figure 10. **Federal Filings by Circuit and Year**  
January 2008 – June 2012



### Filings by Sector

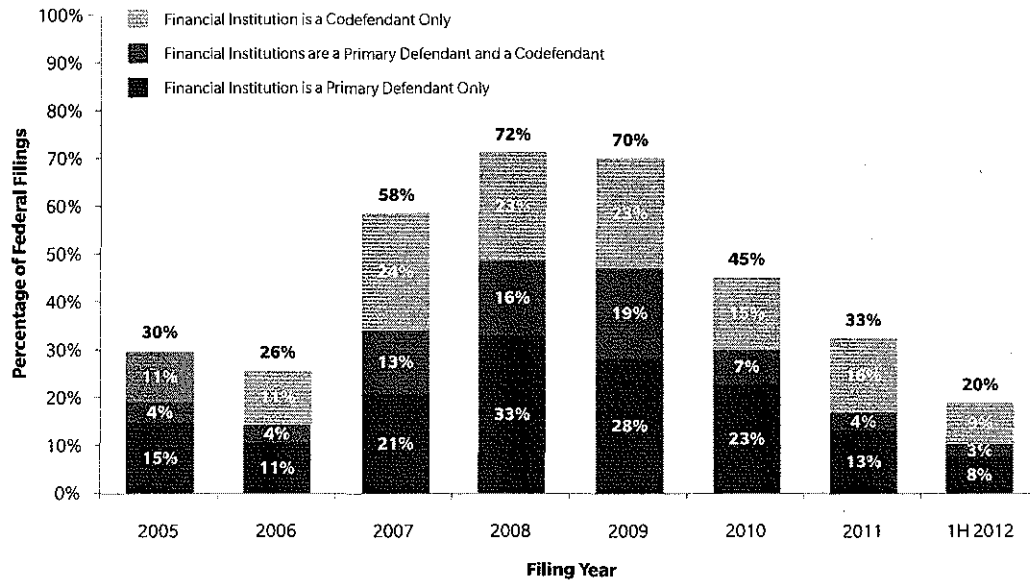
In 2008 and 2009, with the fallout from the credit crisis, filings of securities class actions against companies in the financial sector reached a peak, amounting to nearly half of all securities class actions. The share of filings against companies in the financial sector has declined since then. The decline continued in the first half of this year, in which financial companies represented only 11% of issuers subject to securities class actions. See Figure 11. These figures refer to companies named as primary defendants; companies in the financial sector also have been named as codefendants. Including codefendants, the fraction of cases involving a financial company is 19%, the lowest percentage since at least 2005. See Figure 12.

Figure 11. **Filings by Sector and Year**  
January 2008 – June 2012



Note: This analysis is based on the FactSet Research Systems, Inc. economic sector classification. Some of the FactSet economic sectors are combined for presentation.

Figure 12. **Federal Cases in which Financial Institutions Are Named Defendants**  
January 2005 – June 2012



The share of securities class actions with a defendant in the electronic technology and technology services or health technology and services industries has continued to increase, reaching 22% and 23%, respectively. The share of securities class action filings against issuers in the energy and non-energy minerals sector also has grown.

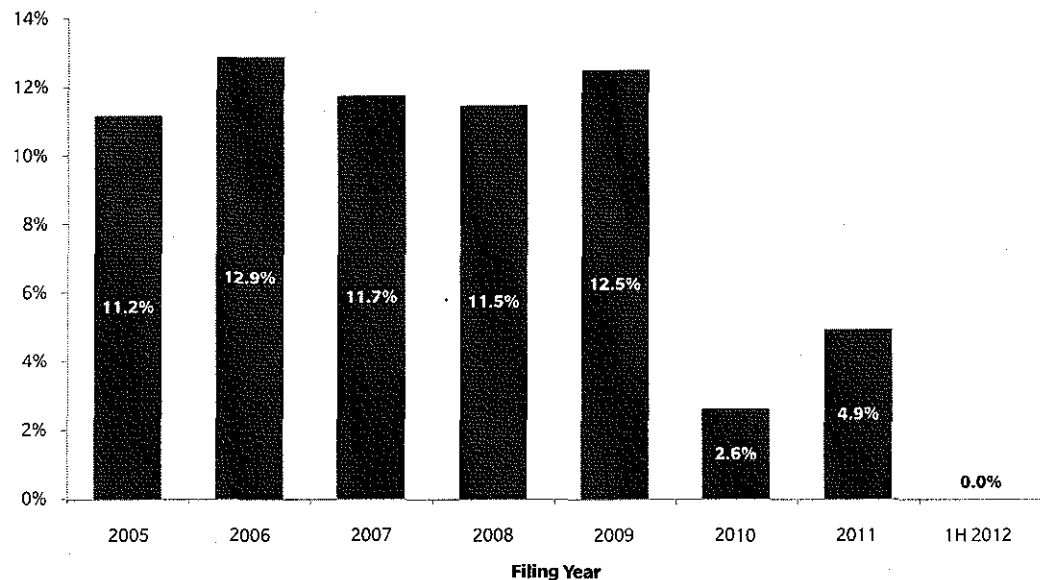
*Accounting codefendants are becoming rare*

Historically, a substantial fraction of securities class actions included an accounting firm as a codefendant. Over 2005-2009, 12% of cases had accounting codefendants; during 2010-2011, that percentage fell to 4%. So far this year, not a single newly filed federal securities class action has included an accounting codefendant. See Figure 13.

This dramatic change may be the result of changes in the legal environment. The Supreme Court's 2011 decision in *Janus* limited the ability of plaintiffs to sue parties not directly responsible for misstatements. Commentators have noted that, as a result of this decision, auditors may be liable only for statements made in their audit opinion.<sup>11</sup> Further, this decision comes after the Court's 2008 decision in *Stoneridge* limiting scheme liability. The cumulative effect appears to have made accounting firms relatively unattractive targets for securities class action litigation.

Despite the virtual disappearance of accounting codefendants, accounting allegations against any defendant are still a common feature in newly filed cases; in 2012, 26% of securities class action filings included allegations of accounting violations. See portion labeled "Accounting" in Figure 14.

Figure 13. **Percentage of Federal Filings in Which an Accounting Firm is a Codefendant**  
January 2005 – June 2012



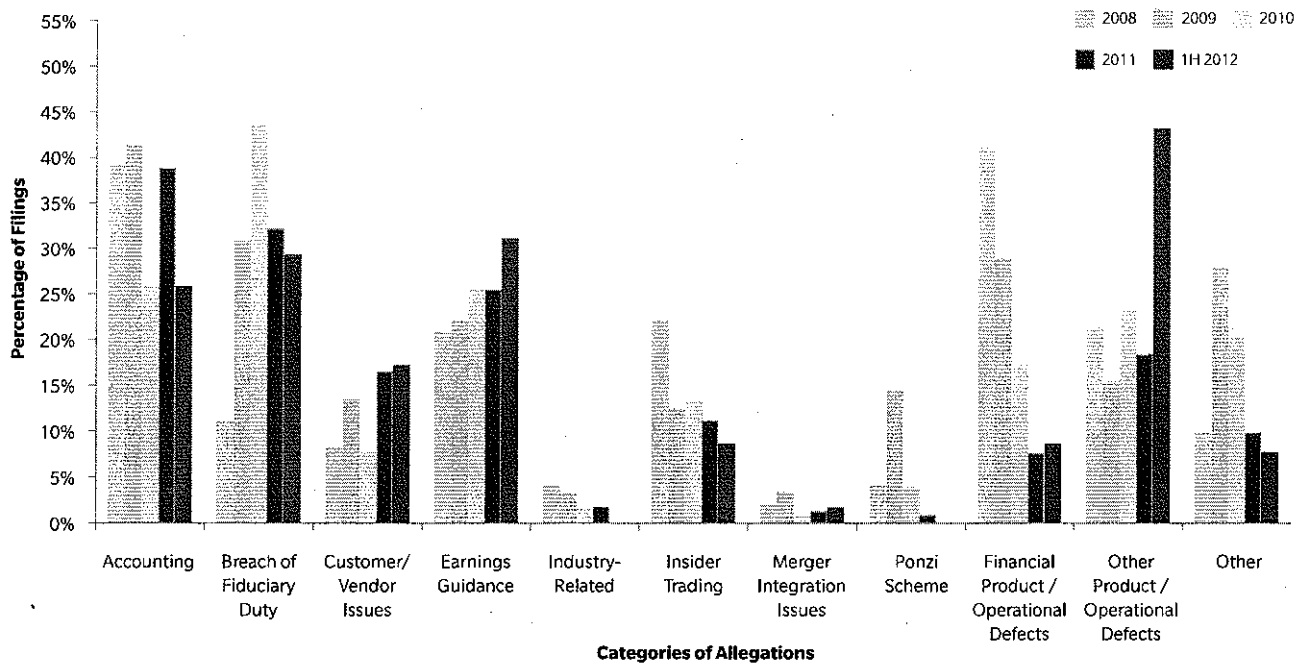


## Allegations

NERA reviews complaints in securities class action filings to evaluate trends in the types of allegations that are made. Figure 14 contains the percentages of filings with allegations in different categories.<sup>12</sup>

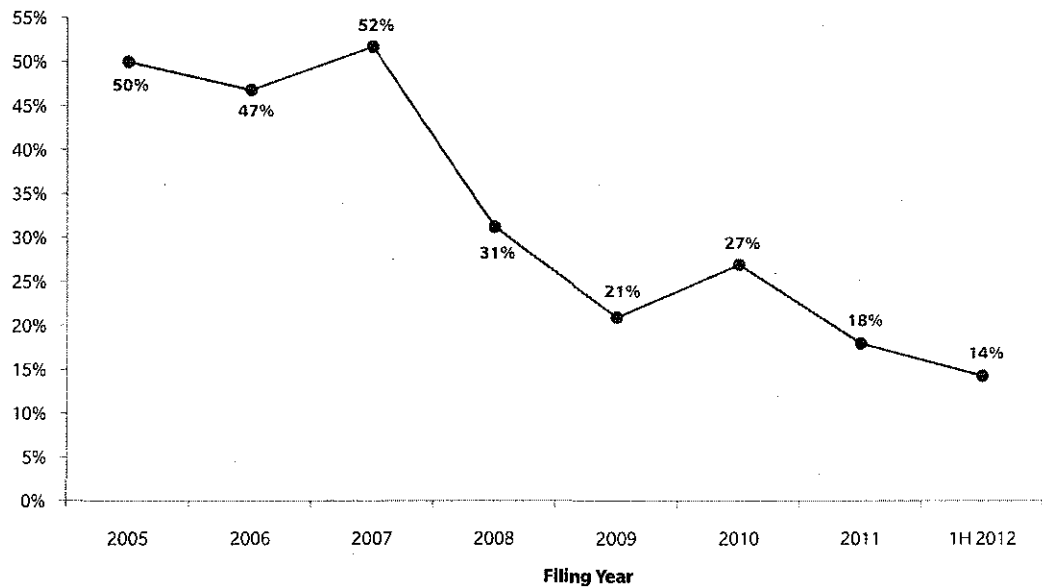
So far in 2012, allegations related to product defects and operational shortcomings (other than financial) have been the most prevalent, having been made in almost 45% of complaints. Allegations related to earnings guidance, breach of fiduciary duty (typical in the merger objection cases), and accounting were each made in more than a quarter of the complaints filed.

Figure 14. **Allegations in Federal Filings**  
January 2008 – June 2012



The fraction of securities class actions alleging violations of Rule 10b-5 that also allege insider sales has continued to decrease in 2012 and has reached a new low since we started tracking these data in 2005.<sup>13</sup> Only 14% of the class actions alleging violations of Rule 10b-5 have alleged insider sales in the first half of 2012. See Figure 15.

