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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

INDUSTRIENS  
PENSIONSORSIKRING A/S,  
Individually and On Behalf of All  
Others Similarly Situated,

Plaintiff,

v.

BECTON, DICKINSON AND  
COMPANY and THOMAS E.  
POLEN,

Defendants.

Case No. 2:20-cv-02155-SRC-CLW

Hon. Stanley R. Chesler  
District Court Judge

Hon. Cathy L. Waldor  
Magistrate Judge

**DECLARATION OF JOSHUA E. D’ANCONA IN SUPPORT OF (I) CLASS  
REPRESENTATIVE’S MOTION FOR FINAL APPROVAL OF  
SETTLEMENT AND PLAN OF ALLOCATION; AND (II) CLASS  
COUNSEL’S MOTION FOR ATTORNEYS’ FEES  
AND LITIGATION EXPENSES**

**TABLE OF CONTENTS**

	<b><u>Page</u></b>
I. INTRODUCTION .....	3
II. BACKGROUND OF THE ACTION AND THE SETTLEMENT .....	8
A. Summary of the Class’s Claims .....	8
B. Commencement of the Action and Industriens’ Appointment as Lead Plaintiff.....	11
C. Lead Plaintiff’s Investigation and Filing of the Amended Class Action Complaint .....	12
D. Defendants’ Motion to Dismiss the Amended Complaint, Lead Plaintiff’s Ongoing Investigation, and Lead Plaintiff’s Filing of the Second Amended Class Action Complaint Based on Newly Learned Evidence .....	14
E. Defendants’ Motion to Dismiss the Second Amended Complaint .....	17
F. Lead Plaintiff’s Continuing Investigation and Filing of the Third Amended Class Action Complaint.....	21
G. Defendants’ Motion to Dismiss the Third Amended Complaint and Answer.....	23
H. Lead Plaintiff’s Filing of the Fourth Amended Complaint.....	26
I. The Parties’ Extensive Discovery Efforts .....	28
1. Rule 26(f) Report, Initial Disclosures, Confidentiality Order and ESI Protocol.....	29
2. Lead Plaintiff’s Discovery Propounded on Defendants .....	30
a. Lead Plaintiff’s Document Requests .....	30
b. Lead Plaintiff’s Interrogatories.....	31
3. Non-Party Discovery .....	32
4. Implementation of Review Protocol and Document Review .....	33
5. The Parties’ Discovery Disputes.....	35
6. Preparation for Fact Depositions .....	39

7.	Defendants’ Discovery Propounded on Lead Plaintiff.....	41
a.	Defendants’ Document Requests .....	41
b.	Defendants’ Interrogatories .....	42
c.	Deposition of Lead Plaintiff .....	42
J.	Lead Plaintiff’s Class Certification Motion .....	43
K.	Class Counsel’s Work with Experts.....	47
L.	Mediation and Preliminary Approval of the Settlement .....	48
III.	RISKS OF CONTINUED LITIGATION .....	50
A.	Risks of Establishing Falsity and Scienter at Trial .....	52
B.	Risks of Establishing Loss Causation and Damages at Trial.....	55
C.	Risks on Appeal.....	57
IV.	COMPLIANCE WITH COURT’S PRELIMINARY APPROVAL ORDER AND REACTION OF THE CLASS TO DATE .....	58
V.	PLAN OF ALLOCATION IS FAIR, REASONABLE, AND ADEQUATE.....	61
VI.	CLASS COUNSEL’S FEE AND EXPENSE APPLICATION .....	66
A.	Class Counsel’s Fee Request Is Fair and Reasonable and Warrants Approval .....	67
1.	The Favorable Settlement Achieved.....	67
2.	The Risks of Litigation and the Need to Ensure the Availability of Competent Counsel in High-Risk Contingent Cases.....	68
3.	The Time and Labor Devoted to the Action by Plaintiff’s Counsel.....	71
4.	The Quality of Plaintiff’s Counsel’s Representation.....	74
5.	Class Representative’s Endorsement of the Fee Application.....	75
B.	Class Counsel’s Request for Litigation Expenses Warrants Approval.....	75
1.	Class Counsel Seeks Reimbursement of Plaintiff’s Counsel’s Reasonable and Necessary Litigation Expenses from the Settlement Fund.....	75

2. Reimbursement to Class Representative Is Fair and Reasonable .....79

VII. CONCLUSION.....81

I, JOSHUA E. D'ANCONA, declare as follows pursuant to 28 U.S.C. § 1746:

1. I am a partner of the law firm of Kessler Topaz Meltzer & Check, LLP (“Kessler Topaz” or “Class Counsel”), counsel for Court-appointed Lead Plaintiff and Class Representative Industriens Pensionsforsikring A/S (“Lead Plaintiff,” “Class Representative” or “Industriens”) in this securities class action lawsuit (“Action”).<sup>1</sup> I have personal knowledge of the matters set forth herein based on my active supervision of and participation in the prosecution and resolution of the Action.

2. I respectfully submit this Declaration in support of Class Representative’s motion pursuant to Rule 23(e) of the Federal Rules of Civil Procedure (“Rules”) for final approval of the proposed settlement with defendants Becton, Dickinson and Company (“BD” or “Company”) and Thomas E. Polen (“Polen”) (together, “Defendants”) for \$85,000,000 in cash (“Settlement”). If approved, the Settlement will resolve all claims asserted in the Action against Defendants on behalf of the Court-certified Class, consisting of all persons and entities who, from November 5, 2019 to February 5, 2020, inclusive, purchased or otherwise acquired BD common stock or call options, or sold BD put options, and

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<sup>1</sup> Capitalized terms not defined in this Declaration have the meanings set forth in the Stipulation and Agreement of Settlement dated as of December 19, 2023 (ECF No. 182-2) (“Stipulation”).

were damaged thereby.<sup>2</sup> The Court preliminarily approved the Settlement and directed notice thereof to the Class by Order dated January 18, 2024 (ECF No. 186) (“Preliminary Approval Order”).

3. I also respectfully submit this Declaration in support of: (i) the proposed plan for allocating the net proceeds of the Settlement to eligible Class Members (“Plan of Allocation” or “Plan”); and (ii) Class Counsel’s motion, on behalf of Plaintiff’s Counsel,<sup>3</sup> for an award of attorneys’ fees in the amount of 25% of the Settlement Fund; payment of Plaintiff’s Counsel’s Litigation Expenses in the total amount of \$843,144.64; and, in accordance with the Private Securities Litigation Reform Act of 1995 (“PSLRA”), reimbursement of \$84,856.40 to Class Representative for the costs it incurred in connection with representing the Class (“Fee and Expense Application”).

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<sup>2</sup> Excluded from the Class are: (i) Defendants; (ii) present or former executive officers of BD or any of BD’s subsidiaries or affiliates, members of BD’s Board of Directors, and members of the immediate families of each of the foregoing (as defined in 17 C.F.R. § 229.404, Instructions (1)(a)(iii) and (1)(b)(ii)); (iii) any of the foregoing individuals’ and entities’ legal representatives, heirs, successors, or assigns; and (iv) any entity in which any Defendant has a controlling interest. Also excluded from the Class are any persons and entities who or which submit a request for exclusion from the Class that is accepted by the Court.

<sup>3</sup> “Plaintiff’s Counsel” refers collectively to Class Counsel Kessler Topaz and Court-appointed Liaison Counsel Carella Byrne Cecchi Brody & Agnello, P.C. (f/k/a Carella Byrne Cecchi Olstein Brody & Agnello, P.C.) (“Carella Byrne”).

4. For the reasons discussed below and in the accompanying briefs,<sup>4</sup> I, on behalf of Class Counsel, respectfully submit that: (i) the terms of the Settlement are fair, reasonable, and adequate in all respects and should be approved by the Court; (ii) the proposed Plan of Allocation is fair, reasonable, and adequate and should be approved by the Court; and (iii) the Fee and Expense Application is fair, reasonable, supported by the facts and the law, and should be granted in all respects. Moreover, the Settlement, Plan of Allocation, and Fee and Expense Application have the full support of Class Representative—a sophisticated, institutional investor that has actively supervised the Action since its inception. *See* Declaration of Jan Østergaard on behalf of Industriens (“Østergaard Decl.”), attached hereto as Exhibit 1.

## **I. INTRODUCTION**

5. Following nearly four years of hard-fought litigation and extensive arm’s-length negotiations facilitated by an experienced mediator, Class Representative and Class Counsel have succeeded in obtaining a recovery of \$85,000,000 in cash (“Settlement Amount”) for the benefit of the Class.<sup>5</sup> As

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<sup>4</sup> In conjunction with this Declaration, Class Representative and Class Counsel are submitting: (i) the Memorandum of Law in Support of Class Representative’s Motion for Final Approval of Settlement and Plan of Allocation (“Settlement Memorandum”) and (ii) the Memorandum of Law in Support of Class Counsel’s Motion for Attorneys’ Fees and Litigation Expenses (“Fee and Expense Memorandum”).

<sup>5</sup> Pursuant to the terms of the Stipulation, the Settlement Amount has been fully funded and is currently being held in the interest-bearing Escrow Account.

provided for in the Stipulation, in exchange for this consideration, the Settlement resolves all claims asserted in the Action (and related claims) by Class Representative and the Class against Defendants and the other Defendants' Releasees.<sup>6</sup>

6. Until a resolution was reached in October 2023, this Action was vigorously litigated by the Parties. At the time of settlement, Class Counsel had, among other things, conducted an extensive investigation into the claims at issue, including over 200 witness interviews; researched and prepared four detailed amended complaints; briefed three motions to dismiss, defeating the third in substantial part; overcome an opposition to a motion to amend; obtained certification of the Class; and engaged in comprehensive fact discovery—including the review and analysis of over two million pages of documents, depositions of two fact witnesses (while undertaking preparations to depose 20 more), and litigation of multiple discovery disputes before the Court. *See infra* § II. Further, the Settlement

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<sup>6</sup> As defined in Paragraph 1(s) of the Stipulation, Defendants' Releasees are "Defendants; Defendants' respective former, present, or future parent companies, controlling shareholders, subsidiaries, divisions and affiliates and the respective present and former employees, members, managers, partners, principals, officers, directors, controlling shareholders, agents, attorneys, advisors, accountants, auditors, and insurers and reinsurers of each of them; the predecessors, successors, estates, Immediate Family members, spouses, heirs, executors, trusts, trustees, administrators, agents, legal or personal representatives, assigns, and assignees of each of them, as well as any trust of which the Individual Defendant is the settlor or which is for the benefit of any of his Immediate Family members; and any firm, trust, corporation, or entity in which any Defendant has a controlling interest."



is the product of protracted arm's-length negotiations, including three formal mediation sessions (two in-person and one virtual) before a highly experienced and respected neutral, David M. Murphy, Esq. ("Mr. Murphy") of Phillips ADR Enterprises, P.C., who ultimately made a mediator's recommendation to resolve the Action for a cash payment of \$85 million that the Parties accepted. *See infra* ¶¶ 110-13.

7. In deciding to settle the Action, Class Representative and Class Counsel carefully considered the significant risks associated with advancing their case through the completion of fact discovery, expert discovery, summary judgment, trial, and the inevitable post-trial appeals. Moreover, an adverse decision for Class Representative at summary judgment or on appeal, or by a jury at trial, could have precluded *any* recovery for the Class. *See infra* § III.

8. Had the Settlement not been reached, Defendants would have continued to aggressively assert defenses to Class Representative's claims. Here, Class Representative alleged Defendants made statements during the Class Period (i.e., November 5, 2019 to February 5, 2020, inclusive) that misled investors regarding BD's revenue and growth prospects by failing to acknowledge severe safety and compliance issues with BD's Alaris Infusion Pump System ("Alaris") and ongoing scrutiny by the U.S. Food and Drug Administration ("FDA") that had led to a commercial "hold" on Alaris shipments. Had the Action continued, Defendants

would assert, as they did throughout the Action, that the statements at issue were not false at the time they were made, and that Defendants legitimately believed them to be true. For example, Defendants would argue that at the time of the alleged misstatements, the FDA had not formally taken any action that would require BD to stop shipping Alaris. Defendants would further argue that, consistent with their contemporaneous public statements, BD voluntarily imposed the ship hold on Alaris to install software updates. Defendants would also claim that they had no knowledge of the FDA's position that Alaris should not be shipped due to its safety defects until February 3, 2020, undermining any claims that their prior alleged statements during the Class Period were made with scienter.

9. In addition to the risks associated with establishing Defendants' liability, Class Representative faced substantial challenges in proving loss causation and the Class's full amount of damages had the Settlement not been reached. Defendants would likely assert, among other things, that: (i) BD's February 6, 2020 announcement regarding the FDA's position that Alaris could not be shipped until required device fixes were in place and a new pre-market clearance from the FDA (i.e., a 510(k)) had been obtained—and the effect on BD's FY20 Guidance from this loss of Alaris sales—did not reveal a hidden “truth” underlying any prior misstatement; (ii) Class Representative's proposed methodology for measuring class-wide damages was flawed because it could not reliably measure the damages

of options traders; and (iii) the Class Period should, at the very least, be shortened by weeks or even months based on evidence regarding falsity and scienter. Acceptance of any such arguments by the Court or a jury, in whole or in part, would have dramatically limited the potential recovery for the Class, or eliminated it altogether.

10. Class Counsel believes that the Settlement, particularly when viewed in the context of the risks and uncertainties of continued litigation, represents an excellent result for the Class. Notably, based on expert estimates employing various reasonable assumptions, the Settlement represents approximately 10-15% of maximum damages, providing a significant recovery for Class Members.

11. Class Counsel has worked with the Court-authorized Claims Administrator, JND Legal Administration (“JND”), to disseminate notice of the Settlement to the Class as directed in the Preliminary Approval Order. In this regard, JND has mailed 200,814 Postcard Notices and 4,131 Notice Packets (i.e., the long-form Notice and Claim Form) to potential Class Members and nominees.<sup>7</sup> Additionally, JND has posted the Notice and Claim Form, along with other documents relevant to the Settlement, on the Settlement website:

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<sup>7</sup> See Declaration of Luiggy Segura Regarding: (A) Dissemination of Postcard Notice and Notice Packet; (B) Publication of the Summary Notice; (C) Establishment of Call Center Services and Settlement Website; and (D) Report on Requests for Exclusion Received to Date (“Segura Decl.”), ¶ 10, attached as Exhibit 2 hereto.

[www.BectonSecuritiesSettlement.com](http://www.BectonSecuritiesSettlement.com), and has caused the Summary Notice to be published in *The Wall Street Journal* and transmitted over *PR Newswire*. Segura Decl., ¶¶ 11, 14.

12. The reaction of the Class thus far has been positive. As ordered by the Court and stated in the notices, requests for exclusion from the Class and objections are due to be received no later than April 1, 2024. To date, there have been no objections to the Settlement, Plan of Allocation, or Class Counsel’s request for attorneys’ fees and Litigation Expenses, including reimbursement of costs to Class Representative, and there have been no requests for exclusion from the Class.<sup>8</sup>

## **II. BACKGROUND OF THE ACTION AND THE SETTLEMENT**

### **A. Summary of the Class’s Claims**

13. The Class’s claims in the Action are fully set forth in the operative Fourth Amended Class Action Complaint dated June 22, 2023 (ECF No. 158) (“Complaint”). The Complaint asserts claims under: (i) Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”), and Rule 10b-5 promulgated thereunder by the U.S. Securities and Exchange Commission (“SEC”), against BD and Polen; (ii) Section 20(a) of the Exchange Act against Polen; and (iii) Sections 10(b) and 20A of the Exchange Act and Rule 10b-5 for insider trading against Polen.

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<sup>8</sup> See Segura Decl., ¶ 16. Should any requests for exclusion or objections be received after the date of this submission, Class Counsel will address them in its reply papers to be filed with the Court on or before April 15, 2024.

14. Class Representative claims that, during the Class Period, Defendants violated the federal securities laws by making numerous statements that were misleading due to their failure to acknowledge severe regulatory, safety and compliance issues concerning Alaris, a key revenue-generating product for BD. *See generally* ¶¶ 295-352.<sup>9</sup>

15. More specifically, the Complaint alleges that Defendants issued materially false or misleading statements concerning the nature of a ship hold on Alaris and the adverse reason underlying the decision to impose the ship hold. *See generally* ¶¶ 295-356. The Complaint alleges that when BD announced it, Defendants represented that the Alaris ship hold was being voluntarily enacted for a short period of time to complete routine upgrades. *See* ¶¶ 304-308, 341-44. The Complaint also alleges that BD misleadingly affirmed its ability to meet its fiscal year 2020 financial guidance despite the undisclosed regulatory risks involved in the ship hold. *See* ¶¶ 338-40.

16. As the Complaint claims, however, unbeknownst to investors, Alaris was plagued by significant defects that were the subject of ongoing regulatory scrutiny by the FDA (*see generally* ¶¶ 122-76), and the true impetus for the ship hold was the FDA's critical feedback regarding these defects, not routine upgrades as Defendants represented. *See* ¶¶ 132-45. Moreover, in order to remedy Alaris's issues

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<sup>9</sup> In this Section II.A, citations to "¶ \_\_" refer to paragraphs in the Complaint.

and lift the ship hold, the Complaint asserts that BD would need to satisfy the FDA's lengthy clearance process, severely curtailing BD's Alaris sales, and therefore, its ability to meet its fiscal year 2020 revenue guidance, all the while—again, contrary to what Defendants represented. *See* ¶¶ 146-76.

17. The Complaint asserts that the allegedly false or misleading misstatements made by Defendants artificially inflated and/or maintained the price of BD common stock and call options and artificially deflated and/or maintained the price of BD put options during the Class Period. ¶¶ 353-56. As a result, Class Members, including Class Representative, who purchased or otherwise acquired (or sold, in the case of put options) BD Securities<sup>10</sup> during the Class Period suffered damages when the inflation (or deflation) was removed from BD's stock price following the corrective disclosure that revealed the relevant truth concealed by those misrepresentations. *Id.*

18. Specifically, the Complaint claims that the artificial inflation (or deflation) in the price of BD common stock was removed on February 6, 2020 when BD disclosed that Alaris would be recalled and placed on an indefinite ship hold due to various software defects, that the FDA was requiring BD to obtain a new 510(k)

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<sup>10</sup> BD common stock and call and put options on BD common stock are collectively referred to herein as "BD Securities."

before resuming sales, and that BD would consequently be lowering its financial guidance for the 2020 fiscal year by \$400 million. ¶¶ 239-56.

19. The Complaint asserts that, in response to the foregoing disclosure, the price of BD common stock declined \$33.74 per share on February 6, 2020, thereby causing damage to Class Representative and the Class. ¶¶ 23, 253, 355. Additionally, the Complaint alleges that Polen executed sales of BD common stock during the Class Period while in possession of material nonpublic information, including concerning the true nature of and reason for the Alaris ship hold and BD's ability to meet its financial guidance for the 2020 fiscal year. ¶¶ 357-61.

**B. Commencement of the Action and Industriens' Appointment as Lead Plaintiff**

20. On February 27, 2020, the initial complaint was filed in the United States District Court for the District of New Jersey on behalf of a putative class of investors that purchased or otherwise acquired BD securities between November 5, 2019 and February 5, 2020, inclusive. ECF No. 1.<sup>11</sup> This complaint asserted claims under Sections 10(b) and 20(a) of the Exchange Act, and Rule 10-5 promulgated thereunder.

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<sup>11</sup> A related derivative complaint, *In re Becton, Dickinson & Co. Shareholder Derivative Litigation*, Master File No. 2:20-cv-15474, was separately filed on November 2, 2020. The claims asserted in the derivative action are not being released by the Settlement and have been specifically carved out of the "Released Plaintiff's Claims."

21. Also on February 27, 2020, notice was published advising putative class members of the pendency of the litigation and their right to move to serve as lead plaintiff in accordance with the PSLRA. ECF No. 6. On April 27, 2020, Industriens moved to be appointed as lead plaintiff in the Action and to have the Court approve its selection of Kessler Topaz as lead counsel and Carella Byrne as liaison counsel for the class (“Lead Plaintiff Motion”). ECF No. 10. Similar motions were filed by two competing movants. ECF Nos. 8, 9. One of the competing motions was subsequently withdrawn. ECF No. 14.

22. Following further submissions by Industriens and movant Michael Kim (“Movant Kim”) (ECF Nos. 15-18, 20-23), respectively, the Court, on June 9, 2020, issued an Opinion and Order appointing Industriens as Lead Plaintiff, approving Kessler Topaz and Carella Byrne as Lead Counsel and Liaison Counsel, respectively, and denying Movant Kim’s motion (“Lead Plaintiff Order”). ECF No. 24.<sup>12</sup>

**C. Lead Plaintiff’s Investigation and Filing of the Amended Class Action Complaint**

23. Prior to filing the Amended Class Action Complaint on August 10, 2020 (ECF No. 31) (“Amended Complaint”), and before Industriens’ appointment

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<sup>12</sup> On October 2, 2020, Movant Kim filed a motion for reconsideration of the Lead Plaintiff Order. ECF No. 32. Industriens submitted a 14-page memorandum of law in opposition on October 19, 2020. ECF No. 38. Following oral argument, the Court denied the motion for reconsideration of the Lead Plaintiff Order. ECF No. 47.



as Lead Plaintiff, Lead Counsel began an exhaustive investigation into the facts underlying the Action. Lead Counsel completed a detailed review and analysis of: (i) BD's public filings with the SEC, including filings concerning common stock transactions by executives; (ii) press releases and public statements issued by BD, including during earnings calls and conference calls with analysts and investors; (iii) research reports and advisories by securities and financial analysts; (iv) publicly available news articles, press releases, documents and other online and media reports regarding defendants; and (v) data and other information concerning BD Securities.

24. Additionally, Lead Counsel dedicated substantial time and resources to locating, interviewing, and memorializing interviews with former BD employees. In total, Lead Counsel, through its in-house investigators, contacted or attempted to contact 454 former BD employees and conducted 227 witness interviews. Ultimately, Lead Counsel incorporated information provided from four such witnesses into the Amended Complaint filed on August 10, 2020.

25. As part of its investigation, Lead Counsel also consulted with an expert in the field of damages to assist in developing the claims that would ultimately be asserted against the named defendants.

26. Moreover, Lead Counsel conducted extensive legal research before filing the Amended Complaint to understand exactly which theories of liability Industriens could allege and how to allege them given the current state of the law.

For instance, Lead Counsel comprehensively researched the law in the Third Circuit related to the standards for pleading securities fraud under Section 10(b) and insider trading claims under Section 20A.

27. Based upon Lead Counsel's thorough investigation and research, Industriens filed the 86-page Amended Complaint on August 10, 2020 against BD, Polen, Vincent A. Forlenza ("Forlenza"), and Christopher R. Reidy ("Reidy") for alleged violations of Sections 10(b), 20(a) and 20A of the Exchange Act and Rule 10b-5 promulgated thereunder. ECF No. 31.

**D. Defendants' Motion to Dismiss the Amended Complaint, Lead Plaintiff's Ongoing Investigation, and Lead Plaintiff's Filing of the Second Amended Class Action Complaint Based on Newly Learned Evidence**

28. Following this filing, Lead Counsel continued to vigorously investigate Lead Plaintiff's claims against the named defendants, including by developing and pursuing additional witness leads, and reviewing and analyzing publicly available information.

29. Meanwhile, on October 9, 2020, the named defendants moved to dismiss the Amended Complaint pursuant to Rule 12(b)(6). ECF No. 36. Their motion was accompanied by a 46-page memorandum of law, an appendix summarizing Lead Plaintiff's claims and defendants' arguments, and 14 supporting exhibits.

30. The motion challenged nearly every element of Lead Plaintiff's claims. Specifically, the defendants argued that the Amended Complaint should be dismissed in its entirety because it: (i) failed to adequately plead any material misstatements or omissions; (ii) failed to plead a strong inference of scienter; (iii) failed to plead loss causation; (iv) failed to allege a Section 20(a) claim; and (v) failed to adequately plead a Section 20A claim. ECF No. 36-1.

31. Lead Counsel reviewed and analyzed the defendants' briefing, accompanying exhibits, and cited legal authority, and conducted extensive legal research into Lead Plaintiff's potential responses thereto. On November 23, 2020, Lead Plaintiff filed a 45-page opposition to the defendants' motion to dismiss. ECF No. 54. In its opposition, Lead Plaintiff rebutted the defendants' arguments, cited extensive legal authority supporting its contentions, distinguished key authorities cited in the motion, and argued that the Amended Complaint adequately pleaded all elements of Lead Plaintiff's claims, including falsity, scienter, and loss causation. *Id.* Alongside its opposition brief, Lead Plaintiff moved to strike the appendix attached to the defendants' motion to dismiss. ECF No. 55. Lead Plaintiff argued in its 17-page supporting memorandum of law that the Court should strike the appendix as it contained new arguments not contained within the defendants' brief and impermissibly expanded the page limit mandated by the Court's Local Rules.

32. After filing Lead Plaintiff's opposition, Lead Counsel discovered in its ongoing investigation new, directly relevant evidence through confidential witness interviews. Lead Counsel determined that this new evidence would substantially strengthen the operative allegations in the Amended Complaint, including regarding the individual defendants' scienter, and met and conferred with the defendants regarding a motion to file an amended pleading to reflect these newly unearthed facts.

33. On January 14, 2021, Lead Plaintiff filed a motion for leave to amend the Amended Complaint. ECF No. 60. Lead Plaintiff's motion attached the 98-page Second Amended Class Action Complaint ("Second Amended Complaint"), which included information from the continued investigation, as an exhibit. ECF No. 60-2. On February 1, 2021, the defendants stipulated that they would not oppose Lead Plaintiff's motion and consented to the filing of the Second Amended Complaint. ECF Nos. 61, 62.

34. The Second Amended Complaint alleged Section 10(b) claims against the named defendants, asserting that they made materially false or misleading statements and omissions concerning, among other topics: (i) BD's need to obtain regulatory approval from the FDA for intended changes to Alaris, and the nature of the intended changes; (ii) the adequacy of BD's risk disclosures; (iii) the purportedly voluntary ship hold of Alaris; and (iv) BD's ability to meet its fiscal year 2020

financial guidance. The Second Amended Complaint additionally alleged Section 20(a) control person claims against individual defendants Polen, Forlenza and Reidy as well as Section 20A insider trading claims against Polen and Forlenza based on their sales of BD common stock while in possession of material non-public information. Lead Plaintiff also pled loss causation based on the alleged February 6, 2020 corrective disclosure, identifying the stock price decline and relevant, contemporaneous analyst and market commentary reacting to the disclosure. In pleading its claims, Lead Plaintiff included first-hand reports from five former BD employees located and interviewed during the course of Lead Counsel's investigation.

**E. Defendants' Motion to Dismiss the Second Amended Complaint**

35. On March 19, 2021, the defendants filed a motion to dismiss the Second Amended Complaint pursuant to Rule 12(b)(6), accompanied by a 50-page supporting memorandum of law, 14 exhibits, and an appendix summarizing Lead Plaintiff's allegations and the defendants' arguments. ECF No. 69.

36. In the motion, the defendants again argued that Lead Plaintiff's claims should be dismissed on the grounds that the Second Amended Complaint failed to adequately plead claims under Sections 10(b), 20(a), and Section 20A. More specifically, the defendants argued that the Second Amended Complaint failed to adequately allege a material misstatement or omission because: (i) the defendants

disclosed or had no duty to disclose the allegedly omitted facts; (ii) the defendants' statements were forward-looking statements protected by the PSLRA; (iii) the defendants' statements were accurate and complete when made; and (iv) the defendants' statements were puffery or corporate optimism. The defendants also argued that the confidential witness and other factual allegations did not support an inference of scienter, nor sufficiently plead motive to commit fraud, and that nonculpable inferences were more compelling than an inference of scienter. The defendants additionally argued that the Second Amended Complaint failed to plead loss causation. Finally, the defendants argued that because Lead Plaintiff failed to plead a primary violation of Section 10(b), the claims asserted under Sections 20(a) and 20A must be dismissed.

37. Lead Counsel once again reviewed and analyzed the defendants' briefing and accompanying exhibits, and the legal authority cited therein. Lead Counsel also conducted extensive legal research into the defendants' arguments and developed new responses thereto. On May 3, 2021, Lead Plaintiff filed its 50-page opposition to the motion to dismiss, citing extensive legal authority to support its contentions, rebut the defendants' arguments, and argue that the Second Amended Complaint adequately pleaded each element of its Sections 10(b), 20(a), and 20A claims. ECF No. 75. Specifically, Lead Plaintiff argued that: (i) the defendants' alleged misstatements were materially misleading and omitted adverse material facts

about BD's regulatory compliance and sales outlook given the true, undisclosed adverse facts regarding the ship hold on Alaris; (ii) the alleged misstatements were not forward-looking, were not accompanied by cautionary language, and lacked a reasonable basis when made, and thus were not protected by the PSLRA safe harbor; (iii) the former BD employee allegations paired with other facts underlying the claims, including regarding the individual defendants' motive, supported a strong inference of scienter; and (iv) loss causation was adequately pled. Lead Plaintiff further argued that its Sections 20(a) and 20A claims were sufficiently alleged because the Second Amended Complaint contained adequate allegations that the defendants were in possession of material non-public information at the time of the alleged insider sales.

38. In addition to its opposition, Lead Plaintiff simultaneously moved to strike the appendix attached to the defendants' motion to dismiss. ECF No. 76. Following thorough research on the issue, Lead Plaintiff argued in its 15-page supporting memorandum of law that the appendix was an impermissible argument beyond the allotted page limit of the memorandum and should be stricken.

39. On June 2, 2021, the defendants filed a 25-page reply in further support of their motion to dismiss. ECF No. 80. On the same day, the defendants filed a 15-page opposition to Lead Plaintiff's motion to strike, arguing that the appendix did

not contain additional legal argument, but was merely a summary of Lead Plaintiff's claims and the defendants' responses. ECF No. 79.

40. On July 1, 2021, after completing further legal research to support its position and distinguish the defendants' cited authorities, Lead Plaintiff filed a reply in further support of its motion to strike. ECF No. 82.

41. On July 8, 2021, the Court denied Lead Plaintiff's motion to strike, but granted Lead Plaintiff permission to file, within ten days, a 15-page sur-reply to the defendants' reply in support of their motion to dismiss. ECF No. 84.

42. Lead Plaintiff completed additional legal research regarding the arguments contained in the defendants' reply and, on July 19, 2021, in accordance with the Court's Order, submitted a sur-reply, arguing responsive points. ECF No. 85.

43. Following this extensive briefing, on September 15, 2021, the Court issued an Order and Opinion granting the defendants' motion to dismiss the Second Amended Complaint without prejudice. ECF Nos. 87, 88. The Court held that Lead Plaintiff did not adequately allege that the defendants had an obligation to disclose the FDA's true role in driving the ship hold or potential adverse FDA action. The Court explained that "[a]bsent a demonstration that the FDA had in some manner or other made clear that it would require a new 510(k) [premarket clearance] application for Alaris products, and that BD would be required to stop marketing



Alaris until that application was successfully resolved, the mere possibility of administrative action is not enough to require disclosure.” ECF No. 87 at 22. The Court also held that the Second Amended Complaint’s allegations were not sufficient to support an inference of scienter, including with respect to Polen’s and Forlenza’s alleged insider trades. And, because the Court dismissed Lead Plaintiff’s Section 10(b) claims, it also dismissed its Sections 20(a) and 20A claims. The Court granted Lead Plaintiff leave to amend the Second Amended Complaint within 45 days of the Order.

**F. Lead Plaintiff’s Continuing Investigation and Filing of the Third Amended Class Action Complaint**

44. Following the dismissal of the Second Amended Complaint, Lead Counsel reviewed the analysis by the Court in its September 15, 2021 Opinion and the authorities cited therein. Lead Counsel conducted extensive further legal research and ramped up its investigation once more with a focus on addressing the issues highlighted by the Court’s Opinion.

45. During its investigation, Lead Counsel reviewed additional, recently published information, such as BD’s SEC filings, transcripts of conference calls, contemporaneous reports by analysts, and news articles. Lead Counsel simultaneously pursued additional witness leads and conducted several additional interviews with former BD employees, including a former senior quality executive of the Company who provided significant evidence to bolster Lead Plaintiff’s

allegations of falsity and scienter against the individual defendants. As a result of these additional interviews, Lead Counsel was able to ultimately incorporate information provided from eleven former BD employees in the Third Amended Class Action Complaint (“Third Amended Complaint”).

46. Lead Plaintiff filed the 114-page Third Amended Complaint on October 29, 2021. ECF No. 91. The Third Amended Complaint asserted claims against the previously-named defendants under Sections 10(b), 20(a) and 20A of the Exchange Act and alleged that the defendants made materially false or misleading statements and omissions concerning the nature of and impetus for the Alaris ship hold, the adequacy of BD’s risk disclosures, BD’s voluntary recall of Alaris announced in February 2020, and BD’s ability to meet its fiscal year 2020 financial guidance. Further, in order to address shortcomings raised by the Court in its September 15, 2020 Opinion, the Third Amended Complaint provided additional detail regarding the FDA’s role as “the impetus” for the Alaris ship hold BD disclosed in November 2019, and new allegations bearing directly upon the individual defendants’ scienter, including the account of a former senior executive at BD detailing their personal knowledge of the FDA’s interactions with BD regarding Alaris prior to issuing the alleged misstatements. The Third Amended Complaint additionally alleged Section 20(a) control person claims against defendants Polen, Forlenza and Reidy as well as Section 20A insider trading claims

against Polen and Forlenza based on their alleged sales of BD common stock while in possession of material non-public information.

**G. Defendants' Motion to Dismiss the Third Amended Complaint and Answer**

47. On December 16, 2021, the named defendants filed a 55-page motion to dismiss the Third Amended Complaint, accompanied by 13 exhibits and an appendix listing the alleged false or misleading statements and omissions and the defendants' responses thereto. ECF No. 99. They urged the Court to dismiss the Third Amended Complaint in its entirety, as it had dismissed the prior complaint. Specifically, the defendants argued pursuant to Rule 12(b)(6) that the Third Amended Complaint did not sufficiently plead a material misstatement or omission because, *inter alia*: (i) BD disclosed or had no duty to disclose the alleged omitted facts concerning Alaris's defects and the FDA's role in precipitating the ship hold; (ii) BD's statements regarding its fiscal year 2020 financial guidance were forward-looking statements covered by the PSLRA safe harbor; (iii) the alleged statements were complete and accurate when made; and (iv) the alleged statements were immaterial statements of opinion or puffery. Regarding scienter, the defendants argued that the former employee accounts and other alleged facts, including concerning the stock sales of Polen and Forlenza, were insufficient to support an inference of scienter. The defendants additionally argued that the Third Amended Complaint failed to plead loss causation.

48. Lead Counsel thoroughly reviewed and analyzed this new briefing and accompanying exhibits. In preparing a response, Lead Counsel researched the authority cited within the defendants' memorandum of law, formed new responses to each of the defendants' arguments, distinguished the authorities cited by the defendants, emphasized that the deficiencies of the prior complaint identified by the Court were now addressed, and substantiated arguments that each element of the Sections 10(b), 20(a) and 20A claims were met with ample legal and factual support. Specifically, in its 55-page opposition filed on February 4, 2022, Lead Plaintiff argued that: (i) the defendants' alleged misstatements and risk disclosures were materially misleading and omitted adverse material facts about the precipitating cause and ongoing risks of the ship hold; (ii) the accounts of the former BD employees cited in the Third Amended Complaint were consistent, detailed and reliable; (iii) the alleged misstatements were not forward-looking, were not accompanied by effective cautionary language, and lacked a reasonable basis when made, and thus were not protected by the PSLRA safe harbor; (iv) the variety of allegations of the individual defendants' knowledge paired with the individual defendants' motive supported a strong inference of scienter; and (v) loss causation was adequately pled. ECF No. 102. Lead Plaintiff also argued that it sufficiently alleged claims pursuant to Sections 20(a) and 20A. *Id.*

49. On March 4, 2022, the defendants filed a 25-page reply in support of their motion to dismiss, arguing that BD disclosed all material information, that the allegations of the former employees cited by Lead Plaintiff were not reliable, and that the Third Amended Complaint did not adequately plead scienter. ECF No. 103.

50. On August 11, 2022, the Court issued an Opinion denying in part and granting in part the defendants' motion to dismiss the Third Amended Complaint ("MTD Opinion"). ECF No. 106. The MTD Opinion rejected numerous arguments made in the motion and ultimately sustained alleged misstatements related to the nature of and impetus for the Alaris ship hold and statements related to the fiscal year 2020 financial guidance.

51. Regarding falsity, the Court found that, "[t]he TAC, bolstered over its predecessor by allegations derived by new and knowledgeable confidential witnesses, adequately pleads that Defendants were obligated to disclose the material, adverse reason why the ship hold had been implemented." *Id.* at 21. The Court also held that, "[i]n light of the FDA's unambiguous feedback at the Fall 2019 Meeting, the FY20 Guidance and subsequent forward-looking statements—which relied on durable Alaris sales in FY20—was unmoored from the Company's immediate reality." *Id.* at 30.

52. Regarding scienter, the Court held that Lead Plaintiff satisfied its burden with respect to Defendants Polen and BD by pleading facts sufficient to

support a strong inference of scienter. *Id.* at 32-40. However, the Court held that Lead Plaintiff did not adequately plead scienter with respect to Forlenza and Reidy and dismissed the Section 10(b) claims against them. *Id.* at 40-41.

53. The Court also held that Lead Plaintiff sufficiently pleaded loss causation based on the February 6, 2020 corrective disclosure. *Id.* at 41-42.

54. The Court further held that because Lead Plaintiff sufficiently alleged a Section 10(b) claim against Defendant Polen, it would sustain Lead Plaintiff's Section 20(a) control-person liability claims against him, as well. *Id.* at 42.

55. Finally, the Court sustained Lead Plaintiff's insider trading claim under Section 20A against Polen, finding that Lead Plaintiff sufficiently alleged a violation under Section 10(b) and sufficiently alleged that "Polen was in possession of material, nonpublic information when he sold 13,907 shares of BD common stock[.]" *Id.* at 43.

56. Defendants answered the Third Amended Complaint on October 3, 2022. ECF No. 116. Thereafter, discovery efforts commenced. *See* § II.I below.

#### **H. Lead Plaintiff's Filing of the Fourth Amended Complaint**

57. As previewed during the Lead Plaintiff reconsideration hearing (*see* ECF No. 92), Lead Counsel conducted extensive factual and legal research into the potential inclusion of options traders in the class. After thorough consideration and conferring with Defendants, Lead Plaintiff moved for leave to amend the Third

Amended Complaint on December 22, 2022 for the limited purpose of including options traders in the class. ECF No. 123. Along with its motion, Lead Plaintiff submitted an 8-page memorandum of law and the proposed Fourth Amended Complaint, which included the proposed allegations needed to add options traders to the class.

58. On January 10, 2023, Defendants filed an opposition, arguing that: (i) the proposed Fourth Amended Complaint did not remove allegations previously dismissed by the Court's MTD Opinion; (ii) Lead Plaintiff unjustifiably delayed seeking to include options traders in the class; and (iii) the proposed amendment would be futile as Lead Plaintiff did not have standing to bring claims on behalf of options traders and in any event their claims were time-barred. ECF No. 127.

59. On January 24, 2023, Lead Plaintiff submitted a 7-page reply in further support of its motion for leave to amend the Third Amended Complaint. ECF No. 132. In its reply, Lead Plaintiff argued that: (i) it did not seek to re-allege claims that were previously dismissed by the Court's MTD Opinion in the Fourth Amended Complaint; (ii) there was no undue delay in seeking to include options traders in the class as Lead Plaintiff had indicated it may do so at the Lead Plaintiff hearing (citing ECF No. 92), notified Defendants eight weeks in advance of its intentions to amend the Third Amended Complaint, and moved to amend as soon as practicable; and (iii) the amendment was not futile because precedent supported Lead Plaintiff's standing

to represent options traders and their claims were not time-barred as they related back to the filing of the earlier complaints.

60. On June 15, 2023, the Court held a hearing regarding Lead Plaintiff's motion for leave to amend. ECF No. 160. During the hearing, the Court issued a ruling granting Lead Plaintiff's motion. ECF Nos. 157, 160.

61. Thereafter, on June 22, 2023, Lead Plaintiff filed the Fourth Amended Complaint, which included in the putative class purchasers of BD call options and sellers of BD put options who were damaged during the Class Period. ECF No. 158.

62. On September 15, 2023, Defendants filed their Answer to the Fourth Amended Complaint. ECF No. 175.

### **I. The Parties' Extensive Discovery Efforts**

63. Promptly after the Court issued its MTD Opinion, Lead Plaintiff undertook aggressive discovery efforts. Lead Plaintiff's efforts in pursuing discovery in this Action resulted in the production of over two million pages of highly technical information from Defendants and various third parties. Discovery was contentious, involving disputes which required multiple rounds of meet and confers between the Parties and, at times, Court intervention.

64. Lead Counsel pursued discovery using a wide variety of tools, including requests for production of documents, subpoenas for documents and



depositions, interrogatories, depositions of fact witnesses, and depositions of expert witnesses in connection with class certification.

65. As set forth in further detail below, Lead Counsel closely reviewed and analyzed approximately 455,000 documents (over two million pages) produced by Defendants and third parties to prepare for fact depositions, class certification, potential summary judgment and trial issues, and mediation. These extensive efforts provided Lead Plaintiff with a thorough understanding of the strengths and weaknesses of its claims and assisted Lead Counsel in engaging in a fruitful mediation process with Defendants and evaluating the fairness of the Settlement.

**1. Rule 26(f) Report, Initial Disclosures, Confidentiality Order and ESI Protocol**

66. Following the Court's issuance of its MTD Opinion on August 11, 2022, the Parties met and conferred pursuant to Rule 26(f). During these discussions, the Parties agreed on a pre-trial schedule, including deadlines for amending the pleadings as well as completing discovery, class certification briefing, expert discovery, and summary judgment briefing. The Parties also agreed to a deposition limit of 20 fact witnesses. On October 4, 2022, Magistrate Judge Cathy L. Waldor entered the Parties' proposed scheduling order. ECF No. 118.

67. The Parties simultaneously engaged in negotiations regarding a protective order to govern confidentiality ("Protective Order") and an order to govern the production of electronically stored information ("ESI Protocol"). The

Parties exchanged multiple rounds of edits to each draft document and met and conferred to resolve their disputes on particular terms. On November 1, 2022, Lead Plaintiff filed a proposed stipulated Protective Order and a proposed stipulated ESI Protocol. ECF No. 119. The Court approved the Protective Order and ESI Protocol on November 2, 2022. ECF Nos. 120, 121.

68. During this same time, the Parties exchanged initial disclosures pursuant to Rule 26(a)(1) on October 17, 2022. Lead Plaintiff immediately reviewed and evaluated Defendants' initial disclosures and raised a deficiency by letter dated October 18, 2022. In response, Defendants amended their initial disclosures on October 25, 2022.

## **2. Lead Plaintiff's Discovery Propounded on Defendants**

### **a. Lead Plaintiff's Document Requests**

69. On September 27, 2022, Lead Plaintiff served its First Set of Requests for the Production of Documents ("RFPs") on Defendants, which included 33 unique requests. Defendants served their responses and objections to Lead Plaintiff's RFPs on November 14, 2022.

70. The Parties conferred extensively to come to an agreement on the scope of discovery and the parameters of Defendants' document collection and production. After multiple telephonic conferences, emails and letters outlining their respective positions, the Parties successfully reached agreement on matters such as the relevant

time period governing Lead Plaintiff's RFPs, the 32 document custodians whose files Defendants would search, and the comprehensive set of search terms Defendants would use to search for electronically stored information. These negotiations were based on, among other things, Defendants' initial disclosures, organizational charts produced by Defendants, information conveyed during the Parties' telephonic meet and confers, data related to the burden of production, and independent research conducted by Lead Counsel.

