UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

IN RE PELOTON INTERACTIVE, INC. SECURITIES LITIGATION	Case No. 1:21-cv-02369-CBA-PK CLASS ACTION

DECLARATION OF JAMES M. WILSON, JR. IN SUPPORT OF LEAD PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND AN AWARD TO LEAD PLAINTIFF

I, James M. Wilson, Jr., declare as follows:

1. I am a member in good standing of the bar of the State of New York and am admitted in this Court. I am a partner in the law firm of Faruqi & Faruqi, LLP. I respectfully submit this declaration in support of Lead Plaintiff's Motion for Final Approval of Class Action Settlement ("Final Approval Motion") and Lead Counsel's Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and an Award to Lead Plaintiff ("Fee Motion"), filed herewith. I have personal knowledge of the facts set forth herein and would testify thereto if called.

I. PRELIMINARY STATEMENT

2. Lead Plaintiff, on behalf of himself and the putative Class, and defendants Peloton Interactive, Inc. ("Peloton" or the "Company"), John Foley, Jill Woodworth, Hisao Kushi, and Brad Olson ("Defendants"), have reached a proposed settlement of the above-captioned action (the "Action") for $13,950,000 in cash that, if approved, will resolve all claims in the Action.

3. The Settlement's terms are set forth in the Stipulation. The Court preliminarily approved the Stipulation by its Decision and Order dated February 21, 2024 (ECF No. 91) ("Preliminary Approval Order"), a true and correct copy of which is attached hereto as ***Exhibit 1.***

4. This declaration sets forth the nature of the claims asserted, the procedural history of the Action, and the methods by which the Class was notified of the Settlement. It also demonstrates the reasons why the Settlement and the Plan of Allocation are fair, reasonable, and adequate, and why Lead Counsel's Fee Motion should be approved.

5. While Lead Counsel believes that the allegations in the Action have substantial merit, Lead Counsel respectfully submits that the Settlement represents a favorable result for the Class.

6. The Settlement is the result of extensive arm's length and contentious settlement negotiations among experienced and capable counsel with a comprehensive understanding of the merits and value of the claims asserted. With the assistance of an esteemed mediator, counsel met for a mediation session to vigorously debate the strengths and weaknesses of the claims and defenses in the Action. The parties came to an agreement in principle during the mediation session, subject to Defendants producing and Lead Counsel reviewing confirmatory discovery to confirm that the proposed Settlement was fair, reasonable, and adequate. Thereafter, the parties engaged in negotiations over the following months regarding the production and review of confirmatory discovery and to finalize the terms of the Stipulation. Lead Counsel's ability to come to a compromise in light of the many complex issues present in this Action evidence the skill of representation and the quality of the results.

7. Pursuant to the Preliminary Approval Order, beginning on March 13, 2024, the Postcard Notice were mailed to an aggregate of 160,309 potential Class Members and nominees (Mejia Decl. ¶¶9-17), [1] and were made available on the designated settlement website, www.PelotonSecuritiesSettlement.com, along with the long-form Notice, the Proof of Claim Form, the Stipulation, and the Preliminary Approval Order. *See* Mejia Decl. ¶¶4, 18-19. The Summary Notice was timely published in *Investor's Business Daily* on March 4, 2024 and posted by *Globe Newswire* on March 6, 2024. *Id.* at ¶¶5-6.

8. The Settlement provides an immediate and certain benefit to the Class considering the significant risks that a smaller recovery—or, indeed, no recovery at all—might be achieved after a trial and the likely appeals that would follow, which could prolong the Action for years

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[1] "Mejia Decl." refers to the Declaration of Melissa Mejia Regarding (A) Mailing of the Postcard Notice; (B) Publication of the Summary Notice; and (C) Report on Requests for Exclusion, filed concurrently herewith.

and incur significant additional expenses. For these reasons, and those set forth more fully below, Lead Counsel respectfully submits that the Settlement is in the best interests of the Class and should be approved as fair, reasonable, and adequate.