Figure 15. **Percentage of Federal Filings Alleging Violations of Rule 10b-5 with Insider Sales Allegations**  
By Filing Year; January 2005 – June 2012

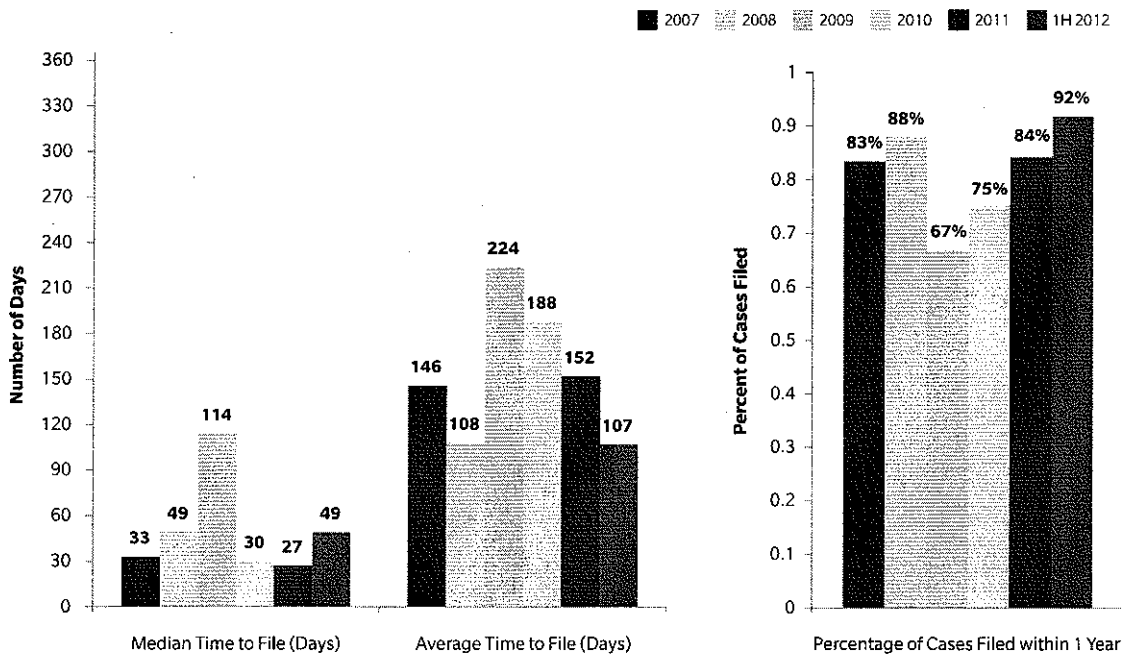


## Time to File

For Rule 10b-5 cases, we define “time to file” as the time from the end of the alleged class period to the date of filing of the first complaint. The average time to file has been decreasing since 2009. In the first half of 2012, it took 107 days, on average, for a complaint to be filed. This is down from a high of 224 days in 2009 and from 120 days in 2011. See Figure 16.

The median time to file was 49 days in the first half of 2012, meaning that half of the complaints were filed within 49 days. Unlike the average time to file, the median time to file is longer than in 2011, when it was only 27 days.

Figure 16. **Time to File**  
Filings Alleging Violation of Rule 10b-5  
January 2007 – June 2012



This analysis excludes cases where the alleged class period could not be unambiguously determined.

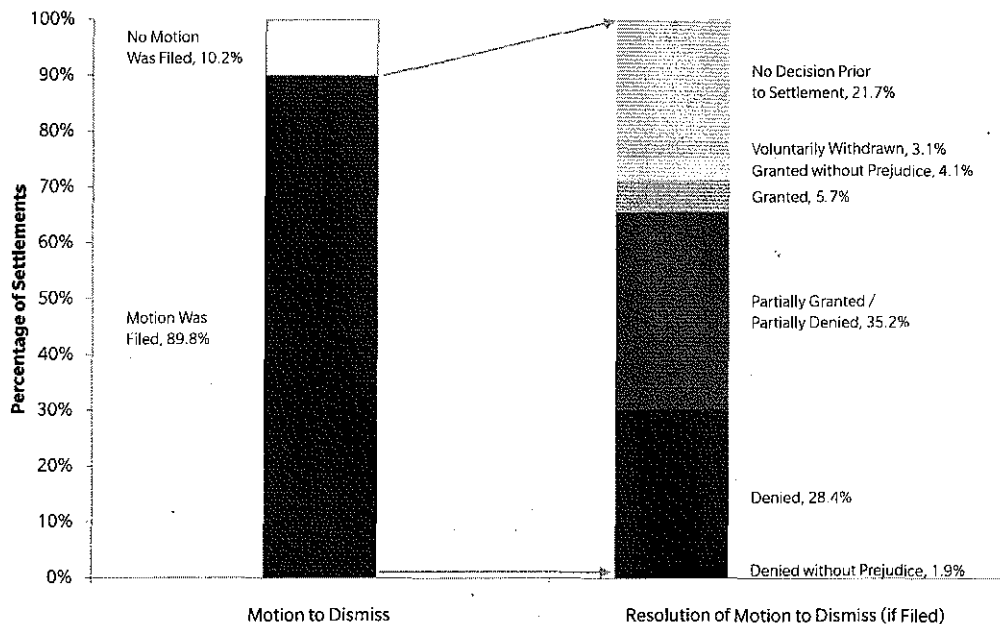
## Analysis of Motions

In an important addition to NERA's analysis of class actions, we have now collected data on motions and their resolutions, for federal securities class actions filed and settled in 2000 or later.<sup>14</sup> Specifically, we have collected data on motions to dismiss, motions for class certification, and motions for summary judgment. These data allow new insight into the process of the litigation of securities class actions and the relation between developments in litigation and the settlement that is ultimately reached. In this section we report on our first analysis based on the status of motions.

Motions to dismiss had at least been filed in the vast majority—nearly 90%—of the cases that settled: the remaining cases settled before any such motion had been filed. In almost 22% of cases where a motion to dismiss had been filed, settlement was reached before the court reached a decision on the motion.

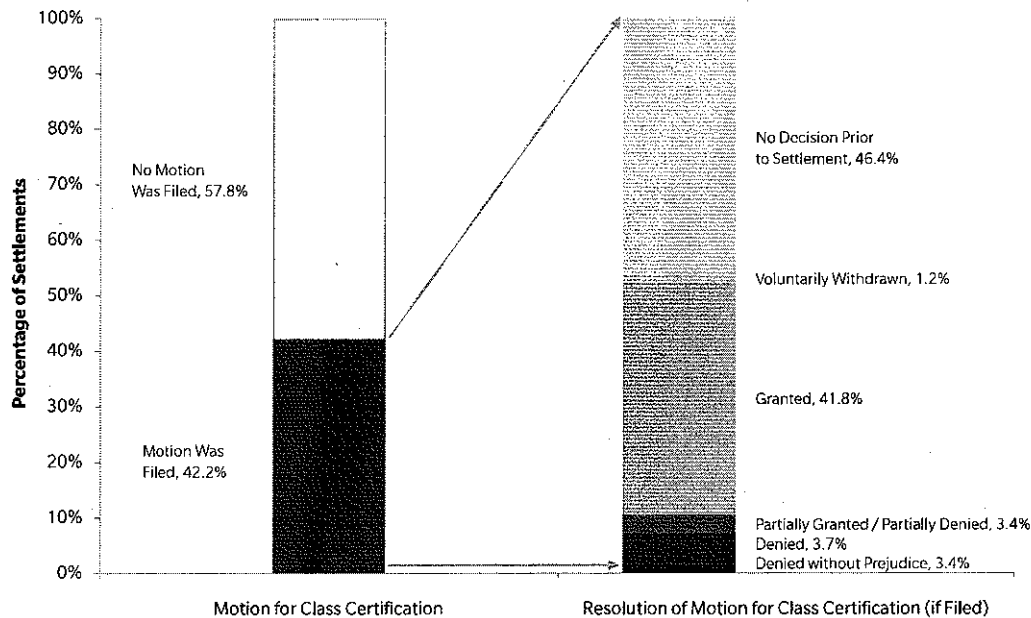
Next we turn to the resolutions of the motion to dismiss. The most frequent decision on the motion to dismiss was a partial grant/partial denial, at 35% of cases filed, followed by complete denial for 28% of cases. A motion to dismiss was granted in 10% of cases that ultimately settled.<sup>15</sup> It is important to note that our data on resolutions are based on the status of the case at the time of settlement—for example, some cases that have been dismissed still reach settlement. These dismissals were likely either without prejudice or under appeal at the time of settlement; had these cases not settled, there was a chance the cases would be refiled or the dismissals would be reversed. As a result of our focus on settled cases, our data do not include the many cases which terminated with a dismissal, without a settlement. See Figure 17 for more details.

Figure 17. **Filing and Resolutions of Motions to Dismiss**  
Cases Filed and Settled January 2000 – June 2012



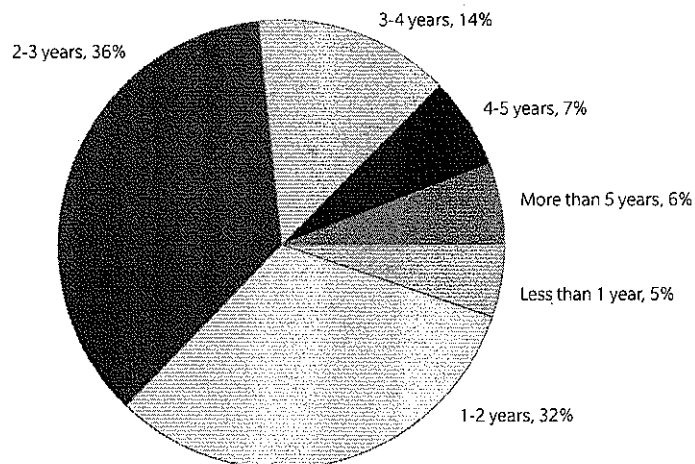
Most cases that settle do so before a motion for class certification is filed—58% of settled cases fall into this category. Of the settled cases for which a motion for class certification had been filed, 46% settled before the motion was resolved. A further 45% of the cases with a class certification motion end up with a certified class. See Figure 18 for more details.

Figure 18. **Filing and Resolutions of Motions for Class Certification**  
Cases Filed and Settled January 2000 – June 2012



While most cases reach settlement before any decision on class certification, the cases that reach this point provide a measure of the overall speed of the legal process. For those cases in which the motion of class certification was eventually decided, the decision came within three years of the original file date of the complaint for almost three quarters of the cases. See Figure 19. It is possible that, with the Supreme Court having granted *certiorari* in *Amgen*, the speed with which a decision on the motion of class certification is reached will slow down, at least until *Amgen* is decided.

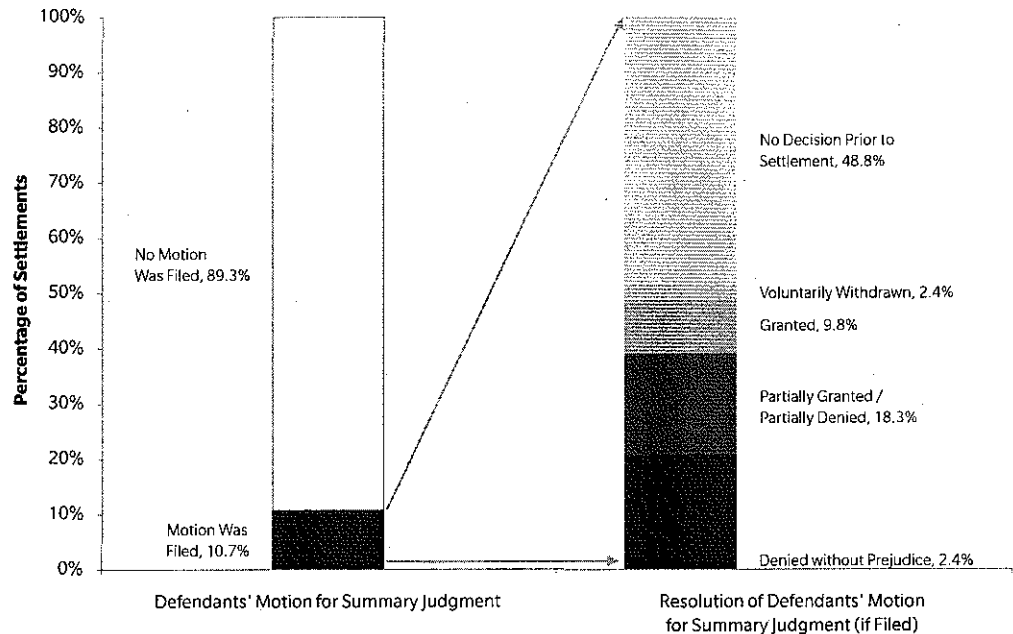
Figure 19. **Time From Complaint Filing to Class Certification Decision**  
Cases Filed and Settled January 2000 – June 2012





Motions for summary judgment had been filed by defendants in only 11% of the cases that ultimately settled. See Figure 20 for details on the outcomes when cases settled after defendants filed such a motion. A very small number of motions for summary judgment were filed by plaintiffs.

Figure 20. **Filing and Resolutions of Defendants' Motions for Summary Judgment**  
Cases Filed and Settled January 2000 – June 2012



Unsurprisingly, the status of motions at the time of settlements affects typical settlement values. For example, for cases settled 2008 through 2012, the median settlement value is \$9.1 million. For cases in which a class was certified at the time of settlement, the median settlement is \$16.5 million, over the same period. In general, however, the relationship between settlement values and motion status at the time of settlement is complicated. Strategic considerations for both parties to the litigation can have an important influence on the stage at which a settlement occurs. Different kinds of cases are likely to settle at different points in the process, making simple comparisons across all cases difficult. Despite this difficulty, NERA research has found that there are statistically robust relationships between motion status and ultimate settlement values, when other case characteristics are taken into account. It is beyond the scope of this paper to provide details on this research.