71. Following these lengthy negotiations, Defendants produced over 1.95 million pages of documents in response to Lead Plaintiff's RFPs.

**b. Lead Plaintiff's Interrogatories**

72. Lead Plaintiff also served two sets of interrogatories on Defendants. On October 28, 2022, Lead Plaintiff served its first set of interrogatories ("First Interrogatories"). The First Interrogatories sought information concerning: BD's meetings with the FDA, the consultants BD engaged in connection with Alaris-related matters, and the Amended Consent Decree with the FDA to which Alaris manufacturing and sales were subject. On December 23, 2022, Defendants served written and verified responses and objections to the First Interrogatories. Lead Counsel carefully reviewed each of Defendants' responses and objections. Thereafter, the Parties exchanged correspondence regarding certain disputes arising over Defendants' responses and objections, and met and conferred regarding these

disputes on numerous occasions. On January 13, 2023, Defendants served supplemental responses and objections to Lead Plaintiff's interrogatories concerning BD's meetings with the FDA. On March 3, 2023, Defendants served their second supplemental responses and objections to provide a more fulsome response. At one point during the Parties' negotiations, Lead Plaintiff brought a dispute regarding the First Interrogatories to the Court for resolution, as described below in § II.I.5.

73. On August 21, 2023, Lead Plaintiff served its second set of interrogatories ("Second Interrogatories") on Defendants. These 18 interrogatories sought information concerning topics such as: the SEC's investigation of BD, Polen's securities transactions, Defendants' bases for the alleged false or misleading statements regarding the ship hold and BD's financial guidance, and the affirmative defenses Defendants asserted in their Answer to the Fourth Amended Complaint. On October 5, 2023, Defendants provided written and verified responses and objections to the Second Interrogatories. Lead Counsel was in the process of reviewing Defendants' responses and objections at the time of settlement.

### **3. Non-Party Discovery**

74. While pursuing discovery from Defendants, Lead Plaintiff also served document subpoenas on ten non-parties, including: (i) three former BD employees; (ii) the FDA Center for Devices and Radiological Health; (iii) the FDA's Office of Regulatory Affairs; (iv) Morgan Stanley Smith Barney LLC and Goldman Sachs &

Co. LLC (the firms responsible for certain investments by certain BD executives); and (v) three consulting firms retained by BD during the Class Period—NSF International, Crisis Prevention and Recovery LLC (d/b/a Software CPR) (“SoftwareCPR”), and Exponent, Inc.

75. Lead Plaintiff met and conferred with many of these nonparties to negotiate, among other things, the scope of the subpoenas, categories of responsive documents, search protocols, and claims of privilege asserted by the nonparty or BD over certain of the requested documents. Lead Plaintiff was still conferring with certain of these nonparties at the time of settlement.

76. As a result of these efforts, Lead Plaintiff obtained over 13,000 nonparty documents (over 117,000 pages), all of which were reviewed under Lead Counsel’s document review protocol and process set forth below.

#### **4. Implementation of Review Protocol and Document Review**

77. Lead Counsel’s review of the over two million pages of documents produced in this Action began after Defendants’ first production of documents from the FDA in December 2022, continued throughout 2023, and was ongoing at the time of settlement.

78. *First*, Lead Counsel solicited bids from database vendors for a document-management system that could accommodate the large anticipated size of the coming productions, enable the review of documents housed on the database by

multiple users, and offer the latest coding, review, and search capabilities for efficient electronic discovery management. Foreign data management capabilities were also required given Industriens' location in Europe. Ultimately, Lead Counsel negotiated a favorable pricing arrangement with the third-party vendor International Litigation Services ("ILS") to host a significant volume of information on its sophisticated electronic database and litigation support platform. Lead Counsel used this electronic database to organize and search the large volume of documents produced, allowing the attorneys performing document review to categorize documents by issues and level of relevance and to identify critical documents supporting the Class's claims.

79. *Second*, once the documents were loaded into the database, Lead Counsel utilized an algorithm-based model that learns from each coding decision fed into it, to rank documents by relevance and predicted priority. This allowed Lead Counsel to focus its review on the most relevant documents first, and de-prioritize potentially irrelevant material more quickly.

80. *Third*, Lead Counsel developed a detailed document coding manual to guide the attorney review of the documents, which: (i) summarized Lead Plaintiff's claims and the key facts, regulatory concerns, and events at issue; (ii) provided instructions on how to evaluate and code each document's relevance; and (iii) instructed how to use the algorithm-based model to make the review more efficient.

81. *Fourth*, Lead Counsel assembled a team of experienced attorneys to review and analyze the documents produced in discovery. This team of Kessler Topaz staff and contract attorneys were assigned specific projects to maximize review efficiency. Partners, associates, staff attorneys and contract attorneys participated in weekly meetings to share insights, discuss highly relevant documents and to develop the facts supporting the theory of the case. The weekly meetings ensured that the reviewing attorneys were aware of: (i) the issues underlying the Class's claims; (ii) the key facts, individuals, and timelines; (iii) why certain documents were high-value; and (iv) how such documents were informing Lead Plaintiff's theories of liability.

82. *Finally*, the review team also completed several targeted discovery projects and produced written memoranda summarizing their findings on specific issues and witnesses. These projects included, for example: (i) supporting the development of a list of potential deponents; (ii) summarizing and analyzing the changes in BD's financial projections of revenue over the course of the Class Period; (iii) developing detailed timelines of BD's interactions with the FDA; and (iv) investigating the design and defect history of Alaris.

## **5. The Parties' Discovery Disputes**

83. Over the course of this litigation, the Parties negotiated extensively on a variety of issues and disputes. In three instances, despite multiple rounds of letters

and telephonic meet and confers, the Parties were not able to resolve their disagreement without the Court's assistance.<sup>13</sup>

84. *First*, the Parties brought a dispute to the Court early in discovery regarding Lead Plaintiff's interrogatory seeking information regarding BD's meetings with the FDA, including *inter alia* the dates, attendees, and the general subject matter of the meetings. In both their original responses and objections and their first supplemental responses and objections to the interrogatory, Defendants relied on Rule 33(d), indicating they would produce responsive documents later in discovery. On February 24, 2023, in a discovery dispute letter submitted to the Court, Lead Plaintiff moved to compel Defendants to provide a complete and substantive response to the interrogatory at issue. ECF No. 135. On March 3, 2023,

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<sup>13</sup> While not formally submitted as a dispute, during a January 24, 2023 status conference before Magistrate Judge Waldor, Lead Plaintiff raised concerns that given the progress of discovery at that point, the Parties would not be able to meet the deadlines set by the Court's first Pretrial Scheduling Order. ECF No. 118. During the status conference, Lead Plaintiff specifically requested that the Court order a substantial completion deadline, which Defendants did not oppose. To propel discovery, the Court ordered: (i) Defendants to submit proposed search terms and custodians by January 27, 2023; (ii) Lead Plaintiff to submit any counter proposal by January 31, 2023; and (iii) the Parties to inform the Court by February 3, 2023 of the number of documents to be produced and a proposed substantial completion date. After multiple meet and confers, the Parties submitted a joint status update to the Court on February 3, 2023 indicating that the Parties had reached agreement on search terms and custodians and a substantial completion deadline of April 21, 2023. ECF No. 133. The Parties also submitted a proposed amended scheduling order including the substantial completion deadline and certain corresponding modifications, which the Court ordered on February 6, 2023. ECF No. 134.



Defendants supplemented their response to the interrogatory with the requested information, rendering the request for relief and further Court intervention moot. *See* ECF No. 138.

85. *Second*, the Parties disputed BD's claim of privilege over a majority of the documents responsive to Lead Plaintiff's subpoena to third-party SoftwareCPR. After meeting and conferring with both SoftwareCPR and Defendants, Lead Plaintiff, on April 21, 2023, submitted a letter to the Court requesting a protective order directing BD to cease its interference with the SoftwareCPR subpoena which would allow the immediate production of responsive documents. ECF No. 146. On April 24, 2023, Defendants submitted a letter in response agreeing to SoftwareCPR's production of a set of non-privileged documents and a privilege log. ECF No. 149. On May 12, 2023, SoftwareCPR produced a limited set of documents and a 21-page privilege log. Lead Plaintiff reviewed each entry on the privilege log accompanying SoftwareCPR's production and conducted legal research to support its position that no privilege applied to the logged documents. After numerous rounds of correspondence and conferring to resolve the privilege dispute, the Parties reached an impasse. On August 28, 2023, the Parties filed a joint letter to the Court, detailing the Parties' months-long dispute concerning Lead Plaintiff's request for the production of SoftwareCPR's documents. ECF No. 169. On September 12, 2023, the Parties presented oral argument at a hearing before Magistrate Judge Waldor.

ECF No. 178. Following the hearing, Magistrate Judge Waldor ordered that Defendants re-review their privilege designations over the SoftwareCPR production and that the Parties meet and confer to present the Court with a sampling of contested documents from the SoftwareCPR privilege log for in camera review. ECF No. 173. The Parties were in the midst of complying with the ordered process at the time of settlement.

86. *Third*, through its RFPs served on September 27, 2022, Lead Plaintiff requested Defendants' production of all documents concerning the SEC's investigation related to Alaris, including transcripts of any interviews conducted by the SEC within the possession of BD or its current employees. In November 2022 meet and confers regarding the RFPs, Defendants represented that, at that time, there were no such transcripts. Lead Plaintiff subsequently renewed its request for the production of these interview transcripts. Despite exchanging letters and engaging in a meet and confer on the issue, the Parties could not reach agreement on the production of such transcripts. Given this impasse, the Parties submitted a joint dispute letter to the Court on September 6, 2023. ECF No. 171. On September 12, 2023, after a hearing on the dispute, Magistrate Judge Waldor ordered BD to direct its current employees to request the transcripts from the SEC and produce those transcripts to Lead Plaintiff. ECF Nos. 173, 178. The Court scheduled a future status

conference regarding this dispute for December 13, 2023, however, this conference was ultimately held in abeyance given the Settlement.

## **6. Preparation for Fact Depositions**

87. Early in discovery, the Parties agreed on a limit of 20 fact depositions per side. Considering the complexity of the Class's claims, Lead Counsel deemed each deposition a potentially critical part of developing the necessary proofs for trial. Accordingly, Lead Plaintiff developed a detailed deposition strategy and process.

88. *First*, Lead Counsel developed a master list of potential deponents, organized by topic area and priority. This list relied on hundreds of hours of analysis and was continuously evolving as Lead Counsel's document review team further analyzed Defendants' ongoing productions and other information.

89. *Second*, Lead Counsel managed a highly efficient process in preparing for depositions. Partners, associates, staff attorneys and contract attorneys were divided into small groups and each group assigned a short list of deponents. The staff and contract attorneys worked directly under the instruction of partners and associates, who were tasked with developing goals for each deposition and ultimately taking the deposition. First-tier document review was conducted primarily by the staff and contract attorneys who worked to identify documents most likely to contain useful information for a given deponent. Often, this involved a meticulous linear review of all documents in a deponent's custodial file or

documents that mentioned the deponent as well as targeted issue searches. Following this work, the document review attorneys produced memoranda for the deponent that summarized key documents regarding various relevant issues and events and provided additional publicly available information regarding the deponent. The partners and associates assigned to take the deposition studied these materials and regularly provided feedback and guidance on further areas of review.

90. *Third*, in order to prepare for depositions, Lead Counsel was required to become well-versed in, among other topics: (i) the intricacies of the Alaris software and the nature of its defects and their proposed fixes; (ii) the FDA's regulations and the various regulatory events related to Alaris that occurred in and around the Class Period as well as historically; and (iii) the complex financial metrics utilized by Defendants to develop their financial guidance.

91. *Finally*, before taking any fact depositions, Lead Counsel interviewed and solicited bids from several deposition vendors. This allowed Lead Counsel to ultimately negotiate highly favorable pricing, including for, among other things, a remote deposition platform, videographers, and court reporters. Lead Counsel also negotiated a remote deposition protocol with Defendants to allow depositions to be taken remotely and discovery to move forward efficiently.

92. At the time the Settlement was reached, Lead Plaintiff had deposed two fact witnesses and noticed the depositions of twenty more. On June 30, 2023, Lead

Plaintiff took a full-day deposition of Michelle Doherty (née Badal), BD's former Senior Director of Regulatory Compliance. On July 21, 2023 and July 27, 2023, Lead Plaintiff deposed Jessica Smith, BD's former Vice President of the Medication Management Solutions Unit.

**7. Defendants' Discovery Propounded on Lead Plaintiff**

**a. Defendants' Document Requests**

93. On January 23, 2023, Defendants served 60 unique requests on Lead Plaintiff for the production of documents ("Defendants' RFPs"). Defendants' RFPs covered subjects including Lead Plaintiff's investments in BD Securities, Lead Plaintiff's investment strategies and records, Lead Plaintiff's participation in the Action, and prior lawsuits in which Lead Plaintiff participated. After Lead Counsel's review and analysis of the document requests, Lead Plaintiff provided its responses and objections on March 9, 2023. The Parties negotiated at length to agree on the search terms to be used and discrete categories of documents to be produced by Lead Plaintiff.

94. In conjunction with Defendants' RFPs, Lead Plaintiff, with the assistance of Lead Counsel, began searching for responsive documents in its possession, custody, or control. Lead Counsel developed a coding protocol for the documents identified by Industriens and undertook a thorough review to ensure the documents were relevant, responsive, and not privileged. Lead Counsel also worked

closely with Industriens and its data vendor to coordinate the collection, housing and review of documents in compliance with all applicable laws and regulations. As a result of these efforts, Lead Plaintiff produced 65 responsive documents (totaling more than 350 pages) to Defendants.

**b. Defendants' Interrogatories**

95. Defendants also served two sets of interrogatories on Lead Plaintiff. *First*, on April 11, 2023, Defendants served two interrogatories on Lead Plaintiff seeking information regarding Lead Plaintiff's investigation of the Class's claims, including the identities of the confidential witnesses cited in the Complaint. Lead Counsel carefully reviewed and analyzed the interrogatories and provided Defendants with written and verified responses and objections on May 26, 2023.

96. *Second*, on August 21, 2023, Defendants served twelve interrogatories on Lead Plaintiff seeking information related to Lead Plaintiff's investment strategies, the damages being sought, and the bases for various contentions made by Lead Plaintiff. Lead Counsel once again reviewed and analyzed the interrogatories and, working with Industriens, provided comprehensive and substantive written and verified responses and objections on October 5, 2023.

**c. Deposition of Lead Plaintiff**

97. On February 7, 2023, Defendants noticed the deposition of Lead Plaintiff pursuant to Rule 30(b)(6), seeking the testimony of a corporate

representative regarding a list of nineteen topics. On March 3, 2023, Lead Plaintiff served written responses and objections to Defendants' noticed topics.

98. On April 12, 2023, Defendants took the remote deposition of Industriens' corporate representative, Jan Østergaard. To prepare for his deposition, Mr. Østergaard met with Lead Counsel for a full day in addition to multiple ancillary communications and preparations with both Lead Counsel and other Industriens personnel. Additionally, following his deposition, Mr. Østergaard was provided with a copy of the deposition transcript for review, after which Mr. Østergaard prepared an errata sheet concerning his testimony.

**J. Lead Plaintiff's Class Certification Motion**

99. While discovery efforts were ongoing, Lead Plaintiff filed a motion to certify the class ("Class Certification Motion") on January 17, 2023. ECF No. 130. Specifically, the Class Certification Motion sought: (i) certification of a class comprised of all persons and entities who, from November 5, 2019 to February 5, 2020, inclusive, purchased or otherwise acquired BD common stock or call options, or sold BD put options, and were damaged thereby; (ii) appointment of Industriens as Class Representative; and (iii) appointment of Kessler Topaz as Class Counsel and Carella Byrne as Liaison Counsel. The Class Certification Motion was accompanied by a 35-page memorandum of law and related exhibits, demonstrating that Lead Plaintiff and the proposed class met all of the requirements of Rules 23(a)

and 23(b)(3). It also included an expert report from Joseph R. Mason, Ph.D. (“Dr. Mason”) of The BVA Group, LLC (“BVA Group”), opining that the markets for both BD common stock and options were efficient throughout the Class Period, and that damages could be calculated using a common class-wide methodology. ECF No. 130-3.

100. In connection with the Class Certification Motion, Lead Counsel defended the depositions of Dr. Mason and Industriens on April 4, 2023 and April 12, 2023, respectively.

101. On May 3, 2023, Defendants filed an opposition to Lead Plaintiff’s Class Certification Motion. ECF No. 152. In their opposition, Defendants asserted that certification of the proposed class should be denied for four reasons. *First*, Defendants argued that options traders could not be included in the class because the claims of options traders were time-barred and evidence did not show that the market for BD options was efficient. *Second*, Defendants contended that Industriens lacked standing to assert a claim on behalf of options traders, rendering it an inadequate and atypical representative. *Third*, Defendants asserted that Industriens was subject to unique defenses as it relied on an outside investment manager to execute trades. And, *fourth*, Defendants argued that Dr. Mason’s proposed damages methodology was not appropriate for calculating damages of options traders. With its opposition, Defendants submitted the expert rebuttal report of Stewart Mayhew, Ph.D. (“Dr.



Mayhew”) of Cornerstone Research, which opined that Dr. Mason failed to demonstrate that the market for BD options was efficient during the Class Period. ECF No. 152-3.

102. Following an in-depth review of his rebuttal report and related preparations, Lead Counsel deposed Dr. Mayhew on May 31, 2023.

103. On June 30, 2023, Lead Plaintiff filed a reply in support of its Class Certification Motion. ECF No. 161. In its reply, Lead Plaintiff asserted that Defendants’ arguments regarding Industriens’ standing to represent options traders and the timeliness of the options traders’ claims were largely mooted by the Court’s June 15, 2023 ruling on Lead Plaintiff’s motion to amend the Third Amended Complaint, which expressly considered and rejected the same arguments. ECF No. 157. Lead Plaintiff further argued that Industriens’ typicality and adequacy under Rule 23(a) were not mitigated by its use of an outside investment manager. Additionally, Lead Plaintiff asserted that Defendants’ argument that the market for BD options was not efficient was inconsistent with controlling case law and their own position conceding that the market for BD common stock was efficient. Finally, Lead Plaintiff argued that Dr. Mason’s class-wide damages methodology could be applied to calculate the damages of options traders. Lead Plaintiff also submitted the expert reply report of Dr. Mason, which opined that the market for BD options was efficient during the Class Period and that damages for both common stock holders

and options traders could be calculated on a class-wide basis using the proposed methodology. ECF No. 161-1.

104. On August 3, 2023, the Court issued an Opinion and Order granting Lead Plaintiff's Class Certification Motion and certifying the Class ("Class Certification Opinion"). ECF No. 168. By its Class Certification Opinion, the Court found, *first*, that the proposed class satisfied the numerosity and commonality requirements. *Second*, the Court ruled that Defendants' argument regarding Lead Plaintiff's standing to represent options traders had already been rejected in connection with the motion to amend and moreover, that Lead Plaintiff's typicality and adequacy were not impacted by the decision to include options traders at this point in the litigation. *Third*, the Court found the use of an independent investment manager did not subject Industriens to a unique defense and that the requirements of typicality and adequacy were satisfied. *Fourth*, the Court ruled that Lead Plaintiff established market efficiency and properly invoked the presumption of reliance. The Court also held that Dr. Mason's report on market efficiency for BD options withstood the challenges raised by Dr. Mayhew. *Finally*, the Court held that Lead Plaintiff adequately demonstrated that damages could be measured on a class-wide basis for both common stock holders and options traders. Thus, the Court found any question of individual damages calculations would not overwhelm common questions.

105. By its Class Certification Opinion, the Court also appointed Industriens as Class Representative and appointed Kessler Topaz as Class Counsel and Carella Byrne as Liaison Counsel for the Class. ECF No. 168.

**K. Class Counsel's Work with Experts**

106. Given the complexity of the issues of damages and loss causation in this Action, Class Representative retained Dr. Mason of BVA Group to offer expert consultation and opinions on these matters at different stages of the litigation. BVA Group is a consulting firm that provides litigation, valuation, and financial advisory services across various industries.

107. Specifically, as noted above, at the class certification stage, Dr. Mason, in coordination with Class Counsel, submitted opening and reply expert reports regarding market efficiency and a model for measuring class-wide damages in accordance with Class Representative's theory of liability. ECF Nos. 130-3, 161-1. Class Counsel defended Dr. Mason at his deposition in connection with the Class Certification Motion on April 4, 2023. Class Counsel frequently communicated with Dr. Mason and his team via emails, telephone and video conferences about economic issues, Defendants' expert report in opposition to the Class Certification Motion, and in preparing for his deposition.

108. Additionally, Dr. Mason provided expert consultation regarding damages immediately following the Court's MTD Order and in connection with the

Parties' mediation and settlement discussions. As discussed below, BVA Group economists also attended the Parties' September 13, 2023 mediation session in order to address any questions regarding the calculation of class-wide damages.

109. Finally, Dr. Mason and his colleagues at BVA Group assisted Class Counsel in developing the proposed Plan of Allocation once the Settlement was reached. *See* § V below.

#### **L. Mediation and Preliminary Approval of the Settlement**

110. While discovery was ongoing and Lead Plaintiff's Class Certification Motion was pending, the Parties began discussing the possibility of resolving the Action through settlement and engaged Mr. Murphy to assist in such efforts. In advance of a scheduled in-person mediation, the Parties prepared and exchanged detailed mediation statements. At the initial mediation session with Mr. Murphy on August 16, 2023, the Parties made presentations addressing their views on liability and damages and engaged in a full day of settlement discussions. Although the Parties were unable to reach agreement at the initial mediation, they continued to negotiate with Mr. Murphy's assistance, meeting twice more—on September 13, 2023 (virtually) with their respective consultants on damages and on October 13, 2023 (in person). Following these mediation sessions, Mr. Murphy issued a mediator's recommendation to resolve the Action for \$85 million, which the Parties accepted on October 18, 2023.

111. On October 20, 2023, the Parties notified the Court of their agreement in principle to settle all claims in the Action, and the Parties' pending discovery dispute (scheduled to be heard on December 13, 2023) was held in abeyance. ECF No. 180. Following further negotiations, the Parties memorialized their agreement in principle to resolve the Action in a term sheet executed on November 13, 2023.

112. Thereafter, Class Counsel began working on various documents to be submitted with Class Representative's motion for preliminary approval of the Settlement. Over the following weeks, counsel for the Parties negotiated the specific terms of the Settlement, including the Stipulation (and exhibits) and a confidential supplemental agreement regarding requests for exclusion ("Supplemental Agreement").<sup>14</sup> During this time, Class Counsel also requested and reviewed detailed bids obtained from several organizations specializing in class action notice and claims administration, and conducted follow-up communications with certain of these firms. As a result of this bidding process, Class Counsel selected JND to serve as the Claims Administrator for the Settlement. Class Counsel also worked closely with Class Representative's economic experts at BVA Group to develop the proposed Plan of Allocation. *See infra* § V. The Parties executed the Stipulation,

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<sup>14</sup> The Supplemental Agreement sets forth the conditions under which Defendants can exercise a right to withdraw from the Settlement in the event that requests for exclusion from the Class exceed certain agreed-upon conditions. Pursuant to its terms, the Supplemental Agreement is not being made public but may be submitted to the Court in camera or under seal.

along with the Supplemental Agreement relating to requests for exclusion, on December 19, 2023.

113. On December 21, 2023, Class Representative filed the Stipulation (and related exhibits) along with its Unopposed Motion for Preliminary Approval of Proposed Settlement and Authorization to Disseminate Notice of Settlement (“Preliminary Approval Motion”) and supporting brief. ECF No. 182. On January 18, 2024, the Court entered the Preliminary Approval Order finding that “it will likely be able to finally approve the Settlement under Rule 23(e)(2) as being fair, reasonable, and adequate to the Class, subject to further consideration at the Settlement Hearing [ ].” ECF No. 186, ¶ 1. The Court set the Settlement Hearing for April 22, 2024, at 11:30 a.m. *Id.*, ¶ 2.

### **III. RISKS OF CONTINUED LITIGATION**

114. As detailed above, when the Settlement was reached, the Parties were in the midst of fact discovery and had ample information and materials against which to evaluate the strengths and weaknesses of Class Representative’s claims and Defendants’ defenses. Class Counsel had analyzed over two million pages of documents produced by Defendants and nonparties. In addition, Class Counsel had already deposed two BD employees who played critical roles in imposing the Alaris ship hold, and was actively preparing to take another 20 depositions, including of Defendant Polen and other high-level BD executives. The Parties had fully briefed

the Class Certification Motion and engaged in related discovery, and the Court's order certifying the Class had clarified several issues that would shape the litigation steps to come. Furthermore, during mediation, the Parties analyzed evidence to support their respective positions, exchanged mediation statements, and presented on liability and damages analyses which included input from economic experts.

115. Class Representative's efforts in prosecuting the Class's claims over the last four years, including through discovery and comprehensive legal analysis, ensured that Class Representative and Class Counsel were fully informed of the risks of continued litigation.

116. While Class Representative firmly believes its case had significant merit, there were a number of factors that made the outcome of continued litigation uncertain. Defendants had already successfully persuaded the Court to dismiss the case once at the motion to dismiss stage, before Industriens' subsequent, successful amendment. Defendants have forcefully denied any culpability throughout the Action and vigorously opposed Class Representative's motion to amend the Third Amended Complaint as well as the Class Certification Motion. Defendants were likely prepared to mount similarly aggressive defenses at summary judgment, and, if necessary, at trial. If successful, Defendants' anticipated summary judgment motions could have narrowed the Class's claims, leading to a recovery in the Action below the Settlement Amount, or no recovery at all. Likewise, if a jury at trial ruled

against Class Representative on any one of the elements required to establish an Exchange Act claim, a recovery for the Class would be foreclosed. Moreover, even if Class Representative prevailed at summary judgment and trial, Defendants would have pursued opportunities for appeal, risking eventual loss for the Class, or at minimum, significant delay and additional costs.

117. Several of the most serious risks of an adverse outcome faced by the Class are discussed in the following paragraphs. After careful evaluation, Class Representative determined that the Settlement represents an excellent result for the Class when the risks of continued litigation are weighed against, among other things, the near-term cash benefit to Class Members.

**A. Risks of Establishing Falsity and Scienter at Trial**

118. *First*, had the Action continued, Defendants would have forcefully asserted that the statements regarding the Alaris ship hold were not materially false or misleading when made.

119. To that end, Defendants would argue that at the time of the alleged misstatements, the FDA had not formally taken any action that would require BD to stop shipping Alaris, but instead, had informed BD that it was the agency's view that Alaris should not be shipped. Defendants would further argue that, as they told the public on November 5, 2019, BD voluntarily imposed the ship hold to install updates. In addition, Defendants would contend that at the time of the alleged



misstatements, the FDA had not expressly told BD that it would require BD to submit a new application for regulatory clearance before BD could resume shipping Alaris, and that the FDA did not take the position that a new regulatory clearance was required until February 3, 2020—just days before BD disclosed the same. Defendants would continue to assert that until that date, BD thought it could come to an understanding with the FDA regarding a regulatory pathway that would allow BD to continue shipping Alaris while addressing the underlying safety and software issues. Defendants would have further argued that BD’s applications for regulatory clearance, or lack thereof, were publicly accessible through the FDA’s online databases, such that the market was well aware of the actual regulatory status of Alaris at all relevant times.

120. With regard to its statements about BD’s fiscal year 2020 financial guidance, Defendants would contend that, based on their understanding of BD’s conversations with the FDA, they believed the ship hold to install the planned updates would be short-lived and was not dependent on the submission and approval of a new 510(k) clearance application. Defendants would further assert that they believed shipping would resume in full shortly after the start of BD’s 2020 fiscal year even as they worked to remediate Alaris’s defects. Defendants would argue that, based on that understanding, their affirmations of the 2020 fiscal year financial guidance were not materially false or misleading because BD understood it could

pursue regulatory clearance for its new software fixes while continuing to sell Alaris in and after 2020.

121. Additionally, Defendants would have argued that the statements affirming BD's fiscal year 2020 sales guidance were forward-looking statements and thus protected under the PSLRA's safe harbor.

122. *Second*, Defendants would likely have argued at summary judgment and trial, as they did at the motion to dismiss stage, that Class Representative could not establish that any of the alleged misstatements and omissions were made with the requisite scienter. To establish scienter, Class Representative would need to prove that Defendants acted intentionally or recklessly when making each of the alleged misstatements regarding the Alaris ship hold and BD's financial guidance for the 2020 fiscal year.

123. More specifically, Defendants likely would have argued that at the time Polen made the alleged misstatements regarding the ship hold, he (and therefore BD) could not predict and had no knowledge that the FDA was going to require a new Alaris 510(k) application to be filed and granted, as well as the remediation of numerous device software issues, before BD could resume shipping. Defendants would further argue that BD understood its proposed regulatory pathway would allow Alaris to ship to customers while BD worked to remediate the device issues, as it had done with prior Alaris software fixes. Defendants would also assert that

they had no knowledge of the FDA's position that Alaris should not be shipped absent these regulatory and remediation steps until February 3, 2020, undermining any claims that the alleged statements in November 2019 through January 2020 were made with scienter. Defendants would also argue that Polen's insider stock sales were not suspicious in timing or amount, including that Polen's trades were made pursuant to a SEC Rule 10b5-1 trading plan, further supporting a finding of no scienter.

124. Moreover, if Defendants were able to successfully convince a jury that either Defendants' statements were factually true or that Defendants did not act with the requisite scienter, Class Representative's Sections 20(a) and 20A claims against Defendant Polen would have been foreclosed as well, as both of these claims require Class Representative to prove a primary violation of the Exchange Act.

**B. Risks of Establishing Loss Causation and Damages at Trial**

125. Even if Class Representative convinced a jury to render a unanimous verdict on falsity and scienter, it still faced significant risks in establishing loss causation and damages. Class Representative would have the burden to prove at trial through complex expert testimony that the alleged disclosure of the fraud on February 6, 2020 proximately caused the substantial declines in the price of BD common stock and call options and the substantial rise in the price of BD put options. At trial, Defendants would have likely made numerous arguments that, if accepted

by jurors, could have materially reduced, or in a worst-case scenario, outright precluded any recovery for the Class.

126. *First*, as they did at the motion to dismiss stage, Defendants likely would have argued that the alleged corrective disclosure on February 6, 2020 did not reveal any truth about any prior misstatements concerning the Alaris ship hold or BD's fiscal year 2020 financial guidance, but instead disclosed an event—the FDA's definitive statement that Alaris needed new regulatory clearance and remediation before it could be shipped—that had occurred just a few days prior, which had required a late change to BD's guidance.

127. *Second*, as they did at the class certification stage, Defendants would contend that Class Representative's proposed damages methodology would not be able to accurately calculate damages for options traders because the model would be unable to determine or take into account what each options trader paid or received for their BD Securities.

128. *Finally*, Defendants would argue that the Class Period should at least be shortened, reducing damages for both options traders and shareholders in the Class, on the grounds that there was no evidence of liability during the early stages of the Class Period.

129. Based on expert estimates employing various reasonable assumptions, the Class's maximum aggregate damages for the entire Class Period were estimated

to be between approximately \$550 million and \$850 million. If the Court or a jury accepted any of Defendants' foregoing arguments, the maximum damages range could have been materially reduced or eliminated altogether.

130. Given the complexity of determining loss causation and measuring damages in the context of a securities fraud case, these issues would have resulted in a "battle of the experts" involving technical testimony by experts. For example, a jury could ultimately credit the view and expected expert evidence put forth by Defendants that the February 6, 2020 disclosure was disconnected from the alleged fraud, and related instead to other intervening causes. Further, while Class Representative strongly believed that Defendants' arguments at the class certification stage regarding the proposed damages methodology were faulty, and would be so at summary judgment and trial, there is no guarantee that a Court or a jury would agree. If the Court or a jury found Defendants' expert testimony more credible, it is likely that the Class's damages could be significantly lower than expected or rejected altogether.

### **C. Risks on Appeal**

131. If Class Representative was successful in proving liability and damages at summary judgment and trial, it would face inevitable post-trial appeals which, even if unsuccessful, would prove costly and time consuming. On appeal, Defendants would renew various arguments as to why Class Representative failed

to establish liability, loss causation, and damages, thereby exposing Class Representative to the risk of having any favorable judgment reversed or reduced below the Settlement Amount after years of litigation.

#### **IV. COMPLIANCE WITH COURT’S PRELIMINARY APPROVAL ORDER AND REACTION OF THE CLASS TO DATE**

132. In its Preliminary Approval Order, the Court authorized Class Counsel to retain JND as the Claims Administrator “to supervise and administer the notice procedure in connection with the proposed Settlement as well as the processing of Claims[.]” ECF No. 186, ¶ 4. In accordance with the Preliminary Approval Order, JND, working in conjunction with Class Counsel: (i) mailed the Postcard Notice to potential Class Members at the addresses set forth in the records provided by Defendants, and to potential Class Members who otherwise could be identified through further reasonable effort;<sup>15</sup> (ii) mailed a copy of the Notice Packet to the Nominees contained in JND’s nominee database and to potential Class Members upon request; (iii) published the Summary Notice in *The Wall Street Journal* and transmitted the same over *PR Newswire*; and (iv) developed the Settlement website, [www.BectonSecuritiesSettlement.com](http://www.BectonSecuritiesSettlement.com), from which copies of the Notice and Claim Form can be downloaded. Segura Decl., ¶¶ 3-11,14.

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<sup>15</sup> The majority of the names and addresses of potential Class Members, as is the case in most securities class actions, were obtained from brokerage firms, banks, institutions, and other nominees (collectively, “Nominees”) holding BD common stock/options in street name. Segura Decl., ¶ 5.

133. The Postcard Notice contains important information concerning the Settlement and, along with the Summary Notice, directs recipients to the Settlement website for additional information regarding the Settlement (and the Action), including the long-form Notice, which includes, among other things, details about the Settlement and a copy of the Plan of Allocation as Appendix A.

134. Collectively, the notices provide the Class definition, a description of the Settlement, information regarding the claims asserted in the Action and information to enable Class Members to determine whether to: (i) participate in the Settlement by completing and submitting a Claim; (ii) object to any aspect of the Settlement, the Plan of Allocation, and/or the Fee and Expense Application; or (iii) submit a request to be excluded from the Class. The notices also inform prospective Class Members of Class Counsel's intent to: (i) apply for an award of attorneys' fees in the amount of 25% of the Settlement Fund; and (ii) request Litigation Expenses in connection with the institution, prosecution, and resolution of the Action in an amount not to exceed \$1 million, plus interest, which amount may include a request for reimbursement of the reasonable costs incurred by Class Representative directly related to its representation of the Class in the Action in accordance with 15 U.S.C. § 78u-4(a)(4). *See Segura Decl.*, Exs. 1 & 2.

135. In accordance with the Preliminary Approval Order, JND began disseminating Postcard Notices to potential Class Members and Notice Packets to

Nominees on February 9, 2024. Segura Decl., ¶¶ 3-10. To date, JND has mailed 200,814 Postcard Notices and 4,131 Notice Packets to potential Class Members and Nominees. *Id.*, ¶ 10. In addition, JND caused the Summary Notice to be published in *The Wall Street Journal* and transmitted over *PR Newswire* on February 28, 2024. *Id.*, ¶11.<sup>16</sup>

136. JND also developed and currently maintains the Settlement website to provide Class Members and other interested parties with information concerning the Settlement and important dates and deadlines in connection therewith, as well as downloadable copies of the Notice, Claim Form, Stipulation, Preliminary Approval Order, and Complaint. Segura Decl., ¶ 14. Additionally, JND maintains a toll-free telephone number to respond to inquiries regarding the Settlement. *Id.*, ¶ 12. Class Members with questions can also contact JND by email at [info@BectonSecuritiesSettlement.com](mailto:info@BectonSecuritiesSettlement.com).

137. As noted above and as set forth in the notices, the deadline for Class Members to request exclusion from the Class or to submit an objection to the Settlement, the Plan of Allocation, and/or the Fee and Expense Application is April 1, 2024. To date, there have been no objections to any aspect of the Settlement and not a single request for exclusion. Segura Decl., ¶ 16. Class Representative and Class

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<sup>16</sup> Defendants have informed Class Counsel that they issued notice of the Settlement pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715 on January 8, 2024.



Counsel will address all requests for exclusion and objections that may be received in their reply submission to be filed on or before April 15, 2024.

**V. PLAN OF ALLOCATION IS FAIR, REASONABLE, AND ADEQUATE**

138. In accordance with the Preliminary Approval Order, and as explained in the notices, Class Members who wish to participate in the distribution of the Net Settlement Fund (i.e., the Settlement Fund less: (i) any Taxes; (ii) any Notice and Administration Costs; (iii) any Litigation Expenses awarded by the Court; (iv) any attorneys' fees awarded by the Court; and (v) any other costs or fees approved by the Court) must submit a valid Claim and all required supporting documentation to the Claims Administrator, JND, postmarked (if mailed), or online through the website, [www.BectonSecuritiesSettlement.com](http://www.BectonSecuritiesSettlement.com), no later than June 14, 2024. As provided in the Notice, the Net Settlement Fund will be distributed to Authorized Claimants<sup>17</sup> in accordance with the plan for allocating the Net Settlement Fund among Authorized Claimants approved by the Court.

139. The Plan of Allocation proposed by Class Representative is attached as Appendix A to the Notice. *See Segura Decl.*, Ex. 2. The Plan is designed to achieve an equitable and rational distribution of the Net Settlement Fund. However, the Plan

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<sup>17</sup> As defined in Paragraph 1(c) of the Stipulation, an "Authorized Claimant" is a "Class Member who submits a Claim to the Claims Administrator that is approved by the Court for payment from the Net Settlement Fund."

is not a formal damages analysis and the calculations made pursuant to it are not intended to be estimates of, nor indicative of, the amounts that Class Members might have been able to recover after trial.

140. Class Counsel developed the Plan in consultation with Class Representative's damages expert, Dr. Mason and his team at BVA Group. The Plan creates a framework for the equitable distribution of the Net Settlement Fund among Class Members who suffered economic losses as a result of the alleged violations of the federal securities laws set forth in the Complaint, as opposed to economic losses caused by market or industry forces or that would likely have been attributed to non-fraud-related information released on the same day. To that end, Dr. Mason calculated the estimated amount of alleged artificial inflation or deflation in the per-share closing prices of BD Securities that allegedly was proximately caused by Defendants' alleged materially false or misleading statements and omissions. As set forth in the Plan, the estimated alleged artificial inflation in BD common stock during the Class Period was \$35.11 per share. Tables B and C of the Plan set forth the estimated alleged artificial inflation and deflation in BD call and put options for each day of the Class Period and these tables will be utilized by JND in calculating

a Claimant's Recognized Loss Amounts, and ultimately their overall Recognized Claim, in BD Securities.<sup>18</sup>

141. As set forth in the Plan, a Claimant's Recognized Loss Amount(s) will depend upon several factors, including when and the price at which they purchased/acquired/sold their BD Securities during the Class Period.<sup>19</sup> In order to have a Recognized Claim under the Plan, a Claimant must have suffered damages proximately caused by the disclosure of the relevant truth concealed by Defendants' alleged fraud. Specifically, a Claimant must have held BD common stock or call options purchased/acquired during the Class Period through the alleged corrective disclosure on February 6, 2020, that removed the artificial inflation from the price of BD common stock or call options. Likewise, with respect to BD put options, a Claimant must have sold (written) those options during the Class Period and such option(s) must have remained open through the alleged corrective disclosure on February 6, 2020, that removed the artificial deflation from the price of BD put

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<sup>18</sup> Pursuant to Paragraph 75 of the Notice, "a 'Recognized Loss Amount' will be calculated for each purchase or acquisition of BD common stock and call options and each sale (writing) of BD put options during the Class Period that is listed on the Claim Form and for which adequate documentation is provided. Pursuant to Paragraph 82 of the Notice, a Claimant's "'Recognized Claim' will be the sum of his, her, or its Recognized Loss Amounts."

<sup>19</sup> The calculation of Recognized Loss Amounts for BD common stock also takes into account the PSLRA's statutory limitation on recoverable damages. *See* Section 21D(e)(1) of the Exchange Act.

options. Under the Plan, the Settlement proceeds available for BD call options purchased/acquired during the Class Period and BD put options sold (written) during the Class Period are limited to a total amount equal to 3.5% of the Net Settlement Fund—the approximate percentage options damages represent of total damages.<sup>20</sup> See Notice ¶ 81.

142. JND, as the Claims Administrator, will determine each Authorized Claimant's *pro rata* share of the Net Settlement Fund by dividing the Authorized Claimant's Recognized Claim (i.e., the sum of the Claimant's Recognized Loss Amounts as calculated under the Plan) by the total Recognized Claims of all Authorized Claimants, multiplied by the total amount in the Net Settlement Fund. Class Representative's losses will be calculated in the same manner.

143. Once JND has processed all submitted Claims and provided Claimants with an opportunity to cure any deficiencies in their Claims or challenge the rejection of their Claims, Class Counsel will file with the Court a motion for approval of JND's determinations with respect to all submitted Claims and authorization to distribute the Net Settlement Fund to Authorized Claimants. As set forth in the Plan,

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<sup>20</sup> If the cumulative Recognized Loss Amounts for BD call options and BD put options exceeds 3.5% of all Recognized Claims, then the Recognized Loss Amounts calculated for options transactions will be reduced proportionately until they collectively equal 3.5% of all Recognized Claims. In the unlikely event that the Net Settlement Fund is sufficient to pay 100% of the BD common stock-based claims, any excess amount will be used to pay the balance on the remaining option-based claims.

if nine months after the initial distribution, there is a balance remaining in the Net Settlement Fund (whether by reason of uncashed checks, or otherwise), and if it is cost-effective to do so, Class Counsel will conduct another distribution of the funds remaining after payment of any unpaid fees and expenses incurred in administering the Settlement, including for such distribution, to Authorized Claimants who have cashed their initial distribution checks and would receive at least \$10.00 from such distribution. *See* Notice ¶ 94. Additional distributions to Authorized Claimants will be repeated until it is determined that additional distribution of the funds remaining in the Net Settlement Fund is no longer cost effective. *Id.* Thereafter, any balance remaining in the Net Settlement Fund will be contributed to non-sectarian, not-for-profit, 501(c)(3) organization(s), to be recommended by Class Counsel and approved by the Court. *Id.*

144. The structure of the Plan is similar to the structure of plans of allocation that have been used to apportion settlement proceeds in numerous other securities class actions. To date, there have been no objections to the Plan. In sum, Class Counsel believes that the Plan provides a fair and reasonable method to equitably distribute the Net Settlement Fund among Authorized Claimants, and respectfully submits that the Plan should be approved by the Court.