9. Lead Counsel also respectfully requests that the Court approve the Plan of Allocation for the Settlement proceeds, the award of attorneys' fees in the amount of $3,906,000, plus accrued interest, reimbursement of expenses in the amount of $88,996.15, plus accrued interest, and an award for Lead Plaintiff pursuant to 15 U.S.C. 78u-4(a)(4) in the amount of $5,000. The fee award constitutes 28% of the Settlement Fund, which is in line with the amount of attorneys' fees awarded by courts in this Circuit and is reasonable in light of the relevant factors, including the quality of the representation, the complexity of the Action, and the risks of representing the Class in this Action. The expenses incurred by Lead Counsel were reasonable and necessary to prosecute this Action and to reach this favorable result for the Class.

II. SUMMARY OF LEAD PLAINTIFF'S CLAIMS

10. This Action arises out of Defendants' allegedly false and/or misleading statements that are alleged to violate §§ 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. §§ 78j(b) and 78t(a), and U.S. Securities and Exchange Commission ("SEC") Rule 10b-5, 17 C.F.R. 240.10b-5. *See, e.g.,* Amended Class Action Complaint ("Complaint" or "Compl."), ECF No. 45.

11. Briefly, the Complaint alleges that during the Class Period, Peloton's signature treadmill, the Peloton Tread+, was involved in events in which personal injuries or product damage had occurred. Compl. ¶¶30-40. As well, touchscreens on some of Peloton's lower cost treadmills, the Peloton Tread, were coming loose while the treadmill was in motion. *Id.* at ¶¶41-44. The Complaint alleges Defendants concealed this information and instead released outdated risk factors and positive statements about the Company's superior products and dedication to

safety. *Id.* at ¶¶55-69. On March 18, 2021, Peloton disclosed that the Tread+ was involved in an incident in which a child tragically died and that the Company was aware of a small number of incidents involving the Tread+ where children had been hurt. *Id.* at ¶¶70-71. However, the Complaint alleges that Peloton did not disclose the full extent of the problem, and that Peloton initially questioned the United States Consumer Product Safety Commission's efforts to protect consumers by issuing a recall. *Id.* at ¶¶74-84.

12. After a series of statements that Lead Plaintiff challenges as false and/or misleading, Peloton eventually recalled the Tread+ and Tread on May 5, 2021. *Id.* at ¶¶85-89.

13. Defendants deny, and continue to deny, each and every one of the claims alleged by Lead Plaintiff in the Action on behalf of the Settlement Class, including all claims in the complaints filed in the Action. Defendants have asserted and continue to assert that their public statements during the putative Class Period contained no material misstatements or omissions, and that at all times, they acted in good faith and in a manner they reasonably believed to be in accordance with all applicable rules, regulations, and laws. *See, e.g.,* Stipulation at 4-5.

III. PROCEDURAL HISTORY

14. This Action began on April 29, 2021, when plaintiff Ashley Wilson filed the initial class action complaint against Peloton and certain defendants in the United States District Court for the Eastern District of New York. ECF No. 1.

15. On October 26, 2021, Magistrate Judge Peggy Kuo recommended that Neswick's motion be granted, that the actions be consolidated, that Neswick be appointed as Lead Plaintiff, and that the Faruqi Firm be appointed as Lead Counsel. ECF No. 37. On November 16, 2021, Judge Amon adopted the report and recommendation in full.

16. On December 21, 2021, Defendants filed a Motion to Transfer Venue to the Southern District of New York Under 28 U.S.C. §1404(a) ("Transfer Motion"), ECF No. 40, which Lead Plaintiff opposed, ECF No. 42.

17. Lead Plaintiff filed the amended complaint ("Complaint" or "Compl.") on January 21, 2022. ECF No. 45.

18. On January 26, 2022, the Court denied Defendants' Transfer Motion. ECF No. 47

19. On March 7, 2022, Defendants moved to dismiss the Complaint ("Motion to Dismiss") and requested judicial notice of certain materials in connection therewith ("Request for Judicial Notice"). ECF Nos. 51-54. Plaintiff opposed Defendants' Motion to Dismiss and Request for Judicial Notice on April 6, 2021, ECF Nos. 55-56, to which Defendants replied on April 26, 2021, ECF Nos. 58-59. On June 9, 2022, the Court held oral argument on the Motion to Dismiss and reserved decision on the motion.