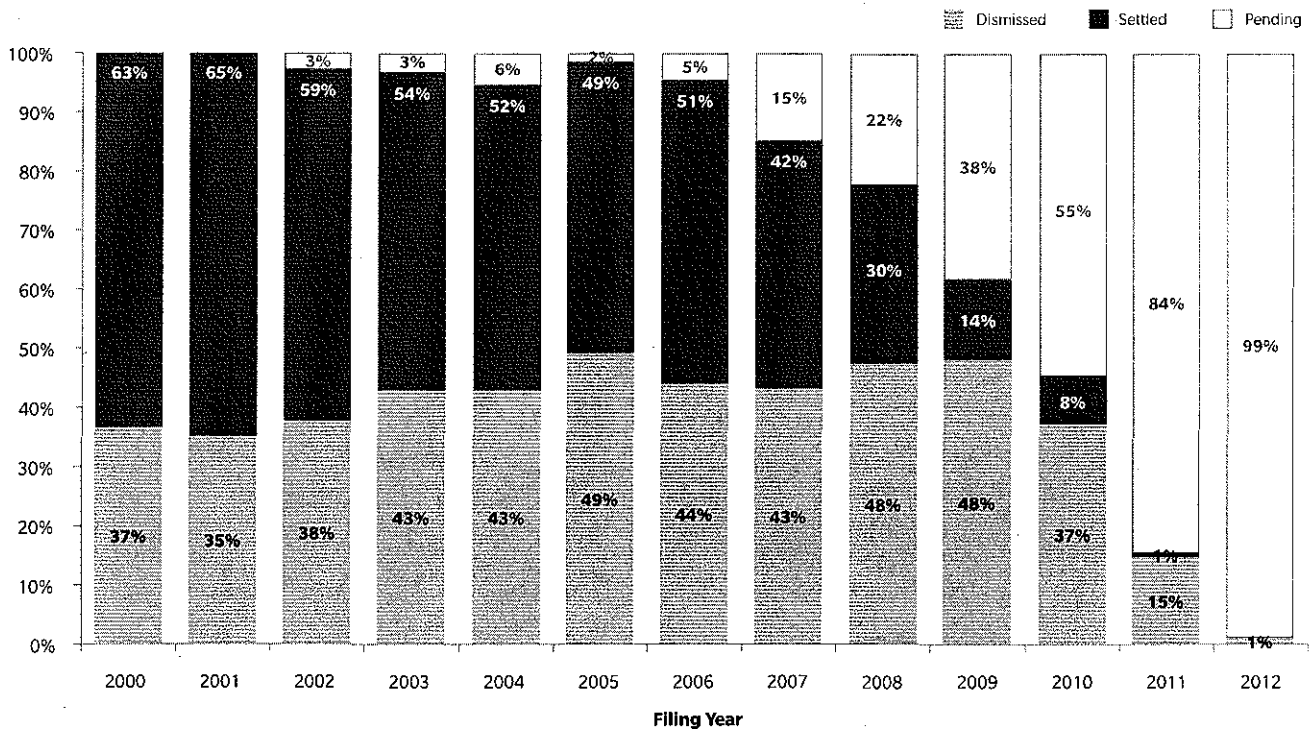
## Trends in Case Resolutions

The typical securities class action takes several years to reach a final resolution, and some take a decade or more. Only a small fraction of securities class actions go to trial (see below), while the large majority of them are settled or dismissed.<sup>16</sup>

To analyze resolutions, we focus on annual “cohorts” of cases filed in different years. The 2001 cohort is the most recent one for which all cases have been resolved. For that cohort, 35% of cases were ultimately dismissed and 65% ultimately settled. For the next five annual cohorts, spanning the years 2002-2006, more than 94% of cases have been resolved. Results for these more recent cohorts indicate that the dismissal rate may be increasing. Indeed, for each annual cohort from 2003 to 2006, the dismissal rate has been 43% or more. These figures will ultimately change somewhat, because some cases are not yet resolved and other cases that have been dismissed may see reversals on appeal or be filed again (for cases dismissed without prejudice). Nonetheless, the evidence so far suggests that these more recent annual cohorts will ultimately see a higher dismissal rate than had been seen in earlier years. See Figure 21.

A larger proportion of cases in the 2007-2012 cohorts await resolution. It is too early to know the exact dismissal rate for cases filed in these recent years. That said, the preliminary data, as shown in the chart, suggest a continuing higher dismissal rate.

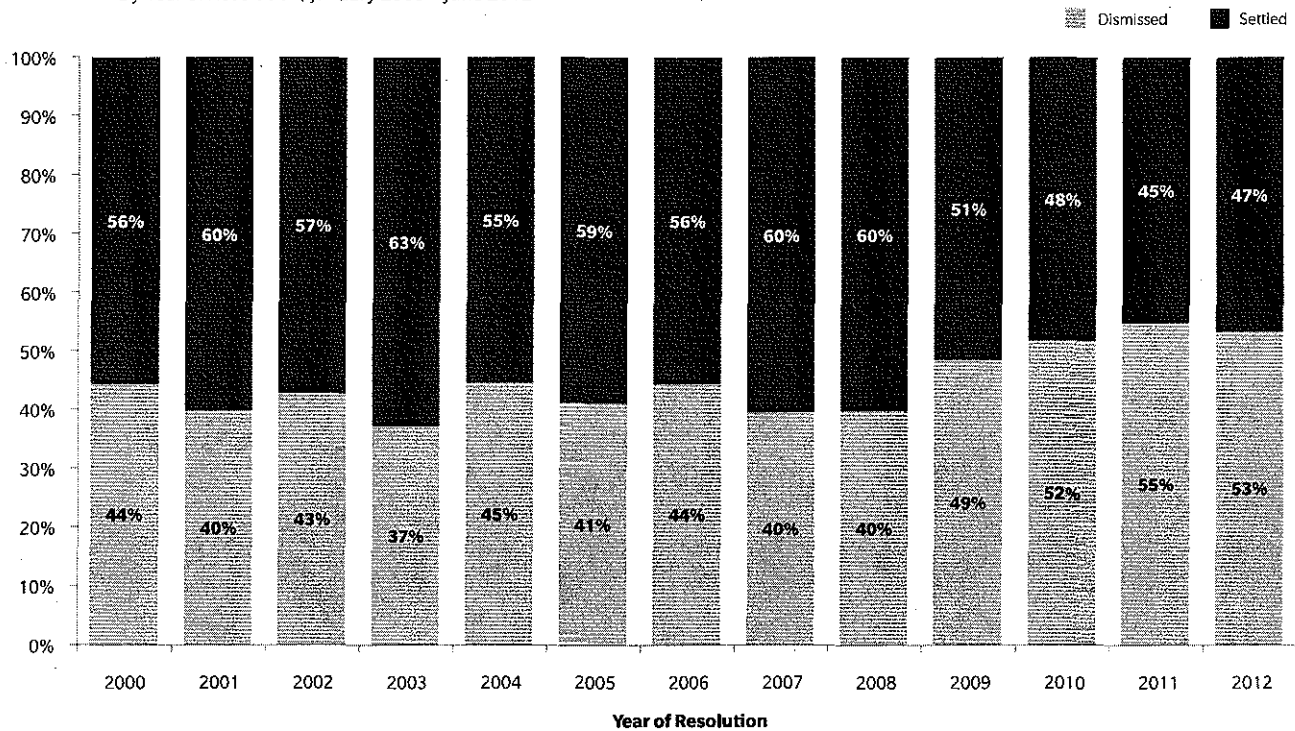
Figure 21. **Status of Cases as Percentage of Federal Filings**  
By Filing Year; January 2000 – June 2012



Note: Analysis excludes IPO laddering, merger objection cases, and verdicts. Dismissals may include dismissals without prejudice and dismissals under appeal.

An alternate way to look at dismissal rates is to examine the percentage of cases dismissed by year of resolution, rather than year of filing as above. Between 2000 and the first half of 2012, dismissed cases have been between 37% and 55% of the cases resolved. That percentage is 48%-55% in 2009-2012, subject to the same disclaimers about dismissals without prejudice and possible appeals. See Figure 22.

Figure 22. **Status of Cases as Percentage of Federal Filings**  
By Year of Resolution; January 2000 – June 2012



Note: Analysis excludes IPO laddering, merger objection cases, and verdicts. Dismissals may include dismissals without prejudice and dismissals under appeal.

The preceding discussion of case resolutions does not include the resolution of merger objection cases. Merger objection cases usually resolve quickly. Merger objections that are filed as federal securities class actions tend to be voluntarily dismissed relatively often because plaintiffs often elect to participate in the settlement of a parallel action filed in state court. Of the merger objection cases filed as federal securities class actions since the beginning of 2010, 6% settled, 34% were voluntarily dismissed because of the settlement in a parallel state action, 21% were dismissed, and 39% were pending as of June 30, 2012.

## Trends in Settlements

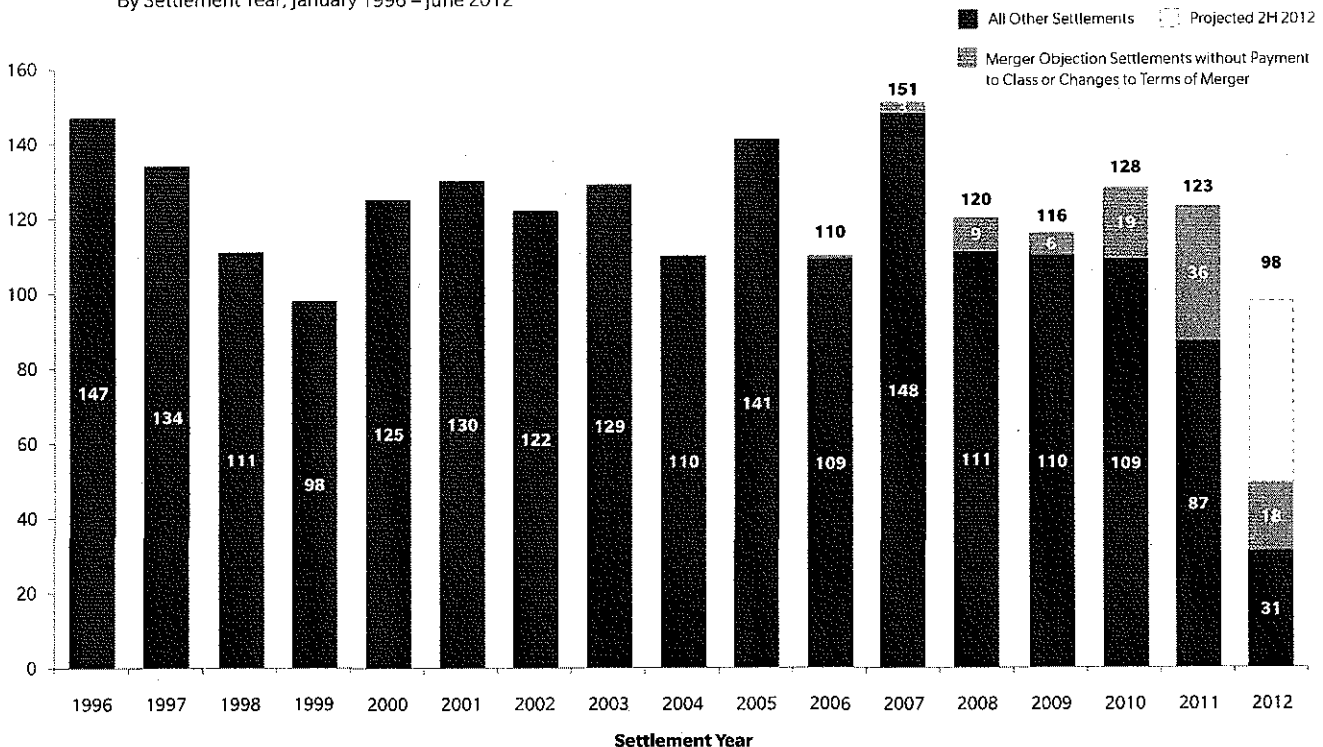
### Number of Settlements<sup>17</sup>

Settlements have been proceeding at an unusually slow pace so far this year. If the current pace continues for the whole year, settlement activity will be at its lowest level since 1999, with only 98 cases settled.

The overall number of settlements did not show a significant slowdown in 2011: there were 123 settlements in 2011, which is in line with the historical average. However, closer examination reveals that settlement activity had already started changing dramatically last year. A large portion of the 2011 settlements involved merger objection cases. Settlements are one more respect in which merger objection cases differ from other securities class actions. Merger objection cases have typically settled only for additional disclosures to investors and fees to plaintiffs' lawyers, with neither monetary compensation to investors nor changes to the terms of merger. Over 2010-2012, 89% of merger objection cases have fallen into this category. If we exclude such merger objection cases, the number of settlements in 2011 was the lowest since the passage of PSLRA in 1995.

In the first six months of 2012, only 31 settlements yielded monetary compensation to investors. If settlements were to continue at this pace for the rest of the year, then by the end of 2012 there would be even fewer such settlements than in 2011, setting a new post-PSLRA low record. See Figure 23.