## VI. CLASS COUNSEL'S FEE AND EXPENSE APPLICATION

145. In addition to seeking final approval of the Settlement and Plan of Allocation, Class Counsel is applying for an award of attorneys' fees and payment of expenses incurred by Plaintiffs' Counsel during the course of the Action. Specifically, Class Counsel is applying for attorneys' fees in the amount of 25% of the Settlement Fund and for Litigation Expenses in the total amount of \$928,001.04.<sup>21</sup> This total amount *includes* a request for reimbursement in the amount of \$84,856.40 for the costs incurred by Class Representative in representing the Class in the Action, as permitted by 15 U.S.C. § 78u-4(a)(4). *See* Østergaard Decl., ¶¶ 11-13. As noted above, Class Counsel's Fee and Expense Application is consistent with the maximum fee and expense amounts set forth in the notices and, as set forth in the Østergaard Declaration (*see* ¶¶ 8-9), is supported by Class Representative who carefully considered the appropriateness of Class Counsel's

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<sup>21</sup> The lodestar and expense submissions of: (i) Sharan Nirmul, on behalf of Kessler Topaz ("Kessler Topaz Fee and Expense Decl."); and (ii) James E. Cecchi, on behalf of Carella Byrne ("Carella Byrne Fee and Expense Decl.") (together, the "Fee and Expense Declarations"), are attached hereto as Exhibits 3 and 4. The Fee and Expense Declarations set forth the names of the attorneys and professional support staff employees who worked on the Action and their respective hourly rates, the lodestar value of the time expended by each such attorney and professional support staff employee, and the expenses incurred by each firm.

request. To date, no objections to the Fee and Expense Application have been received.<sup>22</sup>

146. Below is a summary of the primary factual bases for Class Counsel's Fee and Expense Application. A full analysis of the factors considered by courts in the Third Circuit when evaluating requests for attorneys' fees and expenses from a common fund, as well as the supporting legal authority, is presented in the accompanying Fee and Expense Memorandum.<sup>23</sup>

**A. Class Counsel's Fee Request Is Fair and Reasonable and Warrants Approval**

**1. The Favorable Settlement Achieved**

147. Courts have consistently recognized that the result achieved is a key factor to be considered in making a fee award. *See* Fee and Expense Memorandum, § II.D.1. As described above, based on expert estimates employing various reasonable assumptions, the \$85 million Settlement is a favorable result,

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<sup>22</sup> Class Counsel will address any objections received after this submission in its reply to be filed with the Court by April 15, 2024.

<sup>23</sup> The Third Circuit has noted that a district court should consider the following factors, among others, in determining a fee award: "(1) the size of the fund created and the number of persons benefitted; (2) the presence or absence of substantial objections by members of the class to the settlement terms and/or fees requested by counsel; (3) the skill and efficiency of the attorneys involved; (4) the complexity and duration of the litigation; (5) the risk of nonpayment; (6) the amount of time devoted to the case by plaintiffs' counsel; and (7) the awards in similar cases." *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 n.1 (3d Cir. 2000) (citations omitted). *See also* Fee and Expense Memorandum, § II.D.

representing between 10% and 15% of the Class’s maximum damages. This result—reflecting the informed assessment by Class Counsel and Class Representative of the strengths of the Class’s claims and risks of litigating this complex Action through the remainder of discovery, trial and appeals—provides a significant recovery for the Class.

148. In addition to representing a meaningful percentage of estimated damages, the Settlement is also favorable when considered in view of the substantial risks and obstacles to obtaining a larger recovery (or, any recovery) were the Action to continue. *See supra* ¶¶ 114-131. Here, the Settlement avoids the substantial risks to recovery in the absence of settlement and, as a result, numerous Class Members will benefit and receive compensation for their losses.

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

149. The risks faced by Class Counsel in prosecuting this Action are highly relevant to the Court’s consideration of an award of attorneys’ fees, as well as its approval of the Settlement. Here, Defendants adamantly deny any wrongdoing and, if the Action had continued, would have aggressively litigated their defenses through summary judgment, a trial, and the appeals that would likely follow. As detailed in § III above, Class Counsel and Class Representative faced significant risks to proving Defendants’ liability, loss causation, and damages if the Action continued.



150. These case-specific litigation risks are in addition to the risks accompanying securities litigation generally, such as the fact that the Action is governed by stringent PSLRA requirements and case law interpreting the federal securities laws, and was undertaken on a contingent-fee basis. From the outset, Class Counsel understood that this would be a complex, expensive, and potentially lengthy litigation with no guarantee of ever being compensated for the substantial investment of time and financial expenditures that vigorous prosecution of the case would require. In undertaking that responsibility, Class Counsel was obligated to ensure that sufficient resources (in terms of attorney and support-staff time) were dedicated to prosecuting the Action, and that funds were available to compensate vendors and consultants and to cover the considerable out-of-pocket costs that a case like this typically demands. With an average lag time of several years for these cases to conclude, the financial burden on contingent-fee counsel is far greater than on a firm that is paid on an hourly, ongoing basis. Class Counsel alone has dedicated over 28,800 hours in prosecuting this Action for the benefit of the Class, yet has received no compensation for its efforts.

151. Here, Class Counsel also bore the risk that no recovery would be achieved—a risk that was heightened following the Court’s dismissal of the Action in its ruling on Defendants’ motion to dismiss the Second Amended Complaint. Indeed, Class Counsel knows from experience that the commencement and ongoing

prosecution of a class action does not guarantee a settlement.<sup>24</sup> To the contrary, it takes sustained and diligent work by skilled counsel to develop the facts and legal arguments needed to survive a motion to dismiss or win at class certification, summary judgment and trial, or on appeal, or to cause sophisticated defendants to engage in serious settlement negotiations at meaningful levels.

152. Moreover, courts have repeatedly recognized that it is in the public interest to have experienced and able counsel enforce the securities laws and regulations pertaining to the duties of officers and directors of public companies. As recognized by Congress through the passage of the PSLRA, vigorous private enforcement of the federal securities laws can occur only if private investors, particularly institutional investors, take an active role in protecting the interests of shareholders. If this important public policy is to be carried out, the courts should award fees that adequately compensate plaintiffs' counsel, taking into account the risks undertaken in prosecuting a securities class action.

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<sup>24</sup> For example, there are many appellate decisions affirming summary judgment and directed verdicts for defendants showing that surviving a motion to dismiss is not a guarantee of recovery. *See, e.g., In re Oracle Corp., Sec. Litig.*, 627 F.3d 376 (9th Cir. 2010); *In re Silicon Graphics Inc. Sec. Litig. Inc.*, 183 F.3d 970 (9th Cir. 1999); *Phillips v. Sci.-Atlanta, Inc.*, 489 F. App'x 339 (11th Cir. 2012); *In re Smith & Wesson Holding Corp. Sec. Litig.*, 669 F.3d 68 (1st Cir. 2012); *McCabe v. Ernst & Young, LLP*, 494 F.3d 418 (3d Cir. 2007); *In re Digi Int'l, Inc. Sec. Litig.*, 14 F. App'x 714 (8th Cir. 2001).

153. Class Counsel's extensive efforts in the face of substantial risks and uncertainties have resulted in a significant recovery for the benefit of the Class, as described above. In circumstances such as these, and in consideration of the hard work and excellent result achieved, Class Counsel believes the requested fee is reasonable and should be approved.

**3. The Time and Labor Devoted to the Action by Plaintiff's Counsel**

154. Over the course of four years, Class Counsel along with Court-appointed Liaison Counsel devoted substantial time to the investigation, prosecution, and resolution of the Action. As more fully described above, Class Counsel's efforts included: (i) conducting a thorough investigation into the Class's claims, which involved a detailed review of publicly available information, interviews with former BD employees, consultation with an expert, and extensive legal research to confirm the theories of liability Industriens could pursue on behalf of the Class and the applicable pleading standards; (ii) drafting and filing four detailed amended complaints based on this investigation; (iii) fully briefing and opposing three rounds of motions to dismiss and a motion to amend; (iv) engaging in extensive discovery efforts, including the review of over two million pages of documents, participation in numerous meet and confer sessions with Defendants and third parties regarding discovery disputes (three of which required the Court's intervention), and deposing two fact witnesses and preparing to depose 20 more; (v)

successfully moving for class certification, including preparing for and defending the deposition of Class Representative and Class Representative's expert; (vi) preparing for and taking the deposition of Defendants' expert in connection with class certification; and (vii) engaging in vigorous arm's-length negotiations (including three mediation sessions) to achieve the Settlement. At all times throughout the Action, Class Counsel's efforts were driven and focused on advancing the litigation to achieve the most successful outcome for the Class, whether through settlement or trial, by the most efficient means possible.

155. Throughout the litigation, Class Counsel maintained an appropriate level of staffing that avoided unnecessary duplication of effort and ensured the efficient prosecution of this Action. As one of the lead partners on the case, I personally monitored and maintained control of the work performed by other lawyers at Kessler Topaz throughout the litigation. Other experienced attorneys at Kessler Topaz were also involved in the drafting of pleadings, motion papers, and in the settlement negotiations. More junior attorneys and paralegals worked on matters appropriate to their skill and experience level.

156. All of the attorneys and support personnel that worked on this case are highly qualified in the area of securities class action litigation and greatly assisted in the prosecution and resolution of this Action. *See* Kessler Topaz Fee and Expense Decl., Ex. C (professional bios).

157. The time devoted to this Action by Plaintiff’s Counsel is set forth in the Fee and Expense Declarations attached hereto as Exhibits 3 and 4. Included with the Fee and Expense Declarations are schedules that summarize the time expended by the attorneys and professional support staff employees at each firm, as well as expenses (“Fee and Expense Schedules”). The Fee and Expense Schedules report the amount of time spent by each attorney and professional support staff employee who worked on the Action and their resulting “lodestar,” i.e., their hours multiplied by their hourly rates.<sup>25</sup>

158. In total, from the inception of this Action through March 1, 2024, Plaintiff’s Counsel expended over 29,000 hours on the investigation, prosecution, and resolution of the claims against Defendants for a total lodestar of \$15,527,405.50.<sup>26</sup> Thus, pursuant to a lodestar “cross-check,” Class Counsel’s fee request of 25% of the Settlement Fund (or \$21,250,000 plus interest), if awarded,

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<sup>25</sup> The hourly rates of Plaintiff’s Counsel here range from \$780 to \$1,300 per hour for partners, \$750 per hour for counsel, \$370 to \$600 for other attorneys, \$225 to \$405 per hour for paralegals, and \$370 to \$660 per hour for in-house investigators. *See* Kessler Topaz Fee and Expense Decl., Ex. 1; Carella Byrne Fee and Expense Decl., Ex. 1. These hourly rates are reasonable for this type of complex litigation. *See* Fee and Expense Memorandum, § II.C.2.

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

would yield a multiplier of approximately 1.4 on Plaintiff's Counsel's lodestar, which falls well within the range of fee multipliers typically awarded in comparable securities class actions and in other class actions involving significant contingency fee risk, in this Circuit and elsewhere. *See* Fee and Expense Memorandum, § II.C.2.

#### **4. The Quality of Plaintiff's Counsel's Representation**

159. The skill and diligence of Plaintiff's Counsel also supports the requested fee. As demonstrated by its firm résumé included as Exhibit C to the Kessler Topaz Fee and Expense Declaration, Class Counsel is highly experienced in the securities litigation field, with a long and successful track record representing investors in such cases, and is consistently ranked among the top plaintiffs' firms in the country. Liaison Counsel, Carella Byrne, is also highly experienced in complex litigation. The substantial result achieved for the Class here reflects the superior quality of this representation.

160. The quality of the work performed by Plaintiff's Counsel in obtaining the Settlement should also be evaluated in light of the quality of opposing counsel. Defendants in this case were represented by experienced attorneys from the nationally prominent litigation firms Winston & Strawn LLP and McCarter & English, LLP. These firms vigorously and ably defended the Action for four years. In the face of this formidable defense, Class Counsel was nonetheless able to develop

a case that was sufficiently strong to persuade Defendants to settle the Action on terms that are favorable to the Class.

**5. Class Representative's Endorsement of the Fee Application**

161. Class Representative Industriens is a sophisticated institutional investor that has closely supervised and actively participated in the prosecution and settlement of the Action. Class Representative has evaluated and fully supports Class Counsel's 25% fee request—a request that accords with an agreement entered into between Industriens and Class Counsel at the outset of the Action. *See* Østergaard Decl., ¶ 8. Further, as set forth in the declaration submitted on behalf of Industriens, Class Representative has concluded that the requested fee has been earned based on the efforts of Plaintiff's Counsel and the favorable recovery obtained for the Class in a case that involved serious risk. *Id.* Accordingly, Class Representative's endorsement of Class Counsel's fee request further demonstrates its reasonableness and this endorsement should be given meaningful weight in the Court's consideration of the fee award.

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

**1. Class Counsel Seeks Reimbursement of Plaintiff's Counsel's Reasonable and Necessary Litigation Expenses from the Settlement Fund**

162. Class Counsel also seeks payment from the Settlement Fund of \$843,144.64 for expenses that were reasonably and necessarily incurred by

Plaintiff's Counsel in prosecuting and resolving the Action. The notices inform the Class that Class Counsel will apply for Litigation Expenses in an amount not to exceed \$1,000,000, which amount may include a request for reimbursement of the reasonable costs incurred by Class Representative directly related to its representation of the Class in accordance with 15 U.S.C. § 78u-4(a)(4). The amount of Litigation Expenses requested by Class Counsel, along with the total amount requested by Class Representative (i.e., \$84,856.40), is below the expense cap set forth in the notices. To date, there have been no objections to the maximum amount of Litigation Expenses set forth in the notices.

163. From the beginning of the Action, Class Counsel was aware that it might not recover any of the expenses it incurred in prosecuting the claims against Defendants and, at the very least, would not recover any of its out-of-pocket expenses until the Action was successfully resolved. Class Counsel also understood that, even assuming the Action was ultimately successful, an award of expenses would not compensate counsel for the lost use or opportunity costs of funds advanced to litigate the claims against Defendants. Thus, Class Counsel was motivated to, and did, take significant steps to minimize expenses whenever practicable without jeopardizing the vigorous and efficient prosecution of the Action.



164. As set forth in the accompanying Fee and Expense Declarations, Plaintiff's Counsel's expenses include charges for, among other things: (i) an expert utilized in connection with various stages of the litigation; (ii) establishing and maintaining a database to house the voluminous amount of documents produced in discovery; (iii) online factual and legal research; (iv) mediation and settlement negotiations with Mr. Murphy; and (v) document reproduction.<sup>27</sup> Courts have consistently found that these kinds of expenses are payable from a fund recovered by counsel for the benefit of a class.

165. The largest component of Plaintiff's Counsel's expenses (\$545,734.00, or approximately 65% of their total expenses) was incurred to pay BVA Group for economic work regarding issues related to market efficiency, loss causation, and damages. The retention of this expert was necessary and reasonable in order to prove Class Representative's claims and to meet the considerable challenges posed by Defendants' well-credentialed expert at the class certification stage. *See supra* ¶¶ 106-108. In addition to consulting with Class Counsel in developing the case, Dr. Mason produced two expert reports and was deposed by Defendants' Counsel in

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<sup>27</sup> These expenses are reflected in Plaintiff's Counsel's books and records, which are prepared in the normal course of business and are an accurate record of the expenses incurred in the prosecution of his matter. These expense items are billed separately by Plaintiff's Counsel and are not duplicated in Plaintiff's Counsel's hourly rates. Kessler Topaz Fee and Expense Decl., Ex. B; Carella Byrne Fee and Expense Decl., Ex. B.

connection with the Class Certification Motion. Dr. Mason and his team at BVA Group also assisted Class Counsel in its mediation efforts and in developing the proposed Plan of Allocation after the Settlement was reached. *Id.*, ¶¶ 107, 109.

166. Another substantial component of Plaintiff's Counsel's expenses (i.e., \$152,081.39) was incurred in connection with document review and production. As noted in ¶ 78 above, Class Counsel utilized a sophisticated discovery platform to, among other things: (i) maintain the electronic database through which over two million pages of documents produced by Defendants and third parties were reviewed; and (ii) process documents so they would be in a searchable format. Class Counsel also utilized this outside document management vendor to prepare and produce Class Representative's documents to Defendants in response to their discovery requests. Class Counsel believes it kept these costs exceedingly low at roughly 18% of Plaintiff's Counsel's total expenses.

167. Another large component of Plaintiff's Counsel's expenses was incurred for online legal and factual research. This amount represents charges for computerized research services such as Lexis, Westlaw, and PACER. It is standard practice for attorneys to use online services to assist them in researching legal and factual issues, and indeed, courts recognize that these tools create efficiencies in litigation and ultimately save money for clients and the class. Here, online research was necessary to conduct the factual investigation and identify potential witnesses,

prepare the complaints, research the law pertaining to the claims asserted in the Action, oppose Defendants' motions to dismiss, support the Class Certification Motion, and conduct research in connection with certain discovery-related issues and the Parties' settlement negotiations. The total charges for online research amounted to \$37,215.45, or 4% of Plaintiff's Counsel's total expenses.

168. In addition, Class Counsel incurred \$63,125.00 for Class Representative's portion of the charges related to the three mediation sessions with Mr. Murphy and the settlement negotiations that followed with his assistance.

169. The remaining expenses for which Class Counsel seeks payment are the types of expenses that are necessarily incurred in litigation and routinely charged to clients billed by the hour. These expenses include, among others, travel costs (e.g., lodging, airfare, meals), court fees, process servers, telephone costs, copying, and postage and delivery expenses. All of the expenses incurred by Plaintiff's Counsel were reasonably necessary to the successful litigation of the Action, and have been approved by Class Representative. *See* Østergaard Decl., ¶ 9.

## **2. Reimbursement to Class Representative Is Fair and Reasonable**

170. In addition, Class Representative seeks reimbursement of the reasonable costs that it incurred directly in connection with its representation of the Class. Such payments are expressly authorized and anticipated by the PSLRA, as

more fully discussed in the Fee and Expense Memorandum at § IV.<sup>28</sup> Specifically, Class Representative Industriens seeks reimbursement in the amount of \$84,856.40 for 520 hours expended in connection with the Action by Jan Østergaard (Industriens' Head of Real Assets) and Uffe Berg (Industriens' Chief Legal Consultant). Østergaard Decl., ¶¶ 11-13.

171. The substantial amount of time and effort devoted to this Action by Class Representative's employees is detailed in its accompanying declaration, attached as Exhibit 1 hereto. As discussed therein, Class Representative has been fully committed to pursuing the Class's claims since it became involved in the Action and has provided valuable assistance to Class Counsel during the prosecution and resolution of the Action. Class Representative's efforts during the course of the Action included regular communications with Class Counsel concerning significant developments in the litigation and case strategy, reviewing and commenting on significant pleadings and briefs filed in the Action, responding to Defendants' discovery requests and searching for and producing potentially relevant documents in a process supported by multiple meetings with counsel and internal personnel regarding the document search and collection efforts, preparing and sitting for a

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<sup>28</sup> The PSLRA specifically provides that an "award of reasonable costs and expenses (including lost wages) directly relating to the representation of the class" may be made to "any representative party serving on behalf of a class." 15 U.S.C. § 78u-4(a)(4).

deposition, and participating in the settlement negotiations. *See* Østergaard Decl., ¶¶ 4-6. These are precisely the types of activities courts have found to support reimbursement of class representatives, and fully support Class Representative's request for reimbursement here.

## **VII. CONCLUSION**

172. For the reasons set forth above, Class Counsel respectfully submits that the Settlement and the Plan of Allocation should be approved as fair, reasonable, and adequate. Class Counsel further submits that the requested attorneys' fees in the amount of 25% of the Settlement Fund should be approved as fair and reasonable, and the request for Plaintiff's Counsel's Litigation Expenses in the amount of \$843,144.64, and Class Representative's costs in the aggregate amount of \$84,856.40 should also be approved.

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed in Radnor, Pennsylvania this 18<sup>th</sup> day of March 2024



JOSHUA E. D'ANCONA

**CERTIFICATE OF SERVICE**

I hereby certify that on March 18, 2024, I caused a true and correct copy of the foregoing Declaration of Joshua E. D’Ancona in Support of (I) Class Representative’s Motion for Final Approval of Settlement and Plan of Allocation; and (II) Class Counsel’s Motion for Attorneys’ Fees and Litigation Expenses to be electronically filed with the Clerk of the Court using the ECF system. Notice of this filing will be sent to counsel of record by operation of the Court’s electronic filing system.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: March 18, 2024

*s/ James E. Cecchi* \_\_\_\_\_  
James E. Cecchi  
**CARELLA BYRNE CECCHI  
BRODY & AGNELLO, P.C.**  
5 Becker Farm Road  
Roseland, NJ 07068-1739  
Telephone: (973) 994-1700  
Facsimile: (973) 994-1744  
jcecchi@carellabyrne.com

*Liaison Counsel for the Class*

# **EXHIBIT 1**

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

INDUSTRIENS  
PENSIONS Forsikring A/S,  
Individually and On Behalf of All  
Others Similarly Situated,

Plaintiff,

v.

BECTON, DICKINSON AND  
COMPANY and THOMAS E.  
POLEN,

Defendants.

Case No. 2:20-cv-02155-SRC-CLW

Hon. Stanley R. Chesler  
District Court Judge

Hon. Cathy L. Waldor  
Magistrate Judge

**DECLARATION OF JAN ØSTERGAARD ON BEHALF OF  
INDUSTRIENS PENSIONS Forsikring A/S IN SUPPORT OF  
(I) CLASS REPRESENTATIVE'S MOTION FOR FINAL APPROVAL OF  
SETTLEMENT AND PLAN OF ALLOCATION; AND (II) CLASS  
COUNSEL'S MOTION FOR ATTORNEYS' FEES AND  
LITIGATION EXPENSES**

I, Jan Østergaard, declare as follows:

1. I am the Head of Real Assets for Industriens Pensionsforsikring A/S (“Industriens”), the Court-appointed Lead Plaintiff and Class Representative in this securities class action (“Action”).<sup>1</sup> I submit this Declaration in support of Class

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<sup>1</sup> Unless otherwise defined in this Declaration, all capitalized terms have the meanings set forth in the Stipulation and Agreement of Settlement dated as of December 19, 2023 (ECF No. 182-2). By Opinion and Order issued June 9, 2020 (ECF No. 24), the Court appointed Industriens as Lead Plaintiff and subsequently, by Opinion and Order issued August 3, 2023 (ECF No. 168), the Court appointed Industriens as Class Representative.



Representative’s Motion for Final Approval of Settlement and Plan of Allocation and Class Counsel’s Motion for Attorneys’ Fees and Litigation Expenses, including an award to Industriens commensurate with the time it dedicated to this Action, pursuant to the Private Securities Litigation Reform Act of 1995 (“PSLRA”). I have personal knowledge of the matters set forth in this Declaration and, if called upon, I could and would testify competently thereto.

2. Based in Copenhagen, Denmark, Industriens is one of Denmark’s largest pension funds and provides pension services for industrial employees. Industriens currently manages the pension savings for more than 440,000 members in approximately 8,000 companies. At the end of 2022, Industriens had roughly DKK 217 billion (approximately USD \$31 billion) in assets under management.

**I. Industriens’ Oversight of the Action on Behalf of the Class**

3. From the outset of the litigation four years ago, Industriens has been committed to actively prosecuting this case and to maximizing the recovery for the Class. Further, Industriens has understood that, as a class representative, it owed a fiduciary duty to all members of the Class to provide fair and adequate representation and worked with Court-appointed Class Counsel, Kessler Topaz Meltzer & Check, LLP (“Kessler Topaz”), to prosecute the case vigorously, consistent with good faith and meritorious advocacy.

4. On behalf of Industriens, I and my colleagues at Industriens have closely supervised and carefully monitored the progress of this Action and the prosecution of the Action by Class Counsel. My colleagues and I have received, reviewed, and responded to periodic updates and other correspondence from Kessler Topaz regarding the case. We have reviewed and commented on court filings and other material documents throughout the case. We also participated in discussions with attorneys from Kessler Topaz regarding litigation strategy and significant developments in the Action. In addition, we worked with Class Counsel to respond to discovery requests, including by drafting and finalizing interrogatory responses, and searching for and producing potentially relevant documents in a process supported through multiple meetings with counsel and internal personnel regarding our document search and collection efforts.

5. In connection with Lead Plaintiff's class certification motion, I prepared for and provided testimony at the deposition of Industriens under Fed. R. Civ. P. 30(b)(6), which was conducted virtually on April 12, 2023. Preparations for this deposition included numerous internal communications with relevant Industriens personnel and several meetings with counsel.

6. I authorized and closely followed all settlement negotiations, including the three mediation sessions in August, September and October 2023 and the negotiations following the third mediation that eventually resulted in the Settlement.

Further, Industriens has reviewed the briefs and other documents related to the Settlement, including those that are presently being submitted in support of (i) final approval of the Settlement and approval of the Plan of Allocation; and (ii) Class Counsel's motion for an award of attorneys' fees and expenses.

## **II. Industriens Endorses Approval of the Settlement**

7. Based on its involvement throughout the prosecution and resolution of the Action, Industriens believes that the proposed Settlement is fair, reasonable, and adequate and in the best interest of the Class. Industriens believes that the Settlement represents an excellent recovery for the Class, particularly given the substantial risks of continuing to prosecute the claims in this case through the completion of merits discovery (including the remaining depositions), expert discovery, summary judgment, and trial and obtaining a recovery or judgment larger than the proposed Settlement. Therefore, Industriens strongly endorses approval of the Settlement by the Court.

## **III. Industriens Supports Class Counsel's Motion for Attorneys' Fees and Litigation Expenses**

8. While it is understood that the ultimate determination of Class Counsel's attorneys' fees and expenses rests with the Court, Industriens supports Class Counsel's request for attorneys' fees in the amount of 25% of the Settlement Fund. This percentage fee request is consistent with the retainer agreement entered into by Industriens and Class Counsel at the outset of the Action. Moreover,

Industriens takes seriously its role as Class Representative to ensure that the attorneys' fees are fair in light of the result achieved for the Class, the work performed by Class Counsel, and the substantial risks involved in the Action. Here, Industriens believes that the requested fee is fair and reasonable in light of the \$85 million recovery obtained for the Class, the excellent work performed by Class Counsel over the course of the past four years, and the risks and challenges undertaken by Class Counsel in litigating the Action.

9. Industriens further believes that the litigation expenses requested by Plaintiff's Counsel are reasonable, and represent costs and expenses necessary for the successful prosecution and resolution of this case.

10. Based on the foregoing, and consistent with its obligation to the Class to obtain the best result at the most efficient cost, Industriens fully supports Class Counsel's request for attorneys' fees and Litigation Expenses.

11. Industriens understands that reimbursement of a class representative's reasonable costs and expenses is authorized under the PSLRA. For this reason, in connection with Class Counsel's request for Litigation Expenses, Industriens seeks reimbursement for the time it dedicated to representing the Class in this Action.

12. My primary responsibility at Industriens involves overseeing all of Industriens' private investments. Additionally, during the course of the Action, I was

principally assisted by Uffe Berg, Chief Legal Consultant, in efforts concerning this case.

13. The time that my colleagues and I devoted to the representation of the Class in this Action was time that we otherwise would have expected to spend on other work for Industriens and, thus, represented a cost to Industriens. Industriens seeks reimbursement in the amount of \$84,856.40 for the time of the following Industriens' personnel:

<b>Personnel</b>	<b>Hours</b>	<b>Rate<sup>2</sup></b>	<b>Total</b>
Jan Østergaard	120	\$249.87	\$29,984.40
Uffe Berg	400	\$137.18	\$54,872.00
<b>TOTALS</b>	520		\$84,856.40

#### **IV. Conclusion**

14. In conclusion, Industriens was closely involved throughout the prosecution and settlement of the claims in the Action and strongly endorses the Settlement as fair, reasonable, and adequate, and believes it represents an excellent recovery for the Class. Industriens further supports Class Counsel's request for attorneys' fee and Litigation Expenses, in light of the work performed, the excellent recovery obtained for the Class, and the attendant litigation risks. And finally, Industriens requests reimbursement for its costs under the PSLRA as set forth above.

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<sup>2</sup> The hourly rates used for purposes of this request are based on the annual compensation of the respective personnel who worked on this Action.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, this 12 day of March, 2024.

  
\_\_\_\_\_  
Jan Østergaard  
*Head of Real Assets*  
*Industriens Pensionsforsikring A/S*

## **EXHIBIT 2**

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

INDUSTRIENS  
PENSIONSFORSIKRING A/S,  
Individually and On Behalf of All  
Others Similarly Situated,

Plaintiff,

v.

BECTON, DICKINSON AND  
COMPANY and THOMAS E.  
POLEN,

Defendants.

Case No. 2:20-cv-02155-SRC-CLW

Hon. Stanley R. Chesler  
District Court Judge

Hon. Cathy L. Waldor  
Magistrate Judge

**DECLARATION OF LUIGGY SEGURA REGARDING:  
(A) DISSEMINATION OF POSTCARD NOTICE AND NOTICE PACKET;  
(B) PUBLICATION OF THE SUMMARY NOTICE; (C) ESTABLISHMENT  
OF CALL CENTER SERVICES AND SETTLEMENT WEBSITE; AND  
(D) REPORT ON REQUESTS FOR EXCLUSION RECEIVED TO DATE**

I, Luiggy Segura, hereby declare under penalty of perjury as follows:

1. I am the Vice President of Securities Class Actions at JND Legal Administration (“JND”). Pursuant to the Court’s Order Preliminarily Approving Settlement and Providing for Notice dated January 18, 2024 (ECF No. 186) (“Preliminary Approval Order”), Class Counsel was authorized to retain JND as the Claims Administrator in connection with the proposed Settlement of the above-



captioned action (“Action”).<sup>1</sup> I am over 21 years of age and am not a party to the Action. I have personal knowledge of the facts stated in this declaration and, if called as a witness, could and would testify competently thereto.

**DISSEMINATION OF POSTCARD NOTICE AND NOTICE PACKET**

2. Pursuant to the Preliminary Approval Order, JND is responsible for disseminating notice of the Settlement. Specifically, JND mailed the Postcard Notice to potential Class Members and mailed the Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Settlement Hearing; and (III) Motion for Attorneys’ Fees and Litigation Expenses (“Notice”) and Proof of Claim and Release Form (“Claim Form” and, together with the Notice, the “Notice Packet”) to Nominees as well as potential Class Members upon request. Copies of the Postcard Notice and Notice Packet are attached hereto as Exhibits 1 and 2, respectively.

3. On February 5, 2024, JND received from Defendants’ Counsel a data file containing 5,598 unique name and address records for purchasers of record of Becton, Dickinson and Company (“BD”) common stock during the Class Period. JND verified these 5,598 mailing records through the National Change of Address database to confirm the most current address was being used. As a result, 136 addresses were updated. On February 15, 2024, JND caused the Postcard Notice to

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<sup>1</sup> All capitalized terms used in this declaration that are not otherwise defined herein shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement, dated as of December 19, 2023 (ECF No. 182-2) (“Stipulation”).

be mailed by First-Class mail, postage prepaid, to the 5,598 potential Class Members contained in the data file provided by Defendants' Counsel.

4. JND also researched filings with the U.S. Securities and Exchange Commission on Forms 13-F to identify additional entities that may have purchased BD common stock or call options, or sold BD put options during the Class Period. As a result of these efforts, JND located an additional 2,040 mailing records for potential Class Members. On February 9, 2024, JND caused the Postcard Notice to be mailed by First-Class mail, postage prepaid, to these 2,040 entities.

5. As in most securities class actions, a large majority of potential Class Members are beneficial purchasers whose securities are held in "street name," i.e., the securities are purchased by brokerage firms, banks, institutions, or other third-party nominees ("Nominees") in the name of the Nominee, on behalf of the beneficial purchasers. JND maintains a proprietary database with the names and addresses of the most common Nominees ("Nominees Database").<sup>2</sup> At the time of the initial mailing, JND's Nominees Database contained 4,079 mailing records. On February 9, 2024, JND caused the Notice Packet to be mailed via First-Class mail, postage prepaid, to the 4,079 mailing records contained in JND's Nominees Database.

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<sup>2</sup> JND's Nominees Database is updated from time to time as new Nominees are identified, and others merge or cease to exist.

6. The Notice directed all those who purchased or otherwise acquired shares of BD common stock or call options on BD common stock, or sold put options on BD common stock from November 5, 2019 to February 5, 2020, inclusive, for the benefit of persons or entities other than themselves to, within seven (7) calendar days of receipt of the Notice, either: (i) request from JND sufficient copies of the Postcard Notice to forward to all such beneficial owners and within seven (7) calendar days of receipt of those Postcard Notices forward them to all such beneficial owners; or (ii) provide a list of the names, mailing addresses, and e-mail addresses, if available, of all such beneficial owners to JND.

7. JND also provided a copy of the Notice to the Depository Trust Company (“DTC”) for posting on its Legal Notice System (“LENS”). The LENS may be accessed by any Nominee that is a participant in DTC’s security system. The Notice was posted on the DTC’s LENS on February 8, 2024.

8. In total, 7,638 Postcard Notices and 4,079 Notice Packets were sent to potential Class Members and Nominees from February 9, 2024 through February 15, 2024, in connection with the above-described initial mailing process (“Initial Mailing”). On March 7, 2024, JND also emailed the Notice Packet to the 2,753 potential Class Members for whom an email address had been provided.<sup>3</sup> 144 of these emails were undeliverable.

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<sup>3</sup> Receiving email addresses for notice mailings is not common practice in

9. Since the Initial Mailing, JND has received an additional 39,571 unique names and addresses of potential Class Members from individuals or Nominees requesting that the Postcard Notice be mailed to such potential Class Members. JND also has received a request from a Nominee for 153,605 Postcard Notices, in bulk, for forwarding directly to the Nominees' customers.<sup>4</sup> Additionally, JND has received 52 requests for Notice Packets from potential Class Members through either the case-dedicated email address or telephone helpline. All such requests for notice have been responded to in a timely manner, and JND will continue to disseminate Postcard Notices and Notice Packets upon receipt of additional requests in a timely manner.

10. As a result of the efforts described above, as of March 14, 2024, an aggregate of 200,814 Postcard Notices and 4,131 Notice Packets have been mailed to potential Class Members and Nominees. In addition, JND has promptly re-mailed 131 Postcard Notices to persons whose original mailings were returned by the U.S. Postal Service ("USPS") as undeliverable and for whom updated addresses were provided to JND by the USPS.

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securities matters, but emails (if available) were requested by Class Counsel in light of the 2018 amendments to Federal Rule of Civil Procedure 23. In the event that both an email address and mailing address were provided for the same potential Class Member, that Class Member was mailed a Postcard Notice and also emailed a Notice Packet.

<sup>4</sup> JND received this request on March 7, 2024 and promptly mailed the Nominee the 153,605 Postcard Notices requested on March 13, 2024.

### **PUBLICATION OF THE SUMMARY NOTICE**

11. Pursuant to the Preliminary Approval Order, JND caused the Summary Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Settlement Hearing; and (III) Motion for Attorneys' Fees and Litigation Expenses ("Summary Notice") to be published in *The Wall Street Journal* and transmitted over *PR Newswire* on February 28, 2024. Copies of proof of publication of the Summary Notice in *The Wall Street Journal* and over *PR Newswire* are attached hereto as Exhibit 3.

### **ESTABLISHMENT OF CALL CENTER SERVICES**

12. In connection with the Initial Mailing, JND established, and since then has continued to maintain, a case-specific, toll-free telephone helpline, 1-888-995-0312, with an interactive voice response system and live operators, to accommodate questions about the Action and the Settlement. The telephone helpline is accessible 24 hours a day, 7 days a week. The automated attendant answers calls to the helpline and presents callers with a series of choices to respond to basic questions. Callers requiring further assistance have the option to be transferred to a live operator during business hours. The toll-free telephone number is set forth in the Postcard Notice, Notice, Summary Notice, Claim Form, and on the Settlement Website. The toll-free telephone helpline became operational on February 8, 2024.

13. JND will continue to maintain the telephone helpline and will update the interactive voice response system as necessary throughout the administration of the Settlement.

**ESTABLISHMENT OF THE SETTLEMENT WEBSITE**

14. In connection with the Initial Mailing and in order to further assist potential Class Members, JND established, and since then has continued to maintain, a dedicated website for the Settlement, [www.BectonSecuritiesSettlement.com](http://www.BectonSecuritiesSettlement.com) (“Settlement Website”). The address for the Settlement Website was set forth in the Postcard Notice, Notice, Summary Notice, and Claim Form. The Settlement Website became operational on February 8, 2024, and is accessible 24 hours a day, 7 days a week. The Settlement Website lists the exclusion, objection, and Claim submission deadlines, as well as the date and time of the Court’s final Settlement Hearing. The Settlement Website also contains links to copies of the Notice and Claim Form, as well as copies of the Stipulation, Preliminary Approval Order, and operative Complaint. In addition, the Settlement Website provides Class Members with the ability to submit their Claim Form online and includes detailed instructions for institutions submitting their Claims electronically.

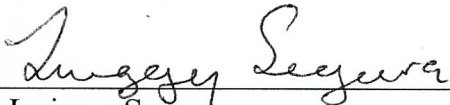
15. JND will continue operating, maintaining, and, as appropriate, updating the Settlement Website until the conclusion of the administration.

**REPORT ON REQUESTS FOR EXCLUSION RECEIVED TO DATE**

16. The notices and Settlement Website inform potential Class Members that requests for exclusion from the Class must be sent to the Claims Administrator, such that they are received no later than April 1, 2024. The Notice also sets forth the information that must be included in each request for exclusion. As of March 14, 2024, JND has received no requests for exclusion from the Class. JND will submit a supplemental declaration after the April 1, 2024 exclusion deadline, which will include a full report on any exclusion requests received.

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

Executed on March 15th, 2024.

  
\_\_\_\_\_  
Luiggy Segura

# **EXHIBIT 1**



**COURT-ORDERED LEGAL NOTICE**

*Industriens Pensjonsforsikring A/S v.  
Becton, Dickinson and Company, et al.  
Case No. 2:20-cv-02155-SRC-CLW (D.N.J.)*

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

For more information, please visit  
**[www.BectonSecuritiesSettlement.com](http://www.BectonSecuritiesSettlement.com)**,  
call toll free 1-888-995-0312,  
or send an email to  
**[info@BectonSecuritiesSettlement.com](mailto:info@BectonSecuritiesSettlement.com)**.



*Becton, Dickinson and Company Securities Litigation  
c/o JND Legal Administration  
P.O. Box 91443  
Seattle, WA 98111*

**<<BARCODE>>**

Postal Service: Please do not mark barcode

«Fullname»

«AddressLine1»

«AddressLine2»

«City», «State» «Zip»

«Country»

***THIS POSTCARD NOTICE PROVIDES ONLY LIMITED INFORMATION ABOUT THE SETTLEMENT.***

***PLEASE VISIT [WWW.BECTONSECURITIESSETTLEMENT.COM](http://WWW.BECTONSECURITIESSETTLEMENT.COM) FOR MORE INFORMATION.***

The parties in the securities class action *Industriens Pensionsforsikring A/S v. Becton, Dickinson and Company, et al.*, Case No. 2:20-cv-02155-SRC-CLW (D.N.J.) (“Action”) have reached a proposed settlement (“Settlement”) of the claims asserted in the Action against Becton, Dickinson and Company (“BD”) and Thomas E. Polen (together, “Defendants”). If approved, the Settlement will resolve the Action in which Court-appointed Class Representative Industriens Pensionsforsikring A/S alleged that Defendants made statements during the Class Period (defined below) which were allegedly misleading due to their failure to acknowledge severe issues with respect to the performance of BD’s Alaris infusion pump system and ongoing scrutiny of the device by the U.S. Food and Drug Administration. Class Representative further alleged that the price of BD’s common stock was artificially inflated as a result of Defendants’ allegedly false and misleading misstatements, and declined when the alleged corrective disclosure was made. Defendants deny any liability or wrongdoing. You received this notice because you, or an investment account for which you serve as a custodian, may be a member of the following Court-certified Class: All persons and entities who, from November 5, 2019 to February 5, 2020, inclusive (“Class Period”), purchased or otherwise acquired BD common stock or call options, or sold BD put options, and were damaged thereby.

Pursuant to the Settlement, Defendants have agreed to pay or cause to be paid \$85,000,000 in cash, which, after deducting Court-awarded fees and expenses, notice and administration costs, and taxes, will be allocated among Class Members who submit valid Claims, in exchange for the Settlement and the release of all claims asserted in the Action and related claims. **For additional information regarding the Settlement, please review the full Notice (“Notice”) available at [www.BectonSecuritiesSettlement.com](http://www.BectonSecuritiesSettlement.com) (“Settlement Website”).** If you are a Class Member, your *pro rata* share of the Settlement will depend on the number of valid Claims submitted, and the number, size, and timing of your transactions in BD common stock and/or options during the Class Period. If all Class Members elect to participate in the Settlement, the estimated average recovery will be \$2.14 per eligible share of BD common stock, \$0.61 per eligible call option, and \$1.62 per eligible put option *before* deducting any fees and expenses. Your actual share of the Settlement will be determined pursuant to the proposed Plan of Allocation set forth in the Notice, or other plan ordered by the Court.

**To qualify for a payment from the Settlement, you must submit a valid Claim.** The Claim Form can be found and submitted on the Settlement Website, or you can request that one be mailed to you. **Claims must be postmarked (if mailed), or submitted online, by June 14, 2024.** If you do not want to be legally bound by any releases, judgments, or orders in the Action, **you must exclude yourself** from the Class by **April 1, 2024.** If you exclude yourself from the Class, you may be able to sue Defendants about the claims being resolved in the Action, but you cannot get money from the Settlement. If you want to object to any aspect of the Settlement, you must file and serve an objection by **April 1, 2024.** The Notice provides instructions on how to submit a Claim, exclude yourself from the Class, or object, and you must comply with all of the instructions in the Notice.

The Court will hold a hearing on **April 22, 2024 at 11:30 a.m.**, to consider, among other things, whether to approve the Settlement and a request by the lawyers representing the Class for up to 25% of the Settlement Fund in attorneys’ fees, plus litigation expenses of no more than \$1,000,000 (which equals a cost of approximately \$0.56 per eligible share of BD common stock, \$0.16 per eligible call option, and \$0.42 per eligible put option). You may attend the hearing and ask to be heard by the Court, but you do not have to. **For more information, call 1-888-995-0312, send an email to [info@BectonSecuritiesSettlement.com](mailto:info@BectonSecuritiesSettlement.com), or visit [www.BectonSecuritiesSettlement.com](http://www.BectonSecuritiesSettlement.com).**

# **EXHIBIT 2**

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

INDUSTRIENS  
PENSIONSFORSIKRING A/S,  
Individually and On Behalf of All Others  
Similarly Situated,

Plaintiff,

v.

BECTON, DICKINSON AND  
COMPANY and THOMAS E. POLEN,  
Defendants.

Case No. 2:20-cv-02155-SRC-CLW

Hon. Stanley R. Chesler  
District Court Judge

Hon. Cathy L. Waldor  
Magistrate Judge

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

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

**NOTICE OF PENDENCY OF CLASS ACTION:** Please be advised that your rights will be affected by the above-captioned securities class action (“Action”) if, from November 5, 2019 to February 5, 2020, inclusive (“Class Period”), you purchased or otherwise acquired Becton, Dickinson and Company (“BD”) common stock or call options, or sold BD put options, and were damaged thereby (“Class”).<sup>1</sup>

**NOTICE OF PROPOSED SETTLEMENT:** Please also be advised that the Court-appointed Lead Plaintiff and Class Representative Industriens Pensionsforsikring A/S (“Lead Plaintiff” or “Class Representative”) has reached a proposed settlement of the Action for \$85,000,000 in cash (“Settlement”) with defendants BD and Thomas E. Polen (together, “Defendants”). If approved by the Court, the Settlement will resolve the Action, including Class Representative’s allegations of violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. §§ 78j(b) and 78t(a), and U.S. Securities and Exchange Commission (“SEC”) Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5 (“Rule 10b-5”) by Defendants. The history of the Action and the claims being released by the Settlement are detailed in ¶¶ 4-23 and ¶¶ 33-39 herein.

<sup>1</sup> All capitalized terms not defined in this Notice have the meanings provided in the Stipulation and Agreement of Settlement dated as of December 19, 2023 (“Stipulation”). The Stipulation can be viewed at [www.BectonSecuritiesSettlement.com](http://www.BectonSecuritiesSettlement.com).

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

If you have questions about this Notice, the proposed Settlement, or your eligibility to participate in the Settlement, please **DO NOT** contact the Court, the Clerk's Office, Defendants, or Defendants' Counsel. All questions should be directed to the Claims Administrator or Class Counsel (*see* ¶ 69 below).