Figure 23. **Number of Settlements**  
By Settlement Year; January 1996 – June 2012

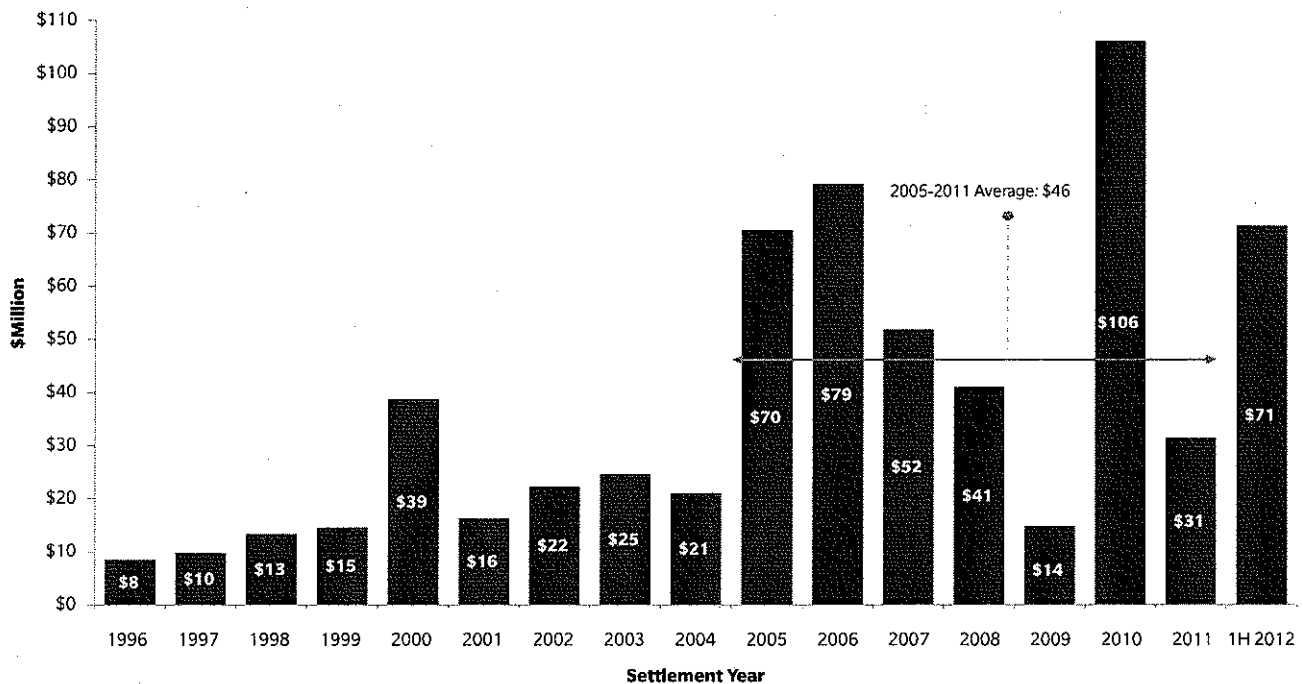


Note: Analysis excludes IPO laddering cases and settlements without details. Merger objection settlements with payment to class or changes to terms of the merger are included in other settlements.

### Settlement Amounts

The average value of a settlement in the first half of 2012 was \$71 million, a sharp rise from the average value of \$46 million over the period 2005-2011.<sup>18</sup> See Figure 24. However, a handful of the very largest settlements often influences the annual average settlement. For the first six months of 2012, the average settlement value has been substantially increased by the \$1.01 billion settlement in *In Re American International Group, Inc. Securities Litigation* ("AIG settlement"). The AIG settlement is composed of four tranches, three of which had been previously approved and the fourth of which was approved this year.

Figure 24. **Average Settlement Value**  
January 1996 – June 2012



Note: Settlements include 309 IPO ladder cases in 2009. Settlements exclude merger objection cases.

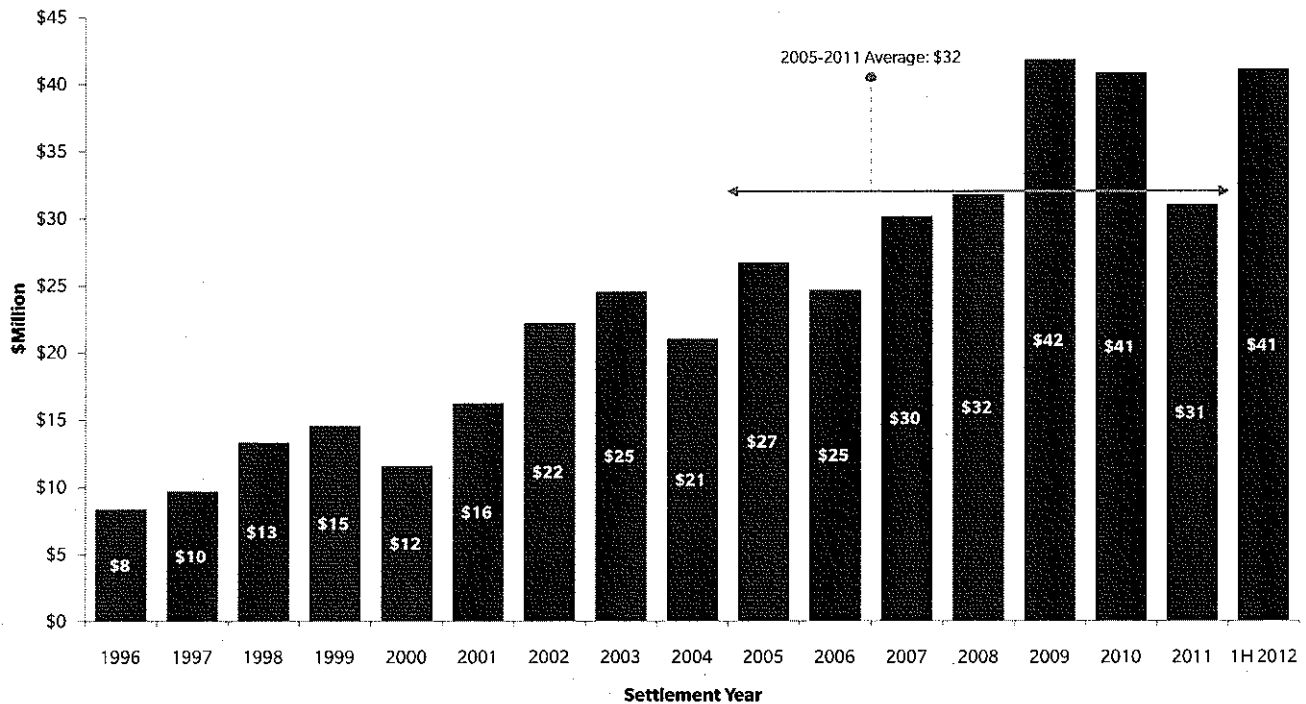


Figure 25 contains average settlements excluding those above \$1 billion and the IPO laddering cases. Under these restrictions (which exclude the AIG settlement), this year's average settlement amount is \$41 million, rebounding from last year's \$31 million to levels close to the record levels of 2009 and 2010.

Another way to look at the typical settlement value is to examine median settlements: medians are more robust to extreme observations than are averages.<sup>19</sup> The median settlement amount in the first six months of 2012 was \$7.9 million, approximately the same as in 2011 and consistent with pre-credit crisis levels. See Figure 26.

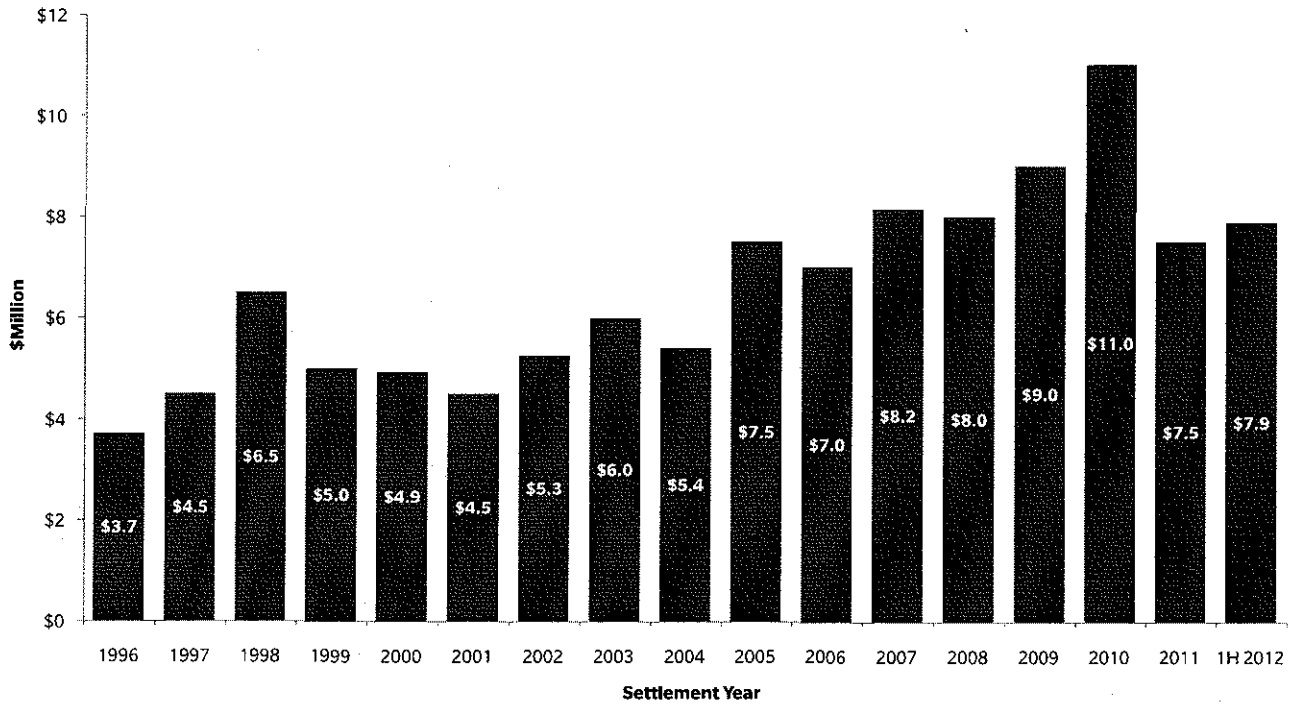
So far this year, there have been four "mega-settlements" over \$100 million—a record high 14% of all settlements. Most settlements, however, are much more modest than the mega-settlements that dominate the news. Of cases that settled in the first half of this year, 52% have settled for less than \$10 million. That percentage is in line with historical observations since at least 2005 (apart from 2010). See Figure 27.

Figure 25. **Average Settlement Value, Excluding Settlements over \$1 Billion**  
January 1996 – June 2012



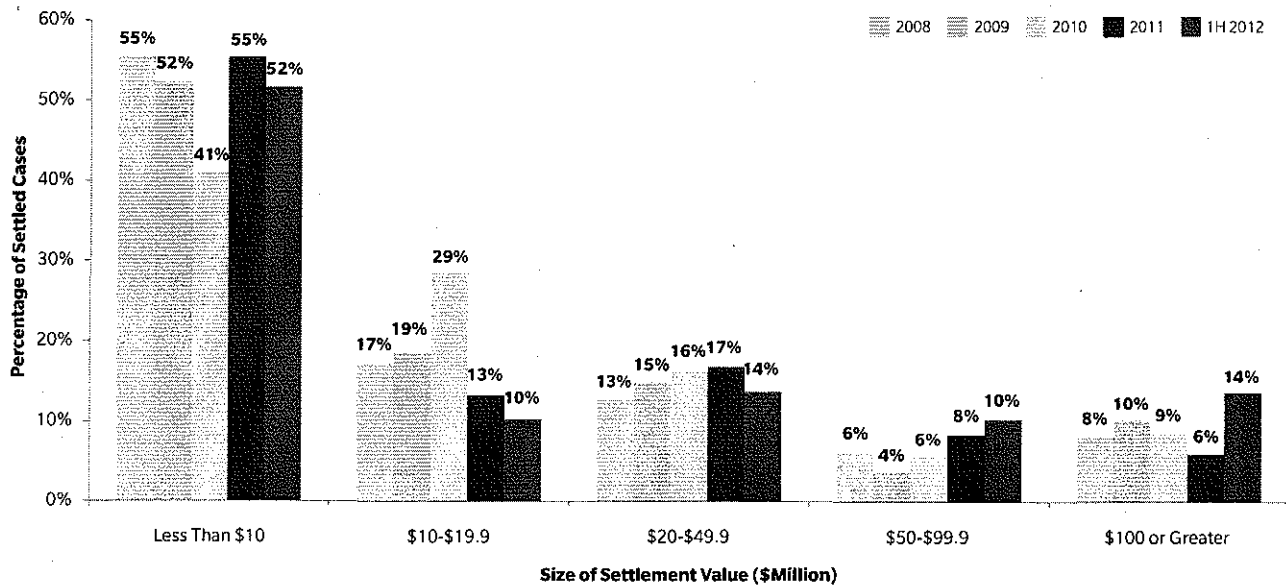
Note: Settlements exclude IPO laddering and merger objection cases. For list of excluded settlements over \$1 billion see Table 1.

Figure 26. **Median Settlement Value**  
January 1996 – June 2012



Note: Settlements exclude IPO laddering and merger objection cases.

Figure 27. **Distribution of Settlement Values**  
January 2008 – June 2012



Note: Settlements exclude IPO laddering and merger objection cases.

Table 1 presents the top 10 securities class action settlements of all time. The AIG settlement already appeared on our list last year, but reached final approval this year with the approval of the fourth tranche. The AIG settlement is one of only two settlements on the list after 2008; the other is Enron, which only completely settled in 2010, though both cases are based on much older events.

Table 1. **Top 10 Securities Class Action Settlements (As of June 30, 2012)**

Ranking	Company	Settlement Year	Total Settlement Year Value (\$MM)	Settlements with Co-Defendants, if Any, that Were			
				Financial Institutions		Accounting Firms	
				Value (\$MM)	Percent	Value (\$MM)	Percent
1	Enron Corp. <sup>1</sup>	2010	\$7,242	\$6,903	95%	\$73	1%
2	WorldCom, Inc. <sup>2</sup>	2005	\$6,158	\$6,004	98%	\$65	1%
3	Cendant Corp. <sup>3</sup>	2000	\$3,692	\$342	9%	\$467	13%
4	Tyco International, Ltd.	2007	\$3,200	\$0	0%	\$225	7%
5	AOL Time Warner Inc.	2006	\$2,650	\$0	0%	\$100	4%
6	Nortel Networks (I)	2006	\$1,143	\$0	0%	\$0	0%
7	Royal Ahold, NV	2006	\$1,100	\$0	0%	\$0	0%
8	Nortel Networks (II)	2006	\$1,074	\$0	0%	\$0	0%
9	McKesson HBOC Inc.	2008	\$1,043	\$10	1%	\$73	7%
10	American International Group, Inc.	2012	\$1,010	\$0	0%	\$98	10%
<b>Total</b>			<b>\$28,311</b>	<b>\$13,259</b>	<b>47%</b>	<b>\$1,099</b>	<b>4%</b>

Notes: For this summary table only, tentative and partial settlements are included for comparison, and "Settlement Year" in this table represents the year in which the last settlement—whether partial or final—had the first fairness hearing. For partial tentative settlements "Settlement Year" is the year in which this settlement was announced.

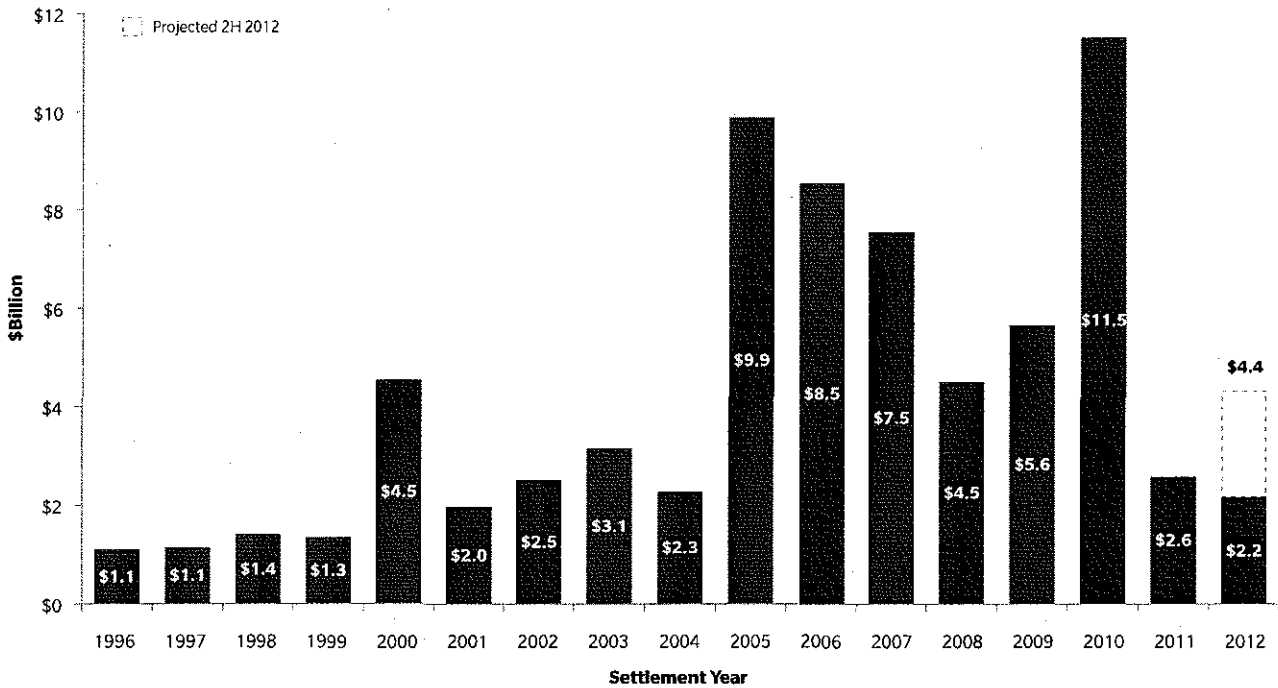
<sup>1</sup> The fairness hearing for the last tentative partial settlement, with Goldman Sachs, was held on February 4, 2010.

<sup>2</sup> The settlement value incorporates a \$1.6 million settlement in the MCI WorldCom TARGETS case.

<sup>3</sup> The settlement value incorporates a \$374 million settlement amount in the Cendant PRIDES I and PRIDES II cases. Settlement in the Cendant PRIDES I case was a non-cash settlement valued at \$341.5 million. The settlement value also incorporates 50% of December 29, 2007 separate settlement of claims of Cendant and certain former HFS officers against E&Y. Under the terms of the Cendant Settlement, the Class is entitled to 50% of Cendant's net recovery from E&Y. The additional recovery to the class is \$131,750,000.

The aggregate amount of settlements approved in the first six months of this year exceeds \$2 billion. See Figure 28. This amount includes just over \$1 billion for the AIG settlement. If settlements were to continue at the current pace for the rest of the year, aggregate settlements by year end would be substantially higher than last year. This result, though, is largely driven by the AIG settlement; if we exclude AIG and extrapolate only the other settlements to the end of the year, then by year end the aggregate settlements could be as low as last year. In large part, the low aggregate settlement value to date this year reflects the small number of settlements as documented at the beginning of this section.

Figure 28. **Aggregate Settlement Value**  
By Settlement Year; January 1996 – June 2012



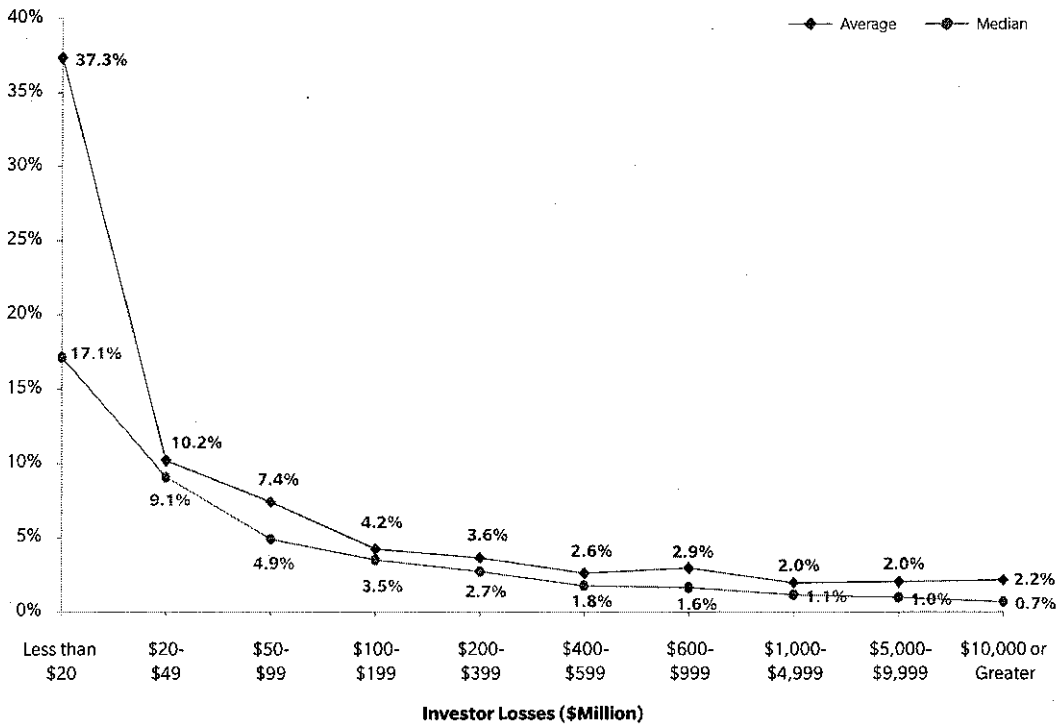
Note: Settlements exclude Merger Objection cases. Excluding the 2010 Enron settlement, aggregate settlement value for that year was \$4.3 billion.

### Investor Losses versus Settlements

Historically, “investor losses” have been a powerful predictor of settlement size. As noted above, NERA’s investor losses variable is a proxy for the aggregate amount that investors lost from buying the defendant’s stock rather than investing in the broader market during the alleged class period. Investor losses can explain more than half of the variance in the settlement values in our database.<sup>20</sup>

In general, settlement sizes grow as investor losses grow, but the relationship is not linear. In particular, settlement size tends to rise less than proportionately, so small cases typically settle for a higher fraction of investor losses (i.e., more cents on the dollar) than larger cases. For example, cases with investor losses below \$20 million on average settle for 37.3% of investor losses, while cases with investor losses over \$10 billion settle for an average of 2.2% percent of investor losses. See Figure 29.

Figure 29. **Settlement Value as a Percentage of Investor Losses**  
By Level of Investor Losses; January 1996 – June 2012

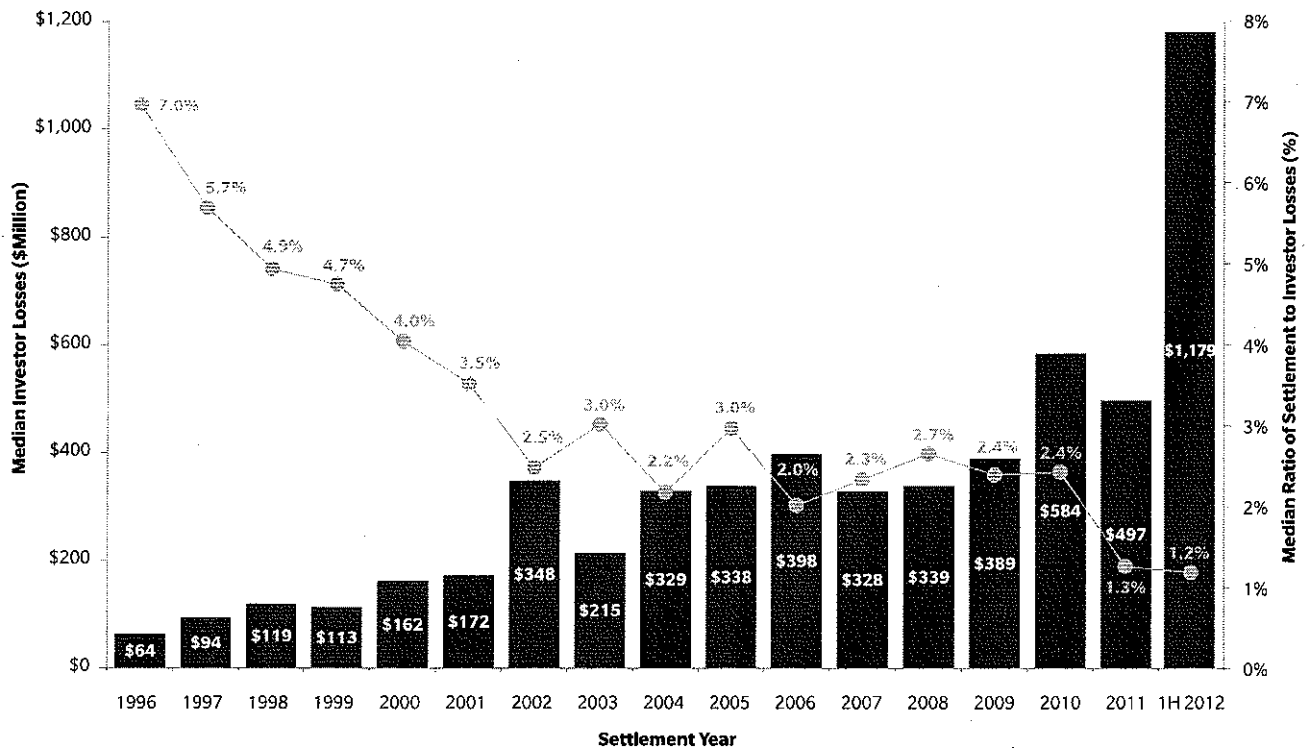


Note that the investor losses variable is not a measure of damages since *any* stock that underperforms the S&P 500 would have “investor losses” over the period of underperformance; rather it is a rough proxy for the relative size of investors’ potential claims. Thus, our findings on the ratio of settlement to investor losses should not be interpreted as the share of damages recovered in settlement but rather as the recovery compared to a rough measure of the “size” of the case.