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

- **Statement of the Class's Recovery:** Subject to Court approval, Class Representative, on behalf of itself and the Class, has agreed to settle the Action in exchange for a settlement payment of \$85,000,000 in cash ("Settlement Amount") to be deposited into an escrow account. The Net Settlement Fund (i.e., the Settlement Amount plus any and all interest earned thereon ("Settlement Fund") less: (i) any Taxes; (ii) any Notice and Administration Costs; (iii) any Litigation Expenses awarded by the Court; (iv) any attorneys' fees awarded by the Court; and (v) any other costs or fees approved by the Court) will be distributed in accordance with a plan of allocation approved by the Court, which will determine how the Net Settlement Fund shall be allocated among members of the Class. The proposed plan of allocation ("Plan of Allocation") is attached hereto as Appendix A.

- **Estimate of Average Amount of Recovery Per Share/Option:** Class Representative's damages expert estimates that approximately 38,449,793 shares of BD common stock and 1,155,500 BD call options<sup>2</sup> purchased, and 1,228,300 BD put options sold, during the Class Period may have been affected by the alleged conduct at issue in the Action and eligible to participate in the Settlement. If all eligible Class Members elect to participate in the Settlement, the estimated average recovery (before deduction of any Court-approved fees, expenses, and costs as described herein) will be \$2.14 per eligible share of BD common stock, \$0.61 per eligible BD call option, and \$1.62 per eligible BD put option. **Class Members should note, however, that these are only estimates based on the overall number of potentially eligible shares and options.** Some Class Members may recover more or less than these estimated amounts depending on: (i) when and the price at which they purchased/acquired/sold their BD common

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<sup>2</sup> All options-related amounts in this paragraph are per share of the underlying security (i.e., 1/100 of a contract).

stock/options; (ii) the total number and value of valid Claims submitted; (iii) the amount of Notice and Administration Costs; and (iv) the amount of attorneys' fees and Litigation Expenses awarded by the Court. Distributions to Class Members will be made based on the Plan of Allocation attached hereto as Appendix A or such other plan of allocation ordered by the Court.

- **Statement of Potential Outcome of the Case:** The Parties do not agree on whether Class Representative would have prevailed on its claims against Defendants. Nor do they agree on whether and to what extent the Class suffered any damages, including the average amount of damages per share or option that would be recoverable if Class Representative was to prevail in the Action. Class Representative agreed to the Settlement because it believes that the Settlement confers substantial benefits upon the Class. Among other things, Defendants do not agree with the assertion that they violated the federal securities laws or that any damages were suffered by any members of the Class as a result of their conduct. Defendants have denied and continue to deny any and all allegations of wrongdoing or fault asserted in the Action, deny that they have committed any act or omission giving rise to any liability or violation of law, and deny that Class Representative and the Class have suffered any loss attributable to Defendants' actions or omissions.

- **Attorneys' Fees and Expenses Sought:** Court-appointed Class Counsel, Kessler Topaz Meltzer & Check, LLP and Court-appointed Liaison Counsel, Carella Byrne Cecchi Brody & Agnello, P.C. have prosecuted this Action on a wholly contingent basis and have not received any attorneys' fees (or payment of expenses) for their representation of the Class. For their efforts, Class Counsel, on behalf of Plaintiff's Counsel, will apply to the Court for attorneys' fees in an amount not to exceed 25% of the Settlement Fund. Class Counsel will also apply for payment of Litigation Expenses incurred in connection with the institution, prosecution, and resolution of the Action, in an amount not to exceed \$1,000,000, which amount may include a request for reimbursement of the reasonable costs and expenses incurred by Class Representative directly related to its representation of the Class in accordance with 15 U.S.C. § 78u-4(a)(4). Any fees and expenses awarded to Plaintiff's Counsel will be paid from the Settlement Fund along with any interest earned at the same rate as earned by the Class on the Settlement Fund. If the Court approves the maximum amount of the foregoing fees and expenses, the estimated average cost will be approximately \$0.56 per eligible share of BD common stock, \$0.16 per eligible BD call option, and \$0.42 per eligible BD put option. **Please note that these are only estimates.**

- **Identification of Attorney Representatives:** Class Representative and the Class are represented by Sharan Nirmul, Esq. of Kessler Topaz Meltzer & Check, LLP, 280 King of Prussia Road, Radnor, PA 19087, 1-610-667-7706, info@ktmc.com,

[www.ktmc.com](http://www.ktmc.com). Other representatives from Class Counsel are listed in ¶ 69 below. Further information regarding the Action, the Settlement, and this Notice also may be obtained by contacting the Claims Administrator at: *Becton, Dickinson and Company Securities Litigation*, c/o JND Legal Administration, P.O. Box 91443, Seattle, WA 98111; 1-888-995-0312; [info@BectonSecuritiesSettlement.com](mailto:info@BectonSecuritiesSettlement.com); or by visiting the website for the Action, [www.BectonSecuritiesSettlement.com](http://www.BectonSecuritiesSettlement.com).

- **Reasons for the Settlement:** Class Representative’s principal reason for entering into the Settlement is the near-term cash benefit for the Class without the substantial risk or the delays and costs inherent in further litigation. Here, the Parties were in the midst of discovery efforts at the time the Settlement was reached. The benefit of the Settlement must be considered against the risk that a smaller recovery—or no recovery at all—might be achieved after full discovery, summary judgment, a trial of the Action, and the likely appeals that would follow a trial. Likewise, throughout this litigation, Defendants have denied, and continue to deny, any and all allegations of fault, liability, wrongdoing or damages whatsoever. Defendants expressly have denied, and continue to deny, that they have committed any act or omission giving rise to any liability under Sections 10(b), 20(a) or 20A of the Exchange Act or Rule 10b-5. Defendants assert that the claims asserted in the Action against them are without merit and that none of the evidence developed to date, or that would be developed if the case continued to be litigated, supports or would support the claims asserted in the Action against them. Nonetheless, Defendants have concluded that further litigation could be protracted and expensive, and that it is desirable that the Action be fully and finally settled. Defendants also have taken into account the uncertainty and risks inherent in any litigation, especially in complex cases like this Action.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT</b>	
<b>SUBMIT A CLAIM FORM POSTMARKED (IF MAILED), OR ONLINE, NO LATER THAN JUNE 14, 2024.</b>	This is the only way to be eligible to receive a payment from the Settlement. If you are a Class Member, you will be bound by the Settlement as approved by the Court and you will give up any Released Plaintiff's Claims (defined in ¶ 34 below) that you have against Defendants and the other Defendants' Releasees (defined in ¶ 35 below), so it is in your interest to submit a Claim Form.
<b>EXCLUDE YOURSELF FROM THE CLASS BY SUBMITTING A WRITTEN REQUEST FOR EXCLUSION SO THAT IT IS RECEIVED NO LATER THAN APRIL 1, 2024.</b>	Get no payment from the Settlement. This is the <i>only</i> option that may allow you to ever bring or be part of any <i>other</i> lawsuit against Defendants or the other Defendants' Releasees about the claims being released by the Settlement.
<b>OBJECT TO THE SETTLEMENT BY SUBMITTING A WRITTEN OBJECTION SO THAT IT IS RECEIVED NO LATER THAN APRIL 1, 2024.</b>	If you do not like the proposed Settlement, the proposed Plan of Allocation, and/or Class Counsel's request for attorneys' fees and Litigation Expenses, you may object by writing to the Court (as described in ¶¶ 60-66 below). In order to object, you must be a member of the Class.
<b>GO TO A HEARING ON APRIL 22, 2024 AT 11:30 A.M., AND FILE A NOTICE OF INTENTION TO APPEAR SO THAT IT IS RECEIVED NO LATER THAN APRIL 1, 2024.</b>	Ask to speak in Court at the Settlement Hearing, at the discretion of the Court, about the proposed Settlement, the proposed Plan of Allocation, and/or Class Counsel's request for attorneys' fees and Litigation Expenses.
<b>DO NOTHING.</b>	Get no payment from the Settlement. You will, however, remain a member of the Class, which means that you give up any right you may have to sue about the claims that are being resolved by the Settlement and you will be bound by any judgments or orders entered by the Court in the Action.

**These rights and options – and the deadlines to exercise them – are further explained in this Notice. Please Note: The date and time of the Settlement Hearing – currently scheduled for April 22, 2024 at 11:30 a.m. – is subject to change without further written notice to the Class. It is also within the Court's discretion to hold the hearing in person or by telephone or video conference. If you plan to attend the Settlement Hearing, you should check the website [www.BectonSecuritiesSettlement.com](http://www.BectonSecuritiesSettlement.com) or with Class Counsel to confirm that no change to the date and/or time of the hearing has been made.**



**WHAT THIS NOTICE CONTAINS**

What Is The Purpose Of This Notice? .....Page 6

What Is This Case About? .....Page 7

Why Is This Case A Class Action?.....Page 11

How Do I Know If I Am Affected By The Settlement?  
Who Is Included In The Class?.....Page 11

What Are Class Representative’s Reasons For The Settlement? .....Page 12

What Might Happen If There Were No Settlement? .....Page 12

How Are Class Members Affected By The Action  
And The Settlement? .....Page 13

How Do I Participate In The Settlement? What Do I Need To Do? .....Page 16

How Much Will My Payment Be? .....Page 16

What Payment Are The Attorneys For The Class Seeking?  
How Will The Lawyers Be Paid? .....Page 18

What If I Do Not Want To Be A Member Of The Class?  
How Do I Exclude Myself? .....Page 18

When And Where Will The Court Decide Whether To Approve The  
Settlement? Do I Have To Come To The Hearing? May I Speak  
At The Hearing If I Don’t Like The Settlement? .....Page 19

What If I Bought Shares/Options On Someone Else’s Behalf? .....Page 22

Can I See The Court File? Whom Should I Contact If I Have Questions? .....Page 23

Proposed Plan of Allocation of the Net Settlement Fund.....Appendix A

**WHAT IS THE PURPOSE OF THIS NOTICE?**

1. The Court has directed the issuance of this Notice to inform potential Class Members about the Action and the proposed Settlement and their options in connection therewith before the Court rules on the Settlement. Additionally, Class Members have the right to understand how this class action lawsuit may generally affect their legal rights.

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

3. The issuance of this Notice is not an expression of any opinion by the Court concerning the merits of any claim in the Action, and the Court still has to decide whether to approve the Settlement. If the Court approves the Settlement and the Plan of Allocation (or some other plan of allocation), the Claims Administrator will make payments to eligible Class Members pursuant to the Settlement after any objections and appeals are resolved.

### WHAT IS THIS CASE ABOUT?

4. The following summary of the Action does not constitute a finding of the Court. Neither the Settlement nor any of the terms of this Notice shall be construed or deemed to be evidence of or constitute an admission, concession, or finding of any fault, liability, wrongdoing, or damage on behalf of Defendants.

5. This is a securities class action against Defendants for alleged violations of the federal securities laws. Among other things, Class Representative alleged that Defendants made misrepresentations during the Class Period about the nature, extent, and revenue impact of alleged undisclosed product issues, compliance violations, and ongoing scrutiny by the U.S. Food and Drug Administration ("FDA") regarding BD's Alaris infusion pump system. Class Representative further alleged that the price of BD common stock was inflated as a result of Defendants' misrepresentations, and declined after BD announced FDA actions taken against Alaris on February 5, 2020.

6. Defendants have denied and continue to deny any fault, liability, or wrongdoing whatsoever in connection with any of the allegations of wrongdoing asserted in the Action or any facts related thereto. Defendants assert that the claims in the Action are without merit and that none of the evidence developed to date, or that would be developed if the case continued to be litigated, supports or would support the claims asserted in the Action against them and have asserted numerous defenses. Without limiting the generality of the foregoing in any way, Defendants have denied, and continue to deny, among other things, that any untrue statements of material fact or material omissions were made or that Class Representative or the Class have suffered any damages. **THE COURT HAS NOT RULED AS TO WHETHER DEFENDANTS ARE LIABLE TO CLASS REPRESENTATIVE OR THE CLASS. THIS NOTICE IS NOT INTENDED TO BE AN EXPRESSION OF ANY OPINION BY THE COURT WITH RESPECT TO THE TRUTH OF THE ALLEGATIONS IN THE ACTION OR THE MERITS OF THE CLAIMS OR DEFENSES ASSERTED. THIS NOTICE IS SOLELY TO ADVISE YOU OF THE**

## **PROPOSED SETTLEMENT OF THE ACTION AND YOUR RIGHTS IN CONNECTION WITH THAT SETTLEMENT.**

7. This Action was commenced on February 27, 2020, with the filing of the initial complaint in the Court, asserting violations of the federal securities laws against BD and certain of its executives. A related derivative complaint, *In re Becton, Dickinson & Co. S'holder Deriv. Litig.*, Master File No. 2:20-cv-15474, was filed in the Court on November 2, 2022.

8. On June 9, 2020, the Court appointed Industriens Pensionsforsikring A/S as Lead Plaintiff for the Action, and approved Lead Plaintiff's selection of Kessler Topaz Meltzer & Check, LLP as Lead Counsel for the class and Carella Byrne Cecchi Olstein Brody & Agnello, P.C. (n/k/a Carella Byrne Cecchi Brody & Agnello, P.C.) as Liaison Counsel for the class.

9. On August 10, 2020, Lead Plaintiff filed the Amended Class Action Complaint. On October 9, 2020, Defendants moved to dismiss the Amended Class Action Complaint. On November 23, 2020, Lead Plaintiff filed its opposition to Defendants' motion to dismiss, along with a motion to strike Appendix A to Defendants' motion and all arguments relying on the Appendix.

10. Thereafter, on January 14, 2021, Lead Plaintiff moved to amend the Amended Class Action Complaint under Federal Rule of Civil Procedure ("Rule") 15(a). With its unopposed motion, Lead Plaintiff filed the Second Amended Class Action Complaint.

11. On March 19, 2021, Defendants moved to dismiss the Second Amended Class Action Complaint. On May 3, 2021, Lead Plaintiff filed its opposition to Defendants' motion to dismiss, along with a second motion to strike Appendix A to Defendants' motion. Both motions were fully briefed.

12. By Opinion and Order dated July 8, 2021, the Court denied Lead Plaintiff's motion to strike but granted Lead Plaintiff leave to submit a sur-reply addressing the Appendix. Lead Plaintiff filed a sur-reply on July 19, 2021.

13. By Opinion and Order dated September 15, 2021, the Court granted Defendants' motion to dismiss the Second Amended Class Action Complaint. By the same Order, the Court granted Lead Plaintiff leave to amend within 45 days. On October 29, 2021, Lead Plaintiff filed the Third Amended Class Action Complaint.

14. On December 16, 2021, Defendants moved to dismiss the Third Amended Class Action Complaint. On February 4, 2022, Lead Plaintiff filed its opposition to

Defendants' motion to dismiss and on March 4, 2022, Defendants filed a reply in support of their motion.

15. By Opinion and Order dated August 11, 2022, the Court denied in part and granted in part Defendants' motion to dismiss the Third Amended Class Action Complaint. Defendants answered the Third Amended Class Action Complaint on October 3, 2022.

16. Thereafter, discovery in the Action commenced. Lead Plaintiff prepared and served initial disclosures, requests for production of documents, and interrogatories on Defendants, exchanged letters with Defendants concerning discovery issues, and served document subpoenas on 10 third parties. Defendants and third parties produced over 2 million pages of documents to Lead Plaintiff, and Lead Plaintiff produced documents to Defendants in response to their discovery requests. Depositions of Lead Plaintiff's corporate representative, as well as the Parties' expert witnesses, were taken in connection with the motion for class certification (described below). Lead Plaintiff also took two fact witness depositions and noticed several more. Lead Plaintiff and Defendants litigated three separate discovery disputes before Magistrate Judge Cathy L. Waldor.

17. On December 22, 2022, Lead Plaintiff moved to amend the Third Amended Class Action Complaint under Rule 15(a). Defendants opposed Lead Plaintiff's motion on January 10, 2023, and Lead Plaintiff filed a reply in support of its motion on January 24, 2023. Following oral argument on June 15, 2023, the Court granted Lead Plaintiff leave to file an amended complaint.

18. On June 22, 2023, Lead Plaintiff filed the operative Fourth Amended Class Action Complaint ("Complaint") on behalf of those who purchased or otherwise acquired BD common stock or call options, or sold BD put options, between November 5, 2019 and February 5, 2020, both dates inclusive, and were injured thereby. The Complaint asserted: (i) claims under Section 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder, against BD and Polen; (ii) claims under Section 20(a) of the Exchange Act against Polen; and (iii) claims under Section 20A of the Exchange Act against Polen. On September 15, 2023, Defendants answered the Complaint, denying the claims and asserting a number of affirmative defenses.

19. During this same time, Lead Plaintiff moved for class certification. Lead Plaintiff's January 17, 2023 class certification motion was accompanied by a report from its expert on market efficiency and a proposed common damages methodology. On May 3, 2023, Defendants filed their opposition to Lead Plaintiff's class certification

motion, along with an expert rebuttal report. Lead Plaintiff filed a reply in support of its motion on June 30, 2023.

20. By Opinion and Order dated August 3, 2023, the Court granted Lead Plaintiff's class certification motion. Specifically, the Court: (i) certified a class of all persons and entities who, from November 5, 2019 to February 5, 2020, inclusive purchased or otherwise acquired BD common stock or call options, or sold BD put options, and were damaged thereby; (ii) appointed Industriens Pensionsforsikring A/S as Class Representative; and (iii) appointed Kessler Topaz Meltzer & Check, LLP and Carella Byrne Cecchi Brody & Agnello, P.C. as Class Counsel and Liaison Counsel, respectively, pursuant to Rule 23(g).

21. Prior to this, while discovery was ongoing and Lead Plaintiff's class certification motion was pending, the Parties agreed to participate in a private mediation before David M. Murphy, Esq., of Phillips ADR Enterprises, P.C. In advance of the mediation, the Parties exchanged detailed mediation statements. A mediation session with Mr. Murphy was held in New York City on August 16, 2023. At the mediation, the Parties engaged in vigorous settlement negotiations with the assistance of Mr. Murphy but the case did not resolve. Following the mediation, the Parties continued their negotiations with the assistance of Mr. Murphy and met virtually on September 13, 2023 with their respective damages consultants and in-person again in New York City on October 13, 2023, where once again the case did not resolve. Finally, on October 16, 2023, Mr. Murphy issued a mediator's recommendation to resolve the Action for \$85 million, which the Parties accepted on October 18, 2023. Thereafter, the Parties memorialized their agreement in principle to resolve the Action in a term sheet executed on November 13, 2023.

22. After additional negotiations regarding the specific terms of their agreement, the Parties entered into the Stipulation on December 19, 2023. The Stipulation, which sets forth the terms and conditions of the Settlement, can be viewed at [www.BectonSecuritiesSettlement.com](http://www.BectonSecuritiesSettlement.com).

23. On January 18, 2024, the Court preliminarily approved the Settlement, authorized notice of the Settlement to be provided to potential Class Members, and scheduled the Settlement Hearing to consider whether to grant final approval of the Settlement.

Defendants have denied and continue to deny the claims and allegations asserted against them in the Action. Despite maintaining that they are not liable for the claims asserted in the Action and that they have good and valid defenses thereto, Defendants have agreed to the Settlement solely to avoid further expense, inconvenience, and the burden of protracted litigation. Each of the Defendants denies that they have committed any violations of law or other wrongdoing. Defendants expressly deny that Class

Representative has asserted any valid claims as to any of them, and expressly deny any and all allegations of fault, liability, wrongdoing, or damages whatsoever.

### WHY IS THIS CASE A CLASS ACTION?

24. In a class action, one or more persons or entities (in this case, Class Representative) sue on behalf of persons and entities that have similar claims. Together, these persons and entities are a “class,” and each is a “class member.” Bringing a case, such as this one, as a class action allows the adjudication of many individuals’ similar claims that might be too small to bring economically as separate actions. One court resolves the issues for all class members at the same time, except for those who exclude themselves, or “opt out,” from the class.

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

25. If you are a member of the Class, you are subject to the Settlement, unless you timely request to be excluded. The Class, as certified by the Court pursuant to its Opinion and Order dated August 3, 2023, consists of:

**All persons and entities who, from November 5, 2019 to February 5, 2020, inclusive, purchased or otherwise acquired BD common stock or call options, or sold BD put options, and were damaged thereby.**

Excluded from the Class are: (i) Defendants; (ii) present or former executive officers of BD or any of BD’s subsidiaries or affiliates, members of BD’s Board of Directors, and members of the immediate families of each of the foregoing (as defined in 17 C.F.R. § 229.404, Instructions (1)(a)(iii) and (1)(b)(ii)); (iii) any of the foregoing individuals’ and entities’ legal representatives, heirs, successors, or assigns; and (iv) any entity in which any Defendant has a controlling interest. Also excluded from the Class are any persons and entities who or which submit a request for exclusion from the Class that is accepted by the Court.

**PLEASE NOTE: Receipt of this Notice or the Postcard Notice does not mean that you are a Class Member or that you will be entitled to a payment from the Settlement. If you are a Class Member and you wish to be eligible to receive a payment from the Settlement, you are required to submit a Claim Form and the required supporting documentation as set forth in the Claim Form postmarked (if mailed), or online at [www.BectonSecuritiesSettlement.com](http://www.BectonSecuritiesSettlement.com), no later than June 14, 2024.**

**WHAT ARE CLASS REPRESENTATIVE'S REASONS FOR THE SETTLEMENT?**

26. The Settlement is the result of over 3 1/2 years of hard-fought litigation and extensive, arm's-length negotiations by the Parties. Class Representative and Class Counsel believe that their claims against Defendants have merit; however, they also recognize the expense and length of continued proceedings necessary to pursue Class Representative's claims - i.e., completion of merits discovery (including depositions), expert discovery, summary judgment, and trial, as well as the challenges Class Representative would face in establishing liability and the Class's full amount of damages. More specifically, Class Representative faced potential challenges associated with proving the securities laws violations alleged in the Action.

27. In light of these risks, the amount of the Settlement, and the certain, near-term recovery to the Class, Class Representative and Class Counsel believe that the proposed Settlement is fair, reasonable, and adequate, and in the best interests of the Class. Class Representative and Class Counsel believe that the Settlement provides a favorable result for the Class, namely \$85,000,000 in cash (less the various deductions described in this Notice), as compared to the risk that the claims in the Action would produce a smaller, or no, recovery after trial and appeals, possibly years in the future.

28. Defendants have denied, and continue to deny, any and all allegations of fault, liability, wrongdoing, or damages whatsoever. Defendants expressly have denied, and continue to deny, that they have committed any act or omission giving rise to any liability under Sections 10(b), 20(a) or 20A of the Exchange Act, or Rule 10b-5. Defendants assert that the claims asserted in the Action against them are without merit and that none of the evidence developed to date, or that would be developed if the case had continued to be litigated, supports or would support the claims asserted in the Action against them. Nonetheless, Defendants have concluded that further conduct of the Action could be protracted and expensive, and that it is desirable that the Action be fully and finally settled. Defendants also have taken into account the uncertainty and risks inherent in any litigation, especially in complex cases like the Action.

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

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

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

30. As a Class Member, you are represented by Class Representative and Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense.

31. If you are a Class Member and do not wish to remain a Class Member, you may exclude yourself from the Class by following the instructions in the section below entitled, “What If I Do Not Want To Be A Member Of The Class? How Do I Exclude Myself?” on page 18.

32. If you are a Class Member and you wish to object to the Settlement, the Plan of Allocation, or Class Counsel’s request for attorneys’ fees and Litigation Expenses, you may present your objection(s) by following the instructions in the section below entitled, “When And Where Will The Court Decide Whether To Approve The Settlement?” on page 19.

33. If you are a Class Member and you do not exclude yourself from the Class, you will be bound by any orders issued by the Court in the Action. If the Settlement is approved, the Court will enter a judgment (“Judgment”). The Judgment will dismiss with prejudice the claims against Defendants and will provide that, upon the Effective Date of the Settlement, Class Representative and each of the other Class Members, whether or not such Class Member executes and delivers a Claim or shares in the Net Settlement Fund, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, assigns, representatives, attorneys, agents, and anyone claiming through or on behalf of any of them, in their capacities as such, shall be deemed to have, and by operation of law and of the Judgment shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Plaintiff’s Claim (as defined in ¶ 34 below) against Defendants and the other Defendants’ Releasees (as defined in ¶ 35 below), and shall forever be barred and enjoined from prosecuting, commencing, or instituting any or all of the Released Plaintiff’s Claims directly or indirectly against any of the Defendants’ Releasees. This release shall not apply to any person or entity who or which submits a request for exclusion from the Class that is accepted by the Court.

34. “Released Plaintiff’s Claims” means all claims and causes of action of every nature and description, whether known or unknown, whether arising under federal, state, local, common, statutory, administrative or foreign law, or any other law, rule or regulation, at law or in equity, whether class or individual in nature, whether accrued or unaccrued, whether liquidated or unliquidated, whether matured or unmatured, that Class Representative or any other member of the Class: (i) asserted in



the Action or (ii) could have asserted in any court or forum that arise out of or are based upon the same allegations, transactions, facts, matters or occurrences, representations, or omissions set forth in the Action and that relate to the purchase or other acquisition of BD common stock or call options on BD common stock, or the sale of put options on BD common stock, during the Class Period. Released Plaintiff's Claims shall not include (i) any claims relating to the enforcement of the Settlement; (ii) any of the claims asserted in *In re Becton, Dickinson & Co. S'holder Deriv. Litig.*, Master File No. 2:20-cv-15474 (D.N.J.); or (iii) any claims of any persons or entities who or which submit a request for exclusion from the Class that is accepted by the Court.

35. "Defendants' Releasees" means Defendants; Defendants' respective former, present or future parent companies, controlling shareholders, subsidiaries, divisions and affiliates and the respective present and former employees, members, managers, partners, principals, officers, directors, controlling shareholders, agents, attorneys, advisors, accountants, auditors, and insurers and reinsurers of each of them; the predecessors, successors, estates, Immediate Family members, spouses, heirs, executors, trusts, trustees, administrators, agents, legal or personal representatives, assigns, and assignees of each of them; as well as any trust of which the Individual Defendant is the settlor or which is for the benefit of any of his Immediate Family members; and any firm, trust, corporation, or entity in which any Defendant has a controlling interest.

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

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of

executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Class Representative and Defendants expressly waive, and each of the other Class Members shall be deemed by operation of law to have waived, any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to California Civil Code § 1542. Class Representative and Defendants acknowledge that they may hereafter discover facts in addition to, or different from, those that they or their counsel now knows or believes to be true with respect to the subject matter of the Released Plaintiff's Claims or Released Defendants' Claims, but the Class Representative and Defendants expressly settle and release, and specifically, each Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled and released any and all Released Plaintiff's Claims and Released Defendants' Claims, as applicable, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, reckless, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. Class Representative and Defendants acknowledge, and each of the other Class Members shall be deemed by operation of law to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the Settlement.

37. The Judgment will also provide that, upon the Effective Date of the Settlement, Defendants, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, assigns, representatives, attorneys, and agents, in their capacities as such, shall be deemed to have, and by operation of law and of the Judgment shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Defendants' Claim (as defined in ¶ 38 below) against Class Representative and the other Plaintiff's Releasees (as defined in ¶ 39 below), and shall forever be barred and enjoined from prosecuting any or all of the Released Defendants' Claims directly or indirectly against any of the Plaintiff's Releasees. This release shall not apply to any person or entity who or which submits a request for exclusion from the Class that is accepted by the Court.

38. "Released Defendants' Claims" means all claims and causes of action of every nature and description, whether known or unknown, whether arising under federal, state, local, common, statutory, administrative or foreign law, or any other law, rule or regulation, at law or in equity, whether class or individual in nature, whether accrued or unaccrued, whether liquidated or unliquidated, whether matured or unmatured, that arise out of or relate in any way to the institution, prosecution, or

settlement of the claims against Defendants. Released Defendants' Claims shall not include any claims relating to the enforcement of the Settlement.

39. "Plaintiff's Releasees" means Class Representative, all other Class Members, and their respective current and former parents, affiliates, subsidiaries, officers, directors, agents, successors, predecessors, assigns, assignees, partnerships, partners, trustees, trusts, employees, Immediate Family members, insurers, reinsurers, and attorneys, in their capacities as such.

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

40. To be eligible for a payment from the proceeds of the Settlement, you must be a member of the Class and you must timely complete and return the Claim Form with adequate supporting documentation *postmarked (if mailed), or submitted online at [www.BectonSecuritiesSettlement.com](http://www.BectonSecuritiesSettlement.com), no later than June 14, 2024*. You can obtain a copy of the Claim Form on the website, [www.BectonSecuritiesSettlement.com](http://www.BectonSecuritiesSettlement.com), or you may request that a Claim Form be mailed to you by calling the Claims Administrator toll free at 1-888-995-0312, or by emailing the Claims Administrator at [info@BectonSecuritiesSettlement.com](mailto:info@BectonSecuritiesSettlement.com). **Please retain all records of your ownership of and transactions in BD common stock, call options and put options, as they may be needed to document your Claim.** If you request exclusion from the Class or do not submit a timely and valid Claim, you will not be eligible to share in the Net Settlement Fund.

**HOW MUCH WILL MY PAYMENT BE?**

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

42. Pursuant to the Settlement, Defendants shall pay or cause to be paid a total of \$85,000,000 in cash. The Settlement Amount will be deposited into an escrow account. The Settlement Amount plus any interest earned thereon is referred to as the "Settlement Fund." If the Settlement is approved by the Court and the Effective Date occurs, the "Net Settlement Fund" (that is, the Settlement Fund less: (i) any Taxes; (ii) any Notice and Administration Costs; (iii) any Litigation Expenses awarded by the Court; (iv) any attorneys' fees awarded by the Court; and (v) any other costs or fees approved by the Court) will be distributed to Class Members who submit valid Claims, in accordance with the proposed Plan of Allocation or such other plan of allocation as the Court may approve.

43. Approval of the Settlement is independent from approval of a plan of allocation. Any determination with respect to the Plan of Allocation set forth in Appendix A, or another plan of allocation, will not affect the Settlement, if approved.

44. Once the Court's order or Judgment approving the Settlement becomes Final and the Effective Date has occurred, no Defendant, Defendants' Releasee, or any other person or entity (including Defendants' insurance carriers) who or which paid any portion of the Settlement Amount on Defendants' behalf are entitled to get back any portion of the Settlement Fund. Defendants shall not have any liability, obligation, or responsibility for the administration of the Settlement, the disbursement of the Net Settlement Fund, or the Plan of Allocation.

45. Unless the Court otherwise orders, any Class Member who fails to submit a Claim postmarked or received on or before June 14, 2024 shall be fully and forever barred from receiving payments pursuant to the Settlement but will in all other respects remain a Class Member and be subject to the provisions of the Stipulation, including the terms of any Judgment entered and the Releases given.

46. Participants in and beneficiaries of any employee retirement and/or benefit plan covered by the Employee Retirement Income Security Act of 1974 ("Employee Plan") should NOT include any information relating to BD securities purchased/acquired/sold through an Employee Plan in any Claim they submit in this Action. They should include ONLY those eligible BD securities purchased/acquired/sold during the Class Period outside of an Employee Plan. Claims based on any Employee Plan(s)' purchases/acquisitions/sales of eligible BD securities during the Class Period may be made by the Employee Plan(s)' trustees.

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

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

49. Only Class Members, i.e., persons and entities who, from November 5, 2019 to February 5, 2020, inclusive, purchased or otherwise acquired BD common stock or call options, or sold BD put options, and were damaged as a result of such purchases, acquisitions and/or sales, will be eligible to share in the distribution of the Net Settlement Fund. Persons and entities that are excluded from the Class by definition or that exclude themselves from the Class pursuant to request will not be eligible to receive a distribution from the Net Settlement Fund and should not submit Claims.

**50. Appendix A to this Notice sets forth the Plan of Allocation for allocating the Net Settlement Fund among Authorized Claimants, as proposed by**

**Class Representative and Class Counsel. At the Settlement Hearing, Class Counsel will request that the Court approve the Plan of Allocation. The Court may modify the Plan of Allocation, or approve a different plan of allocation, without further notice to the Class.**

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

51. Class Counsel has not received any payment for its services in pursuing claims against Defendants on behalf of the Class, nor has Class Counsel been reimbursed for its out-of-pocket expenses. Before final approval of the Settlement, Class Counsel will apply, on behalf of Plaintiff’s Counsel, to the Court for an award of attorneys’ fees in an amount not to exceed 25% of the Settlement Fund. At the same time, Class Counsel also intends to apply for payment of Plaintiff’s Counsel’s Litigation Expenses in an amount not to exceed \$1,000,000, which amount may include a request for reimbursement of the reasonable costs and expenses incurred by Class Representative directly related to its representation of the Class in accordance with 15 U.S.C. § 78u-4(a)(4).

52. Class Counsel’s motion for attorneys’ fees and Litigation Expenses will be filed by March 18, 2024. A copy of Class Counsel’s motion for attorneys’ fees and Litigation Expenses will be available for review at [www.BectonSecuritiesSettlement.com](http://www.BectonSecuritiesSettlement.com) once it is filed. The Court will determine the amount of any award of attorneys’ fees or Litigation Expenses. Such sums as may be approved by the Court will be paid from the Settlement Fund. ***Class Members are not personally liable for any such fees or expenses.***

**WHAT IF I DO NOT WANT TO BE A MEMBER OF THE CLASS?  
HOW DO I EXCLUDE MYSELF?**

53. Each Class Member will be bound by all determinations and judgments in this lawsuit, whether favorable or unfavorable, unless such person or entity mails or delivers a letter requesting exclusion addressed to: *Becton, Dickinson and Company Securities Litigation*, EXCLUSIONS, c/o JND Legal Administration, P.O. Box 91443, Seattle, WA 98111. The request for exclusion must be ***received no later than April 1, 2024***. You will not be able to exclude yourself from the Class after that date. Each letter requesting exclusion must: (i) state the name, address, and telephone number of the person or entity requesting exclusion, and in the case of entities, the name and telephone number of the appropriate contact person; (ii) state that such person or entity “requests exclusion from the Class in *Industriens Pensionsforsikring A/S v. Becton, Dickinson and Company, et al.*, Case No. 2:20-cv-02155-SRC-CLW (D.N.J.)”; (iii) state the number of shares of BD common stock and the number of call or put

options on BD common stock that the person or entity requesting exclusion (A) owned as of the opening of trading on November 5, 2019 and (B) purchased/acquired and/or sold during the Class Period (i.e., from November 5, 2019 to February 5, 2020, inclusive), as well as the dates, number of shares/options, and prices of each such purchase/acquisition and/or sale; and (iv) be signed by the person or entity requesting exclusion or an authorized representative. A letter requesting exclusion shall not be valid and effective unless it provides all the information called for in this paragraph and is received within the time stated above, or is otherwise accepted by the Court.

54. If you do not want to be part of the Class, you must follow these instructions for exclusion even if you have pending, or later file, another lawsuit, arbitration, or other proceeding relating to any Released Plaintiff's Claim against any of the Defendants' Releasees. Excluding yourself from the Class is the only option that may allow you to be part of any other current or future lawsuit against Defendants or any of the other Defendants' Releasees concerning the Released Plaintiff's Claims. Please note, however, if you decide to exclude yourself from the Class, Defendants and the other Defendants' Releasees will have the right to assert any and all defenses they may have to any claims that you may seek to assert.

55. If you ask to be excluded from the Class, you will not be eligible to receive any payment from the Net Settlement Fund.

56. Defendants shall have the right to terminate the Settlement in the event that Class Members timely and validly requesting exclusion from the Class meet the conditions set forth in the Parties' confidential agreement in accordance with the terms of that agreement.

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

57. **Class Members do not need to attend the Settlement Hearing. The Court will consider any submission made in accordance with the provisions below even if a Class Member does not attend the hearing. You can participate in the Settlement without attending the Settlement Hearing.**

58. **Please Note**: The date and time of the Settlement Hearing may change without further written notice to the Class. In addition, the Court may decide to conduct the Settlement Hearing by video or telephonic conference, or otherwise allow Class Members to appear at the hearing by video or telephone, without further written notice to the Class. **In order to determine whether the date and time of the Settlement**

**Hearing have changed, or whether Class Members must or may participate by telephone or video, it is important that you check the Court's docket and the website, [www.BectonSecuritiesSettlement.com](http://www.BectonSecuritiesSettlement.com), before making any plans to attend the Settlement Hearing. Any updates regarding the Settlement Hearing, including any changes to the date or time of the hearing or updates regarding in-person or remote appearances at the hearing, will be posted to the website [www.BectonSecuritiesSettlement.com](http://www.BectonSecuritiesSettlement.com). If the Court requires or allows Class Members to participate in the Settlement Hearing by telephone or video conference, the information for accessing the telephone or video conference will be posted to [www.BectonSecuritiesSettlement.com](http://www.BectonSecuritiesSettlement.com).**

59. The Settlement Hearing will be held on **April 22, 2024 at 11:30 a.m.**, before the Honorable Cathy L. Waldor, United States Magistrate Judge for the District of New Jersey, either in person in Courtroom 4D of the Martin Luther King Building & U.S. Courthouse, 50 Walnut Street, Newark, NJ 07101, or by telephone or videoconference (in the discretion of the Court). The Court reserves the right to approve the Settlement, the Plan of Allocation, Class Counsel's request for attorneys' fees and Litigation Expenses, and/or any other matter related to the Settlement at or after the Settlement Hearing without further notice to the members of the Class.

60. Any Class Member may object to the Settlement, the Plan of Allocation, and/or Class Counsel's motion for attorneys' fees and Litigation Expenses. Objections must be in writing. You must file any written objection, together with copies of all other papers and briefs supporting the objection, with the Clerk's Office at the United States District Court for the District of New Jersey at the address set forth below, as well as serve copies on Class Counsel and Defendants' Counsel at the addresses set forth below *on or before April 1, 2024*.

<u>Clerk's Office</u>	<u>Class Counsel</u>	<u>Defendants' Counsel</u>
U.S. District Court District of New Jersey Martin Luther King Building & U.S. Courthouse 50 Walnut Street Newark, NJ 07101	Sharan Nirmul, Esq. Kessler Topaz Meltzer & Check, LLP 280 King of Prussia Road Radnor, PA 19087	James P. Smith III, Esq. Winston & Strawn LLP 200 Park Avenue New York, NY 10166

61. Any objection, filings, and other submissions by the objecting Class Member must include: (1) the name of this proceeding, *Industriens Pensionsforsikring A/S v. Becton, Dickinson and Company, et al.*, Case No. 2:20-cv-02155-SRC-CLW (D.N.J.); (2) the objector's full name, current address, and telephone number; (3) the objector's signature; (4) a statement providing the specific reasons for the objection,

including a detailed statement of the specific legal and factual basis for each and every objection and whether the objection applies only to the objector, to a specific subset of the Class, or to the entire Class; and (5) documents sufficient to prove membership in the Class, including documents showing the number of shares of BD common stock and call or put options on BD common stock that the objecting Class Member (A) held as of the opening of trading on November 5, 2019 and (B) purchased/acquired and/or sold during the Class Period, as well as the dates, number of shares/options, and prices of each such purchase/acquisition and sale. The objecting Class Member shall provide documentation establishing membership in the Class through copies of brokerage confirmation slips or brokerage account statements, or an authorized statement from the objector's broker containing the transactional and holding information found in a brokerage confirmation slip or account statement.

**62. You may not object to the Settlement, Plan of Allocation, and/or Class Counsel's motion for attorneys' fees and Litigation Expenses if you exclude yourself from the Class.**

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

64. If you wish to be heard orally at the hearing in opposition to the approval of the Settlement, the Plan of Allocation, and/or Class Counsel's motion for attorneys' fees and Litigation Expenses, and if you timely submit a written objection as described above, you must also file a notice of appearance with the Clerk's Office and serve it on Class Counsel and Defendants' Counsel at the addresses set forth in ¶ 60 above so that it is **received on or before April 1, 2024**. Persons who intend to object and desire to present evidence at the Settlement Hearing must include in their written objection or notice of appearance the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the hearing. Such persons may be heard orally at the discretion of the Court.

65. You are not required to hire an attorney to represent you in making written objections or in appearing at the Settlement Hearing. However, if you decide to hire an attorney, it will be at your own expense, and that attorney must file a notice of appearance with the Court and serve it on Class Counsel and Defendants' Counsel at the addresses set forth in ¶ 60 above so that the notice is **received on or before April 1, 2024**.



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

**WHAT IF I BOUGHT SHARES/OPTIONS  
ON SOMEONE ELSE'S BEHALF?**

67. If you purchased or otherwise acquired shares of BD common stock or call options on BD common stock, or sold put options on BD common stock from November 5, 2019 to February 5, 2020, inclusive, for the beneficial interest of persons or entities other than yourself, you must either (i) within seven (7) calendar days of receipt of this Notice, request from the Claims Administrator sufficient copies of the Postcard Notice to forward to all such beneficial owners and within seven (7) calendar days of receipt of those Postcard Notices forward them to all such beneficial owners; or (ii) within seven (7) calendar days of receipt of this Notice, provide a list of the names, mailing addresses, and e-mail addresses, if available, of all such beneficial owners to *Becton, Dickinson and Company Securities Litigation*, c/o JND Legal Administration, P.O. Box 91443, Seattle, WA 98111. If you choose the second option, the Claims Administrator will send a copy of the Postcard Notice to the beneficial owners you have identified on your list. Upon full compliance with these directions, nominees may seek reimbursement of their reasonable expenses actually incurred in complying with these directions by providing the Claims Administrator with proper documentation supporting the expenses for which reimbursement is sought. Reasonable expenses shall not exceed \$0.10 per mailing record provided to the Claims Administrator; \$0.50 per unit for each Postcard Notice actually mailed, which amount includes postage; and \$0.10 per Postcard Notice sent via email. Such properly documented expenses incurred by nominees in compliance with these directions shall be paid from the Settlement Fund, with any disputes as to the reasonableness or documentation of expenses incurred subject to review by the Court.

68. Copies of the Notice and the Claim Form may be obtained from the website for the Settlement, [www.BectonSecuritiesSettlement.com](http://www.BectonSecuritiesSettlement.com), by calling the Claims Administrator toll free at 1-888-995-0312, or by emailing the Claims Administrator at [info@BectonSecuritiesSettlement.com](mailto:info@BectonSecuritiesSettlement.com).

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

69. This Notice contains only a summary of the terms of the Settlement. For the full terms and conditions of the Settlement, please see the Stipulation available at [www.BectonSecuritiesSettlement.com](http://www.BectonSecuritiesSettlement.com). More detailed information about the matters involved in this Action can be obtained by accessing the Court docket in this case, for a fee, through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.njd.uscourts.gov>, or by visiting, during regular office hours, the Office of the Clerk, United States District Court for the District of New Jersey, Martin Luther King Building & U.S. Courthouse, 50 Walnut Street, Newark, NJ 07101. Additionally, copies of any related orders entered by the Court and certain other filings in this Action will be posted on the website [www.BectonSecuritiesSettlement.com](http://www.BectonSecuritiesSettlement.com).

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

*Becton, Dickinson and Company Securities Litigation*  
c/o JND Legal Administration  
P.O. Box 91443  
Seattle, WA 98111

1-888-995-0312

[info@BectonSecuritiesSettlement.com](mailto:info@BectonSecuritiesSettlement.com)  
[www.BectonSecuritiesSettlement.com](http://www.BectonSecuritiesSettlement.com)

and/or

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

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

Dated: February 15, 2024

By Order of the Court  
United States District Court  
District of New Jersey

## **APPENDIX A**

### **PROPOSED PLAN OF ALLOCATION OF THE NET SETTLEMENT FUND**

70. The objective of the proposed Plan of Allocation is to equitably distribute the Net Settlement Fund to those Class Members who suffered economic losses as a result of the alleged violations of the federal securities laws set forth in the Complaint. The calculations made pursuant to the Plan of Allocation are not intended to be estimates of, nor indicative of, the amounts that Class Members might have been able to recover after a trial. Nor are the calculations made pursuant to the Plan of Allocation intended to be estimates of the amounts that will be paid to Authorized Claimants pursuant to the Settlement. The computations under the Plan of Allocation are only a method to weigh the claims of Claimants against one another for the purposes of making *pro rata* allocations of the Net Settlement Fund.