Median investor losses for settled cases have been steadily increasing since the passage of the PSLRA, from \$64 million for settlements in 1996 to \$497 million in 2011. They appear to have skyrocketed in the first half of 2012, exceeding \$1 billion. However, this figure is based on a relatively small number of settlements and as such may not represent a trend that will continue for the rest of the year. The median ratio of settlement to investor losses has reached a new post-PSLRA low at 1.2%, but that is unsurprising given that investor losses are high and (as explained above) settlements typically grow less than proportionally to investor losses. See Figure 30.

Figure 30. **Median Investor Losses and Median Ratio of Settlement to Investor Losses**  
By Settlement Year; January 1996 – June 2012

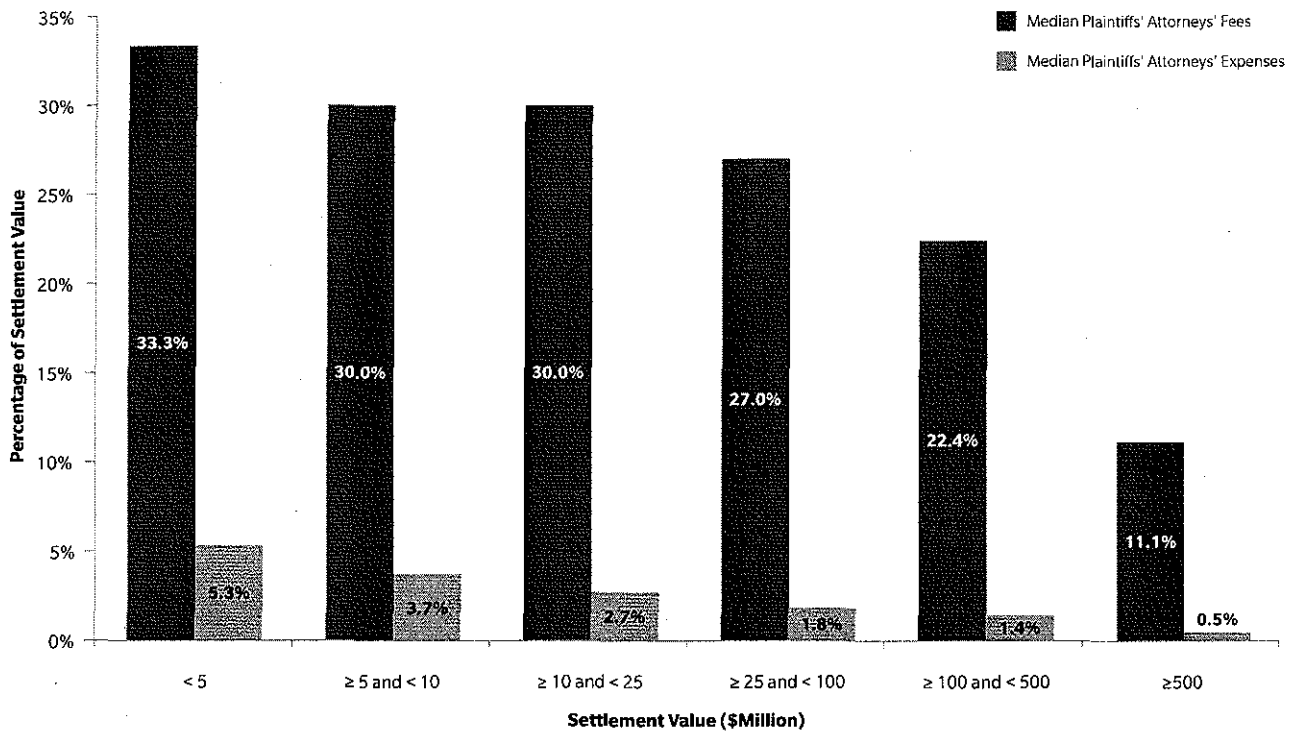


Note: Settlements exclude IPO laddering and merger objection cases.

### Plaintiffs' Attorneys' Fees and Expenses

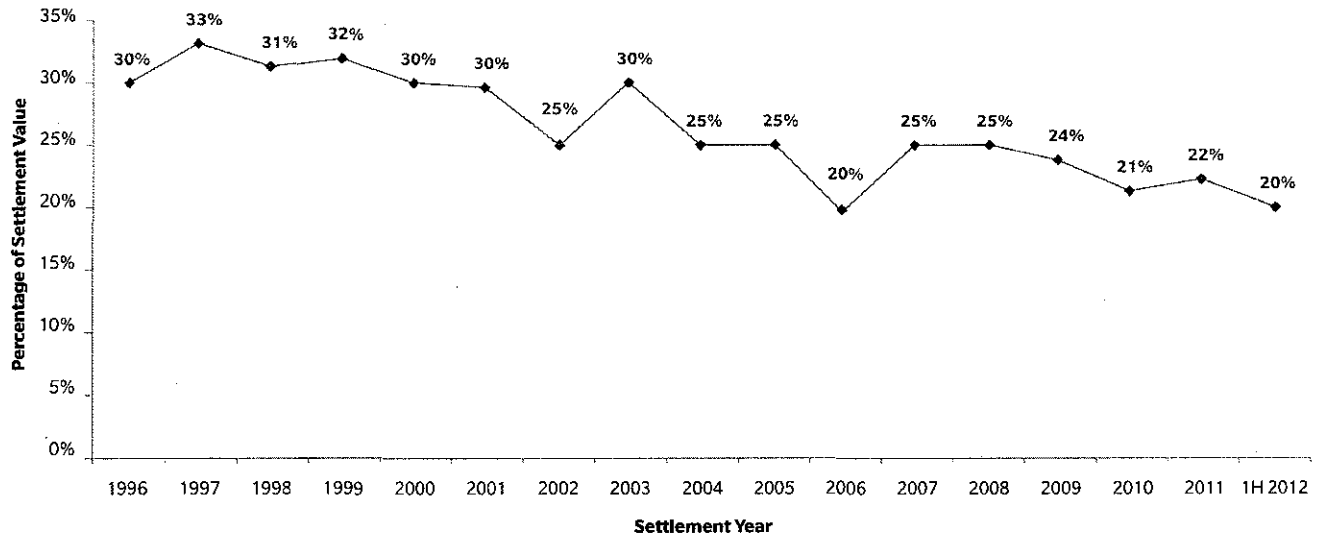
The settlement values that we report include plaintiffs' attorneys' fees and expenses in addition to the amounts ultimately paid to the class. In Figure 31, fees and expenses as a proportion of settlement value for settlements finalized from 1996 through June 2012, excluding merger objection cases, are shown. Typically, the proportion of a settlement taken by fees and expenses declines as the settlement size rises. For settlements below \$5 million, for example, median plaintiffs' attorneys' fees are 33% of the settlement amount; while for settlements of over \$500 million, median fees fall to 11%. Median plaintiff expense ratios fall over this settlement value range as well, as seen in Figure 31.

Figure 31. **Median Plaintiffs' Attorneys' Fees and Expenses, by Size of Settlement**  
January 1996 – June 2012



We have also analyzed trends in plaintiffs' attorneys' fees over time. Median fees for all settlements other than merger objections cases during the first half of this year have represented 20% of the settlement value—a small decrease since last year. See Figure 32. The general downward time trend in the fee percentage is explained, at least in part, by the fact that cases have been getting bigger over time, and that, as documented above, bigger cases typically have lower fee percentages.

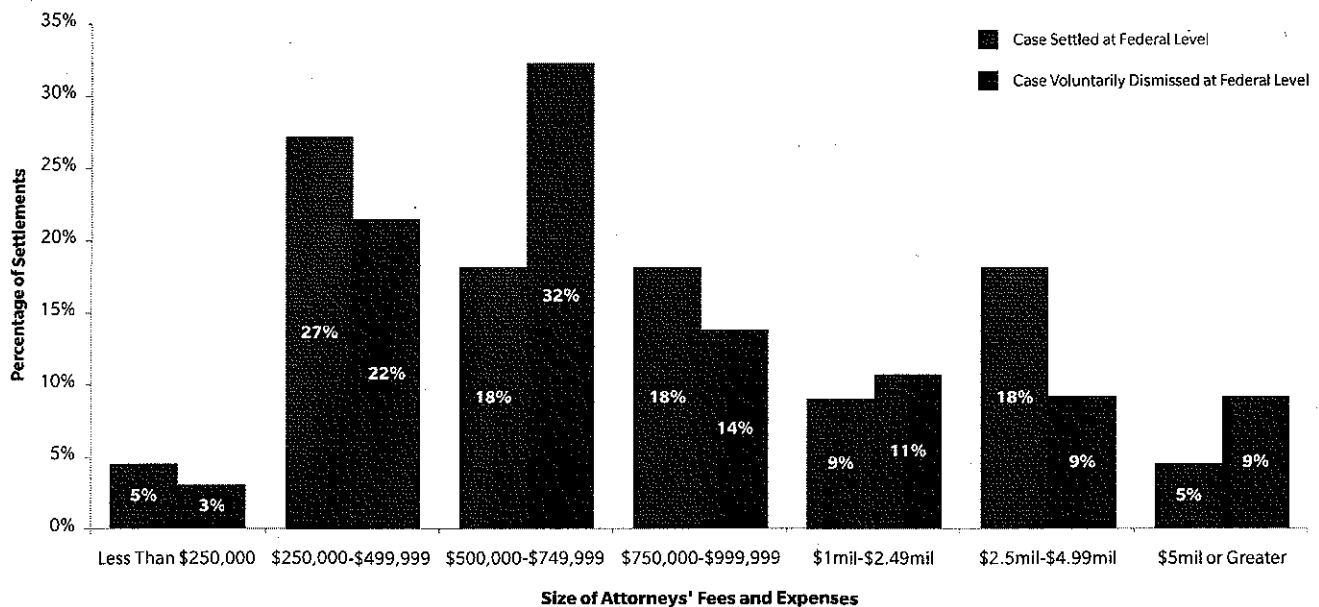
Figure 32. **Median Plaintiffs' Attorneys' Fees, by Year**  
For Settlement Values Greater Than or Equal to \$25M; January 1996 – June 2012



Note: Analysis excludes merger objection cases.

We report the fees for merger objection cases separately. For the merger objection cases that settled at the federal level since 2005 with no payment to investors, plaintiffs' attorneys' fees have been below \$1 million in 68% of the cases. See Figure 33. For the merger objection cases that were voluntarily dismissed because a parallel state action settled, plaintiffs' attorneys' fees in the parallel state action have been below \$1 million in 71% of the cases.

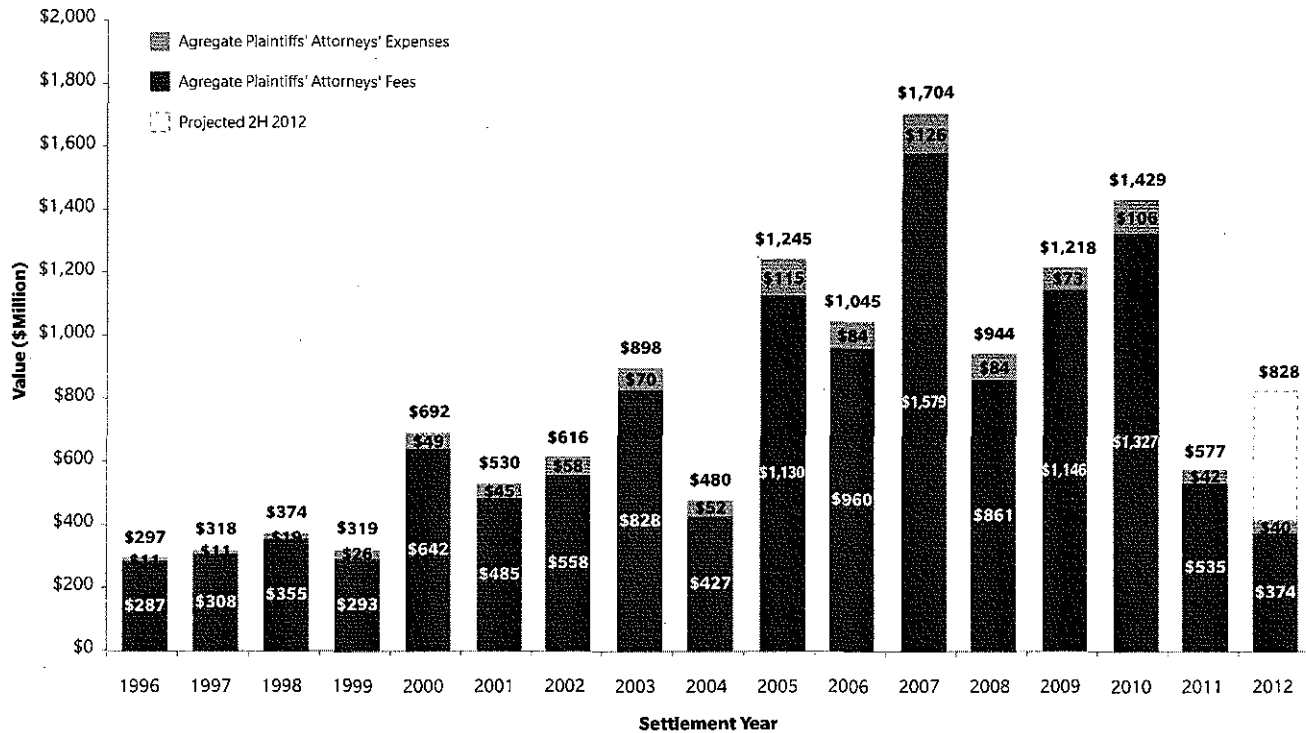
Figure 33. **Distribution of Plaintiffs' Attorneys' Fees and Expenses in Merger Objection Settlements**  
With No Payment to Investors; January 2005 – June 2012



Note: Cases filed and settled January 2005 - June 2012. For merger objections voluntarily dismissed at federal level, attorneys' fees and expenses refer to the settlement in the parallel state merger objection case, when such settlement exists.

Aggregate plaintiffs' attorneys' fees and expenses for all federal settlements have been \$414 million in the first six months of this year. See Figure 34. If fees and expenses were to continue at this pace, they would be noticeably higher than last year, but still the second lowest since 2004. Fees and expenses for the first six months of this year include \$143 million for the AIG settlement. If the AIG fees and expenses are excluded, and if the remainder were to continue at the same pace for the rest of the year, aggregate fees and expenses for 2012 would end up being similar to the aggregate level for 2011.

Figure 34. **Aggregate Plaintiffs' Attorneys' Fees and Expenses**  
January 1996 – June 2012



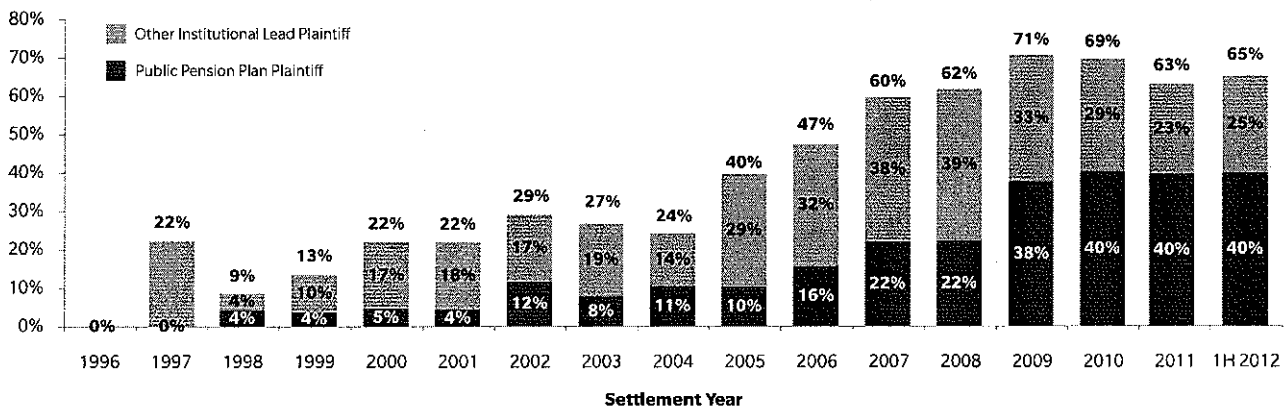
These fees are calculated for federal securities class actions only. As such, they do not include fees and expenses for merger objection cases filed in state court or as derivative actions, which may be lucrative for plaintiffs' law firms. One example is *In Re Southern Peru Copper*, a case in Delaware Chancery Court that yielded a well-publicized award of \$285 million to plaintiffs' attorneys.

### Characteristics of Settled Cases

One of the policy goals of the PSLRA was to increase the participation of institutions as lead plaintiffs in securities class actions, and in that respect it has been a success. The proportion of settled cases with an institutional lead plaintiff rose sharply between 1996 and 2010, as did the fraction of such settlements in which the institutional lead plaintiff was a public pension plan, *peaking* at 71% and 40%, respectively. The trend of increasing institutional participation appears to have leveled off in the last two or three years. The fraction of lead plaintiffs that are public pension plans has remained at or near 40% since 2009. During the first half of 2012, the total fraction of institutional lead plaintiffs has been 65%—a little below the 2009 and 2010 levels. See Figure 35.

NERA's research on factors explaining the amounts for which cases have settled historically finds that, on average, institutional lead plaintiff participation is associated with larger settlements.

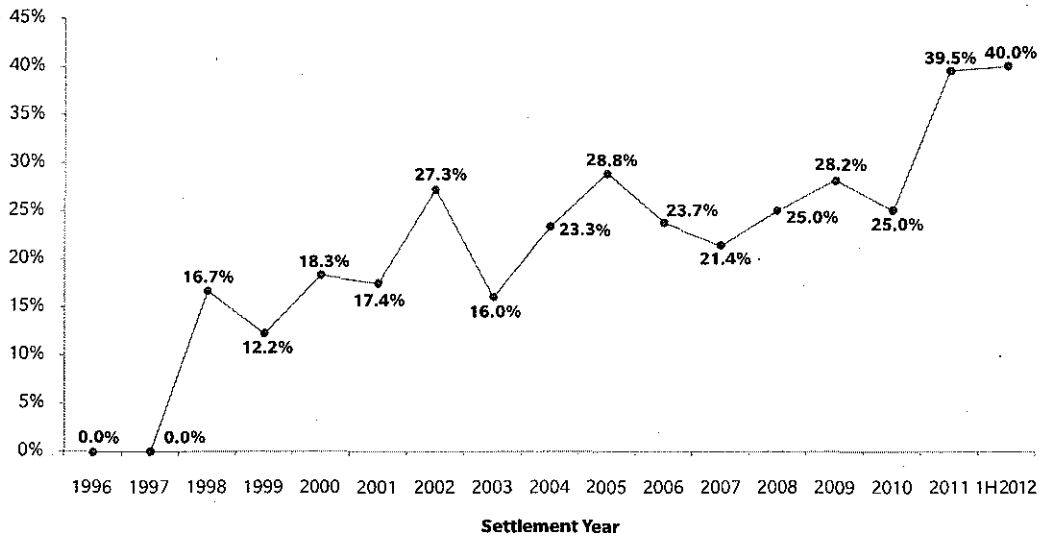
Figure 35. **Percentage of Settlements with an Institutional Lead Plaintiff**  
Cases Filed and Settled; January 1996 – June 2012



A “blow-up” provision typically permits a settlement to be invalidated if more than a certain proportion of the class opts out. These provisions have become an increasingly common feature of settlement agreements in recent years. In 2012, the proportion of settlements with such provisions increased to 40% of all settlements, continuing an upward trend. See Figure 36.

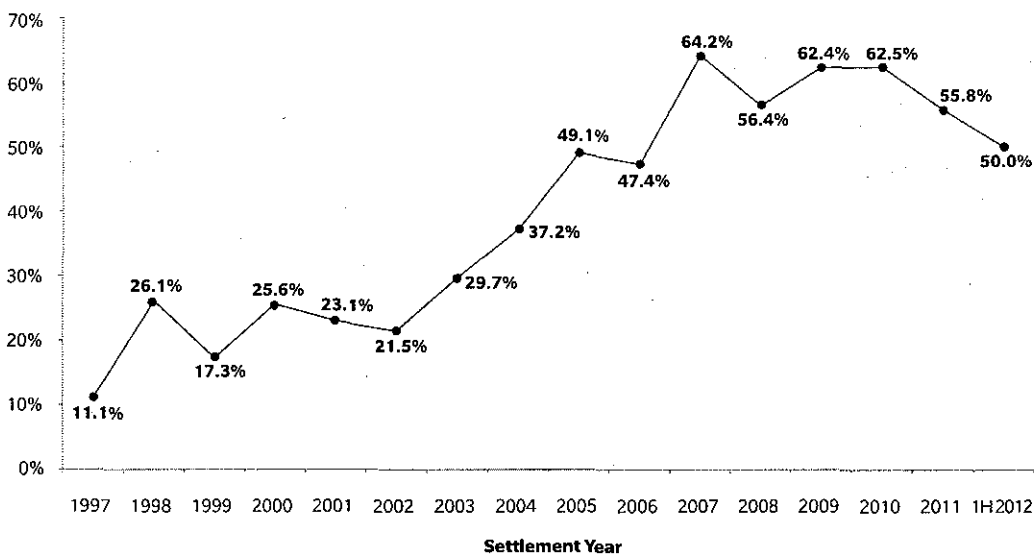


Figure 36. **Percentage of Settlements with a "Blow-Up" Provision  
(Settlements with Available Settlement Notice)**  
Cases Filed and Settled; January 1996 – June 2012



"Tag-along" derivative actions associated with securities class actions have been proliferating over the last ten years. Over the period 2007-2010, more than 60% of securities class actions had parallel derivative suits. This year and last, the trend toward such derivative actions appears to have reversed. In 2012, the proportion of cases with a parallel derivative action (among those that settled) has declined to 50%. See Figure 37.

Figure 37. **Percentage of Settled Cases with a Parallel Derivative Action**  
Cases Filed and Settled; January 1996 – June 2012



Note: We excluded cases filed and settled in 1996 because there was only one case and it had a derivative action.

## **Trials**

Few securities class actions proceed to trial, though those that do tend to attract a great deal of attention. Fewer still get all the way to a verdict. So it is not surprising that there have been no trials or verdicts so far in 2012 that we know of. Since the passage of the PSLRA in late 1995, there have been only 30 securities class action trials, as compared to a total of over 3,909 filings. Figure 38 summarized the status of cases that have gone to trial and Table 2 provides details.

Figure 38. **Status of 30 Securities Class Actions That Went to Trial After PSLRA**  
As of June 30, 2012

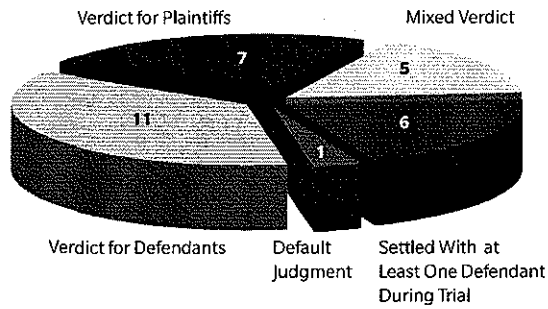


Table 2. **Thirty Securities Class Actions That Went to Trial after PSLRA**

Case (1)	Federal Circuit (2)	File Year (3)	Trial Year <sup>1</sup> (4)
<b>I. Verdict for Defendants (11)</b>			
1 American Mutual Funds (Fee Litigation) <sup>2</sup>	9	2004	2009
2 American Pacific Corp. <sup>3</sup>	9	1993	1997
3 BankAtlantic Bancorp, Inc. <sup>4</sup>	11	2007	2011
4 Biogen Inc.	1	1994	1998
5 Everex Systems Inc. <sup>5</sup>	9	1992	2002
6 Garment Capitol Associates	2	1996	2000
7 Health Management, Inc.	2	1996	1999
8 JDS Uniphase Corp.	9	2002	2007
9 NAI Technologies, Inc.	2	1994	1996
10 Thane International, Inc. <sup>6</sup>	9	2003	2009
11 Tricord Systems, Inc.	8	1994	1997
<b>II. Verdict for Plaintiffs (7)</b>			
1 Apollo Group, Inc. <sup>7</sup>	9	2004	2010
2 Claghorn / Scorpion Technologies, Inc.	9	1998	2002
3 Computer Associates International, Inc.	2	1991	2000
4 Helfonetics, Inc.	9	1994	2000
5 Homestore.com, Inc. <sup>8</sup>	9	2001	2011
6 Real Estate Associates, LP	9	1998	2002
7 U.S. Banknote Corp. <sup>9</sup>	2	1994	1997
<b>III. Mixed Verdict (5)</b>			
1 Clarent Corp. <sup>10</sup>	9	2001	2005
2 Digitran Systems, Inc. <sup>11</sup>	10	1993	1996
3 ICN Pharmaceuticals, Inc. <sup>12</sup>	2	1987	1996
4 Household International, Inc. <sup>13</sup>	7	2002	2009
5 Vivendi Universal, S.A. <sup>14</sup>	2	2002	2010
<b>IV. Settled During Trial<sup>15</sup> (6)</b>			
1 AT&T	3	2000	2004
2 First Union National Bank / First Union Securities / Cypres Funds	11	2000	2003
3 Globalstar Telecommunications, Ltd.	2	2001	2005
4 Heartland High-Yield / Short Duration High Yield Municipal Bond Funds	7	2000	2005
5 WorldCom	2	2002	2005
6 Safety-Kleen Corp. (Bondholders Litigation) <sup>16</sup>	4	2000	2005
<b>V. Default Judgment (1)</b>			
1 Equisure Inc. <sup>17</sup>	8	1997	1998

Notes: Until otherwise noted, all these cases went to a jury trial. Data are from case dockets. Cases within each group presented in alphabetical order.