71. In order to have recoverable damages under Sections 10(b) and 20(a) of the Exchange Act and SEC Rule 10b-5, the disclosure of the allegedly misrepresented information must have been the cause of the adverse change in the price of BD common stock and call and put options on BD common stock (collectively, “BD Securities”). In this case, Class Representative Industriens Pensionsforsikring A/S alleged that Defendants BD and Thomas E. Polen made misleading statements or omissions from November 5, 2019 through February 5, 2020, inclusive (i.e., the Class Period), which had the alleged effect of artificially inflating the price of BD common stock and call options, and deflating the price of BD put options. Class Representative further alleged that corrective information was released to the market on February 6, 2020 (prior to market open), which removed the alleged artificial inflation from the prices of BD common stock and call options and the alleged artificial deflation from the prices of BD put options on February 6, 2020.

72. In developing the Plan of Allocation, Class Representative’s damages expert calculated the estimated amount of artificial inflation or deflation in the per-share closing prices of BD Securities that allegedly was proximately caused by Defendants’ alleged materially false or misleading statements or omissions.

73. In calculating the estimated artificial inflation or deflation allegedly caused by Defendants’ alleged misrepresentations, Class Representative’s damages expert considered price changes in BD Securities in reaction to certain public announcements allegedly making the corrective disclosure concerning Defendants’ alleged misleading statements or omissions, adjusting for price changes that were attributable to market or industry forces or that would likely have been attributed to non-fraud-related information released on the same day.

74. Recognized Loss Amounts (as calculated below) are based primarily on the difference in the amount of alleged artificial inflation or deflation in the price of BD Securities at the time of purchase and at the time of sale, or the difference between the actual purchase price and sale price. Accordingly, in order to have a Recognized Loss Amount pursuant to the Plan of Allocation, a Class Member must have held BD common stock or call options purchased or acquired during the Class Period through the alleged corrective disclosure on February 6, 2020, that removed the artificial inflation from the price of BD common stock or call options, and with respect to BD put options, a Class Member must have sold (written) those options during the Class Period and such option(s) must have remained open through the alleged corrective disclosure on February 6, 2020, that removed the artificial deflation from the price of BD put options.

75. Based on the formulas stated below, a “Recognized Loss Amount” will be calculated for each purchase or acquisition of BD common stock and call options and each sale (writing) of BD put options during the Class Period that is listed on the Claim Form and for which adequate documentation is provided. If a Recognized Loss Amount calculates to a negative number or zero under the formulas below, that number will be zero.

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

#### **BD Common Stock**

76. For each share of BD common stock purchased or otherwise acquired during the period from November 5, 2019 through the close of trading on February 5, 2020, and:

- A. Sold before February 6, 2020, the Recognized Loss Amount will be \$0.00;
- B. Sold from February 6, 2020 through the close of trading on May 5, 2020,<sup>3</sup> the Recognized Loss Amount will be *the least of*:

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<sup>3</sup> May 5, 2020 represents the last day of the 90-day period subsequent to the end of the Class Period, i.e., the period from February 6, 2020 through May 5, 2020 (“90-day Look Back Period”). The Private Securities Litigation Reform Act of 1995 (“PSLRA”) imposes a statutory limitation on recoverable damages using the 90-day Look Back Period. This limitation is incorporated into the calculation of a Class Member’s Recognized Loss Amount. Specifically, a Class Member’s Recognized Loss Amount cannot exceed the difference between the purchase price paid for the BD common stock and the average price of BD common stock during the 90-day Look Back Period if the BD common stock was held through May 5, 2020, the end of this period. Losses on BD

- (i) \$35.11 per share (the amount of alleged artificial inflation removed from the price of BD common stock on February 6, 2020); (ii) the actual purchase/acquisition price per share *minus* the average closing price from February 6, 2020 through the date of sale as stated in Table A below; or (iii) the actual purchase/acquisition price per share *minus* the actual sale price per share; or
- C. Held as of the close of trading on May 5, 2020, the Recognized Loss Amount will be ***the lesser of***: (i) \$35.11 per share (the amount of alleged artificial inflation removed from the price of BD common stock on February 6, 2020); or (ii) the actual purchase/acquisition price per share *minus* \$243.51 (the average closing price of BD common stock during the 90-day Look Back Period (i.e., February 6, 2020 through May 5, 2020), as shown on the last line of Table A below).

### **BD Call and Put Options**

77. Exchange-traded options are traded in units called “contracts” which entitle the holder to buy (in the case of a call option) or sell (in the case of a put option) 100 shares of the underlying security, which in this case is BD common stock. Throughout this Plan of Allocation, all price quotations are *per share of the underlying security* (i.e., 1/100 of a contract).

78. Each option contract specifies a strike price and an expiration date. Contracts with the same strike price and expiration date are referred to as a “series” and each series represents a different security that trades in the market and has its own market price (and thus its own artificial inflation or deflation). Under the Plan of Allocation, the dollar artificial inflation per share (i.e., 1/100 of a contract) for each series of BD call options and the dollar artificial deflation per share (i.e., 1/100 of a contract) for each series of BD put options has been calculated by Class Representative’s damages expert. Table B sets forth the dollar artificial inflation per share in BD call options during the Class Period. Table C sets forth the dollar artificial deflation per share in BD put options during the Class Period. Tables B and C list only series of exchange-traded BD options that expired on or after February 6, 2020—the date of the alleged corrective disclosure.

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common stock purchased/acquired during the period between November 5, 2019 and February 5, 2020, and sold during the 90-day Look Back Period cannot exceed the difference between the purchase price paid for the BD common stock and the average price of BD common stock during the portion of the 90-day Look Back Period that had elapsed prior to the date of sale. The mean (average) closing price for BD common stock during the 90-day Look Back Period was \$243.51.

Any BD options traded during the Class Period that are not found on Tables B and C have a Recognized Loss Amount of zero under the Plan of Allocation.

79. For each BD call option purchased or otherwise acquired during the Class Period, and:

- A. Closed (through sale, exercise, or expiration) before February 6, 2020, the Recognized Loss Amount will be \$0.00; or
- B. Open as of the close of trading on February 6, 2020, the Recognized Loss Amount will be *the lesser of*: (i) the amount of artificial inflation per share on the date of purchase/acquisition as stated in Table B; or (ii) the purchase/acquisition price *minus* the closing price of that option on February 6, 2020 (i.e., the “Holding Price”) as stated in Table B.

80. For each BD put option sold (written) during the Class Period, and:

- A. Closed (through purchase, exercise, or expiration) before February 6, 2020, the Recognized Loss Amount will be \$0.00; or
- B. Open as of the close of trading on February 6, 2020, the Recognized Loss Amount will be *the lesser of*: (i) the amount of artificial deflation per share on the date of sale (writing) as stated in Table C; or (ii) the closing price of that option on February 6, 2020 (i.e., the “Holding Price”) as stated in Table C *minus* the sale price.

81. **Maximum Recovery for Options:** The Settlement proceeds available for BD call options purchased/acquired during the Class Period and BD put options sold (written) during the Class Period shall be limited to a total amount equal to 3.5% of the Net Settlement Fund. Thus, if the cumulative Recognized Loss Amounts for BD call options and BD put options exceeds 3.5% of all Recognized Claims, then the Recognized Loss Amounts calculated for option transactions will be reduced proportionately until they collectively equal 3.5% of all Recognized Claims. In the unlikely event that the Net Settlement Fund is sufficient to pay 100% of the BD common stock-based claims, any excess amount will be used to pay the balance on the remaining option-based claims.

## ADDITIONAL PROVISIONS

82. **Recognized Claim:** A Claimant’s “Recognized Claim” will be the sum of his, her, or its Recognized Loss Amounts.

83. **FIFO Matching:** If a Class Member made more than one purchase/acquisition or sale of BD Securities during the Class Period, all purchases/acquisitions and sales of the like security will be matched on a First In, First Out (“FIFO”) basis. With respect to BD common stock and call options, sales will be matched first against any holdings at the beginning of the Class Period, and then against purchases/acquisitions in chronological order, beginning with the earliest purchase/acquisition made during the Class Period. For BD put options, purchases/acquisitions will be matched first to close out positions open at the beginning of the Class Period, and then against BD put options sold (written) during the Class Period in chronological order.

84. **“Purchase/Sale” Prices:** For the purposes of calculations under this Plan of Allocation, “purchase/acquisition price” means the actual price paid, excluding all fees, taxes, and commissions, and “sale price” means the actual amount received, not deducting any fees, taxes, and commissions.

85. **“Purchase/Sale” Dates:** Purchases or acquisitions and sales of BD Securities will be deemed to have occurred on the “contract” or “trade” date as opposed to the “settlement” or “payment” date. The receipt or grant by gift, inheritance, or operation of law of BD Securities during the Class Period shall not be deemed a purchase, acquisition, or sale of such BD Securities for the calculation of a Claimant’s Recognized Loss Amount, nor shall the receipt or grant be deemed an assignment of any claim relating to the purchase/acquisition/sale of BD Securities unless (i) the donor or decedent purchased or otherwise acquired or sold such BD Securities during the Class Period; (ii) the instrument of gift or assignment specifically provides that it is intended to transfer such rights; and (iii) no Claim was submitted by or on behalf of the donor, on behalf of the decedent, or by anyone else with respect to such BD Securities.

86. **Short Sales:** With respect to BD common stock, the date of covering a “short sale” is deemed to be the date of purchase or acquisition of the BD common stock. The date of a “short sale” is deemed to be the date of sale of the BD common stock. In accordance with the Plan of Allocation, however, the Recognized Loss Amount on “short sales” and the purchases covering “short sales” is zero.

87. In the event that a Claimant has an opening short position in BD common stock, the earliest purchase or acquisition of BD common stock during the Class Period will be matched against such opening short position, and not be entitled to a recovery, until that short position is fully covered.

88. If a Class Member has “written” BD call options, thereby having a short position in the call options, the date of covering such a written position is deemed to be the date of purchase or acquisition of the call option. The date on which the call option was written is deemed to be the date of sale of the call option. In accordance with the Plan of Allocation, however, the Recognized Loss Amount on “written” BD call options is zero. In the event that a Claimant has an opening written position in BD call options, the earliest purchases or acquisitions of like call options during the Class Period will be matched against such opening written position, and not be entitled to a recovery, until that written position is fully covered.

89. If a Class Member has purchased or acquired BD put options, thereby having a long position in the put options, the date of purchase/acquisition is deemed to be the date of purchase/acquisition of the put option. The date on which the put option was sold, exercised, or expired is deemed to be the date of sale of the put option. In accordance with the Plan of Allocation, however, the Recognized Loss Amount on purchased/acquired BD put options is zero. In the event that a Claimant has an opening long position in BD put options, the earliest sales or dispositions of like put options during the Class Period will be matched against such opening position, and not be entitled to a recovery, until that long position is fully covered.

90. **Common Stock Purchased/Sold Through the Exercise of Options:** With respect to BD common stock purchased or sold through the exercise of an option, the purchase/sale date of the security is the exercise date of the option and the purchase/sale price is the exercise price of the option.

91. **Determination of Distribution Amount:** If the sum total of the Recognized Claims of all Authorized Claimants who are entitled to receive payment out of the Net Settlement Fund is greater than the Net Settlement Fund, each Authorized Claimant shall receive his, her, or its *pro rata* share of the Net Settlement Fund. The *pro rata* share will be the Authorized Claimant’s Recognized Claim divided by the total of Recognized Claims of all Authorized Claimants, multiplied by the total amount in the Net Settlement Fund.

92. If the Net Settlement Fund exceeds the sum total amount of the Recognized Claims of all Authorized Claimants entitled to receive payment out of the Net Settlement Fund, the excess amount in the Net Settlement Fund will be distributed *pro rata* to all Authorized Claimants entitled to receive payment.

93. If an Authorized Claimant’s Distribution Amount calculates to less than \$10.00, no distribution will be made to that Authorized Claimant.

94. After the initial distribution of the Net Settlement Fund, the Claims Administrator will make reasonable and diligent efforts to have Authorized Claimants cash their distribution checks. To the extent any monies remain in the Net Settlement



Fund after the initial distribution, if Class Counsel, in consultation with the Claims Administrator, determines that it is cost-effective to do so, the Claims Administrator, no less than nine (9) months after the initial distribution, will conduct another distribution of the funds remaining after payment of any unpaid fees and expenses incurred in administering the Settlement, including for such distribution, to Authorized Claimants who have cashed their initial distributions and who would receive at least \$10.00 from such distribution. Additional distributions to Authorized Claimants who have cashed their prior checks and who would receive at least \$10.00 on such additional distributions may occur thereafter if Class Counsel, in consultation with the Claims Administrator, determines that additional distributions after the deduction of any additional fees and expenses incurred in administering the Settlement would be cost-effective. At such time as it is determined that further distribution of funds remaining in the Net Settlement Fund is not cost-effective, the remaining balance will be contributed to non-sectarian, not-for-profit, 501(c)(3) organization(s), to be recommended by Class Counsel and approved by the Court.

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

96. The Plan of Allocation stated herein is the plan that is being proposed to the Court for its approval by Class Representative after consultation with its damages expert. The Court may approve this plan as proposed or it may modify the Plan of Allocation without further notice to the Class. Any Orders regarding any modification of the Plan of Allocation will be posted on [www.BectonSecuritiesSettlement.com](http://www.BectonSecuritiesSettlement.com).

**Table A**

**90-Day Look Back Table for BD Common Stock  
(Closing Price and Average Closing Price: February 6, 2020 – May 5, 2020)**

<b>Date</b>	<b>Closing Price</b>	<b>Average Closing Price Between February 6, 2020 and Date Shown</b>	<b>Date</b>	<b>Closing Price</b>	<b>Average Closing Price Between February 6, 2020 and Date Shown</b>
2/6/20	\$252.25	\$252.25	3/23/20	\$200.58	\$241.88
2/7/20	\$246.91	\$249.58	3/24/20	\$202.85	\$240.70
2/10/20	\$252.00	\$250.39	3/25/20	\$203.60	\$239.61
2/11/20	\$256.41	\$251.89	3/26/20	\$219.35	\$239.03
2/12/20	\$252.23	\$251.96	3/27/20	\$216.58	\$238.40
2/13/20	\$254.35	\$252.36	3/30/20	\$222.87	\$237.98
2/14/20	\$260.22	\$253.48	3/31/20	\$229.77	\$237.77
2/18/20	\$256.00	\$253.80	4/1/20	\$225.40	\$237.45
2/19/20	\$256.07	\$254.05	4/2/20	\$233.28	\$237.35
2/20/20	\$253.46	\$253.99	4/3/20	\$226.73	\$237.09
2/21/20	\$257.35	\$254.30	4/6/20	\$237.69	\$237.10
2/24/20	\$250.53	\$253.98	4/7/20	\$237.55	\$237.11
2/25/20	\$245.43	\$253.32	4/8/20	\$250.00	\$237.41
2/26/20	\$246.15	\$252.81	4/9/20	\$247.45	\$237.63
2/27/20	\$242.69	\$252.14	4/13/20	\$248.06	\$237.86
2/28/20	\$237.82	\$251.24	4/14/20	\$249.53	\$238.10
3/2/20	\$245.32	\$250.89	4/15/20	\$252.53	\$238.40
3/3/20	\$239.50	\$250.26	4/16/20	\$261.61	\$238.88
3/4/20	\$247.11	\$250.09	4/17/20	\$261.40	\$239.33
3/5/20	\$244.14	\$249.80	4/20/20	\$263.44	\$239.80
3/6/20	\$239.12	\$249.29	4/21/20	\$256.50	\$240.12
3/9/20	\$230.78	\$248.45	4/22/20	\$266.76	\$240.62
3/10/20	\$237.31	\$247.96	4/23/20	\$265.08	\$241.08
3/11/20	\$231.91	\$247.29	4/24/20	\$268.17	\$241.57
3/12/20	\$220.57	\$246.23	4/27/20	\$270.00	\$242.08
3/13/20	\$236.50	\$245.85	4/28/20	\$261.92	\$242.43
3/16/20	\$223.14	\$245.01	4/29/20	\$257.85	\$242.69
3/17/20	\$248.52	\$245.14	4/30/20	\$252.53	\$242.86
3/18/20	\$234.72	\$244.78	5/1/20	\$251.87	\$243.01
3/19/20	\$220.96	\$243.98	5/4/20	\$255.27	\$243.21
3/20/20	\$220.12	\$243.21	5/5/20	\$261.70	\$243.51

**TABLE B**

**Estimated Artificial Inflation in BD Call Options (per share)  
from November 5, 2019 to February 5, 2020 inclusive, and Holding Prices**

**Please Note:** This table is available on the case website  
[www.BectonSecuritiesSettlement.com](http://www.BectonSecuritiesSettlement.com).

**TABLE C**

**Estimated Artificial Deflation in BD Put Options (per share)  
from November 5, 2019 to February 5, 2020 inclusive, and Holding Prices**

**Please Note:** This table is available on the case website  
[www.BectonSecuritiesSettlement.com](http://www.BectonSecuritiesSettlement.com).

# PROOF OF CLAIM AND RELEASE FORM

***Becton, Dickinson and Company Securities Litigation***  
c/o JND Legal Administration  
P.O. Box 91443  
Seattle, WA 98111

**Toll-Free Number: 1-888-995-0312**

**Email: [info@BectonSecuritiesSettlement.com](mailto:info@BectonSecuritiesSettlement.com)**

**Website: [www.BectonSecuritiesSettlement.com](http://www.BectonSecuritiesSettlement.com)**

To be eligible to receive a share of the Net Settlement Fund from the proposed Settlement of the action captioned *Industriens Pensionsforsikring A/S v. Becton, Dickinson and Company, et al.*, Case No. 2:20-cv-02155-SRC-CLW (D.N.J.) (“Action”), you must complete and sign this Proof of Claim and Release Form (“Claim Form”) and mail it by first-class mail to the above address, or submit it online at [www.BectonSecuritiesSettlement.com](http://www.BectonSecuritiesSettlement.com), **postmarked (or received) no later than June 14, 2024.**

**You will bear all risks of delay or non-delivery of your Claim Form.** Failure to submit your Claim Form by the date specified will subject your Claim to rejection and may preclude you from being eligible to recover any money in connection with the proposed Settlement.

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

## CONTENTS

<b>02</b>	PART I.	GENERAL INSTRUCTIONS
<b>05</b>	PART II.	CLAIMANT IDENTIFICATION
<b>06</b>	PART III.	SCHEDULE OF TRANSACTIONS IN BECTON, DICKINSON AND COMPANY (“BD”) COMMON STOCK (NYSE TICKER SYMBOL: BDX / CUSIP: 075887109)
<b>08</b>	PART IV.	SCHEDULE OF TRANSACTIONS IN BD CALL OPTIONS
<b>10</b>	PART V.	SCHEDULE OF TRANSACTIONS IN BD PUT OPTIONS
<b>12</b>	PART VI.	RELEASE OF CLAIMS AND SIGNATURE

# PART I – GENERAL INSTRUCTIONS

1. It is important that you completely read and understand the Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Settlement Hearing; and (III) Motion for Attorneys' Fees and Litigation Expenses ("Notice"), including the proposed Plan of Allocation set forth in the Notice ("Plan of Allocation"). The Notice describes the proposed Settlement, how Class Members are affected by the Settlement, and the manner in which the Net Settlement Fund will be distributed if the Settlement and Plan of Allocation are approved by the Court. The Notice also contains the definitions of many of the defined terms (which are indicated by initial capital letters) used in this Claim Form. By signing and submitting this Claim Form, you will be certifying that you have read and that you understand the Notice, including the terms of the Releases described therein and provided for herein.

2. This Claim Form is directed to the Court-certified Class: **all persons and entities who, from November 5, 2019 to February 5, 2020, inclusive ("Class Period"), purchased or otherwise acquired Becton, Dickinson and Company ("BD") common stock or call options, or sold BD put options, and were damaged thereby.** Certain persons and entities are excluded from the Class by definition as set forth in ¶ 25 of the Notice. If you are a member of the Class and you do not timely request exclusion from the Class in accordance with the instructions provided in the Notice, you will be bound by the terms of any order of dismissal or judgment entered in the Action, including the Releases provided for herein, **WHETHER OR NOT YOU SUBMIT A CLAIM FORM.**

3. By submitting this Claim Form, you are making a request to share in the proceeds of the Settlement described in the Notice. **IF YOU ARE NOT A CLASS MEMBER (see definition of "Class" contained in ¶ 25 of the Notice), OR IF YOU SUBMIT A REQUEST FOR EXCLUSION FROM THE CLASS, DO NOT SUBMIT A CLAIM FORM AS YOU MAY NOT, DIRECTLY OR INDIRECTLY, PARTICIPATE IN THE SETTLEMENT.** **THUS, IF YOU ARE EXCLUDED FROM THE CLASS, ANY CLAIM FORM THAT YOU SUBMIT, OR THAT MAY BE SUBMITTED ON YOUR BEHALF, WILL NOT BE ACCEPTED.**

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

5. Use the Schedules of Transactions in Parts III to V of this Claim Form to supply all required details of your transaction(s) (including free transfers and deliveries) in and holding(s) of the eligible BD Securities. On these Schedules, please provide all of the requested information with respect to your holdings, purchases, acquisitions, and sales of BD common stock, call options, and put options, whether such transactions resulted in a profit or a loss. If you need more space or additional schedules, please attach separate sheets giving all of the required information in substantially the same form. Sign and print your name and Social Security or Taxpayer Identification number on each additional sheet. **Failure to report all transaction and holding information during the requested time periods may result in the rejection of your Claim.**

6. **Please Note:** Only BD common stock and BD call options purchased/acquired, and BD put options sold (written) during the Class Period (i.e., from November 5, 2019 to February 5, 2020, inclusive) are eligible under the Settlement. However, because the PSLRA provides for a "90-day Look Back Period" (described in the Plan of Allocation set forth in the Notice), you must provide documentation related to your purchases, acquisitions, and sales of BD common stock during the period from February 6, 2020 through May 5, 2020 (i.e., the 90-day Look Back Period) in order for the Claims Administrator to calculate your Recognized Loss Amount(s) under the Plan of Allocation and process your Claim. **Failure to report all transaction and holding information during the requested time periods may result in the rejection of your Claim.**

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

8. BD call options and BD put options are identified by strike price and expiration date.

9. **Please Note:** As a result of a spinoff event effective on April 1, 2022, Becton share prices were adjusted by a factor of 1025/1000. When completing the below Schedules of Transactions, please make sure your transactions reflect the pricing details when they occurred (i.e., on the trade date) and not the adjusted pricing as a result of the April 1, 2022 spinoff.

10. **One Claim Form should be submitted for each separate legal entity or separately managed account.** Separate Claim Forms should be submitted for each separate legal entity (e.g., a Claim from joint owners should not include separate transactions of just one of the joint owners, and an individual should not combine his or her IRA transactions with transactions made solely in the individual's name). Generally, a single Claim Form should be submitted on behalf of one legal entity including all holdings and transactions made by that entity on one Claim Form. However, if a single person or legal entity had multiple accounts that were separately managed, separate Claim Forms may be submitted for each such account. The Claims Administrator reserves the right to request information on all the holdings and transactions in BD common stock and call and put options on BD common stock made on behalf of a single beneficial owner.

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

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

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

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

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

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

16. If you have questions concerning the Claim Form, or need additional copies of the Claim Form or a copy of the Notice, you may contact the Claims Administrator, JND Legal Administration, at the above address, by email at [info@BectonSecuritiesSettlement.com](mailto:info@BectonSecuritiesSettlement.com), or by toll-free phone at 1-888-995-0312, or you can visit the website maintained by the Claims Administrator, [www.BectonSecuritiesSettlement.com](http://www.BectonSecuritiesSettlement.com), where copies of the Claim Form and Notice are available for downloading.

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

#### **IMPORTANT PLEASE NOTE**

**YOUR CLAIM IS NOT DEEMED SUBMITTED UNTIL YOU RECEIVE AN ACKNOWLEDGEMENT POSTCARD. THE CLAIMS ADMINISTRATOR WILL ACKNOWLEDGE RECEIPT OF YOUR CLAIM BY MAIL WITHIN 60 DAYS. IF YOU DO NOT RECEIVE AN ACKNOWLEDGEMENT POSTCARD WITHIN 60 DAYS, CALL THE CLAIMS ADMINISTRATOR TOLL FREE AT 1-888-995-0312.**

# PART II – CLAIMANT IDENTIFICATION

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

Beneficial Owner's First Name	MI	Beneficial Owner's Last Name
<input style="width: 95%;" type="text"/>	<input style="width: 30px;" type="text"/>	<input style="width: 95%;" type="text"/>

Co-Beneficial Owner's First Name <i>(if applicable)</i>	MI	Co-Beneficial Owner's Last Name <i>(if applicable)</i>
<input style="width: 95%;" type="text"/>	<input style="width: 30px;" type="text"/>	<input style="width: 95%;" type="text"/>

Entity Name (if Beneficial Owner is not an individual)

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

Address 1 (street name and number)

Address 2 (apartment, unit or box number)

City	State	Zip Code
<input style="width: 95%;" type="text"/>	<input style="width: 30px;" type="text"/>	<input style="width: 95%;" type="text"/>

Country

Last four digits of Social Security Number or Taxpayer Identification Number

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Telephone Number (home)	Telephone Number (work)
<input style="width: 95%;" type="text"/>	<input style="width: 95%;" type="text"/>

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

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

Claimant Account Type (check appropriate box)

<input type="checkbox"/> Individual (includes joint owner accounts)	<input type="checkbox"/> Pension Plan	<input type="checkbox"/> Trust	<input type="checkbox"/> Corporation
<input type="checkbox"/> Estate	<input type="checkbox"/> IRA/401K	<input type="checkbox"/> Other (please specify): _____	

<sup>1</sup> If the account number is unknown, you may leave blank. If filing for more than one account for the same legal entity, you may write "multiple." Please see ¶ 10 of the General Instructions above for more information on when to file separate Claim Forms for multiple accounts.



# PART III – SCHEDULE OF TRANSACTIONS IN BD COMMON STOCK

Complete this Part III if and only if you purchased or otherwise acquired BD common stock during the period from November 5, 2019 to February 5, 2020, inclusive. Please be sure to include proper documentation with your Claim Form as described in detail in Part I – General Instructions, ¶ 7, above. Do not include information in this section regarding securities other than BD common stock (NYSE ticker symbol: BDX / CUSIP: 075887109).

<p><b>1. HOLDINGS AS OF NOVEMBER 5, 2019</b> – State the total number of shares of BD common stock held as of the opening of trading on November 5, 2019. (Must be documented.) If none, write “zero” or “0.”</p> <div style="text-align: center; border: 1px solid black; width: 200px; height: 20px; margin: 10px auto;"></div>	<p style="text-align: center;"><b>Confirm Proof of Holding Position Enclosed</b></p> <p style="text-align: center;"><input type="checkbox"/></p>																																													
<p><b>2. PURCHASES/ACQUISITIONS FROM NOVEMBER 5, 2019 TO FEBRUARY 5, 2020, INCLUSIVE</b> – Separately list each and every purchase/acquisition (including free receipts) of BD common stock from after the opening of trading on November 5, 2019 through and including the close of trading on February 5, 2020. (Must be documented.)</p>																																														
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 25%;">Date of Purchase/ Acquisition (List Chronologically) (Month/Day/Year)</th> <th style="width: 25%;">Number of Shares Purchased/Acquired</th> <th style="width: 15%;">Purchase/ Acquisition Price Per Share<sup>2</sup></th> <th style="width: 20%;">Total Purchase/ Acquisition Price (excluding taxes, commissions, and fees)</th> <th style="width: 15%;">Confirm Proof of Purchases/ Acquisitions Enclosed</th> </tr> </thead> <tbody> <tr><td style="text-align: center;">/ /</td><td></td><td style="text-align: center;">\$</td><td style="text-align: center;">\$</td><td style="text-align: center;"><input type="checkbox"/></td></tr> <tr><td style="text-align: center;">/ /</td><td></td><td style="text-align: center;">\$</td><td style="text-align: center;">\$</td><td style="text-align: center;"><input type="checkbox"/></td></tr> <tr><td style="text-align: center;">/ /</td><td></td><td style="text-align: center;">\$</td><td style="text-align: center;">\$</td><td style="text-align: center;"><input type="checkbox"/></td></tr> <tr><td style="text-align: center;">/ /</td><td></td><td style="text-align: center;">\$</td><td style="text-align: center;">\$</td><td style="text-align: center;"><input type="checkbox"/></td></tr> <tr><td style="text-align: center;">/ /</td><td></td><td style="text-align: center;">\$</td><td style="text-align: center;">\$</td><td style="text-align: center;"><input type="checkbox"/></td></tr> <tr><td style="text-align: center;">/ /</td><td></td><td style="text-align: center;">\$</td><td style="text-align: center;">\$</td><td style="text-align: center;"><input type="checkbox"/></td></tr> <tr><td style="text-align: center;">/ /</td><td></td><td style="text-align: center;">\$</td><td style="text-align: center;">\$</td><td style="text-align: center;"><input type="checkbox"/></td></tr> <tr><td style="text-align: center;">/ /</td><td></td><td style="text-align: center;">\$</td><td style="text-align: center;">\$</td><td style="text-align: center;"><input type="checkbox"/></td></tr> </tbody> </table>	Date of Purchase/ Acquisition (List Chronologically) (Month/Day/Year)	Number of Shares Purchased/Acquired	Purchase/ Acquisition Price Per Share <sup>2</sup>	Total Purchase/ Acquisition Price (excluding taxes, commissions, and fees)	Confirm Proof of Purchases/ Acquisitions Enclosed	/ /		\$	\$	<input type="checkbox"/>	/ /		\$	\$	<input type="checkbox"/>	/ /		\$	\$	<input type="checkbox"/>	/ /		\$	\$	<input type="checkbox"/>	/ /		\$	\$	<input type="checkbox"/>	/ /		\$	\$	<input type="checkbox"/>	/ /		\$	\$	<input type="checkbox"/>	/ /		\$	\$	<input type="checkbox"/>	
Date of Purchase/ Acquisition (List Chronologically) (Month/Day/Year)	Number of Shares Purchased/Acquired	Purchase/ Acquisition Price Per Share <sup>2</sup>	Total Purchase/ Acquisition Price (excluding taxes, commissions, and fees)	Confirm Proof of Purchases/ Acquisitions Enclosed																																										
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<p><b>3. PURCHASES/ACQUISITIONS FROM FEBRUARY 6, 2020 TO MAY 5, 2020, INCLUSIVE</b> – State the total number of shares of BD common stock purchased/acquired (including free receipts) from February 6, 2020 through and including the close of trading on May 5, 2020. (Must be documented.) If none, write “zero” or “0.”<sup>3</sup></p> <div style="text-align: right; border: 1px solid black; width: 200px; height: 20px; margin: 10px auto;"></div>																																														

<sup>2</sup> **Please Note:** As a result of a spinoff event effective on April 1, 2022, Becton share prices were adjusted by a factor of 1025/1000. When completing this Schedule, please make sure your transactions reflect the pricing details when they occurred (i.e., on the trade date) and not the adjusted pricing as a result of the April 1, 2022 spinoff.

<sup>3</sup> **Please Note:** Information requested with respect to your purchases/acquisitions of BD common stock from February 6, 2020 through and including the close of trading on May 5, 2020 is needed in order to perform the necessary calculations for your Claim; purchases/acquisitions during this period, however, are not eligible transactions and will not be used for purposes of calculating Recognized Loss Amounts pursuant to the Plan of Allocation.



# PART IV – SCHEDULE OF TRANSACTIONS IN BD CALL OPTIONS

Complete this Part IV if and only if you purchased or otherwise acquired BD call options during the period from November 5, 2019 through February 5, 2020, inclusive. Please be sure to include proper documentation with your Claim Form as described in detail in Part I – General Instructions, ¶ 7, above. Do not include information in this section regarding securities other than BD call options.

<b>1. HOLDINGS AS OF NOVEMBER 5, 2019</b> – Separately list all positions in BD call option contracts in which you had an open interest as of the opening of trading on November 5, 2019. (Must be documented.) If none, write “zero” or “0.”	Confirm Proof of Holding Position Enclosed <input type="checkbox"/>
---	--

Strike Price of Call Option Contract	Expiration Date of Call Option Contract (Month/Day/Year)	Number of Call Option Contracts in Which You Had an Open Interest (including any short holdings)
\$	/ /	
\$	/ /	
\$	/ /	
\$	/ /	
\$	/ /	
\$	/ /	

**2. PURCHASES/ACQUISITIONS FROM NOVEMBER 5, 2019 TO FEBRUARY 5, 2020, INCLUSIVE** – Separately list each and every purchase/acquisition (including free receipts) of BD call option contracts from after the opening of trading on November 5, 2019 through and including the close of trading on February 5, 2020. (Must be documented.)

Date of Purchase/ Acquisition (List Chronologically) (Month/Day/Year)	Strike Price of Call Option Contract	Expiration Date of Call Option Contract (Month/Day/Year)	Number of Call Option Contracts Purchased/ Acquired	Purchase/ Acquisition Price Per Call Option Contract	Total Purchase/ Acquisition Price (excluding taxes, commissions, and fees)	Insert an “E” if Exercised/ Insert an “A” if Assigned/ Insert an “X” if Expired	Exercise Date (Month/Day/Year)
/ /	\$	/ /		\$	\$		/ /
/ /	\$	/ /		\$	\$		/ /
/ /	\$	/ /		\$	\$		/ /
/ /	\$	/ /		\$	\$		/ /
/ /	\$	/ /		\$	\$		/ /
/ /	\$	/ /		\$	\$		/ /

**3. SALES FROM NOVEMBER 5, 2019 TO FEBRUARY 5, 2020, INCLUSIVE –** Separately list each and every sale/disposition (including free deliveries) of BD call options from after the opening of trading on November 5, 2019 through and including the close of trading on February 5, 2020. (Must be documented.)

**IF NONE, CHECK HERE**

Date of Sale (List Chronologically) (Month/Day/Year)	Strike Price of Call Option Contract	Expiration Date of Call Option Contract (Month/Day/Year)	Number of Call Option Contracts Sold	Sale Price Per Call Option Contract	Total Sale Price (not deducting taxes, commissions, and fees)	Insert an "E" if Exercised/ Insert an "A" if Assigned/ Insert an "X" if Expired	Assignment Date (Month/Day/Year)
/ /	\$	/ /		\$	\$		/ /
/ /	\$	/ /		\$	\$		/ /
/ /	\$	/ /		\$	\$		/ /
/ /	\$	/ /		\$	\$		/ /
/ /	\$	/ /		\$	\$		/ /
/ /	\$	/ /		\$	\$		/ /
/ /	\$	/ /		\$	\$		/ /

**4. HOLDINGS AS OF FEBRUARY 5, 2020 –** Separately list all positions in BD call options in which you had an open interest as of the close of trading on February 5, 2020. (Must be documented.) If none, write "zero" or "0."

**Confirm Proof of Holding Position Enclosed**

Strike Price of Call Option Contract	Expiration Date of Call Option Contract (Month/Day/Year)	Number of Call Option Contracts in Which You Had an Open Interest
\$	/ /	
\$	/ /	
\$	/ /	
\$	/ /	
\$	/ /	
\$	/ /	
\$	/ /	

**IF YOU REQUIRE 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 V – SCHEDULE OF TRANSACTIONS IN BD PUT OPTIONS

Complete this Part V if and only if you sold (wrote) BD put options during the period from November 5, 2019 to February 5, 2020, inclusive. Please be sure to include proper documentation with your Claim Form as described in detail in Part I – General Instructions, ¶ 7, above. Do not include information in this section regarding securities other than BD put options.

<b>1. HOLDINGS AS OF NOVEMBER 5, 2019</b> – Separately list all positions in BD put option contracts in which you had an open interest as of the opening of trading on November 5, 2019. (Must be documented.) If none, write “zero” or “0.”	Confirm Proof of Holding Position Enclosed <input type="checkbox"/>
--	--

Strike Price of Put Option Contract	Expiration Date of Put Option Contract (Month/Day/Year)	Number of Put Option Contracts in Which You Had an Open Interest (including any short holdings)
\$	/ /	
\$	/ /	
\$	/ /	
\$	/ /	
\$	/ /	
\$	/ /	

**3. SALES (WRITING) FROM NOVEMBER 5, 2019 TO FEBRUARY 5, 2020, INCLUSIVE** – Separately list each and every sale (writing) (including free deliveries) of BD put options from after the opening of trading on November 5, 2019 through and including the close of trading on February 5, 2020. (Must be documented.)

Date of Sale (Writing) (List Chronologically) (Month/Day/Year)	Strike Price of Put Option Contract	Expiration Date of Put Option Contract (Month/Day/Year)	Number of Put Option Contracts Sold (Written)	Sale Price Per Put Option Contract	Total Sale Price (not deducting taxes, commissions, and fees)	Insert an “A” if Assigned/ Insert an “E” if Exercised/ Insert an “X” if Expired	Assignment Date (Month/Day/Year)
/ /	\$	/ /		\$	\$		/ /
/ /	\$	/ /		\$	\$		/ /
/ /	\$	/ /		\$	\$		/ /
/ /	\$	/ /		\$	\$		/ /
/ /	\$	/ /		\$	\$		/ /
/ /	\$	/ /		\$	\$		/ /

**3. PURCHASES/ACQUISITIONS FROM NOVEMBER 5, 2019 TO FEBRUARY 5, 2020, INCLUSIVE** – Separately list each and every purchase/acquisition (including free receipts) of BD put option contracts from after the opening of trading on November 5, 2019 through and including the close of trading on February 5, 2020. (Must be documented.)

**IF NONE, CHECK HERE**

Date of Purchase/ Acquisition (List Chronologically) (Month/Day/Year)	Strike Price of Put Option Contract	Expiration Date of Put Option Contract (Month/Day/Year)	Number of Put Option Contracts Purchased/ Acquired	Purchase/ Acquisition Price Per Put Option Contract	Total Purchase/ Acquisition Price (excluding taxes, commissions, and fees)	Insert an "A" if Assigned/ Insert an "E" if Exercised/ Insert an "X" if Expired	Exercise Date (Month/Day/Year)
/ /	\$	/ /		\$	\$		/ /
/ /	\$	/ /		\$	\$		/ /
/ /	\$	/ /		\$	\$		/ /
/ /	\$	/ /		\$	\$		/ /
/ /	\$	/ /		\$	\$		/ /
/ /	\$	/ /		\$	\$		/ /
/ /	\$	/ /		\$	\$		/ /

**4. HOLDINGS AS OF FEBRUARY 5, 2020** – Separately list all positions in BD put option contracts in which you had an open interest as of the close of trading on February 5, 2020. (Must be documented.) If none, write "zero" or "0."

**Confirm Proof of Holding Position Enclosed**

Strike Price of Put Option Contract	Expiration Date of Put Option Contract (Month/Day/Year)	Number of Put Option Contracts in Which You Had an Open Interest
\$	/ /	
\$	/ /	
\$	/ /	
\$	/ /	
\$	/ /	
\$	/ /	
\$	/ /	

**IF YOU REQUIRE 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 VI – RELEASE OF CLAIMS AND SIGNATURE

## YOU MUST ALSO READ THE RELEASE AND CERTIFICATION BELOW AND SIGN ON PAGE 13 OF THIS CLAIM FORM.

I (we) hereby acknowledge that, pursuant to the terms set forth in the Stipulation and Agreement of Settlement dated as of December 19, 2023, without further action by anyone, upon the Effective Date of the Settlement, I (we), on behalf of myself (ourselves) and my (our) heirs, executors, administrators, predecessors, successors, assigns, representatives, attorneys, agents, and anyone claiming through or on behalf of me (us), in their capacities as such, shall be deemed to have, and by operation of law and of the Judgment shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Plaintiff's Claim against Defendants and the other Defendants' Releasees, and shall forever be barred and enjoined from prosecuting, commencing, or instituting any or all of the Released Plaintiff's Claims directly or indirectly against any of the Defendants' Releasees.

### CERTIFICATION

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

1. that I (we) have read and understand the contents of the Notice and this Claim Form, including the Releases provided for in the Settlement and the terms of the Plan of Allocation;
2. that the Claimant(s) is a (are) member(s) of the Class, as defined in the Notice, and is (are) not excluded by definition from the Class as set forth in the Notice;
3. that the Claimant(s) did **not** submit a request for exclusion from the Class;
4. that I (we) own(ed) the BD common stock/options identified in the Claim Form and have not assigned the claim against Defendants or any of the other Defendants' Releasees to another, or that, in signing and submitting this Claim Form, I (we) have the authority to act on behalf of the owner(s) thereof;
5. that the Claimant(s) has (have) not submitted any other Claim covering the same purchases/acquisitions/sales of BD common stock/options and knows (know) of no other person having done so on the Claimant's (Claimants') behalf;
6. that the Claimant(s) submit(s) to the jurisdiction of the Court with respect to Claimant's (Claimants') Claim and for purposes of enforcing the Releases set forth herein;
7. that I (we) have included information about all my (our) transactions in BD common stock/options during the Class Period;
8. that I (we) agree to furnish such additional information with respect to this Claim Form as Class Counsel, the Claims Administrator, or the Court may require;
9. that the Claimant(s) waive(s) the right to trial by jury, to the extent it exists, agree(s) to the determination by the Court of the validity or amount of this Claim, and waives any right of appeal or review with respect to such determination;

10. that I (we) acknowledge that the Claimant(s) will be bound by and subject to the terms of any judgment(s) that may be entered in the Action; and

11. that the Claimant(s) is (are) NOT subject to backup withholding under the provisions of Section 3406(a)(1)(C) of the Internal Revenue Code because (a) the Claimant(s) is (are) exempt from backup withholding or (b) the Claimant(s) has (have) not been notified by the IRS that they are subject to backup withholding as a result of a failure to report all interest or dividends or (c) the IRS has notified the Claimant(s) that they are no longer subject to backup withholding. **If the IRS has notified the Claimant(s) that they are subject to backup withholding, please strike out the language in the preceding sentence indicating that the Claim is not subject to backup withholding in the certification above.**

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

\_\_\_\_\_  
Signature of Claimant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Claimant name here

\_\_\_\_\_  
Signature of joint Claimant, if any

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print joint Claimant name here

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

\_\_\_\_\_  
Signature of person signing on behalf of Claimant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print name of person signing on behalf of Claimant here

\_\_\_\_\_  
Capacity of person signing on behalf of Claimant, if other than an individual, e.g., executor, president, trustee, custodian, etc. (Must provide evidence of authority to act on behalf of Claimant – see ¶ 12 on page 3 of this Claim Form.)



# REMINDER CHECKLIST



1. Sign the above release and certification. If this Claim Form is being made on behalf of joint Claimants, then both must sign.

2. Attach only **copies** of acceptable supporting documentation as these documents will not be returned to you.



3. Do not highlight any portion of the Claim Form or any supporting documents.

4. Keep copies of the completed Claim Form and any supporting documentation for your own records.



5. The Claims Administrator will acknowledge receipt of your Claim Form by mail, within 60 days. Your Claim is not deemed submitted until you receive an acknowledgement postcard. **If you do not receive an acknowledgement postcard within 60 days, please call the Claims Administrator toll free at 1-888-995-0312.**

6. If your address changes in the future, you must send the Claims Administrator written notification of your new address. If you change your name, inform the Claims Administrator.