**Table 2 Notes Continued:**

- <sup>1</sup> Trial Year shows the year in which the trial began or, when there are relevant post-trial developments (such as a ruling on an appeal or a re-trial), the most recent such development.
- <sup>2</sup> Judgment for defendants entered 12/28/09 after a 7/28/09-8/7/09 bench trial.
- <sup>3</sup> On 11/27/95 the US District Court granted in part the Company's motion for summary judgment ruling that the Company had not violated the federal securities laws in relation to disclosure concerning the Company's agreements with Thiokol. The remaining claims, which related to allegedly misleading or inadequate disclosures regarding Halotron, were the subject of a jury trial that began in December 1995 and ended on 1/17/96. The jury reached a unanimous verdict that neither the Company nor its directors and officers made misleading or inadequate statements regarding Halotron. Verdict was appealed, but on 6/5/97 affirmed by the 9th Circuit Court of Appeals.
- <sup>4</sup> On 11/18/10 the jury returned a verdict in the plaintiffs' favor, finding seven of the statements to have been false, and awarding damages of \$2.41 per share. On 4/25/11 the jury verdict was set aside by the court in a post-trial ruling. Judge opinion granted the defendants' motion for judgment as a matter of law and indicated that she will enter judgment in defendants' favor following remaining procedural issues.
- <sup>5</sup> 1998 verdict for defendants was reversed and remanded by the 9th Circuit Court of Appeals; 2002 retrial again yielded a verdict for defendants.
- <sup>6</sup> On 6/10/05 bench trial verdict dismissed the case. Thereafter, plaintiffs filed a notice of appeal from the trial verdict in favor of the defendants. On 11/26/07, the US Court of Appeals of the 9th Circuit issued an Opinion reversing and remanding the action back to District Court with instructions to enter judgment in favor of the plaintiffs, to address loss causation, and to conduct further proceedings consistent with this opinion. On 12/5/08 the defendants filed a Motion for Judgment On Loss Causation and a Motion for Judgment On Lack Of Control Person Liability And Good Faith Defenses. On 3/17/09, the Court granted the defendants' Motion for Judgment On Loss Causation but denied the Motion for judgment On Lack Of Control Person Liability And Good Faith Defenses. Final judgment on behalf of the defendants was entered on 3/25/09.
- <sup>7</sup> On 1/16/08 a federal jury found Apollo Group Inc. and certain former officers liable for securities fraud and ordered them to pay approximately \$280 million to shareholders. On 8/8/08 the District Court overturned the jury verdict; Federal Judge James A. Teilborg's order vacated the judgment and entered judgment in defendants' favor. Following the dismissal, a notice of appeal was filed on 8/29/08. On 6/23/10 the United States Court of Appeals for the 9th Circuit reversed the District Court's post-trial ruling and remanded the case with instructions that the District Court enter judgment in accordance with the jury's verdict.
- <sup>8</sup> On 1/25/11, a civil jury trial commenced against the sole remaining defendant in the case – Stuart H. Wolff, the company's former Chairman and CEO. On 2/24/11 a Central District of California rendered a verdict on behalf of plaintiffs. The jury found that the defendant, Stuart H. Wolff, had violated the federal securities laws in connection with a series of statements the company made in 2001. All other defendants had previously settled or been dismissed.
- <sup>9</sup> Judge subsequently vacated the jury verdict and approved a settlement.
- <sup>10</sup> Chairman of Clarent liable; Ernst & Young not liable.
- <sup>11</sup> A 9/30/96-10/24/96 jury trial resulted in a mixed verdict, with liability for Digitran Systems, Inc. and its former president, but not liable verdict for other individual defendants and the auditor, Grant Thornton.
- <sup>12</sup> Hung jury.
- <sup>13</sup> The jury found in favor of the defendants with respect to 23 of the alleged misstatements, but in favor of the plaintiffs with respect to 17 other statements.
- <sup>14</sup> The trial started 10/5/09. On 1/29/10 the jury returned a verdict against the company on all 57 of the plaintiffs' claims. However, the jury also found that the two individual defendants, (former CEO Jean-Marie Messier and former CFO Guillaume Hannezo) were not liable.
- <sup>15</sup> At least one defendant settled after the trial began, but prior to judgment.
- <sup>16</sup> Some director-defendants settled during the trial. Default judgment against CEO and CFO who failed to show up for trial.
- <sup>17</sup> Default judgment against Equisure Inc. which failed to show up for trial.

## Notes

- <sup>1</sup> This edition of NERA's research on recent trends in shareholder class action litigation expands on previous work by our colleagues Lucy Allen, Elaine Buckberg, Frederick C. Dunbar, Todd Foster, Vinita M. Juneja, Denise Neumann Martin, Jordan Milev, Robert Patton, Stephanie Planich, and David I. Tabak. We gratefully acknowledge their contribution to previous editions as well as this current version. The authors also thank Lucy Allen for helpful comments on this version. In addition, we thank Carlos Soto, Nicole Roman, and other researchers in NERA's Securities and Finance Practice for their valuable assistance with this paper. These individuals receive credit for improving this paper; all errors and omissions are ours. Data for this report are collected from multiple sources, including complaints, case dockets, RiskMetrics Group/Securities Class Action Services (SCAS), Dow Jones Factiva, Bloomberg Finance L.P., FactSet Research Systems, Inc., SEC filings, and the public press.
- <sup>2</sup> NERA tracks class actions filed in federal court and involving alleged violations of the federal securities laws. If multiple such actions are filed against the same defendant, are related to the same allegations, and are in the same circuit, we treat them as a single filing. However, multiple actions filed in different circuits are treated as separate filings. If cases filed in different circuits are consolidated, we revise our count to reflect that consolidation. Therefore, our count for a particular year may change over time. Different assumptions for consolidating filings would likely lead to counts that are directionally similar but may, in certain circumstances, lead observers to draw a different conclusion about short-term trends in filings.
- <sup>3</sup> This average excludes the IPO laddering cases.
- <sup>4</sup> We have classified cases as credit crisis-related based on the allegations in the complaint. The category includes cases with allegations related to subprime mortgages, mortgage-backed securities, and auction rate securities, as well as some other cases alleged to involve the credit crisis. Our categorization is intended to provide a useful picture of trends in litigation but is not based on detailed analysis of any particular case.
- <sup>5</sup> This figure refers to deals announced between 2010 and 2011 for \$100 million or more, completed by February 29, 2012, with a US public company as target, and challenged by December 31, 2011. Data from a proprietary NERA database.
- <sup>6</sup> The merger objection cases form the largest group of federal securities class actions not involving such alleged violations.
- <sup>7</sup> We do not compute investor losses for all cases included in this publication. For instance, class actions in which buyers of common stock are not alleged to have been damaged are not included.
- <sup>8</sup> Our normal approach to geographical classification is to use the country of domicile for the issuing company. Many of the defendant Chinese companies, however, obtained their US listing through a reverse merger and, consequently, report a US domicile. For this reason, we have also tracked companies with their principal executive offices in China.
- <sup>9</sup> Approximately 63% of the Chinese companies targeted by a securities class action in the period 2010-2012 were listed in the US through reverse mergers.
- <sup>10</sup> See, for example, Xueqing Linda Ji and Hunter Qiu, "Weighing Reverse Mergers for Private Chinese Cos.," *Law360*, June 25, 2012.
- <sup>11</sup> See, for example, Gwyn Quillen and Amy June, "Clarifying Accountants' Secondary Liability," *Law360*, August 8, 2011.
- <sup>12</sup> In earlier editions of NERA's "Recent Trends in Securities Class Action Litigation," we displayed this information differently. The percentage corresponding to each category is now computed as the number of complaints making an allegation in that category as a percentage of the total number of complaints filed; in earlier editions, it was computed as a percentage of the total number of allegations in any category. In other words, we have changed the denominator from total number of allegations to total number of cases. The change in methodology can lead to different results because complaints often make multiple allegations.
- <sup>13</sup> We have updated this analysis so that the fraction is computed only over cases alleging violation of Rule 10b-5.
- <sup>14</sup> Cases for which investor losses cannot be calculated are excluded. The largest excluded groups are the IPO laddering cases and the merger objection cases.
- <sup>15</sup> Thus, it is not that only 10% of cases are dismissed; it is that 10% of settled cases in which a motion to dismiss had been filed, had been dismissed at the time of settlement.
- <sup>16</sup> The dismissed category includes several outcomes: cases with granted motion to dismiss granted, denied motion for class certification, granted motion for summary judgment filed by defendant, and cases that were voluntarily dismissed. Motions to dismiss that are only partially granted are not included in the dismissed category.
- <sup>17</sup> Unless otherwise noted, tentative settlements (those yet to receive court approval) and partial settlements (those covering some but not all non-dismissed defendants) are not included in our settlement statistics. We define "Settlement Year" as the year of the first court hearing related to the fairness of the entire settlement or the last partial settlement.
- <sup>18</sup> Because merger objection cases typically settle for no monetary compensation to investors, we exclude all merger objection settlements from the analysis of settlement values.
- <sup>19</sup> The median settlement value for a year is the level that half of all settlements that year exceeded and half fell below.
- <sup>20</sup> Technically, the investor losses variable explains more than half of the variance in the logarithm of settlement size. Investor losses over the class period are measured relative to the S&P 500, using a proportional decay trading model to estimate the number of affected shares of common stock. We measure investor losses only if the proposed class period is at least two days. Our sample includes more than 1,000 post-PSLRA settlements.



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NERA's clients value our ability to apply and communicate state-of-the-art approaches clearly and convincingly, our commitment to deliver unbiased findings, and our reputation for quality and independence. Our clients rely on the integrity and skills of our unparalleled team of economists and other experts backed by the resources and reliability of one of the world's largest economic consultancies. With its main office in New York City, NERA serves clients from more than 20 offices across North America, Europe, and Asia Pacific.

## Contacts

For further information, please contact:

**Dr. Renzo Comolli**

Senior Consultant

+1 212 345 6025

[renzo.comolli@nera.com](mailto:renzo.comolli@nera.com)

**Dr. Ron Miller**

Vice President

+1 212 345 3141

[ronald.miller@nera.com](mailto:ronald.miller@nera.com)

**Dr. John Montgomery**

Senior Vice President

+1 212 345 5411

[john.montgomery@nera.com](mailto:john.montgomery@nera.com)

**Svetlana Starykh**

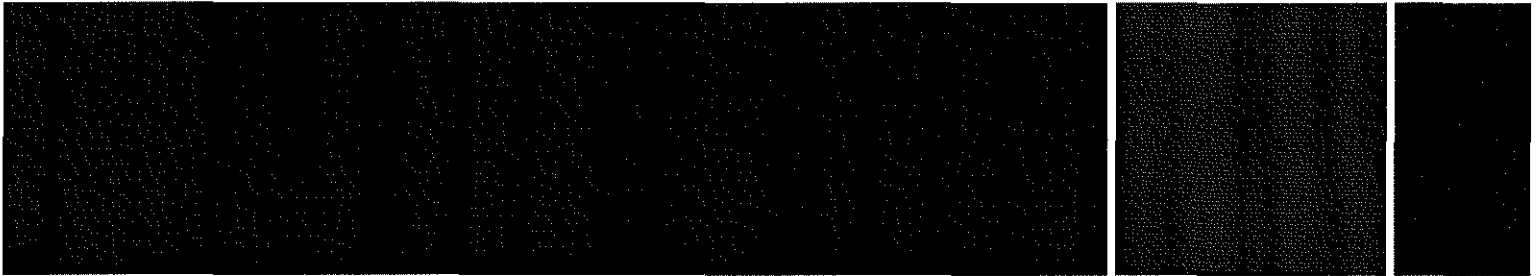
Senior Consultant

+1 212 345 8931

[svetlana.starykh@nera.com](mailto:svetlana.starykh@nera.com)

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