7. If you have any questions or concerns regarding your Claim, please contact the Claims Administrator at the address below, by email at [info@BectonSecuritiesSettlement.com](mailto:info@BectonSecuritiesSettlement.com), or by toll-free phone at 1-888-995-0312, or you may visit the website for the Settlement at [www.BectonSecuritiesSettlement.com](http://www.BectonSecuritiesSettlement.com). DO NOT call the Court, Defendants, or Defendants' Counsel with questions regarding your Claim.

THIS CLAIM FORM MUST BE MAILED TO THE CLAIMS ADMINISTRATOR BY FIRST-CLASS MAIL, OR SUBMITTED ONLINE AT [WWW.BECTONSECURITIESSETTLEMENT.COM](http://WWW.BECTONSECURITIESSETTLEMENT.COM), **POSTMARKED (OR RECEIVED) NO LATER THAN JUNE 14, 2024**. IF MAILED, THE CLAIM FORM SHOULD BE ADDRESSED AS FOLLOWS:

***Becton, Dickinson and Company Securities Litigation***  
**c/o JND Legal Administration**  
**P.O. Box 91443**  
**Seattle, WA 98111**

If mailed, a Claim Form received by the Claims Administrator shall be deemed to have been submitted when posted, if a postmark date on or before June 14, 2024 is indicated on the envelope and it is mailed First Class, and addressed in accordance with the above instructions. In all other cases, a Claim Form shall be deemed to have been submitted when actually received by the Claims Administrator.

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

# **EXHIBIT 3**

BIGGEST 1,000 STOCKS

How to Read the Stock Tables

The following explanations apply to NYSE, NYSE Arca, NYSE American and Nasdaq Stock Market listed securities. Prices are consolidated from trades reported by various market centers, including securities exchanges, Fintz, electronic communication networks and other broker-dealers. The list comprises the 1,000 largest companies based on market capitalization.

Underlined quotations are those stocks with large changes in volume compared with the issue's average trading volume. Boldfaced quotations highlight those issues whose price changed by 5% or more if their previous closing price was \$2 or higher.

Footnotes: F-New 52-week high; F-New 52-week low; dd-Indicates loss in the most recent four quarters.

Stock tables reflect preliminary closing values as of 4 p.m. ET and changes in the official closing prices from 4 p.m. ET the previous day.

Table with columns: Stock, Sym, Close, Net Chg, Stock, Sym, Close, Net Chg, Stock, Sym, Close, Net Chg, Stock, Sym, Close, Net Chg, Stock, Sym, Close, Net Chg. Includes sub-sections for Tuesday, February 27, 2024 and D E F.

New Highs and Lows

The following explanations apply to the New York Stock Exchange, NYSE Arca, NYSE American and Nasdaq Stock Market stocks that hit a new 52-week intraday high or low in the latest session. % CHG-Daily percentage change from the previous trading session.

Table with columns: Stock, Sym, Hi/Low, Chg, Stock, Sym, Hi/Low, Chg, Stock, Sym, Hi/Low, Chg, Stock, Sym, Hi/Low, Chg, Stock, Sym, Hi/Low, Chg. Includes sub-sections for Tuesday, February 27, 2024 and Highs.

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POLEN, Defendants.

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with Plant Mngt or in Supervisory
or Mngt role or Eng role. Send
resume to Chad Anderson 2700 E
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55406 or email to
chad@metroproduce.com

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TO: All persons and entities who, from November 5, 2019
to February 5, 2020, inclusive, purchased or
otherwise acquired Becton, Dickinson and
Company ("BD") common stock or call options, or
sold BD put options, and were damaged thereby:
PLEASE READ THIS NOTICE CAREFULLY;
YOUR RIGHTS WILL BE AFFECTED BY A CLASS
ACTION LAWSUIT PENDING IN THIS COURT.
YOU ARE HEREBY NOTIFIED, pursuant to Rule 23 of
the Federal Rules of Civil Procedure and an Order of the
United States District Court for the District of New Jersey
("Court"), that the above-captioned action ("Action") has
been certified as a class action on behalf of the following
class: all persons and entities who, from November 5, 2019
to February 5, 2020, inclusive ("Class Period"), purchased
or otherwise acquired BD common stock or call options, or
sold BD put options, and were damaged thereby ("Class").
Certain persons and entities are excluded from the Class
by definition as set forth in the Stipulation and Agreement
of Settlement dated December 19, 2023 ("Stipulation")
and the detailed Notice of (I) Pendency of Class Action
and Proposed Settlement; (II) Settlement Hearing; and
(III) Motion for Attorneys' Fees and Litigation Expenses
("Notice"). The Stipulation and Notice can be viewed at
www.BectonSecuritiesSettlement.com.

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YOU ARE ALSO HEREBY NOTIFIED that
Court-appointed Lead Plaintiff and Class Representative
Industriens Forsikring A/S ("Class Representative"),
on behalf of itself and the Court-certified Class, has reached
a proposed settlement of the Action with defendants BD
and Thomas E. Polen (together, "Defendants") for \$85,000,000
in cash ("Settlement"). If approved by the Court, the
Settlement will resolve all claims in the Action.
A hearing ("Settlement Hearing") will be held on
April 22, 2024 at 11:30 a.m., before the Honorable Cathy
L. Waldor, United States Magistrate Judge for the District
of New Jersey, either in person at the Martin Luther King
Building & U.S. Courthouse, 50 Walnut Street, Newark, NJ
07101, Courtroom 4D, or by telephone or videoconference
(in the discretion of the Court), to determine, among
other things: (i) whether the Settlement on the terms and
conditions provided for in the Stipulation is fair, reasonable,
and adequate to the Class, and should be finally approved
by the Court; (ii) whether the Action should be dismissed
with prejudice against Defendants and the releases specified
and described in the Stipulation (and in the Notice) should
be granted; and (iii) whether Class Counsel's motion for
attorneys' fees in an amount not to exceed 25% of the
Settlement Fund and payment of expenses in an amount not
to exceed \$1,000,000 (which amount may include a request
for reimbursement of the reasonable costs and expenses
incurred by Class Representative directly related to its
representation of the Class) should be approved. Any updates
regarding the Settlement Hearing, including any changes
to the date or time of the hearing or updates regarding in-
person or remote appearances at the hearing, will be posted
to the website www.BectonSecuritiesSettlement.com.

By ORDER OF THE COURT
United States District Court
District of New Jersey
Becton, Dickinson and Company Securities Litigation
c/o JND Legal Administration
P.O. Box 91443
Seattle, WA 98111
1-888-995-0312
info@BectonSecuritiesSettlement.com
www.BectonSecuritiesSettlement.com
All other inquiries should be made to Class Counsel:
Kessler Topaz Meltzer & Check, LLP
Sharan Nirmul, Esq.
Joshua D'Ancona, Esq.
280 King of Prussia Road
Radnor, PA 19087
1-610-667-7706
info@ktmc.com

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# Kessler Topaz Meltzer & Check, LLP Announces Pendency of Class Action and Proposed Settlement Involving Becton, Dickinson and Company Common Stock and Options

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NEWS PROVIDED BY  
**JND Legal Administration** →  
28 Feb, 2024, 09:28 ET

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SEATTLE, Feb. 28, 2024 /PRNewswire/ --

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

INDUSTRIENS PENSIONS Forsikring  
A/S, Individually and On Behalf of All Others  
Similarly Situated,

Plaintiff,

v.

BECTON, DICKINSON AND COMPANY  
and THOMAS E. POLEN,

Defendants.

Case No. 2:20-cv-02155-SRC-CLW

Hon. Stanley R. Chesler  
District Court Judge

Hon. Cathy L. Waldor  
Magistrate Judge

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

Case 2:20-cv-02155-SRC-CLW Document 189-2 Filed 03/18/24 Page 63 of 66 PageID: 5647  
TO: All persons and entities who, from November 5, 2019 to February 5, 2020, inclusive, purchased or otherwise acquired Becton, Dickinson and Company ("BD") common stock or call options, or sold BD put options, and were damaged thereby:

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

**YOU ARE HEREBY NOTIFIED**, pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the United States District Court for the District of New Jersey ("Court"), that the above-captioned action ("Action") has been certified as a class action on behalf of the following class: all persons and entities who, from November 5, 2019 to February 5, 2020, inclusive ("Class Period"), purchased or otherwise acquired BD common stock or call options, or sold BD put options, and were damaged thereby ("Class"). Certain persons and entities are excluded from the Class by definition as set forth in the Stipulation and Agreement of Settlement dated December 19, 2023 ("Stipulation") and the detailed Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Settlement Hearing; and (III) Motion for Attorneys' Fees and Litigation Expenses ("Notice"). The Stipulation and Notice can be viewed at [www.BectonSecuritiesSettlement.com](http://www.BectonSecuritiesSettlement.com).

**YOU ARE ALSO HEREBY NOTIFIED** that Court-appointed Lead Plaintiff and Class Representative Industriens Pensionsforsikring A/S ("Class Representative"), on behalf of itself and the Court-certified Class, has reached a proposed settlement of the Action with defendants BD and Thomas E. Polen (together, "Defendants") for \$85,000,000 in cash ("Settlement"). If approved by the Court, the Settlement will resolve all claims in the Action.

A hearing ("Settlement Hearing") will be held on **April 22, 2024 at 11:30 a.m.**, before the Honorable Cathy L. Waldor, United States Magistrate Judge for the District of New Jersey, either in person at the Martin Luther King Building & U.S. Courthouse, 50 Walnut Street, Newark, NJ 07101, Courtroom 4D, or by telephone or videoconference (in the discretion of the Court), to determine, among other things: (i) whether the Settlement on the terms and conditions provided for in the Stipulation is fair, reasonable, and adequate to the Class, and should be finally approved by the Court; (ii) whether the Action should be dismissed with prejudice against Defendants and the releases specified and described in the Stipulation (and in the Notice) should be granted; and (iii) whether Class Counsel's motion for attorneys' fees in an amount not to exceed 25% of the Settlement Fund and payment of expenses in an amount not to exceed \$1,000,000 (which amount may include a request for reimbursement of the reasonable costs and expenses incurred by Class Representative directly

related to its representation of the Class) should be approved. Any updates regarding the Settlement Hearing, including any changes to the date or time of the hearing or updates regarding in-person or remote appearances at the hearing, will be posted to the website [www.BectonSecuritiesSettlement.com](http://www.BectonSecuritiesSettlement.com).

**If you are a member of the Class, your rights will be affected by the pending Action and the Settlement, and you may be entitled to share in the Settlement Fund.** This notice provides only a summary of the information contained in the detailed Notice. You may obtain a copy of the Notice, along with the Claim Form, on the website for the Settlement, [www.BectonSecuritiesSettlement.com](http://www.BectonSecuritiesSettlement.com). You may also obtain a copy of the Notice and Claim Form by contacting the Claims Administrator by mail at *Becton, Dickinson and Company Securities Litigation*, c/o JND Legal Administration, P.O. Box 91443, Seattle, WA 98111; by calling toll free 1-888-995-0312; or by sending an email to [info@BectonSecuritiesSettlement.com](mailto:info@BectonSecuritiesSettlement.com). Copies of the Notice and Claim Form can also be found on Class Counsel's website [www.ktmc.com](http://www.ktmc.com).

If you are a Class Member, in order to be eligible to receive a payment from the proposed Settlement, you must submit a Claim Form **postmarked (if mailed), or online via [www.BectonSecuritiesSettlement.com](http://www.BectonSecuritiesSettlement.com), no later than June 14, 2024**, in accordance with the instructions set forth in the Claim Form. If you are a Class Member and do not submit a proper Claim Form, you will not be eligible to share in the distribution of the net proceeds of the Settlement, but you will nevertheless be bound by any releases, judgments, or orders entered by the Court in the Action.

If you are a member of the Class and wish to exclude yourself from the Class, you must submit a request for exclusion such that it is **received no later than April 1, 2024**, in accordance with the instructions set forth in the Notice. If you properly exclude yourself from the Class, you will not be bound by any releases, judgments, or orders entered by the Court in the Action and you will not receive any benefits from the Settlement. Excluding yourself from the Class is the only option that may allow you to be part of any other current or future lawsuit against Defendants or any of the other released parties concerning the claims being resolved by the Settlement.

Any objections to the proposed Settlement, the proposed Plan of Allocation, and/or Class Counsel's motion for attorneys' fees and Litigation Expenses must be filed with the Court and delivered to Class Counsel and Defendants' Counsel such that they are **received no later than April 1, 2024**, in accordance with the instructions set forth in the Notice.

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

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

*Becton, Dickinson and Company Securities Litigation*

c/o JND Legal Administration

P.O. Box 91443

Seattle, WA 98111

1-888-995-0312

**[info@BectonSecuritiesSettlement.com](mailto:info@BectonSecuritiesSettlement.com)**

**[www.BectonSecuritiesSettlement.com](http://www.BectonSecuritiesSettlement.com)**

All other inquiries should be made to Class Counsel:

Kessler Topaz Meltzer & Check, LLP

Sharan Nirmul, Esq.

Joshua D'Ancona, Esq.

280 King of Prussia Road

Radnor, PA 19087

1-610-667-7706

**[info@ktmc.com](mailto:info@ktmc.com)**

BY ORDER OF THE COURT  
United States District Court  
District of New Jersey

SOURCE JND Legal Administration

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## **EXHIBIT 3**

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

INDUSTRIENS  
PENSIONSFORSIKRING A/S,  
Individually and On Behalf of All  
Others Similarly Situated,

Plaintiff,

v.

BECTON, DICKINSON AND  
COMPANY and THOMAS E.  
POLEN,

Defendants.

Case No. 2:20-cv-02155-SRC-CLW

Hon. Stanley R. Chesler  
District Court Judge

Hon. Cathy L. Waldor  
Magistrate Judge

**DECLARATION OF SHARAN NIRMUL ON BEHALF OF  
KESSLER TOPAZ MELTZER & CHECK, LLP IN SUPPORT OF  
CLASS COUNSEL’S MOTION FOR ATTORNEYS’ FEES  
AND LITIGATION EXPENSES**

I, Sharan Nirmul, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am a partner in the law firm of Kessler Topaz Meltzer & Check, LLP (“Kessler Topaz”). I submit this declaration in support of Class Counsel’s motion for an award of attorneys’ fees in connection with services rendered by Plaintiff’s Counsel in the above-captioned securities class action (“Action”), as well as for payment of Litigation Expenses incurred in connection with the Action.<sup>1</sup> Unless

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<sup>1</sup> All capitalized terms that are not otherwise defined herein shall have the meanings set forth in the Stipulation and Agreement of Settlement dated as of December 19, 2023. ECF No. 182-2.

otherwise stated, I have personal knowledge of the facts set forth herein and, if called upon, could and would testify thereto.

2. As Court-appointed Class Counsel, my firm was involved in all aspects of the prosecution of the Action and its resolution, as set forth in the Declaration of Joshua E. D’Ancona in Support of (I) Class Representative’s Motion for Final Approval of Settlement and Plan of Allocation, and (II) Class Counsel’s Motion for Attorneys’ Fees and Litigation Expenses filed concurrently herewith.

3. Based on my work in the Action, as well as the review of time records reflecting work performed by other attorneys and professional support staff at or on behalf of Kessler Topaz in the Action (“Timekeepers”), as reported by the Timekeepers, I directed the preparation of the table set forth as Exhibit A hereto. The table in Exhibit A: (i) identifies the names and employment positions (i.e., titles) of the Timekeepers who devoted twenty (20) or more hours to the Action; (ii) provides the number of hours that each Timekeeper expended in connection with work on the Action, from the time when potential claims were being investigated through March 1, 2024; (iii) provides each Timekeeper’s current hourly rate unless otherwise noted; and (iv) provides the lodestar of each Timekeeper and the entire firm. For Timekeepers who are no longer employed by Kessler Topaz, the hourly rate used is the hourly rate for such employee in his or her final year of employment by my firm. The table in Exhibit A was prepared from daily time records regularly

prepared and maintained by my firm in the ordinary course of business, which are available at the request of the Court. All time expended in preparing Class Counsel's motion for attorneys' fees and expenses has been excluded.

4. The number of hours expended by Kessler Topaz in the Action, from inception through March 1, 2024, as reflected in Exhibit A, is 28,861.50. The lodestar for my firm, as reflected in Exhibit A, is \$15,153,648.00, consisting of \$13,865,017.50 for attorneys' time and \$1,288,630.50 for professional support staff time.

5. The rates for the Timekeepers, as set forth in Exhibit A, are their current hourly rates. My firm's current hourly rates are largely based upon a combination of the title, the specific years of experience for each attorney and professional support staff employee, as well as market rates for practitioners in the field. These hourly rates are comparable to rates submitted by Kessler Topaz which have been accepted by courts in other complex contingent class actions for purposes of "cross-checking" lodestar against a proposed fee based on the percentage-of-the-fund method, as well as determining a reasonable fee under the lodestar method in prior years.

6. I believe that the number of hours expended and the services performed by the attorneys and professional support staff employees at or on behalf of Kessler Topaz were reasonable and necessary for the effective and efficient prosecution and resolution of the Action.

7. Expense items are reported separately and are not duplicated in my firm's hourly rates. As set forth in Exhibit B hereto, Kessler Topaz is seeking payment for \$842,590.24 in expenses incurred in connection with the prosecution and resolution of the Action. In my judgment, these expenses were reasonable and expended for the benefit of the Class in this Action.

8. The following is additional information regarding the expenses set forth in Exhibit B.

(a) **Court Filing Fees** (\$2,535.17): This amount reflects costs incurred in connection with obtaining District of New Jersey pro hac vice admissions for Kessler Topaz attorneys.

(b) **Service of Process** (\$1,222.25): This amount reflects payments for the service of subpoenas upon various out-of-state nonparties.

(c) **Express Mail & Messenger Services** (\$1,737.82): In connection with the prosecution of the Action, Kessler Topaz incurred charges associated with overnight delivery via Federal Express. Included in this total are charges associated with Kessler Topaz's payment to a messenger service (i.e., \$65.93) for delivery of documents for use at a deposition.

(d) **Online Legal/Factual Research** (\$37,111.05): During the course of this Action, Kessler Topaz incurred costs associated with online legal and factual research necessary to the investigation, prosecution, and resolution of the Action.

These costs include charges from online vendors such as Westlaw, LexisNexis, Courtlink, TransUnion Risk & Alternative Data Solutions Inc.,<sup>2</sup> PACER, and others, and reflect costs associated with obtaining access to court filings, financial data, and performing legal and factual research. The expenses in this category are tracked using the specific client-matter number for the Action and are based upon the costs assessed by each vendor. There are no administrative charges in this figure.

(e) **Reproduction Costs** (\$5,596.38): Kessler Topaz incurred costs related to document reproduction. For internal reproduction, my firm charges \$0.10 per page. Each time a photocopy is made or a document is printed, our billing system requires that a case or administrative billing code be entered into the copy-machine or computer being used, and this is how the 31,457 pages copied or printed (for a total of \$3,145.70) were identified as attributable to this Action. Kessler Topaz also paid a total of \$2,450.68 to outside copy vendors.

(f) **Out-of-Town Travel** (\$13,555.35): In connection with the prosecution of this Action over the past four years, Kessler Topaz attorneys incurred travel-related expenses for travel to, among other things, Court hearings, depositions,

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<sup>2</sup> TransUnion Risk & Alternative Data Solutions Inc. is a database providing information on business risk, fraud mitigation, skip tracing, insurance claims management, asset recovery, and identity authentication. This database is used for factual research, and provides information such as telephone numbers, emails, addresses, criminal history, civil litigation history, and other consumer related information.

client meetings, and mediation. Kessler Topaz applied “caps” to certain of these travel expenses as is routinely done by my firm. For example, airfare was capped at coach/economy rates.

(g) **In-Office Working Meals** (\$466.28): During the course of the Action, Kessler Topaz employees incurred the costs of meals when working through meal times while in the office (including in connection with virtual depositions). Kessler Topaz applies a \$20.00 per-person cap to working meals.

(h) **Expert** (\$545,734.00): Kessler Topaz engaged Joseph R. Mason, Ph.D. of The BVA Group, LLC (“BVA Group”) to investigate and testify regarding the economic importance of the information allegedly misrepresented and/or concealed by Defendants, loss causation and damages. In connection with class certification, Dr. Mason prepared two market efficiency reports and sat for a deposition on April 4, 2023. In addition, Class Counsel consulted with Dr. Mason during the Parties’ mediation efforts. Class Counsel also consulted with BVA Group in developing the Plan of Allocation.

(i) **Witness Counsel** (\$8,512.50): This amount represents payments made to the law firm Calcagni & Kanefsky, LLP for its work (and representation) of nonparty witnesses.

(j) **Witness Fee** (\$40.00): This amount reflects the payment of a witness fee permitted pursuant to 28 U.S. Code § 1821.

(k) **Document Hosting/Management** (\$152,081.39): Class Counsel retained outside vendor, International Litigation Services (“ILS”) to host the document database utilized to effectively and efficiently review and analyze the more than two million pages of electronic documents produced by Defendants and nonparties during the course of the Action. ILS also provided the foreign data management capabilities required to handle Class Representative’s production (given its location in Europe).

(l) **Court Reporters, Transcripts & Deposition Services** (\$10,873.05): This amount consists of charges from court reporters for transcription and video services at depositions taken and defended in the Action, and for copies of deposition and hearing transcripts and corresponding videos.

(m) **Mediation** (\$63,125.00): The Parties retained David M. Murphy, Esq. of Phillips ADR Enterprises, P.C., a neutral mediator with extensive experience in mediating complex securities class actions such as this one, to assist with settlement negotiations in the Action, including three formal mediation sessions. Mediation expenses were split between the Parties and \$63,125.00 represents Class Counsel’s share of the costs for Mr. Murphy’s services.

9. The expenses incurred by Kessler Topaz in the Action are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records, and other source materials and are an accurate



record of the expenses incurred. I believe these expenses were reasonable and expended for the benefit of the Class in the Action.

10. With respect to the standing of my firm, attached hereto as Exhibit C is a firm résumé, which includes information about my firm and biographical information concerning the firm's attorneys.

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

Executed on March 18, 2024, in Radnor, Pennsylvania.

A handwritten signature in blue ink, appearing to read "Sharan Nirmul", written over a horizontal line.

SHARAN NIRMUL

**EXHIBIT A**

*Industriens Pensionsforsikring A/S v. Becton, Dickinson and Company, et al.*  
Case No. 2:20-cv-02155-SRC-CLW (D.N.J.)

**KESSLER TOPAZ MELTZER & CHECK, LLP****TIME REPORT**

From Inception Through March 1, 2024

<b>NAME</b>	<b>CURRENT HOURLY RATE</b>	<b>HOURS</b>	<b>LODESTAR</b>
<b>Partners</b>			
Naumon A. Amjed	\$1,145.00	81.70	\$93,546.50
Stuart L. Berman	\$1,195.00	38.00	\$45,410.00
David A. Bocian	\$1,195.00	587.10	\$701,584.50
Joshua E. D'Ancona	\$965.00	2,217.50	\$2,139,887.50
Ryan T. Degnan	\$870.00	55.50	\$48,285.00
Eric Gerard	\$780.00	744.70	\$580,866.00
David Kessler	\$1,195.00	120.90	\$144,475.50
Josh A. Materese	\$870.00	190.00	\$165,300.00
Margaret E. Mazzeo	\$870.00	477.90	\$415,773.00
Sharan Nirmul	\$1,145.00	369.50	\$423,077.50
<b>Counsel / Associates</b>			
Helen Bass	\$440.00	259.90	\$114,356.00
Jennifer L. Enck	\$750.00	225.80	\$169,350.00
Vanessa M. Milan	\$580.00	1,508.70	\$875,046.00
Michelle M. Newcomer	\$750.00	283.00	\$212,250.00
Melanie Rader	\$400.00	467.80	\$187,120.00
Karissa Sauder	\$575.00	53.00	\$30,475.00
Nathaniel C. Simon	\$580.00	1,101.90	\$639,102.00
<b>Staff Attorneys</b>			
Candice L. H. Hegedus	\$455.00	1,366.60	\$621,803.00
Joshua A. Levin	\$455.00	1,123.20	\$511,056.00
John J. McCullough	\$455.00	781.00	\$355,355.00
Stefanie Menzano	\$410.00	1,184.60	\$485,686.00
Timothy A. Noll	\$455.00	1,335.90	\$607,834.50

<b>NAME</b>	<b>CURRENT HOURLY RATE</b>	<b>HOURS</b>	<b>LODESTAR</b>
Sara Riegel	\$455.00	58.80	\$26,754.00
Allyson M. Rosseel	\$455.00	488.50	\$222,267.50
Michael J. Sechrist	\$455.00	531.90	\$242,014.50
Brian W. Thomer	\$455.00	1,549.70	\$705,113.50
<b>Contract Attorneys</b>			
Edmond Collier	\$370.00	924.40	\$342,028.00
Karen Dick	\$370.00	100.70	\$37,259.00
Wenquin Fan	\$370.00	307.20	\$113,664.00
Linda Fante	\$370.00	880.00	\$325,600.00
Theresa Farrell	\$370.00	824.50	\$305,065.00
James Gillespie	\$370.00	748.00	\$276,760.00
Fernando Guerra	\$370.00	907.00	\$335,590.00
Robert Lausen	\$370.00	791.00	\$292,670.00
John Meravi	\$370.00	932.00	\$344,840.00
Chinwe Nwahiri Acholonu	\$370.00	869.00	\$321,530.00
Laura Pierce	\$370.00	164.90	\$61,013.00
Sheronda Stewart	\$370.00	933.00	\$345,210.00
<b>Paralegals</b>			
Emily Bigelow	\$405.00	34.50	\$13,972.50
Robert Hrouda	\$320.00	56.50	\$18,080.00
Holly Paffas	\$320.00	282.80	\$90,496.00
Abigail Stucker	\$320.00	690.50	\$220,960.00
Mary R. Swift	\$405.00	527.90	\$213,799.50
<b>Investigators</b>			
Kevin Kane	\$435.00	270.20	\$117,537.00
Jamie Maginnis	\$400.00	272.60	\$109,040.00
John Marley	\$435.00	399.10	\$173,608.50
Henry Molina	\$400.00	322.20	\$128,880.00
William Monks	\$660.00	135.70	\$89,562.00
Caitlyn Righter	\$370.00	39.50	\$14,615.00
Kerry Seidel	\$400.00	245.20	\$98,080.00
<b>TOTALS</b>		<b>28,861.50</b>	<b>\$15,153,648.00</b>

**EXHIBIT B**

*Industriens Pensionsforsikring A/S v. Becton, Dickinson and Company, et al.*  
Case No. 2:20-cv-02155-SRC-CLW (D.N.J.)

**KESSLER TOPAZ MELTZER & CHECK, LLP**  
**EXPENSE REPORT**

<b>CATEGORY</b>	<b>AMOUNT</b>
Court Filing Fees	\$2,535.17
Service of Process	\$1,222.25
Express Mail	\$1,671.89
Messenger Services	\$65.93
Online Legal Research	\$35,624.48
Online Factual Research	\$1,486.57
External Reproduction Costs	\$2,450.68
Internal Reproduction Costs	\$3,145.70
Out of Town Travel (Transportation, Hotels & Meals)	\$13,555.35
In-Office Working Meals	\$466.28
Expert	\$545,734.00
Witness Counsel	\$8,512.50
Witness Fee	\$40.00
Document Hosting/Management	\$152,081.39
Court Reporters, Transcripts & Deposition Services	\$10,873.05
Mediation	\$63,125.00
<b>TOTAL EXPENSES:</b>	<b>\$842,590.24</b>

**EXHIBIT C**

*Industriens Pensionsforsikring A/S v. Becton, Dickinson and Company, et al.*  
Case No. 2:20-cv-02155-SRC-CLW (D.N.J.)

**KESSLER TOPAZ MELTZER & CHECK, LLP**

**FIRM RESUME**



**KESSLERTOPAZ**  
**MELTZERCHECK** LLP  
ATTORNEYS AT LAW

**FIRM PROFILE**

Since 1987, Kessler Topaz Meltzer & Check, LLP has specialized in the prosecution of securities class actions and has grown into one of the largest and most successful shareholder litigation firms in the field. With offices in Radnor, Pennsylvania and San Francisco, California, the Firm is comprised of 94 attorneys as well as an experienced support staff consisting of over 80 paralegals, in-house investigators, legal clerks and other personnel. With a large and sophisticated client base (numbering over 350 institutional investors from around the world -- including public and Taft-Hartley pension funds, mutual fund managers, investment advisors, insurance companies, hedge funds and other large investors), Kessler Topaz has developed an international reputation for excellence and has extensive experience prosecuting securities fraud actions. For the past several years, the National Law Journal has recognized Kessler Topaz as one of the top securities class action law firms in the country. In addition, the Legal Intelligencer recently awarded Kessler Topaz with its Class Action Litigation Firm of The Year award. Lastly, Kessler Topaz and several of its attorneys are regularly recognized by Legal500 and Benchmark: Plaintiffs as leaders in our field.

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

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**OFFICES:**

**PENNSYLVANIA**

(HEADQUARTERS)  
280 King of Prussia Road,  
Radnor, PA 19087  
Direct: 610-667-7706  
Fax: 610-667-7056  
[info@ktmc.com](mailto:info@ktmc.com)

**CALIFORNIA**

One Sansome Street,  
Suite 1850,  
San Francisco, CA 94104  
Direct: 415-400-3000  
Fax: 415-400-3001

## NOTEWORTHY ACHIEVEMENTS

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

### SECURITIES FRAUD LITIGATION

*In re Bank of America Corp. Securities, Derivative, and Employee Retirement Income Security Act (ERISA) Litigation, Master File No. 09 MDL 2058: (S.D.N.Y. 2009)*

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

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

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

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

As presiding Judge Paul Barbadoro aptly stated in his Order approving the final settlement, "[i]t is difficult to overstate the complexity of [the litigation]." Judge Barbadoro noted the extraordinary effort required to pursue the litigation towards its successful conclusion, which included the review of

more than 82.5 million pages of documents, more than 220 depositions and over 700 hundred discovery requests and responses. In addition to the complexity of the litigation, Judge Barbadoro also highlighted the great risk undertaken by Co-Lead Counsel in pursuit of the litigation, which he indicated was greater than in other multi-billion dollar securities cases and “put [Plaintiffs] at the cutting edge of a rapidly changing area of law.” In sum, the Tyco settlement is of historic proportions for the investors who suffered significant financial losses and it has sent a strong message to those who would try to engage in this type of misconduct in the future.

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

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

*In re Wachovia Preferred Securities and Bond/Notes Litigation, Master File No. 09 Civ. 6351 (RJS) (S.D.N.Y. 2009):*

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



*In re Initial Public Offering Sec. Litig., Master File No. 21 MC 92 (SAS) (S.D.N.Y. 2001):*

This action settled for \$586 million on January 1, 2010, after years of litigation overseen by U.S. District Judge Shira Scheindlin. Kessler Topaz served on the plaintiffs' executive committee for the case, which was based upon the artificial inflation of stock prices during the dot-com boom of the late 1990s that led to the collapse of the technology stock market in 2000 that was related to allegations of laddering and excess commissions being paid for IPO allocations.

*In re Longtop Financial Technologies Ltd. Securities Litigation, No. 11-cv-3658 (S.D.N.Y. 2011):*

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

*Operative Plasterers and Cement Masons International Association Local 262 Annuity Fund v. Lehman Brothers Holdings, Inc., No. 1:08-cv-05523-LAK (S.D.N.Y. 2008):*

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

*Minneapolis Firefighters' Relief Association v. Medtronic, Inc. et al.*, Case No. 0:08-cv-06324-PAM-AJB (D. Minn. 2008):

Kessler Topaz brought an action on behalf of lead plaintiffs that alleged that the company failed to disclose its reliance on illegal “off-label” marketing techniques to drive the sales of its INFUSE Bone Graft (“INFUSE”) medical device. While physicians are allowed to prescribe a drug or medical device for any use they see fit, federal law prohibits medical device manufacturers from marketing devices for any uses not specifically approved by the United States Food and Drug Administration. The company’s off-label marketing practices have resulted in the company becoming the target of a probe by the federal government which was revealed on November 18, 2008, when the company’s CEO reported that Medtronic received a subpoena from the United States Department of Justice which is “looking into off-label use of INFUSE.” After hearing oral argument on Defendants’ Motions to Dismiss, on February 3, 2010, the Court issued an order granting in part and denying in part Defendants’ motions, allowing a large portion of the action to move forward. The Court held that Plaintiff successfully stated a claim against each Defendant for a majority of the misstatements alleged in the Complaint and that each of the Defendants knew or recklessly disregarded the falsity of these statements and that Defendants’ fraud caused the losses experienced by members of the Class when the market learned the truth behind Defendants’ INFUSE marketing efforts. While the case was in discovery, on April 2, 2012, Medtronic agreed to pay shareholders an \$85 million settlement. The settlement was approved by the Court by order issued on November 8, 2012.

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

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

Larry Sonsini. On this point, the Court also agreed and advised WSGR to remove itself from the case entirely. On May 25, 2007, WSGR complied and withdrew as counsel to Brocade. The case settled for \$160 million and was approved by the Court.

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

Kessler Topaz served as Co-Lead Counsel in this securities fraud class action in the Southern District of New York. The action asserts claims by lead plaintiffs for violations of the federal securities laws against Satyam Computer Services Limited (“Satyam” or the “Company”) and certain of Satyam’s former officers and directors and its former auditor PricewaterhouseCoopers International Ltd. (“PwC”) relating to the Company’s January 7, 2009, disclosure admitting that B. Ramalinga Raju (“B. Raju”), the Company’s former chairman, falsified Satyam’s financial reports by, among other things, inflating its reported cash balances by more than \$1 billion. The news caused the price of Satyam’s common stock (traded on the National Stock Exchange of India and the Bombay Stock Exchange) and American Depository Shares (“ADSs”) (traded on the New York Stock Exchange (“NYSE”)) to collapse. From a closing price of \$3.67 per share on January 6, 2009, Satyam’s common stock closed at \$0.82 per share on January 7, 2009. With respect to the ADSs, the news of B. Raju’s letter was revealed overnight in the United States and, as a result, trading in Satyam ADSs was halted on the NYSE before the markets opened on January 7, 2009. When trading in Satyam ADSs resumed on January 12, 2009, Satyam ADSs opened at \$1.14 per ADS, down steeply from a closing price of \$9.35 on January 6, 2009. Lead Plaintiffs filed a consolidated complaint on July 17, 2009, on behalf of all persons or entities, who (a) purchased or otherwise acquired Satyam’s ADSs in the United States; and (b) residents of the United States who purchased or otherwise acquired Satyam shares on the National Stock Exchange of India or the Bombay Stock Exchange between January 6, 2004 and January 6, 2009. Co-Lead Counsel secured a settlement for \$125 million from Satyam on February 16, 2011. Additionally, Co-Lead Counsel was able to secure a \$25.5 million settlement from PwC on April 29, 2011, who was alleged to have signed off on the misleading audit reports.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Kessler Topaz served as sole Lead Counsel in this action on behalf of an institutional investor and received final approval of a settlement consisting of \$20 million in cash and 6,551,725 shares of IPG common stock. As of the final hearing in the case, the stock had an approximate value of \$87 million, resulting in a total settlement value of approximately \$107 million. In granting its approval, the Court praised Kessler Topaz for acting responsibly and noted the Firm's professionalism, competence and contribution to achieving such a favorable result.

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

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

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

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

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

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

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

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

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

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

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

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

## SHAREHOLDER DERIVATIVE ACTIONS

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

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

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

Kessler Topaz served as co-lead counsel in a shareholder derivative action challenging 2.745 million "spring-loaded" stock options. On the day before CytRx announced the most important news in the Company's history concerning the positive trial results for one of its significant pipeline drugs, the Compensation Committee of CytRx's Board of Directors granted the stock options to themselves, their fellow directors and several Company officers which immediately came "into the money" when CytRx's stock price shot up immediately following the announcement the next day. Kessler Topaz negotiated a settlement recovering 100% of the excess compensation received by the directors and approximately 76% of the damages potentially obtainable from the officers. In addition, as part of the settlement, Kessler Topaz obtained the appointment of a new independent director to the Board of Directors and the implementation of significant reforms to the Company's stock option award processes. The Court complimented the settlement, explaining that it "serves what Delaware views as the overall positive function of stockholder litigation, which is not just recovery in the individual case but also deterrence and norm enforcement."

*International Brotherhood of Electrical Workers Local 98 Pension Fund v. Black, et al., Case No. 37-2011-00097795-CU-SL-CTL (Sup. Ct. Cal., San Diego Feb. 5, 2016) ("Encore Capital Group, Inc."):*

Kessler Topaz, as co-lead counsel, represented International Brotherhood of Electrical Workers Local 98 Pension Fund in a shareholder derivative action challenging breaches of fiduciary duties and other

violations of law in connection with Encore's debt collection practices, including robo-signing affidavits and improper use of the court system to collect alleged consumer debts. Kessler Topaz negotiated a settlement in which the Company implemented industry-leading reforms to its risk management and corporate governance practices, including creating Chief Risk Officer and Chief Compliance Officer positions, various compliance committees, and procedures for consumer complaint monitoring.

*In re Southern Peru Copper Corp. Derivative Litigation*, Consol. CA No. 961-CS (Del. Ch. 2011):

Kessler Topaz served as co-lead counsel in this landmark \$2 billion post-trial decision, believed to be the largest verdict in Delaware corporate law history. In 2005, Southern Peru, a publicly-traded copper mining company, acquired Minera Mexico, a private mining company owned by Southern Peru's majority stockholder Grupo Mexico. The acquisition required Southern Peru to pay Grupo Mexico more than \$3 billion in Southern Peru stock. We alleged that Grupo Mexico had caused Southern Peru to grossly overpay for the private company in deference to its majority shareholder's interests. Discovery in the case spanned years and continents, with depositions in Peru and Mexico. The trial court agreed and ordered Grupo Mexico to pay more than \$2 billion in damages and interest. The Delaware Supreme Court affirmed on appeal.

*Quinn v. Knight*, No. 3:16-cv-610 (E.D. Va. Mar. 16, 2017) ("Apple REIT Ten"):

This shareholder derivative action challenged a conflicted "roll up" REIT transaction orchestrated by Glade M. Knight and his son Justin Knight. The proposed transaction paid the Knights millions of dollars while paying public stockholders less than they had invested in the company. The case was brought under Virginia law, and settled just ten days before trial, with stockholders receiving an additional \$32 million in merger consideration.

*Kastis v. Carter*, C.A. No. 8657-CB (Del. Ch. Sept. 19, 2016) ("Hemispherx Biopharma, Inc."):

This derivative action challenged improper bonuses paid to two company executives of this small pharmaceutical company that had never turned a profit. In response to the complaint, Hemispherx's board first adopted a "fee-shifting" bylaw that would have required stockholder plaintiffs to pay the company's legal fees unless the plaintiffs achieved 100% of the relief they sought. This sort of bylaw, if adopted more broadly, could substantially curtail meritorious litigation by stockholders unwilling to risk losing millions of dollars if they bring an unsuccessful case. After Kessler Topaz presented its argument in court, Hemispherx withdrew the bylaw. Kessler Topaz ultimately negotiated a settlement requiring the two executives to forfeit several million dollars' worth of accrued but unpaid bonuses, future bonuses and director fees. The company also recovered \$1.75 million from its insurance carriers, appointed a new independent director to the board, and revised its compensation program.

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

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



*In re Helios Closed-End Funds Derivative Litig., No. 2:11-cv-02935-SHM-TMP (W.D. Tenn. 2011):* Kessler Topaz represented stockholders of four closed-end mutual funds in a derivative action against the funds' former investment advisor, Morgan Asset Management. Plaintiffs alleged that the defendants mismanaged the funds by investing in riskier securities than permitted by the funds' governing documents and, after the values of these securities began to precipitously decline beginning in early 2007, cover up their wrongdoing by assigning phony values to the funds' investments and failing to disclose the extent of the decrease in value of the funds' assets. In a rare occurrence in derivative litigation, the funds' Boards of Directors eventually hired Kessler Topaz to prosecute the claims against the defendants on behalf of the funds. Our litigation efforts led to a settlement that recovered \$6 million for the funds and ensured that the funds would not be responsible for making any payment to resolve claims asserted against them in a related multi-million dollar securities class action. The fund's Boards fully supported and endorsed the settlement, which was negotiated independently of the parallel securities class action.

*In re Viacom, Inc. Shareholder Derivative Litig., Index No. 602527/05 (N.Y. Sup. Ct. 2005):* Kessler Topaz represented the Public Employees' Retirement System of Mississippi and served as Lead Counsel in a derivative action alleging that the members of the Board of Directors of Viacom, Inc. paid excessive and unwarranted compensation to Viacom's Executive Chairman and CEO, Sumner M. Redstone, and co-COOs Thomas E. Freston and Leslie Moonves, in breach of their fiduciary duties. Specifically, we alleged that in fiscal year 2004, when Viacom reported a record net loss of \$17.46 billion, the board improperly approved compensation payments to Redstone, Freston, and Moonves of approximately \$56 million, \$52 million, and \$52 million, respectively. Judge Ramos of the New York Supreme Court denied Defendants' motion to dismiss the action as we overcame several complex arguments related to the failure to make a demand on Viacom's Board; Defendants then appealed that decision to the Appellate Division of the Supreme Court of New York. Prior to a decision by the appellate court, a settlement was reached in early 2007. Pursuant to the settlement, Sumner Redstone, the company's Executive Chairman and controlling shareholder, agreed to a new compensation package that, among other things, substantially reduces his annual salary and cash bonus, and ties the majority of his incentive compensation directly to shareholder returns.

*In re Family Dollar Stores, Inc. Derivative Litig., Master File No. 06-CVS-16796 (Mecklenburg County, NC 2006):* Kessler Topaz served as Lead Counsel, derivatively on behalf of Family Dollar Stores, Inc., and against certain of Family Dollar's current and former officers and directors. The actions were pending in Mecklenburg County Superior Court, Charlotte, North Carolina, and alleged that certain of the company's officers and directors had improperly backdated stock options to achieve favorable exercise prices in violation of shareholder-approved stock option plans. As a result of these shareholder derivative actions, Kessler Topaz was able to achieve substantial relief for Family Dollar and its shareholders. Through Kessler Topaz's litigation of this action, Family Dollar agreed to cancel hundreds of thousands of stock options granted to certain current and former officers, resulting in a seven-figure net financial benefit for the company. In addition, Family Dollar has agreed to, among other things: implement internal controls and granting procedures that are designed to ensure that all stock options are properly dated and accounted for; appoint two new independent directors to the board of directors; maintain a board composition of at least 75 percent independent directors; and adopt stringent officer stock-ownership policies to further align the interests of officers with those of Family Dollar shareholders. The settlement was approved by Order of the Court on August 13, 2007.

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

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

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

Represented shareholders in derivative litigation challenging board's decision to accelerate "golden parachute" payments to South Financial Group's CEO as the company applied for emergency assistance in 2008 under the Troubled Asset Recovery Plan (TARP). We sought injunctive relief to block the payments and protect the company's ability to receive the TARP funds. The litigation was settled with the CEO giving up part of his severance package and agreeing to leave the board, as well as the implementation of important corporate governance changes one commentator described as "unprecedented."

## OPTIONS BACKDATING

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

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

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

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

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

## MERGERS & ACQUISITIONS LITIGATION

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

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

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

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

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

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

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

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

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

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

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

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

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

On August 27, 2015, Vice Chancellor J. Travis Laster issued his much-anticipated post-trial verdict in litigation by former stockholders of Dole Food Company against Dole's chairman and controlling stockholder David Murdock. In a 106-page ruling, Vice Chancellor Laster found that Murdock and his longtime lieutenant, Dole's former president and general counsel C. Michael Carter, unfairly manipulated Dole's financial projections and misled the market as part of Murdock's efforts to take the company private in a deal that closed in November 2013. Among other things, the Court concluded that Murdock and Carter "primed the market for the freeze-out by driving down Dole's stock price" and provided the company's outside directors with "knowingly false" information and intended to "mislead the board for Mr. Murdock's benefit." Vice Chancellor Laster found that the \$13.50 per share going-private deal underpaid stockholders, and awarded class damages of \$2.74 per share, totaling \$148 million. That award represents the largest post-trial class recovery in the merger context. The largest post-trial derivative recovery in a merger case remains Kessler Topaz's landmark 2011 \$2 billion verdict in *In re Southern Peru*.

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

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

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

*In re GSI Commerce, Inc. Shareholder Litig., Consol. C.A. No. 6346-VCN (Del. Ch. Nov. 15, 2011):* On behalf of the Erie County Employees' Retirement System, we alleged that GSI's founder breached his fiduciary duties by negotiating a secret deal with eBay for him to buy several GSI subsidiaries at below market prices before selling the remainder of the company to eBay. These side deals significantly reduced the acquisition price paid to GSI stockholders. Days before an injunction hearing, we negotiated an improvement in the deal price of \$24 million.

*In re Amicas, Inc. Shareholder Litigation, 10-0174-BLS2 (Suffolk County, MA 2010):* Kessler Topaz served as lead counsel in class action litigation challenging a proposed private equity buyout of Amicas that would have paid Amicas shareholders \$5.35 per share in cash while certain Amicas executives retained an equity stake in the surviving entity moving forward. Kessler Topaz prevailed in securing a preliminary injunction against the deal, which then allowed a superior bidder to purchase the Company for an additional \$0.70 per share (\$26 million). The court complimented Kessler Topaz attorneys for causing an "exceptionally favorable result for Amicas' shareholders" after "expend[ing] substantial resources."

*In re Harleysville Mutual, Nov. Term 2011, No. 02137 (C.C.P., Phila. Cnty.):* Kessler Topaz served as co-lead counsel in expedited merger litigation challenging Harleysville's agreement to sell the company to Nationwide Insurance Company. Plaintiffs alleged that policyholders were entitled to receive cash in exchange for their ownership interests in the company, not just new Nationwide policies. Plaintiffs also alleged that the merger was "fundamentally unfair" under Pennsylvania law. The defendants contested the allegations and contended that the claims could not be prosecuted directly by policyholders (as opposed to derivatively on the company's behalf). Following a two-day preliminary injunction hearing, we settled the case in exchange for a \$26 million cash payment to policyholders.

## CONSUMER PROTECTION & FIDUCIARY LITIGATION

*In re: J.P. Jeanneret Associates Inc., et al., No. 09-cv-3907 (S.D.N.Y.):* Kessler Topaz served as lead counsel for one of the plaintiff groups in an action against J.P. Jeanneret and Ivy Asset Management relating to an alleged breach of fiduciary and statutory duty in connection with the investment of retirement plan assets in Bernard Madoff-related entities. By breaching their fiduciary duties, Defendants caused significant losses to the retirement plans. Following extensive hard-fought litigation, the case settled for a total of \$216.5 million.

*In re: National City Corp. Securities, Derivative and ERISA Litig, No. 08-nc-7000 (N.D. Ohio):* Kessler Topaz served as a lead counsel in this complex action alleging that certain directors and officers of National City Corp. breached their fiduciary duties under the Employee Retirement Income Security Act of 1974. These breaches arose from an investment in National City stock during

a time when defendants knew, or should have known, that the company stock was artificially inflated and an imprudent investment for the company's 401(k) plan. The case settled for \$43 million on behalf of the plan, plaintiffs and a settlement class of plan participants.

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

Kessler Topaz served as lead counsel in this novel and complex action which alleged that Defendants Countrywide Financial Corporation, Countrywide Home Loans, Inc. and Balboa Reinsurance Co. violated the Real Estate Settlement Procedure Act ("RESPA") and ultimately cost borrowers millions of dollars. Specifically, the action alleged that Defendants engaged in a scheme related to private mortgage insurance involving kickbacks, which are prohibited under RESPA. After three and a half years of hard-fought litigation, the action settled for \$34 million.

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

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

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

On behalf of the Southeastern Pennsylvania Transportation Authority Pension Fund and a class of similarly situated domestic custodial clients of BNY Mellon, we alleged that BNY Mellon secretly assigned a spread to the FX rates at which it transacted FX transactions on behalf of its clients who participated in the BNY Mellon's automated "Standing Instruction" FX service. BNY Mellon determining this spread by executing its clients' transactions at one rate and then, typically, at the end of the trading day, assigned a rate to its clients which approximated the worst possible rates of the trading day, pocketing the difference as riskless profit. This practice was despite BNY Mellon's contractual promises to its clients that its Standing Instruction service was designed to provide "best execution," was "free of charge" and provided the "best rates of the day." The case asserted claims for breach of contract and breach of fiduciary duty on behalf of BNY Mellon's custodial clients and sought to recover the unlawful profits that BNY Mellon earned from its unfair and unlawful FX practices. The case was litigated in collaboration with separate cases brought by state and federal agencies, with Kessler Topaz serving as lead counsel and a member of the executive committee overseeing the private litigation. After extensive discovery, including more than 100 depositions, over 25 million pages of fact discovery, and the submission of multiple expert reports, Plaintiffs reached a settlement with BNY Mellon of \$335 million. Additionally, the settlement is being administered by Kessler Topaz along with separate recoveries by state and federal agencies which bring the total recovery for BNY Mellon's custodial customers to \$504 million. The settlement was approved on September 24, 2015. In approving the settlement, Judge Lewis Kaplan praised counsel

for a “wonderful job,” stating that counsel “fought tooth and nail at every step of the road.” In further recognition of the efforts of counsel, Judge Kaplan noted that “[t]his was an outrageous wrong by the Bank of New York Mellon, and plaintiffs’ counsel deserve a world of credit for taking it on, for running the risk, for financing it and doing a great job.”

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

Kessler Topaz served as Interim Class Counsel in this matter alleging that BNY Mellon Bank, N.A. and the Bank of New York Mellon (collectively, “BNYM”) breached their statutory, common law and contractual duties in connection with the administration of their securities lending program. The Second Amended Complaint alleged, among other things, that BNYM imprudently invested cash collateral obtained under its securities lending program in medium term notes issued by Sigma Finance, Inc. -- a foreign structured investment vehicle (“SIV”) that is now in receivership -- and that such conduct constituted a breach of BNYM’s fiduciary obligations under the Employee Retirement Income Security Act of 1974, a breach of its fiduciary duties under common law, and a breach of its contractual obligations under the securities lending agreements. The Complaint also asserted claims for negligence, gross negligence and willful misconduct. The case recently settled for \$280 million.

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

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

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

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

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

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

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

Kessler Topaz, which served as Co-Lead Counsel in this highly-publicized ERISA fiduciary breach class action brought on behalf of the Company's 401(k) plans and their participants, achieved a record \$100 million settlement with defendants. The \$100 million restorative cash payment to the plans (and, concomitantly, their participants) represents the largest recovery from a single defendant in a breach of fiduciary action relating to mismanagement of plan assets held in the form of employer securities. The action asserted claims for breach of fiduciary duties pursuant to the Employee Retirement Income Security Act of 1974 ("ERISA") on behalf of the participants in the AOL Time Warner Savings Plan, the AOL Time Warner Thrift Plan, and the Time Warner Cable Savings Plan (collectively, the "Plans") whose accounts purchased and/or held interests in the AOLTW Stock Fund at any time between January 27, 1999 and July 3, 2003. Named as defendants in the case were Time Warner (and its corporate predecessor, AOL Time Warner), several of the Plans' committees, as well as certain current and former officers and directors of the company. In March 2005, the Court largely denied defendants' motion to dismiss and the parties began the discovery phase of the case. In January 2006, Plaintiffs filed a motion for class certification, while at the same time defendants moved for partial summary judgment. These motions were pending before the Court when the settlement in principle was reached. Notably, an Independent Fiduciary retained by the Plans to review the settlement in accordance with Department of Labor regulations approved the settlement and filed a report with Court noting that the settlement, in addition to being "more than a reasonable recovery" for the Plans, is "one of the largest ERISA employer stock action settlements in history."

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

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

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

The Firm served as Co-Lead Counsel for one of the largest consumer class actions in history, consisting of approximately 11 million Sears credit card holders whose interest rates were improperly increased in connection with the transfer of the credit card accounts to a national bank. Kessler Topaz successfully negotiated a settlement representing approximately 66% of all class members' damages, thereby providing a total benefit exceeding \$156 million. All \$156 million was distributed automatic-



ally to the Class members, without the filing of a single proof of claim form. In approving the settlement, the District Court stated: “. . . I am pleased to approve the settlement. I think it does the best that could be done under the circumstances on behalf of the class. . . . The litigation was complex in both liability and damages and required both professional skill and standing which class counsel demonstrated in abundance.”

## ANTITRUST LITIGATION

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

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

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

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

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

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

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

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

# OUR PROFESSIONALS

## PARTNERS

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

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

**NAUMON A. AMJED**, a Partner of the Firm, concentrates his practice on new matter development with a focus on analyzing securities class action lawsuits, direct (or opt-out) actions, non-U.S. securities and shareholder litigation, SEC whistleblower actions, breach of fiduciary duty cases, antitrust matters, data breach actions and oil and gas litigation. Mr. Amjed is a graduate of the Villanova University School of Law, cum laude, and holds an undergraduate degree in business administration from Temple University, cum laude. Mr. Amjed is a member of the Delaware State Bar, the Bar of the Commonwealth of Pennsylvania, the New York State Bar, and is admitted to practice before the United States Courts for the District of Delaware, the Eastern District of Pennsylvania and the Southern District of New York.

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

*Data Sec. Breach Litig.*, No. MDL 14-2522 PAM/JJK, 2015 WL 5432115 (D. Minn. Sept. 15, 2015). At the time of its issuance, the class certification order in Target was the first of its kind in data breach litigation by financial institutions.

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

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

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

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

Mr. Berman regularly counsels and educates institutional investors located around the world on emerging legal trends, new case ideas and the rights and obligations of institutional investors as they relate to securities fraud class actions and individual actions. In this respect, Mr. Berman has been instrumental in courts appointing the Firm's institutional clients as lead plaintiffs in class actions as well as in representing institutions individually in direct actions. Mr. Berman is currently representing institutional investors in direct actions against Vivendi and Merck, and took a very active role in the precedent setting Shell settlement on behalf of many of the Firm's European institutional clients.

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

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

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

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

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

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

**DARREN J. CHECK**, a Partner of the Firm, manages Kessler Topaz's portfolio monitoring & claims filing service, *SecuritiesTracker*<sup>™</sup>, and works closely with the Firm's litigators and new matter development department. He consults with institutional investors from around the world with regard to implementing systems to best identify, analyze, and monetize claims they have in shareholder litigation.

In addition, Mr. Check assists Firm clients in evaluating opportunities to take an active role in shareholder litigation, arbitration, and other loss recovery methods. This includes U.S. based litigation and arbitration, as well as actions in an increasing number of jurisdictions around the globe. With an increasingly complex investment and legal landscape, Mr. Check has experience advising on traditional class actions, direct actions (opt-outs), non-U.S. opt-in actions, fiduciary actions, appraisal actions and arbitrations to name a few. Over the last twenty years Mr. Check has become a trusted advisor to hedge funds, mutual fund managers, asset managers, insurance companies, sovereign wealth funds, central banks, and pension funds throughout North America, Europe, Asia, Australia, and the Middle East.

Mr. Check regularly speaks on the subjects of shareholder litigation, corporate governance, investor activism, and recovery of investment losses at conferences around the world. He has also been actively involved in the precedent setting Shell and Fortis settlements in the Netherlands, the Olympus shareholder case in Japan, direct actions against Petrobras and Merck, and securities class actions against Bank of America, Lehman Brothers, Royal Bank of Scotland (U.K.), and Hewlett-Packard. Currently Mr. Check represents investors in numerous high profile actions in the United States, the Netherlands, Germany, France, Japan, and Australia.

Mr. Check received his law degree from Temple University School of Law and is a graduate of Franklin & Marshall College. He is admitted to practice in numerous state and federal courts across the United States.

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

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

Ms. Christiansen devotes her time to advising clients on the challenges and benefits of pursuing particular litigation opportunities in jurisdictions outside the U.S. In those non-US actions where Kessler Topaz is actively involved, Emily liaises with local counsel, helps develop case strategy, reviews pleadings, and helps clients understand and successfully navigate the legal process. Her experience includes non-US opt-in actions, international law, and portfolio monitoring and claims administration. In her role, Ms. Christiansen has helped secure recoveries for institutional investors in litigation in Japan against Olympus Corporation (settled - ¥11 billion) and in the Netherlands against Fortis Bank N.V. (settled - €1.2 billion).

**JOSHUA E. D'ANCONA**, a Partner of the Firm, concentrates his practice in the securities litigation and lead plaintiff departments of the Firm. Mr. D'Ancona received his J.D., magna cum laude, from the Temple University Beasley School of Law in 2007, where he served on the Temple Law Review and as president of the Moot Court Honors Society, and graduated with honors from Wesleyan University. He is licensed to practice in Pennsylvania and New Jersey.

Before joining the Firm in 2009, he served as a law clerk to the Honorable Cynthia M. Rufe of the United States District Court for the Eastern District of Pennsylvania.

**RYAN T. DEGNAN**, a Partner of the Firm, concentrates his practice on new matter development with a specific focus on analyzing securities class action lawsuits, antitrust actions, and complex consumer actions. Mr. Degnan received his law degree from Temple University Beasley School of Law, where he was a Notes and Comments Editor for the Temple Journal of Science, Technology & Environmental Law, and earned his undergraduate degree in Biology from Johns Hopkins University. While a law student, Mr. Degnan served as a Judicial Intern to the Honorable Gene E.K. Pratter of the United States District Court for the Eastern District of Pennsylvania. Mr. Degnan is licensed to practice in Pennsylvania and New Jersey. As a member of the Firm's lead plaintiff litigation practice group, Mr. Degnan has helped secure the Firm's clients' appointments as lead plaintiffs in: *In re HP Securities Litigation*, No. 12-cv-5090, 2013 WL 792642 (N.D. Cal. Mar. 4, 2013); *In re JPMorgan Chase & Co. Securities Litigation*, No. 12-3852- GBD ("London Whale Litigation") (\$150 million recovery); *Freedman v. St. Jude Medical, Inc., et al.*, No. 12-cv-3070 (D. Minn.); *United Union of Roofers, Waterproofers & Allied Workers Local Union No. 8 v. Ocwen Fin. Corp.*, No. 14 Civ. 81057 (WPD), 2014 WL 7236985 (S.D. Fla. Nov. 7, 2014); *Louisiana Municipal Police Employees' Retirement System v. Green Mountain Coffee Roasters, Inc., et al.*, No. 11-cv-289, 2012 U.S. Dist. LEXIS 89192 (D. Vt. Apr. 27, 2012); and *In re Longtop Financial Technologies Ltd. Securities Litigation*, No. 11-cv-3658, 2011 U.S. Dist. LEXIS 112970 (S.D.N.Y. Oct. 4, 2011). Additional representative matters include: *In re Bank of New York Mellon Corp. Foreign Exchange Transactions Litigation*, No. 12-md-02335 (S.D.N.Y.) (\$335 million settlement); and *Policemen's Annuity and Benefit Fund of the City of Chicago, et al. v. Bank of America, NA, et al.*, No. 12-cv- 02865 (S.D.N.Y.) (\$69 million settlement).

**TYLER S. GRADEN**, a Partner of the Firm, concentrates his practice in the area of consumer protection and unlawful business practice litigation, representing individuals, retirement plan beneficiaries, businesses and government entities as plaintiffs in class actions and arbitrations. Prior to joining the Firm, Mr. Graden worked at a boutique defense litigation firm in Philadelphia and as an investigator with the Chicago District Office of the Equal Employment Opportunity Commission.

**GRANT D. GOODHART III**, a Partner of the Firm, concentrates his practice in the areas of merger and acquisition litigation and shareholder derivative actions. Through his practice, Mr. Goodhart helps institutional and individual shareholders obtain significant financial recoveries and corporate governance reforms. Mr. Goodhart graduated from Temple University Beasley School of Law in 2015. While in law school, Mr. Goodhart interned as a law clerk to the Hon. Thomas C. Branca of the Montgomery County Court of Common Pleas, the Hon. Anne E. Lazarus of the Pennsylvania Superior Court, and U.S. Magistrate Judge Lynne A. Sitarski of the U.S. District Court for the Eastern District of Pennsylvania. Grant also served as the Executive Articles Editor for the Temple International and Comparative Law Journal.

**SEAN M. HANDLER**, a Partner of the Firm and member of Kessler Topaz's Management Committee, currently concentrates his practice on all aspects of new matter development for the Firm including securities, consumer and intellectual property. Mr. Handler earned his Juris Doctor, cum laude, from Temple University School of Law, and received his Bachelor of Arts degree from Colby College, graduating with distinction in American Studies. Mr. Handler is licensed to practice in Pennsylvania, New Jersey and New York. As part of his responsibilities, Mr. Handler also oversees the lead plaintiff appointment process in securities class actions for the Firm's clients. In this role,

Mr. Handler has achieved numerous noteworthy appointments for clients in reported decisions including *Foley v. Transocean*, 272 F.R.D. 126 (S.D.N.Y. 2011); *In re Bank of America Corp. Sec., Derivative & Employment Ret. Income Sec. Act (ERISA) Litig.*, 258 F.R.D. 260 (S.D.N.Y. 2009) and *Tanne v. Autobytel, Inc.*, 226 F.R.D. 659 (C.D. Cal. 2005) and has argued before federal courts throughout the country.

Mr. Handler was also one of the principal attorneys in *In re Brocade Securities Litigation* (N.D. Cal. 2008), where the team achieved a \$160 million settlement on behalf of the class and two public pension fund class representatives. This settlement is believed to be one of the largest settlements in a securities fraud case in terms of the ratio of settlement amount to actual investor damages.

Mr. Handler also lectures and serves on discussion panels concerning securities litigation matters, most recently appearing at American Conference Institute's National Summit on the Future of Fiduciary Responsibility and Institutional Investor's The Rights & Responsibilities of Institutional Investors.

**NATHAN A. HASIUK**, a Partner of the Firm, concentrates his practice on securities litigation. Mr. Hasiuk received his law degree from Temple University Beasley School of Law, and graduated summa cum laude from Temple University. He is licensed to practice in Pennsylvania and New Jersey and has been admitted to practice before the United States District Court for the District of New Jersey. Prior to joining the Firm, Mr. Hasiuk was an Assistant Public Defender in Philadelphia.

**GEOFFREY C. JARVIS**, a Partner of the Firm, focuses on securities litigation for institutional investors. Mr. Jarvis graduated from Harvard Law School in 1984, and received his undergraduate degree from Cornell University in 1980. He is licensed to practice in Pennsylvania, Delaware, New York and Washington, D.C. Following law school, Mr. Jarvis served as a staff attorney with the Federal Communications Commission, participating in the development of new regulatory policies for the telecommunications industry.

Mr. Jarvis had a major role in Oxford Health Plans Securities Litigation, Daimler Chrysler Securities Litigation, and Tyco Securities Litigation all of which were among the top ten securities settlements in U.S. history at the time they were resolved, as well as a large number of other securities cases over the past 16 years. He has also been involved in a number of actions before the Delaware Chancery Court, including a Delaware appraisal case that resulted in a favorable decision for the firm's client after trial, and a Delaware appraisal case that was tried in October, argued in 2016, which is still awaiting a final decision. Mr. Jarvis then became an associate in the Washington office of Rogers & Wells (subsequently merged into Clifford Chance), principally devoted to complex commercial litigation in the fields of antitrust and trade regulations, insurance, intellectual property, contracts and defamation issues, as well as counseling corporate clients in diverse industries on general legal and regulatory compliance matters.

**JENNIFER L. JOOST**, a Partner in the Firm's San Francisco office, focuses her practice on securities litigation. Ms. Joost received her law degree, cum laude, from Temple University Beasley School of Law, where she was the Special Projects Editor for the Temple International and Comparative Law Journal. Ms. Joost earned her undergraduate degree with honors from Washington University in St. Louis. She is licensed to practice in Pennsylvania and California and is admitted to practice before the United States Courts of Appeals for the Second, Fourth, Ninth, and Eleventh Circuits, and the United States District Courts for the Eastern District of Pennsylvania, the Northern District of California and the Southern District of California.

Ms. Joost has represented institutional investors in numerous securities fraud class actions including *In re Bank of America Corp. Securities, Derivative, and Employee Retirement Income Security Act (ERISA) Litigation*, No. 09 MDL 2058 (S.D.N.Y.) (settled -- \$2.425 billion); *In re Citigroup Bond Litigation*, No. 08-cv-09522-SHS (S.D.N.Y.) (\$730 million recovery); *David H. Luther, et al., v. Countrywide Financial Corp., et al.*, 2:12-cv-05125 (C.D.Cal. 2012) (settled -- \$500 million); *In re JPMorgan Chase & Co. Securities Litigation*, No. 12-3852-GBD ("London Whale Litigation") (\$150 million recovery); *Minneapolis Firefighters' Relief Association v. Medtronic, Inc.*, No. 08-cv-06324-PAM-AJB (D. Minn.) (settled -- \$85 million); *In re MGM Mirage Securities Litigation*, Case No. 2:09-cv-01558-GMN-VCF (D. Nev.) (\$75 million settlement); and *In re Weatherford Int'l Securities Litigation*, No. 11-cv-01646-LAK-JCF (S.D.N.Y.) (settled -- \$52.5 million).

**STACEY KAPLAN**, a Partner in the Firm's San Francisco office, concentrates her practice on prosecuting securities class actions. Ms. Kaplan received her J.D. from the University of California at Los Angeles School of Law in 2005, and received her Bachelor of Business Administration from the University of Notre Dame in 2002, with majors in Finance and Philosophy. Ms. Kaplan is admitted to the California Bar and is licensed to practice in all California state courts, as well as the United States District Courts for the Northern and Central Districts of California.

During law school, Ms. Kaplan served as a Judicial Extern to the Honorable Terry J. Hatter, Jr., United States District Court, Central District of California. Prior to joining the Firm, Ms. Kaplan was an associate with Robbins Geller Rudman & Dowd LLP in San Diego, California.

**DAVID KESSLER**, a Partner of the Firm, is a worldwide leader in securities litigation. His reputation and track record earn instant credibility with judges and bring opponents to the bargaining table in complex, high-stakes class actions. Mr. Kessler has been recognized for excellence by publications including Benchmark Plaintiff and Law Dragon.

As co-head of the firm's securities litigation practice, Mr. Kessler has led several of the largest class actions ever brought under the federal securities laws and the Private Securities Litigation Reform Act of 1995. Since the financial crisis began in 2008, he has helped recover well over \$5 billion for clients and class members who invested in financial companies such as Wachovia, Bank of America, Citigroup and Lehman Brothers. Prior to 2008, Mr. Kessler guided some of the largest cases both in size—including allegations of a massive scandal regarding the unfair allocation of IPO shares by more than 300 public companies—and in notoriety—including the Tyco fraud and mismanagement litigation that resolved for over \$3 billion.



Mr. Kessler brings his background as a certified public accountant to bear in actions involving complex loss causation issues and damages arising from losses in public offerings, open market purchases, and mergers and acquisitions. As head of the firm's settlement department, Mr. Kessler also has extensive experience in mediation, settlements, claims administration and distributions.

A sought-after lecturer on securities litigation issues, Mr. Kessler has been invited to speak by plaintiffs' firms, defense firms, mediators and insurance carriers on a variety of topics related to securities class actions. He recently assisted in authoring a chapter on mediations in a publication soon to be released by a federal mediator.

**JOSHUA A. MATERESE**, a Partner of the Firm, is an experienced and trusted securities litigator. He devotes his practice almost entirely to advising and representing institutional and individual investors in class or direct actions arising from fraud, market manipulation, or other corporate misconduct. Mr. Materese currently serves as one of the lead trial attorneys in pending securities class actions involving General Electric, Kraft-Heinz, Goldman Sachs, and Boeing, and in direct actions involving Teva Pharmaceutical and Perrigo Co. During his career, Mr. Materese has helped clients recover substantial monetary losses, including most recently *In re Allergan, Inc. Proxy Violation Securities Litigation*, No. 14-cv-02004 (C.D. Cal.) (\$290 million recovery), *In re JPMorgan Chase & Co. Sec. Litig.*, No. 12-cv-03852 (S.D.N.Y.) (\$150 million recovery); *Lou Baker v. SeaWorld Entertainment, Inc., et al.*, No. 14-cv-02129 (S.D. Cal.) (\$65 million recovery); *Quinn v. Knight*, No. 16-cv-00610 (E.D. Va.) (\$32 million recovery). Josh also successfully litigated claims on behalf of over 100 U.S. and international institutional investors in direct actions against Brazil's state-run oil company, Petrobras, arising out of a decade-long bid-rigging scheme—the largest corruption scandal in Brazil's history.

In addition to his direct litigation responsibilities, Mr. Materese advises the Firm's institutional clients on potential claims they may have in shareholder litigation. He is one of the partners at the Firm responsible for client relations and outreach in the U.S., and assists with overseeing Kessler Topaz's proprietary portfolio monitoring and claims filing service, *SecuritiesTracker*<sup>TM</sup>.

Mr. Materese also maintains an active pro bono practice. He serves as Co-Chair of the Firm's Pro Bono Committee and frequently represents clients referred to the Firm on matters concerning federal disability benefits, felony pardons, and wrongful convictions.

**MARGARET E. MAZZEO**, a Partner of the Firm, concentrates her practice in the area of securities fraud litigation. Since joining the firm, Ms. Mazzeo has represented shareholders in several securities fraud class actions and direct actions, through all aspects of pre-trial proceedings, including complaint drafting, litigating motions to dismiss and for summary judgment, conducting document, deposition and expert discovery, and appeal. Ms. Mazzeo was a member of the trial team that recently won a jury verdict in favor of investors in the *In re Longtop Financial Technologies Ltd. Securities Litigation*, No. 11-cv-3658 (S.D.N.Y.) action.

**JAMIE E. MCCALL**, a Partner of the Firm, concentrates on securities fraud litigation. Prior to joining the Firm, Mr. McCall spent twelve years with the Department of Justice in the U.S. Attorney's Offices for Miami, Florida and Wilmington, Delaware, where he oversaw complex criminal investigations ranging from securities, tax, bank and wire frauds, to the theft of trade secrets and cybercrime.

Mr. McCall has successfully tried numerous jury trials, including a seven-week securities fraud trial, which arose from financial conduct during the Great Recession, and resulted in trial verdicts against four bank executives and a \$60 million civil settlement to victim-shareholders; and a five-week multi-defendant stalking-murder case, which stemmed from the 2013-shootout at the New Castle County Courthouse in Delaware, and resulted in first-in-the-nation convictions for "cyberstalking resulting in death" under the Violence Against Women Act. For his work on both of these cases, Mr. McCall was twice awarded the Director's Award for Superior Performance by the Department of Justice. Most recently, Mr. McCall served as the section chief for the National Security and Cybercrime Division for the Delaware U.S. Attorney's office.

Mr. McCall also spent several years practicing civil law at Morgan, Lewis & Bockius in Philadelphia, where he worked on major, high-stakes litigation matters involving Fortune 250 companies. Mr. McCall began his legal career as a Judge Advocate in the Marine Corps, working primarily as a prosecutor and achieving the rank of Captain. In 2004, Mr. McCall served for nearly five months as the principal legal advisor to 1st Battalion, 5th Marine Regiment in and around Fallujah, Iraq, including during the First Battle of Fallujah.

Mr. McCall maintains an active membership in the Federal Bar Association, District of Delaware chapter. He has presented on numerous issues involving corporate and securities fraud. He was also a featured interview on CBS's "60 Minutes" in a segment about theft of original correspondence by Christopher Columbus, most recently aired in August 2020.

Mr. McCall has received numerous awards for his work in securities fraud and cybercrime, along with respective military service awards, including the Navy & Marine Corps Commendation Medal, Navy & Marine Corps Achievement Medal, Combat Action Ribbon, and Global War Against Terrorism Expeditionary Medal.

**JOSEPH H. MELTZER**, a Partner of the Firm, leads the firm's Fiduciary, Consumer Protection and Antitrust groups.

A pioneer in prosecuting breach of fiduciary duty cases, Mr. Meltzer has been lead or co-lead counsel in numerous nationwide class actions brought under fiduciary laws including ERISA. Joe represents institutional investor clients in a variety of breach of fiduciary duty cases and has some of the largest settlements in fiduciary breach actions including several recoveries in the hundreds of millions of dollars.

The firm also has a robust Consumer Protection department which represents individuals, businesses, and governmental entities that have sustained losses as a result of defective products or improper business practices. Kessler Topaz is highly selective in these matters – the firm litigates only complex cases that it deems suitable for judicial resolution.

In his antitrust work, Mr. Meltzer represents clients injured by anticompetitive and unlawful business practices, including overcharges related to prescription drugs, health care expenditures and commodities. Mr. Meltzer has also represented various states in pharmaceutical pricing litigation as a Special Assistant Attorney General.

**MATTHEW L. MUSTOKOFF** is a Partner of the Firm and is a nationally recognized securities litigator. He has argued and tried numerous high-profile cases in federal courts throughout the country in fields as diverse as securities fraud, corporate takeovers, antitrust, unfair trade practices, and patent infringement.

Mr. Mustokoff is currently litigating several nationwide securities cases on behalf of U.S. and overseas investors. He serves as lead counsel for shareholders in *In re Celgene Securities Litigation* (D.N.J.), involving allegations that Celgene fraudulently concealed clinical problems with a developmental multiple sclerosis drug. Mr. Mustokoff is also class counsel in *Sjunde AP-Fonden v. The Goldman Sachs Group* (S.D.N.Y.), a securities fraud case implicating Goldman Sachs' pivotal role in the 1Malaysia Development Berhad (1MDB) money laundering scandal, one of the largest financial frauds involving a Wall Street firm in recent memory. Mr. Mustokoff recently led the team that secured a \$130 million recovery for plaintiffs in *In re Allergan Generic Drug Pricing Securities Litigation* (D.N.J.), arising out of the industrywide price-fixing scheme in the generic drug market. This marks the first settlement of a federal securities case stemming from the long-running price-fixing conspiracy which is believed to be the largest domestic pharmaceutical cartel in U.S. history.

Mr. Mustokoff played a major role in prosecuting *In re Citigroup Bond Litigation* (S.D.N.Y.), involving allegations that Citigroup concealed its exposure to subprime mortgage debt on the eve of the 2008 financial crisis. The \$730 million settlement marks the second largest recovery ever in a Securities Act class action brought on behalf of corporate bondholders. Mr. Mustokoff represented the class in *In re Pfizer Securities Litigation* (S.D.N.Y.), a twelve-year fraud case alleging that Pfizer concealed adverse clinical results for its pain drugs Celebrex and Bextra. The case settled for \$486 million following a victory at the Second Circuit Court of Appeals reversing the district court's dismissal of the action on the eve of trial. Mr. Mustokoff also served as class counsel in *In re JPMorgan Chase Securities Litigation* (S.D.N.Y.), arising out of the 2012 "London Whale" derivatives trading scandal. The case resulted in a \$150 million recovery.

Mr. Mustokoff served as lead counsel to several prominent mutual funds in securities fraud actions in Manhattan federal court against Brazil's state-run oil company, Petrobras, involving a decade-long bid-rigging scheme, the largest corruption scandal in Brazil's history. In *Connecticut Retirement Plans & Trust Funds v. BP plc* (S.D. Tex.), a multi-district litigation stemming from the 2010 Deepwater Horizon oil-rig explosion in the Gulf of Mexico, Mr. Mustokoff successfully argued the opposition to BP's motion to dismiss and obtained a landmark decision sustaining fraud claims under English law on behalf of investors on the London Stock Exchange—the first in a U.S. court. Mr. Mustokoff's significant courtroom experience includes serving as one of the lead trial lawyers for shareholders in the only securities fraud class action arising out of the 2008 financial crisis to be tried to jury verdict.

Prior to joining the Firm, Mr. Mustokoff practiced at Weil, Gotshal & Manges LLP in New York where he represented clients in SEC enforcement actions, white collar criminal matters, and shareholder litigation.

A frequent speaker and writer on securities law and litigation, Mr. Mustokoff's publications have been cited in more than 75 law review articles and treatises. He has published in the *Rutgers University Law Review*, *Maine Law Review*, *Temple Political & Civil Rights Law Review*, *Hastings Business Law Journal*, *Securities Regulation Law Journal*, *Review of Securities & Commodities Regulation*, and *The Federal Lawyer*, among others. He has been a featured panelist at the American Bar Association's Section of Litigation Annual Conference and NERA Economic Consulting's Securities and Finance Seminar. Since 2010, Mr. Mustokoff has served as the Co-Chair of the ABA Subcommittee on Securities Class Actions.

Mr. Mustokoff is a Phi Beta Kappa honors graduate of Wesleyan University. He received his law degree from the Temple University School of Law.

**SHARAN NIRMUL**, a Partner of the Firm, concentrates his practice in the area of securities, consumer and fiduciary class action and complex commercial litigation, exclusively representing the interests of plaintiffs and particularly, institutional investors.

Mr. Nirmul represents a number of the world's largest institutional investors in cutting edge, high stakes complex litigation. In addition to his securities litigation practice, he has been at the forefront of developing the Firm's fiduciary litigation practice and has litigated ground-breaking cases in areas of securities lending, foreign exchange, and MBS trustee litigation. Mr. Nirmul was instrumental in developing the underlying theories that propelled the successful recoveries for customers of custodial banks in *Compsource Oklahoma v. BNY Mellon*, a \$280 million recovery for investors in BNY Mellon's securities lending program, and *AFTRA v. JP Morgan*, a \$150 million recovery for investors in JP Morgan's securities lending program. In *Transatlantic Re v. A.I.G.*, Mr. Nirmul recovered \$70 million for Transatlantic Re in a binding arbitration against its former parent, American International Group, arising out of AIG's management of a securities lending program.

Focused on issues of transparency by fiduciary banks to their custodial clients, Mr. Nirmul served as lead counsel in a multi-district litigation against BNY Mellon for the excess spreads it charged to its custodial customers for automated FX services. Litigated over four years, involving 128 depositions and millions of pages of document discovery, and with unprecedented collaboration with the U.S.

Department of Justice and the New York Attorney General, the litigation resulted in a settlement for the Bank's custodial customers of \$504 million. Mr. Nirmul also spearheaded litigation against the nation's largest ADR programs, Citibank, BNY Mellon and JP Morgan, which alleged they charged hidden FX fees for conversion of ADR dividends. The litigation resulted in \$100 million in recoveries for ADR holders and significant reforms in the FX practices for ADRs.

Mr. Nirmul has served as lead counsel in several high-profile securities fraud cases, including a \$2.4 billion recovery for Bank of America shareholders arising from BoA's shotgun merger with Merrill Lynch in 2009. More recently, Mr. Nirmul was lead trial counsel in litigation arising from the IPO of social media company Snap, Inc., which has resulted in a \$187.5 million settlement for Snap's investors, claims against Endo Pharmaceuticals, arising from its disclosures concerning the efficacy of its opioid drug, Opana ER, which resulted in a recovery of \$80.5 million for Endo's shareholders, and claims against Ocwen Financial, arising from its mortgage servicing practices and disclosures to investors, which settled on the eve of trial for \$56 million. Mr. Nirmul currently serves as lead trial counsel in pending securities class actions involving General Electric, Kraft-Heinz, and the stunning collapse of Luckin Coffee Inc., following disclosure of a massive accounting fraud just ten months after its IPO. He also served on the Executive Committee for the multi-district litigation involving the Chicago Board Options Exchange and the manipulation of its key product, the Cboe Volatility Index.

Mr. Nirmul received his law degree from The George Washington University National Law Center and undergraduate degree from Cornell University. He was born and grew up in Durban, South Africa.

**LEE D. RUDY**, a partner of the Firm, practices in the area of corporate governance litigation, with a focus on transactional and derivative cases. Representing both institutional and individual shareholders in these actions, he has helped cause significant monetary and corporate governance improvements for those companies and their shareholders.

Mr. Rudy regularly practices in the Delaware Court of Chancery, where he served as co-lead trial counsel in the landmark case of *In re S. Peru Copper Corp. S'holder Derivative Litig.* (2011), a \$2 billion trial verdict against Southern Peru's majority shareholder, and *In re Facebook, Inc. Class C Reclassification Litigation* (2017), which forced Facebook and its founder Mark Zuckerberg to abandon plans to issue a new class of nonvoting stock to entrench Zuckerberg as the company's majority stockholder. Mr. Rudy also recently served as lead counsel in *In re Allergan, Inc. Proxy Violation Securities Litigation* (C.D. Cal. 2017), which was brought by a class of Allergan stockholders who sold shares while Pershing Square and its founder Bill Ackman were buying Allergan stock in advance of a secret takeover attempt by Valeant Pharmaceuticals, and which settled for \$250 million just weeks before trial. Mr. Rudy previously served as lead counsel in dozens of high profile derivative actions relating to the "backdating" of stock options.

Prior to civil practice, Mr. Rudy served for several years as an Assistant District Attorney in the Manhattan (NY) District Attorney's Office, and as an Assistant United States Attorney in the US Attorney's Office (D.N.J.), where he tried dozens of jury cases to verdict. Mr. Rudy received his law degree from Fordham University, and his undergraduate degree, cum laude, from the University of Pennsylvania. Mr. Rudy is licensed to practice in Pennsylvania and New York.

**RICHARD A. RUSSO, JR.**, a partner of the Firm, concentrates his practice in the area of securities litigation, and principally represents the interests of plaintiffs in class actions and complex commercial litigation.

Mr. Russo specializes in prosecuting complex securities fraud actions arising under the Securities Exchange Act of 1934 and the Securities Act of 1933, and has significant experience in all stages of pre-trial litigation, including drafting pleadings, litigating motions to dismiss and motions for summary judgment, conducting extensive document and deposition discovery, and appeals.

Mr. Russo has represented both institutional and individual investors in a number of notable securities class actions. These matters include *In re Bank of America Securities Litigation*, where shareholders' \$2.43 billion recovery represents one of the largest recoveries ever achieved in a securities class action and the largest recovery arising out of the 2008 subprime crisis; *In re Citigroup Inc. Bond Litigation*, where the class's \$730 million recovery was the second largest recovery ever for claims brought under Section 11 of the Securities Act of 1933; and *In re Lehman Brothers*, where shareholders recovered \$616 million from Lehman's officers, directors, underwriters and auditors following the company's bankruptcy filing.

Mr. Russo is currently representing shareholders in high-profile securities fraud actions against General Electric, Precision Castparts Corp., Kraft Heinz Corp. and Luckin Coffee Co. Mr. Russo has also assisted in prosecuting whistleblower actions and patent infringement matters.

In 2016, Mr. Russo was selected as an inaugural member of Benchmark Litigation's Under 40 Hot List, an award meant to honor the achievements of the nation's most accomplished attorneys under the age of 40. Mr. Russo was again selected as a member of the 40 & Under Hot List in 2018, 2019, and 2020. Rick has also been selected by his peers as a Pennsylvania Super Lawyers Rising Star on five occasions.

**MARC A. TOPAZ**, a partner of the Firm, has a keen eye for what makes a successful case. As one of the firm's most experienced litigators, he helps clients focus their efforts on cases with a favorable mix of facts, law and potential recovery. Mr. Topaz oversees case initiation and development in complex securities fraud, ERISA, fiduciary, antitrust, shareholder derivative, and mergers and acquisitions actions.

Mr. Topaz has counselled clients in high-profile class action litigation stemming from the subprime mortgage crisis, including cases seeking recovery for shareholders in companies affected by the crisis, and cases seeking recovery for 401K plan participants who suffered losses in their retirement plans.

Mr. Topaz's commitment to making things right for clients shows in the cases he pursues. Recognizing the importance of effective corporate governance policies in safeguarding investments, Mr. Topaz has used fiduciary duty litigation to fight for meaningful policy changes. He also played an active role in using option-backdating litigation as a vehicle to re-price erroneously issued options and improve corporate governance.

**JOHNSTON DE F. WHITMAN, JR.** is a Partner of the Firm, and his primary practice area is securities litigation.

Mr. Whitman represents individual and institutional investors pursuing claims for securities fraud. In this capacity, Mr. Whitman has helped clients obtain substantial recoveries in numerous class actions alleging claims under the federal securities laws, and has also assisted in obtaining favorable recoveries for institutional investors pursuing direct securities fraud claims.

**ROBIN WINCHESTER**, a Partner of the Firm, represents private investors and public institutional investors in derivative, class and individual actions and has helped recover hundreds of millions of dollars for corporations and stockholders injured by purported corporate fiduciaries.

Ms. Winchester has extensive experience in federal and state stockholder litigation seeking to hold wayward fiduciaries accountable for corporate abuses.

Ms. Winchester seeks not only to recover losses for the corporations and stockholders who have been harmed but also to ensure corporate accountability by those who have been entrusted by stockholders to act as faithful fiduciaries. She litigates cases involving all areas of corporate misconduct including excessive executive compensation, misuse and waste of corporate assets, unfair related-party transactions, failure to ensure compliance with state and federal laws, insider selling and other breaches of fiduciary duty which impinge on stockholder rights. Ms. Winchester has successfully resolved dozens of cases which have required financial givebacks as well as the implementation of extensive corporate governance reforms that will hopefully prevent similar misconduct from recurring, strengthen the company, and make the members of the board of directors more effective and responsive representatives of stockholder interests.

**MELISSA L. YEATES**, is a Partner in the Firm's Fiduciary, Consumer Protection, and Antitrust Group. A seasoned litigator with nearly two decades of experience litigating in federal courts nationwide, Ms. Yeates manages and litigates complex class action litigation, with a focus on consumer fraud, unfair trade practices, breach of contract and implied duties, warranty, and antitrust actions.

Ms. Yeates has played a leading role in the Firm's successful litigation of claims against numerous large corporations accused of defrauding consumers and engaging in anticompetitive conduct. Her practice has also focused on new matter development, including the investigation and analysis of consumer fraud, antitrust, and securities matters. Prior to joining the Firm, Ms. Yeates clerked for the Honorable Stanley S. Brotman in the District of New Jersey and defended corporations in complex commercial, antitrust, product liability, and patent matters. Ms. Yeates's 12 years of experience as a litigator at large defense firms makes her uniquely suited to evaluate potential claims, develop litigation strategy, and negotiate cooperatively and effectively with defense counsel. Ms. Yeates currently represents consumers and entities in class action litigation against, among others, General Motors Company, FCA US LLC, Toyota Motor Corporation, Bank of Nova Scotia, Netflix, Hulu, State Farm Mutual Automobile Insurance Company, and the federal government.

[ERIC L. ZAGAR](#), a Partner of the Firm, co-manages the Firm's Mergers and Acquisitions and Shareholder Derivative Litigation Group, which has excelled in the highly specialized area of prosecuting cases involving claims against corporate officers and directors.

Since 2001, Mr. Zagar has served as lead or co-lead counsel in numerous shareholder derivative actions nationwide and has helped recover billions of dollars in monetary value and substantial corporate governance relief for the benefit of shareholders.

[TERENCE S. ZIEGLER](#) is a Partner of the Firm and has worked since 2005. Since joining the Firm, he has focused his practice on antitrust and complex consumer litigation. Mr. Ziegler is currently involved in a number of class action lawsuits against large pharmaceutical manufacturers in antitrust cases alleging improper reverse payment and generic suppression schemes.

Mr. Ziegler also served as a special assistant attorney general to several states in litigation involving the sales and marketing practices of major pharmaceutical companies. These cases led to important injunctive relief and significant monetary recovery for those states.

Mr. Ziegler's extensive experience in complex cases also includes consumer class actions alleging improper insurer and lender practices in violation of RICO and RESPA.

Examples of Mr. Ziegler's recent notable cases include *In re Flonase Antitrust Litigation* (\$150 million settlement on behalf of direct purchasers); *In re Wellbutrin SR Antitrust Litigation* (\$21.5 million settlement on behalf of end-payors); *Alston v. Countrywide, et al.* (\$34 million settlement on behalf of borrowers); and *Ligouri v. Wells Fargo & Co., et al.* (\$12.5 million settlement on behalf of borrowers).

Mr. Ziegler received his bachelor's degree from Loyola University in 1989. He earned his juris doctor from Tulane University in 1992. He is a member of the Pennsylvania and Louisiana bars and is admitted to practice in several federal district and appellate courts across the country.

[ANDREW L. ZIVITZ](#), a Partner of the Firm, has achieved extraordinary results in securities fraud cases. His work has led to the recovery of more than \$1 billion for damaged clients and class members.

Mr. Zivitz has represented dozens of major institutional investors in securities class actions and private litigation. He is skilled in all aspects of complex litigation, from developing and implementing strategies, to conducting merits and expert discovery, to negotiating resolutions. Mr. Zivitz has served as lead or co-lead counsel in many of the largest securities class actions in the U.S., including cases against Bank of America, Celgene, Goldman Sachs, Hewlett-Packard, JPMorgan, Pfizer, Tenet Healthcare, and Walgreens.

Mr. Zivitz's extensive courtroom experience serves his clients well in trial situations, as well as pre-trial proceedings and settlement negotiations. He served as one of the lead plaintiffs' attorneys in the only securities fraud class action arising out of the financial crisis to be tried to a jury verdict, has handled a *Daubert* trial in the U.S. District Court for the Southern District of New York, and successfully argued dispositive motions before federal district and appeals courts throughout the country.



## COUNSEL

**ASHER S. ALAVI**, Counsel to the Firm, concentrates his practice exclusively on whistleblower litigation, particularly cases brought under the qui tam provisions of the federal False Claims Act. Mr. Alavi has worked on a variety of whistleblower cases involving fraud against government programs, including cases involving healthcare fraud, kickback violations, and government contract fraud. Asher has devoted his entire post-college career to working on behalf of whistleblowers, both as a lawyer and as an advocate for whistleblower rights. During law school, Mr. Alavi served as a Note Editor for Boston College Law School's Journal of Law and Social Justice, and interned with the Department of Justice's Office of Professional Responsibility.

**JENNIFER L. ENCK**, Counsel to the Firm, concentrates her practice in the area of securities litigation and settlement matters. Ms. Enck's practice includes negotiating and documenting complex class action settlements, obtaining the required court approval for settlements and developing and assisting with the administration of class notice programs.

**LISA LAMB PORT**, Counsel to the Firm, concentrates her practice on consumer, antitrust, and securities fraud class actions. Ms. Lamb Port received her law degree, Order of the Coif, summa cum laude, from the Villanova University School of Law in 2003 and her Bachelor of Arts, cum laude, from Princeton University in 2000. Ms. Lamb Port is licensed to practice law in the Commonwealth Pennsylvania.

Prior to joining Kessler Topaz, Ms. Lamb Port was a partner at another class action firm, where she represented institutional and individual investors in securities fraud, breach of fiduciary duty, and shareholder derivative cases, as well as in litigation resulting from mergers and acquisitions.

**DONNA SIEGEL MOFFA** serves as Counsel to the Firm. Throughout her career, both in private practice and in her early years as an attorney in the Bureau of Consumer Protection at the Federal Trade Commission in Washington, D.C., she has concentrated her work in the area of consumer protection litigation. Ms. Moffa has substantial experience handling and supervising all aspects of the prosecution and resolution of national class action litigation asserting claims challenging predatory lending, lending discrimination, violations of RESPA, consumer fraud and unfair, deceptive and anticompetitive practices in federal courts throughout the country. Currently, Ms. Moffa is involved in a number of antitrust class action lawsuits alleging that large pharmaceutical manufacturers have engaged in improper reverse payment and generic suppression schemes.

Ms. Moffa also has been involved in significant appellate work, in both state and federal appeals courts representing individuals, classes, and non-profit organizations participating as amici curiae in appeals.

**JONATHAN NEUMANN**, Counsel to the Firm, concentrates his practice on securities fraud and fiduciary matters. Mr. Neumann represents sophisticated investors in complex litigation brought under federal and state laws. In this role, Mr. Neumann has litigated many high stakes cases from the pleading stage to the eve of trial, resulting in substantial recoveries for aggrieved investors.

Prior to joining the Firm, Mr. Neumann served as a law clerk to the Hon. Douglas E. Arpert of the United States District Court for the District of New Jersey. While in law school, Mr. Neumann was an editor for the Temple International and Comparative Law Journal and a member of the Moot Court Honor Society.

**MICHELLE M. NEWCOMER**, Counsel to the Firm, concentrates her practice in the area of securities litigation. Ms. Newcomer has been involved in dozens of class actions in which the Firm has served as Lead or Co-Lead Counsel, through all aspects of pre-trial proceedings, including complaint drafting, litigating motions to dismiss, for class certification and for summary judgment, conducting document, deposition and expert discovery, and appeals. Ms. Newcomer was also part of the trial team in the Firm's most recent securities fraud class action trial, which resulted in a jury verdict on liability and damages in favor of investors.

Ms. Newcomer has represented many types of individual and institutional investors, including public pension funds, asset managers and Sovereign Wealth Funds. Ms. Newcomer's experience includes traditional class actions, direct actions, and non-U.S. collective actions.

Ms. Newcomer began her legal career with the Firm in 2005. Prior to joining the Firm, she was a summer law clerk for the Hon. John T.J. Kelly, Jr. of the Pennsylvania Superior Court.

## ASSOCIATES

**MATTHEW C. BENEDICT**, an Associate of the Firm, concentrates his practice in the area of mergers and acquisition litigation and stockholder derivative litigation. Mr. Benedict has represented both plaintiffs and defendants in numerous high-profile securities fraud class actions concerning Wall Street institutions' conduct before, during, and in the wake of the 2008 financial crisis.

**CAMERON N. CAMPBELL**, an Associate of the Firm, concentrates her practice in the areas of Corporate Governance and merger and acquisition litigation. Cameron graduated from the Villanova University Charles Widger School of Law in 2020. While in law school, Cameron interned as a law clerk to the Hon. George A. Pagano of the Delaware County Court of Common Pleas and as a summer associate at Grant & Eisenhofer, P.A. Cameron was also a member of the Villanova Trial Team and the Student Bar Association. Prior to joining the Firm, Cameron practiced corporate governance and mergers and acquisition litigation at a prominent plaintiff's firm in Wilmington, Delaware.

**VARUN ELANGO VAN**, an Associate of the Firm, concentrates his practice in the area of consumer protection. Varun received his JD from Georgetown University Law Center in 2022 and his undergraduate degree from DePaul University in 2015. While at Georgetown, Varun served as an Executive Online Editor for The Georgetown Law Journal from 2021 to 2022. He is licensed to practice in Pennsylvania.

**CONNOR T. FOLEY**, an Associate of the Firm, focuses his practice in the areas of securities litigation and qui tam actions. Mr. Foley received his law degree from the Temple University Beasley School of Law in 2023 and his undergraduate degree from Georgetown University in 2019. While in law school, Mr. Foley interned at the Department of Justice's Civil Division: Aviation, Space and Admiralty Section.

**ALEX B. HELLER**, an Associate of the Firm, concentrates his practice in the areas of securities litigation and corporate governance. Mr. Heller received his law degree from the George Mason University Antonin Scalia Law School in 2015 and his undergraduate degree from American University in 2008. While in law school, Mr. Heller served as an associate editor for the George Mason Law Review. Prior to joining the Firm, Mr. Heller was a partner at a plaintiffs' litigation firm, where he served as chair of the shareholder derivative litigation practice group. Mr. Heller is a Certified Public Accountant (CPA). Prior to his legal career, Mr. Heller practiced as a CPA for several years, advising businesses and auditing large corporations.

**EVAN R. HOEY**, an Associate of the Firm, focuses his practice in securities litigation. Mr. Hoey received his law degree from Temple University Beasley School of Law, where he graduated cum laude, and graduated summa cum laude from Arizona State University. He is licensed to practice in Pennsylvania and is admitted to practice before the United States District Court for the Eastern District of Pennsylvania.

**DYLAN J. ISENBERG**, an Associate of the Firm, focuses his practice in securities litigation. Mr. Isenberg graduated cum laude from Temple University's James E. Beasley School of Law and received his undergraduate degree in Government from Hamilton College. While in Law School, Mr. Isenberg served as a judicial intern to the Hon. Noel L. Hillman of the U.S. District Court for the District of New Jersey and to the Hon. Ashley M. Chan of the U.S. Bankruptcy Court for the Eastern District of Pennsylvania. Prior to law school, Mr. Isenberg lobbied on behalf of national trade associations and worked for a member of the U.S. Senate.

**JORDAN E. JACOBSON**, an Associate of the Firm, concentrates her practice in consumer protection and antitrust litigation. Ms. Jacobson received her law degree from Georgetown University in 2014 and her undergraduate degrees in history and political science from Arizona State University in 2011. Prior to joining the Firm, Ms. Jacobson clerked for the honorable Deborah J. Saltzman, United States Bankruptcy Judge, in the Central District of California. Ms. Jacobson was also previously an associate at a large defense firm, and an attorney in the General Counsel's office of the Pension Benefit Guaranty Corporation in Washington, D.C. Ms. Jacobson is licensed to practice law in Pennsylvania, California, and Virginia.

**MAX S.S. JOHNSON**, an Associate of the Firm, focuses his practice in securities litigation. Mr. Johnson graduated magna cum laude from the Pepperdine Caruso School of Law in 2022. While at Pepperdine, Mr. Johnson served as a Literary Citation Editor for the Pepperdine Law Review. Prior to attending law school, Mr. Johnson earned his undergraduate degree from the University of Puget Sound in the Business Leadership Program

**KEVIN M. KENNEDY**, an Associate of the Firm, concentrates his practice on the areas of corporate governance and merger and acquisition litigation. Kevin received his law degree from Temple University's Beasley School of Law in 2022 and his undergraduate degree from La Salle University in 2010. While in law school, Kevin interned as a law clerk to the Hon. Anthony J. Scirica of the Third Circuit Court of Appeals. Kevin also served as a Note/Comment Editor and the Symposium Editor for the Temple Law Review.

**JOSHUA S. KESZCZYK**, an Associate of the Firm, concentrates his practice in new matter development with a focus on analyzing securities class action lawsuits and direct (or opt-out) actions. Prior to joining the firm, Joshua was an associate at Dechert LLP, where he focused his practice on secured financial transactions involving various asset classes.

**LAUREN C. LUMMUS**, an Associate of the Firm, concentrates her practice in the areas of corporate governance and merger and acquisition litigation. Mr. Lummus received her law degree from the Temple University Beasley School of Law in 2022 and her undergraduate degree from Haverford College in 2017. While in law school, Lauren interned as a law clerk for the Honorable Carolyn H. Nichols of the Pennsylvania Superior Court and U.S. Magistrate Judge Timothy R. Rice of the U.S. District Court for the Eastern District of Pennsylvania. Mr. Lummus also served as Co-President of the Women's Law Caucus, Research Editor for the Temple International & Comparative Law Journal, and Teaching Assistant for two legal research and writing courses.

**MATTHEW T. MACKEN**, an Associate of the Firm, concentrates his practice in consumer protection. Mr. Macken graduated from Temple University's Beasley School of Law in 2022. During law school, Mr. Macken served as Managing Editor of the Temple Law Review. As a student, Mr. Macken interned for a judge in the U.S. District Court for the Eastern District of Pennsylvania, as well as in Philadelphia Legal Assistance's Unemployment Compensation Unit and Community Legal Services' Homeownership and Consumer Rights Unit.

**AUSTIN W. MANNING**, an Associate of the Firm, graduated magna cum laude from Temple University's James E. Beasley School of Law and received her Bachelor of Science in Economics from Penn State University. During law school, Ms. Manning served as a Staff Editor for the Temple Law Review. In her final year, she studied at the University of Lucerne in Lucerne, Switzerland where she received her Global Legal Studies Certificate with a focus on international economic law, human rights, and sustainability. While in Law School, Ms. Manning served as a judicial intern to the Hon. Michael M. Baylson of the U.S. District Court for the Eastern District of Pennsylvania and to the Hon. Arnold L. New of the Pennsylvania Court of Common Pleas. Prior to joining the firm, Ms. Manning was a regulatory and litigation associate for a boutique environmental law firm in the Philadelphia area.

**JOHN A. MERCURIO, JR.**, an Associate of the Firm, concentrates his practice in the area of international actions. Mr. Mercurio is an associate in the Firm's Philadelphia office and graduated magna cum laude from Syracuse University College of Law and received his Bachelor of Arts in Criminal Justice and Psychology from Temple University. While in law school, Mr. Mercurio served as a judicial intern to the Hon. Thérèse Wiley Dancks of the U.S. District Court for the Northern District of New York and spent a semester in Washington D.C. working with the Narcotic and Dangerous Drug Section of the U.S. Department of Justice. He also served as a legal intern at the Office of the New York State Attorney General. Mr. Mercurio is licensed to practice law in Pennsylvania.

**MICHAEL W. MCCUTCHEON**, an Associate of the Firm, concentrates his practice in the areas of corporate governance and mergers & acquisitions litigation. Mr. McCutcheon graduated cum laude from Rutgers Law School in 2021, earning a certificate in corporate and business law for completing a specialized curriculum in those subjects. He earned his bachelor of science degree from the University of Delaware in 2017, majoring in economics and finance. While in law school, Mr. McCutcheon served as an Executive Board member for the moot court program, and was a Staff Editor for the Rutgers Journal of Law and Public Policy. He also interned for the Honorable Donald J. Stein in New Jersey Superior Court, General Civil Division. Prior to joining KTMC, Mr. McCutcheon clerked for a corporate litigation firm in Wilmington, Delaware.

**VANESSA M. MILAN**, an Associate of the Firm, concentrates her practice in the area of securities fraud litigation. Ms. Milan is an associate in the Firm's Philadelphia office and received her law degree from Temple University Beasley School of Law in 2019 and her undergraduate degrees in Government & Law and English from Lafayette College in 2016. While in law school, Ms. Milan served as an Articles Editor for the Temple Law Review. Prior to joining the firm, Ms. Milan served as a judicial law clerk to the Honorable Robert D. Mariani, United States District Court Judge for the Middle District of Pennsylvania. Ms. Milan is licensed to practice law in New York and Pennsylvania.

**JONATHAN NAJI**, an Associate of the Firm, develops and initiates cases involving shareholder derivative and securities fraud, class and individual actions. Mr. Naji seeks to help individuals recover losses caused by unlawful conduct. Mr. Naji received his law degree from Temple University Beasley School of Law and graduated from Franklin & Marshall College. In law school, Mr. Naji interned as a law clerk to the Honorable C. Darnell Jones II of the United States District Court for the Eastern District of Pennsylvania and worked as a summer associate at Berger Harris, LLP.

**KYE KYUNG (ALEX) PARK**, an Associate of the Firm, concentrates his practice in consumer protection. Mr. Park received his law degree from Temple University James E. Beasley School of Law in 2022 and his undergraduate degree from University of North Carolina at Chapel Hill in 2016. During law school, Mr. Park served as Staff Editor of the Temple Law Review. He is licensed to practice in Pennsylvania.

**ANDREW M. ROCCO**, an Associate of the Firm, focuses his practice in securities litigation. Andrew received his JD from the University of Pennsylvania Carey Law School in 2021 and his undergraduate degree from Rowan University in 2016. He is licensed to practice in Pennsylvania. Prior to joining the Firm, Andrew was an associate at Dechert LLP, where he focused his practice on secured financial transactions involving various asset classes.

**BARBARA SCHWARTZ**, an Associate of the Firm, concentrates her practice on new matter development with a focus on analyzing consumer and antitrust class action lawsuits. Ms. Schwartz received her law degree from Yale Law School in 2013 and her undergraduate degree from Temple University in 2010. Prior to joining the firm, Ms. Schwartz was an associate with Duane Morris, where she handled various complex commercial and antitrust matters.

**FARAI VYAMUCHARO-SHAWA**, an Associate of the Firm, concentrates his practice in the areas of securities litigation and corporate governance. Mr. Shawa graduated from the Temple University Beasley School of Law in 2021. While in law school, Mr. Shawa worked as a legal intern with the Philadelphia Eagles and as a summer associate at Skadden Arps Slate Meagher and Flom LLP. Mr. Shawa was also a member of the Temple Trial Team, ICC Moot Court Team and President of the International Law Society. Prior to joining the Firm, Mr. Shawa practiced corporate litigation at a prominent defense firm in Wilmington, Delaware.

**KELSEY V. SHERONAS**, an Associate of the Firm, concentrates her practice in the area of consumer protection. Ms. Sheronas received her undergraduate degree from Cornell University in 2016 and her law degree from the Temple University Beasley School of Law in 2021. While at Temple, Ms. Sheronas was recognized for Outstanding Oral Advocacy and was the only member of her graduating class to complete certificates in both Business Law and Trial Advocacy. She served as Executive Editor of the Temple International and Comparative Law Journal from 2020 to 2021. She is licensed to practice in Pennsylvania.

**NATHANIEL SIMON**, an Associate of the Firm, concentrates his practice in securities litigation. Before joining the firm, Mr. Simon served as a judicial law clerk to the Honorable Mark A. Kearney, United States District Judge for the Eastern District of Pennsylvania. Mr. Simon received his law degree from Villanova University, Charles Widger School of Law in 2018 and his undergraduate degree from Gettysburg College in 2014. While in law school, Mr. Simon served as an Articles Editor for the Villanova Law Review.

**ZACHARY M. WINKLER**, an Associate of the Firm, concentrates his practice in securities litigation. Mr. Winkler earned his law degree from Georgetown University Law Center, where he was selected to the Barristers' Council honors society, competed with the trial advocacy team, and was a Teaching Fellow. He was also named a Special Pro Bono Honoree in recognition of his 100+ hours of pro bono service. During law school, he served as a legal fellow for Congressman Brendan F. Boyle and as a law clerk for the Honorable J.P. Howard, District of Columbia Office of Administrative Hearings. Mr. Winkler earned his undergraduate degree from Vanderbilt University. He is licensed to practice in Pennsylvania.

## STAFF ATTORNEYS

**SARA ALSALEH**, a Staff Attorney of the Firm, received her law degree from Widener University School of Law in Wilmington, Delaware and her undergraduate degree in Marketing, with a minor in International Business, from Pennsylvania State University in State College, Pennsylvania. Ms. Alsaleh currently concentrates her practice at the Firm in the area of securities fraud litigation.

Prior to joining the Firm, Ms. Alsaleh practiced in the areas of pharmaceutical & health law litigation. Ms. Alsaleh clerked at the U.S. Food and Drug Administration, as well as the Delaware Department of Justice (Consumer Protection & Fraud Division), where she was heavily involved in protecting consumers within a wide variety of subject areas.

**LAMARLON R. BARKSDALE**, a Staff Attorney of the Firm, was a former Assistant District Attorney in the Philadelphia DA's Office and veteran of the US Navy.

Mr. Barksdale has experience with securities fraud litigation, complex pharmaceutical litigation, criminal litigation and bankruptcy litigation. Mr. Barksdale has also lectured criminal law courses at Delaware Technical and Community College, Newark, Delaware. At KTMC, Mr. Barksdale practices in the area of securities fraud litigation.

**ELIZABETH W. CALHOUN**, a Staff Attorney of the Firm, concentrates her practice in securities litigation. Ms. Calhoun has represented investors in major securities fraud and has also represented shareholders in derivative and direct shareholder litigation.

Ms. Calhoun has over ten years of experience in pharmaceutical-related litigation including both securities and products liability matters. Prior to joining Kessler, Topaz, Meltzer & Check, Ms. Calhoun was employed with the Wilmington, Delaware law firm of Grant & Eisenhofer, P.A. and before that was an associate in the Philadelphia offices of Dechert, LLP and Ballard Spahr, LLP.

**STEPHEN J. DUSKIN**, a Staff Attorney of the Firm, concentrates his practice in the area of antitrust litigation. Mr. Duskin received his law degree from Rutgers School of Law at Camden in 1985, and his undergraduate degree in Mathematics from the University of Rochester in 1976. Mr. Duskin is licensed to practice law in Pennsylvania.

Prior to joining Kessler Topaz, Mr. Duskin practiced corporate and securities law in private practice and in corporate legal departments, and also worked for the U.S. Securities and Exchange Commission and the Resolution Trust Corporation.



**DONNA K. EAGLESON**, a Staff Attorney of the Firm, concentrates her practice in the area of securities litigation discovery matters. She received her law degree from the University of Dayton School of Law in Dayton, Ohio. Ms. Eagleson is licensed to practice law in Pennsylvania.

Prior to joining Kessler Topaz, Ms. Eagleson worked as an attorney in the law enforcement field, and practiced insurance defense law with the Philadelphia firm Margolis Edelstein.

**PATRICK J. EDDIS**, a Staff Attorney of the Firm, concentrates his practice in the area of corporate governance litigation. Mr. Eddis received his law degree from Temple University School of Law in 2002 and his undergraduate degree from the University of Vermont in 1995. Mr. Eddis is licensed to practice in Pennsylvania.

Prior to joining Kessler Topaz, Mr. Eddis was a Deputy Public Defender with the Bucks County Office of the Public Defender. Before that, Mr. Eddis was an attorney with Pepper Hamilton LLP, where he worked on various pharmaceutical and commercial matters.

**DEEMS A. FISHMAN**, a Staff Attorney of the Firm, concentrates his practice in the area of Securities Fraud.

**KIMBERLY V. GAMBLE**, a Staff Attorney of the Firm, concentrates her practice in the area of securities litigation. She received her law degree from Widener University, School of Law in Wilmington, DE. While in law school, she was a CASA/Youth Advocates volunteer and had internships with the Delaware County Public Defender's Office as well as The Honorable Judge Ann Osborne in Media, Pennsylvania. She received her Bachelor of Arts degree in Sociology from The Pennsylvania State University. Ms. Gamble is licensed to practice law in the Commonwealth of Pennsylvania. Prior to joining Kessler Topaz, she worked in pharmaceutical litigation.

**KEITH S. GREENWALD**, a Staff Attorney of the Firm, concentrates his practice in the area of securities litigation. Mr. Greenwald received his law degree from Temple University, Beasley School of Law in 2013 and his undergraduate degree in History, summa cum laude, from Temple University in 2004. Mr. Greenwald is licensed to practice law in Pennsylvania.

Prior to joining Kessler Topaz, Mr. Greenwald was a contract attorney on various projects in Philadelphia and was at the International Criminal Tribunal for the Former Yugoslavia, at The Hague in The Netherlands, working in international criminal law.

**CANDICE L.H. HEGEDUS**, a Staff Attorney of the Firm, concentrates her practice in securities fraud class actions. She received her law degree from Villanova University Charles Widger School of Law and her Bachelor of Arts from Muhlenberg College, cum laude. Ms. Hegedus is licensed to practice in Pennsylvania.

Prior to joining the firm, Ms. Hegedus spent several years at another class action litigation firm where she practiced in the areas of securities fraud, antitrust and consumer matters.

**JOSHUA A. LEVIN**, a Staff Attorney of the Firm, concentrates his practice in the area of securities litigation. Mr. Levin received his law degree from Widener University School of Law, and earned his undergraduate degree from The Pennsylvania State University. Mr. Levin is licensed to practice in Pennsylvania and New Jersey. Prior to joining Kessler Topaz, he worked in pharmaceutical litigation.

**JOHN J. MCCULLOUGH**, a Staff Attorney of the Firm, concentrates his practice in the area of securities litigation. In 2012, Mr. McCullough passed the CPA Exam. Mr. McCullough earned his Juris Doctor degree from Temple University School of Law, and his undergraduate degree from Temple University. Mr. McCullough is licensed to practice in Pennsylvania.

**STEVEN D. MCLAIN**, a Staff Attorney of the Firm, concentrates his practice in mergers and acquisition litigation and stockholder derivative litigation. He received his law degree from George Mason University School of Law, and his undergraduate degree from the University of Virginia. Mr. McLain is licensed to practice in Virginia. Prior to joining Kessler, Topaz, he practiced with an insurance defense firm in Virginia.

**TIMOTHY A. NOLL**, a Staff Attorney of the Firm, concentrates his practice in the area of securities fraud litigation. Mr. Noll received his law degree from the Southwestern University School of Law and his undergraduate degree in Communications from Temple University. Prior to joining the Firm, Mr. Noll was a staff attorney at Grant & Eisenhofer, P.A. and also worked in pharmaceutical litigation.

**ELAINE M. OLDENETTEL**, a Staff Attorney of the Firm, concentrates her practice in consumer and ERISA litigation. She received her law degree from the University of Maryland School of Law and her undergraduate degree in International Studies from the University of Oregon. While attending law school, Ms. Oldenettel served as a law clerk for the Honorable Robert H. Hodges of the United States Court of Federal Claims and the Honorable Marcus Z. Shar of the Baltimore City Circuit Court. Ms. Oldenettel is licensed to practice in Pennsylvania and Virginia.

**ANDREW M. PEOPLES**, a Staff Attorney of the Firm, concentrates his practice in the area of Consumer Protection.

**ALLYSON M. ROSSEEL**, a Staff Attorney of the Firm, concentrates her practice at Kessler Topaz in the area of securities litigation. She received her law degree from Widener University School of Law, and earned her B.A. in Political Science from Widener University. Ms. Rosseel is licensed to practice law in Pennsylvania and New Jersey. Prior to joining the Firm, Ms. Rosseel was employed as general counsel for a boutique insurance consultancy/brokerage focused on life insurance sales, premium finance and structured settlements.

**MICHAEL J. SECHRIST**, a Staff Attorney of the Firm, Concentrates his practice in the area of securities litigation. Mr. Sechrist received his law degree from Widener University School of Law in 2005 and his undergraduate degree in Biology from Lycoming College in 1998. Mr. Sechrist is licensed to practice law in Pennsylvania. Prior to joining Kessler Topaz, Mr. Sechrist worked in pharmaceutical litigation.

**ROBERTA A. SHANER**, a Staff Attorney of the Firm, concentrates her practice in the area of securities litigation. She received her JD degree from the New York University School of Law. She graduated from Dartmouth College with a BA in Asian Area Studies. Ms. Shaner is licensed in Pennsylvania.

**IGOR SIKAVICA**, a Staff Attorney of the Firm, practices in the area of corporate governance litigation, with a focus on transactional and derivative cases. Mr. Sikavica received his J.D. from the Loyola University Chicago School of Law and his LL.B. from the University of Belgrade Faculty Of Law. Mr. Sikavica is licensed to practice in Pennsylvania. Mr. Sikavica's licenses to practice law in Illinois and the former Yugoslavia are no longer active.

Prior to joining Kessler Topaz, Mr. Sikavica has represented clients in complex commercial, civil and criminal matters before trial and appellate courts in the United States and the former Yugoslavia. Also, Mr. Sikavica has represented clients before international courts and tribunals, including – the International Criminal Tribunal for the Former Yugoslavia (ICTY), European Court of Human Rights and the UN Committee Against Torture.

**MELISSA J. STARKS**, a Staff Attorney of the Firm, concentrates her practice in the area of securities litigation. Ms. Starks earned her Juris Doctor degree from Temple University--Beasley School of Law, her LLM from Temple University--Beasley School of Law, and her undergraduate degree from Lincoln University. Ms. Starks is licensed to practice in Pennsylvania.

**MICHAEL P. STEINBRECHER**, a Staff Attorney of the Firm, concentrates his practice in the area of securities litigation. Prior to joining Kessler Topaz, Mr. Steinbrecher worked in pharmaceutical litigation.

**ERIN E. STEVENS**, a Staff Attorney of the Firm, concentrates her practice in the area of securities litigation. Ms. Stevens was a former associate attorney at a general practice firm where she litigated for a variety of civil and bankruptcy cases.

**BRIAN W. THOMER**, a Staff Attorney of the Firm, concentrates his practice in the area of securities fraud litigation. Prior to joining Kessler Topaz, Mr. Thomer worked in pharmaceutical litigation.

**KURT W. WEILER**, a Staff Attorney of the Firm, concentrates his practice in the area of securities litigation. Prior to joining the Firm, Mr. Weiler was associate corporate counsel for a publicly-traded, Philadelphia-based mortgage company, where he specialized in the areas of loss mitigation and bankruptcy.

[ANNE M. ZANESKI](#), is a Staff attorney in the Firm's Securities Practice Group. Ms. Zaneski focuses her practice in the areas of securities and consumer litigation on behalf of institutional and individual investors. Selected matters that Ms. Zaneski has been involved with include the Valeant Pharmaceuticals-Pershing Square Capital insider trading certified class action team (\$250 million settlement) and Lehman Brothers securities fraud litigation co-counsel team (\$616 million settlement).

Prior to joining the Firm, Ms. Zaneski was an associate with a New York securities litigation boutique law firm where she was part of the team on the *Engel, et al. v. Refco* commodities case at the National Futures Association still one of the largest collected arbitration awards (\$43 million) on behalf of public customers against a brokerage firm. Ms. Zaneski also previously served as a legal counsel for the New York City Economic Development Corporation and New York City Industrial Development Agency in the areas of project finance, bond financing and complex litigation, involving infrastructure projects in a variety of industries including healthcare, education and sports and entertainment, and facilitating tax-exempt and taxable financings. While in law school, Ms. Zaneski was a recipient of the CALI Excellence Award and Kosciuszko Foundation Scholarship and a member of the Securities Arbitration Clinic.

## PROFESSIONALS

**JUSTIN CHANEY**, Client Services Representative at the Firm, concentrates his practice in the Business Development Department where he is responsible for onboarding new clients and liaising between the firm, its clients, and their custodian banks.

Mr. Chaney also provides quality control oversight for ongoing client data collection and online reporting access. He has over two decades of experience in litigation support, and holds an M.B.A. and a B.S. in Organizational Management. Mr. Chaney joined the Firm in 2019.

**JEAN F. CHUBA**, serves as the Director of Operations for Portfolio Monitoring & Claims Administration, overseeing the Operations Team responsible for supporting the Firm's comprehensive *SecuritiesTracker*<sup>™</sup> service available to institutional investors. In this role, Ms. Chuba provides vision, direction and oversight to several teams, including client services, client implementation, data intake, claims administration and payments, and client reporting.

Ms. Chuba has over 18 years of experience at Kessler Topaz working with institutional investors and securities class actions, having previously worked as a paralegal in the Firm's Lead Plaintiff department and as a manager of claims administration and client reporting. From her experience and vast knowledge of all of these areas, Ms. Chuba is well equipped to continuously optimize workflow and productivity across the department to best serve the Firm's institutional clients participating in the *SecuritiesTracker*<sup>™</sup> program.

**BRAM HENDRIKS**, European Client Relations Manager at Kessler Topaz, guides European institutional investors through the intricacies of U.S. class action litigation as well as securities litigation in Europe and Asia. His experience with securities litigation allows him to translate complex document and discovery requirements into straightforward, practical action. For shareholders who want to effect change without litigation, Mr. Hendriks' advises on corporate governance issues and strategies for active investment.

Mr. Hendriks' has been involved in some of the highest-profile U.S. securities class actions of the last 20 years. Before joining Kessler Topaz, he handled securities litigation and policy development for NN Group N.V., a publicly-traded financial services company with approximately EUR 197 billion in assets under management. He previously oversaw corporate governance activities for a leading Amsterdam pension fund manager with a portfolio of more than 4,000 corporate holdings.

A globally-respected investor advocate, Mr. Hendriks' has co-chaired the International Corporate Governance Network Shareholder Rights Committee since 2009. In that capacity, he works with investors from more than 50 countries to advance public policies that give institutional investors a voice in decision-making. He is a sought-after speaker, panelist and author on corporate governance and responsible investment policies.

Based in the Netherlands, Mr. Hendriks' is available to meet with clients personally and provide hands-on-assistance when needed.

**WILLIAM MONKS**, CPA, CFF, CVA, Director of Investigative Services at Kessler Topaz, brings nearly 30 years of white collar investigative experience as a Special Agent of the Federal Bureau of Investigation (FBI) and “Big Four” Forensic Accountant. As the Director, he leads the Firm’s Investigative Services Department, a group of highly trained professionals dedicated to investigating fraud, misrepresentation and other acts of malfeasance resulting in harm to institutional and individual investors, as well as other stakeholders.

Mr. Monks’s recent experience includes being the corporate investigations practice leader for a global forensic accounting firm, which involved widespread investigations into procurement fraud, asset misappropriation, financial statement misrepresentation, and violations of the Foreign Corrupt Practices Act (FCPA).

While at the FBI, Mr. Monks worked on sophisticated white collar forensic matters involving securities and other frauds, bribery, and corruption. He also initiated and managed fraud investigations of entities in the manufacturing, transportation, energy, and sanitation industries. During his 25 year FBI career, Mr. Monks also conducted dozens of construction company procurement fraud and commercial bribery investigations, which were recognized as a “Best Practice” to be modeled by FBI offices nationwide.

Mr. Monks also served as an Undercover Agent for the FBI on long term successful operations targeting organizations and individuals such as the KGB, Russian Organized Crime, Italian Organized Crime, and numerous federal, state and local politicians. Each matter ended successfully and resulted in commendations from the FBI and related agencies.

Mr. Monks has also been recognized by the FBI, DOJ, and IRS on numerous occasions for leading multi-agency teams charged with investigating high level fraud, bribery, and corruption investigations. His considerable experience includes the performance of over 10,000 interviews incident to white collar criminal and civil matters. His skills in interviewing and detecting deception in sensitive financial investigations have been a featured part of training for numerous law enforcement agencies (including the FBI), private sector companies, law firms and accounting firms.

Among the numerous government awards Mr. Monks has received over his distinguished career is a personal commendation from FBI Director Louis Freeh for outstanding work in the prosecution of the West New York Police Department, the largest police corruption investigation in New Jersey history.

Mr. Monks regards his work at Kessler Topaz as an opportunity to continue the public service that has been the focus of his professional life. Experience has shown and Mr. Monks believes, one person with conviction can make all the difference. Mr. Monks looks forward to providing assistance to any aggrieved party, investor, consumer, whistleblower, or other witness with information relative to a securities fraud, consumer protection, corporate governance, qui-tam, anti-trust, shareholder derivative, merger & acquisition or other matter.

**MICHAEL G. KANIA**, Client Implementation and Data Manager at the Firm, has over 20 years of experience in securities custody operations, specializing in securities class actions, corporate actions, and proxy voting. Mr. Kania has designed and built securities class action claims processes and applications to support the filing and payment of tens of thousands claims annually, recovering billions of dollars for damaged investors. Mr. Kania has worked with some of largest institutional investors worldwide to educate them about the securities litigation process and to provide or suggest securities litigation solutions to meet their needs. Prior to joining the Firm, Mr. Kania was employed with The Bank of New York Mellon, where he was a Vice President and Manager in Asset Servicing (Securities Custody) Operations.

**KATHLEEN MCGUIGAN**, serves as the Manager of the Firm's Claims Administration Department. In this role, Ms. McGuigan oversees the analysis of transactional data from the Firm's clients and manages the preparation and filing of proof of claim forms in securities class action settlements. Ms. McGuigan also oversees the Firm's claims auditing services. Ms. McGuigan has been with the Firm for 7 years.

**MICHAEL A. PENNA**, serves as the Firm's Client Relations Manager and focuses specifically on the Taft-Hartley community. Coming from a family with a long line of labor union workers, Mr. Penna followed suit and has over 10 years of experience in servicing the Taft-Hartley world in finance and accounting.

Prior to joining the firm, Mr. Penna served in many roles in the Taft-Hartley world, spending seven years as an auditor for various labor union funds across the country followed by becoming the assistant controller for the Iron Workers District Council of Philadelphia.

**KATELYN A. ROSENBERG**, is the manager of the Settlement Claims Payments Team. Ms. Rosenberg oversees all incoming settlement payments and organization of outgoing payments to our clients. She began her work at Kessler Topaz with the Data Intake Team before shifting gears to work as a Claims Payment Analyst, and eventually to Manager of the Settlement Claims Payments Team. Prior to working for Kessler Topaz her background was primarily in education and school counseling.

**NICOLE B. SCHOEFFLING**, serves as the Marketing and Business Development Manager of the Firm. Ms. Schoeffling focuses on promoting Kessler Topaz's capabilities through various efforts including brand-building, key initiatives, writing engagements, RFP submissions, event partnerships, presentations, and award nominations.

In addition, Ms. Schoeffling manages Kessler Topaz's online presence including the website, social media, and online publications. After graduating from the University of Pennsylvania's software engineer program in 2019, Ms. Schoeffling developed and redesigned the Firm's website.

**CHRISTOPHER T. SMITH**, Senior Portfolio Analyst at the Firm, concentrates his practice in the area of business development for securities fraud litigation, opt out and direct actions, and global portfolio monitoring for institutional investors.

Mr. Smith has over 15 years of experience in financial services community, beginning his career at PaineWebber/UBS in their Philadelphia office. Prior to joining Kessler Topaz, Mr. Smith worked in case development for Wapner Newman, where he helped develop cases for the firm's FINRA Arbitration Practice.

**IAN YEATES**, Director of Financial Research & Analysis at Kessler Topaz brings a wealth of experience in investment research and data analysis to the firm. Mr. Yeates leads a group of professionals within Kessler Topaz's Lead Plaintiff Department that are dedicated to protecting the firm's clients by identifying and researching corporate fraud or malfeasance that has resulted in harm to investors and other stakeholders. By leveraging the firm's resources and technology, Mr. Yeates and his team efficiently evaluate and identify potential new matters to pursue on behalf of Kessler Topaz's clients.

Prior to joining Kessler Topaz, Ian spent several years in the private equity industry. Mr. Yeates spent four years with Hamilton Lane Advisors, L.P. before joining the National Bank of Kuwait ("NBK") in New York. At NBK, Mr. Yeates was part of a team tasked with evaluating, structuring and monitoring investments for the bank's proprietary private equity portfolio.

**JUAN PABLO VILLATORO**, Head of the Firm's *SecuritiesTracker*<sup>™</sup> Development. Mr. Villatoro has over 15 years of experience and is responsible for driving continuous improvement and best practices for portfolio monitoring and claims filing for the U.S. and international institutional investors. As a visionary, accomplished Operations and Development Executive, Mr. Villatoro has become an expert in US and non-U.S. securities litigation for domestic and international clients on numerous opt-in securities matters. Over the last few years, Mr. Villatoro has spearheaded the development of best-in-class Securities Litigation Class Action monitoring and claims filing platforms. He is responsible for the development and design of technology platforms and the creation and maintenance of databases and sophisticated data analytics.



## **EXHIBIT 4**

**CARELLA BYRNE CECCHI  
BRODY & AGNELLO, PC**

James E. Cecchi  
Donald A. Ecklund  
5 Becker Farm Road  
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*Liaison Counsel for the Class*

**KESSLER TOPAZ  
MELTZER & CHECK, LLP**

Sharan Nirmul  
David A. Bocian  
Joshua E. D'Ancona  
Margaret E. Mazzeo  
Vanessa M. Milan (admitted *pro hac vice*)  
Nathaniel C. Simon (admitted *pro hac vice*)  
280 King of Prussia Road  
Radnor, PA 19087  
Telephone: (610) 667-7706

*Counsel for Class Representative  
Industriens Pensionsforsikring A/S  
and Class Counsel for the Class*

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

INDUSTRIENS  
PENSIONSFORSIKRING A/S,  
Individually and On Behalf of All  
Others Similarly Situated,

Plaintiff,

v.

BECTON, DICKINSON AND  
COMPANY and THOMAS E.  
POLEN,

Defendants.

Case No. 2:20-cv-02155-SRC-CLW

Hon. Stanley R. Chesler  
District Court Judge

Hon. Cathy L. Waldor  
Magistrate Judge

**DECLARATION OF JAMES E. CECCHI  
IN SUPPORT OF CLASS COUNSEL'S MOTION FOR  
ATTORNEYS' FEES AND LITIGATION EXPENSES**

I, JAMES E. CECCHI, declare as follows pursuant to 28 U.S.C. § 1746:

1. I am a partner of the law firm of Carella Byrne Cecchi Brody & Agnello, P.C. which serves as Liaison Counsel for Court-appointed Lead Plaintiff and Class Representative Industriens Pensionsforsikring A/S in this securities class action lawsuit (“Action”). I have personal knowledge of the matters set forth herein based on personal knowledge and the business records of our firm. By making this declaration, I do not intend to waive any attorney-client privilege or applicable work product protections.

2. I am one of the partners who oversees and conducts the day-to-day activities in the Action.

3. The time and expense information provided in the charts annexed to this declaration is taken from time and expense records and documentation prepared and maintained by our firm. I reviewed the firm’s time and expense records and documentation when preparing this declaration. I confirmed the accuracy of the records, as well as the necessity for, and reasonableness of, the time and expenses committed to this litigation. As a result of this review, I believe the time reflected in the firm’s lodestar calculation and the expenses for which payment is sought are reasonable and were necessary for the effective and efficient prosecution and resolution of the Action. In addition, I believe that the expenses are all of a type that would normally be charged to a fee-paying client in the private legal marketplace.

4. A breakdown of the time our firm incurred in the Action from inception through March 1, 2024 is provided in Exhibit A. The lodestar amount of \$373,757.50 was calculated using the firm's current rates (or, in the case of individuals who no longer work at our firm, using their rate as of the date they last worked for the firm).

5. The expenses incurred by our firm are summarized by category in Exhibit B. Our firm also seeks an award of expenses of \$554.40 in connection with the prosecution and resolution of the Action. The expenses pertaining to the Action are reflected in the books and records of our firm. These books and records are prepared from receipts, check records, expense vouchers, and other documents and are an accurate record of the expenses.

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed in Roseland, New Jersey on March 18, 2024

  
\_\_\_\_\_  
JAMES E. CECCHI

# **EXHIBIT A**

**EXHIBIT A**

*In re Industriens Pensionsforsikring A/S, et al. v. Becton Dickinson  
et al.,*  
Case No. 2:20-cv-02155-SRC-CLW

<u>NAME</u>		<u>HOURS</u>	<u>RATE</u>	<u>LODESTAR</u>
Cecchi, James	(P)	99.20	\$ 1,300.00	\$ 128,960.00
Ecklund, Donald	(P)	125.60	\$ 950.00	\$ 119,320.00
Cooper, Kevin	(P)	135.70	\$ 800.00	\$ 108,560.00
Patel, Chirali	(A)	7.10	\$ 400.00	\$ 2,840.00
Steele, Jordan	(A)	10.50	\$ 600.00	\$ 6,300.00
O'Toole, Brian	(A)	5.50	\$ 600.00	\$ 3,300.00
Tempesta, Laura	(PL)	13.00	\$ 225.00	\$ 2,925.00
Luhn, Tabitha	(LC)	6.90	\$ 225.00	\$ 1,552.50
<b>Total:</b>		<b>403.50</b>		<b>\$ 373,757.50</b>

# **EXHIBIT B**

**EXHIBIT B**

*In re Industriens Pensionsforsikring A/S, et al. v. Becton Dickinson  
et al.,  
Case No. 2:20-cv-02155-SRC-CLW*

<i>CATEGORY</i>	<i>AMOUNT</i>	<i>PERCENT</i>
<i>PACER</i>	<i>\$ 104.40</i>	<i>19%</i>
<i>Court Filing Fees</i>	<i>\$ 450.00</i>	<i>81%</i>
<i>Total:</i>	<i>\$ 554.40</i>	