IV. THE SETTLEMENT

A. Settlement Negotiations

20. From the outset, Lead Counsel has tirelessly navigated the complicated issues present in the Action. Prior to engaging in settlement negotiations, Lead Counsel spent considerable time evaluating the facts and argument available in this Action through the following: (1) conducting an extensive investigation into the facts alleged in the Action, including retaining an investigator to conduct an investigation, as well as reviewing press releases, online and newspaper articles, SEC filings, conference call transcripts, and stock price movements; (2) preparing a detailed amended complaint containing more than seventy pages of factual and legal allegations; (3) conducting complex legal research in connection with opposing the Transfer Motion, Motion to Dismiss and Request for Judicial Notice; (4) drafting those

briefs; (5) preparing for and arguing in opposition to the Motion to Dismiss at the hearing; (6) consulting with a damages expert; and (7) preparing for the settlement negotiations, including drafting a detailed mediation statement and reply mediation statement.

21. After oral argument on Defendants' Motion to Dismiss, the Parties conferred about the possibility of a resolution of class claims. As a result of these communications, the Parties were able to reach an agreement on the procedures for conducting a formal mediation.

22. With the benefit of this extensive investigation and comprehensive analysis of the factual and legal issues in this Action, all Parties entered settlement negotiations well-informed of the strengths and weaknesses of the claims and defenses asserted in this Action.

23. On December 15, 2022, while Defendants' Motion to Dismiss remained pending, the Parties engaged in a full-day mediation session before David Murphy of Phillips ADR, a well-respected and highly experienced mediator and former securities litigator. The mediation was preceded by submission of mediation statements, reply mediation statements, and exhibits. The mediation session lasted well into the late evening hours and resulted in the Parties reaching an agreement-in-principle to settle and release the claims asserted against Defendants in the Action, subject to the completion of confirmatory discovery.

24. As soon as the Parties had reached an agreement in principle of the main terms of a settlement, including an agreement for the production of documents and Peloton employee interviews, the Parties notified the Court and asked for the Court to immediately stay and vacate pre-trial deadlines. The Parties informed the Court that they had agreed to endeavor to submit the final stipulation of settlement and preliminary approval papers within 120 days. ECF No. 77. The Court granted the Parties' motion to stay on December 26, 2022. ECF No. 78. Thereafter, the Parties continued to negotiate in good faith on the detailed terms of the proposed settlement

and to reach agreement on the production of documents from Defendants regarding the claims in the Complaint. The Parties updated the Court on January 13, 2023, of the status of these negotiations that included, the negotiation of the terms of a memorandum of understanding that sets forth the material terms and conditions to settle class claims. The negotiations also included the terms of a confidentiality agreement pursuant to which Lead Plaintiff would obtain confirmatory discovery from Defendants and that the document production had begun. The Parties informed the Court that they would continue to endeavor to file the formal settlement agreement and motion for preliminary approval within the 120 days since reaching the settlement on December 15, 2022. ECF No. 78. The Court then set April 17, 2023 as the deadline to file the final settlement agreement or a status letter. ECF No. 79.

25. The Parties thereafter negotiated with respect to the confirmatory discovery and finalization of the Settlement papers. As part of the confirmatory discovery process, Lead Counsel reviewed over 16,000 pages of documents that Defendants produced and interviewed two Peloton employees.

26. On April 17, 2023, Lead Plaintiff filed with the Court the Parties' Stipulation of Settlement and the proposed settlement notice documents with the Court and a motion for preliminary approval of the Settlement, subject to completion of the confirmatory discovery. ECF. Nos. 80-83.

27. On April 28, 2023, Fred Alger Management, LLC ("Alger Funds") filed a letter with the Court indicating that it had concerns with certain proposed procedures in the Settlement Notice for class members to exclude themselves from the proposed settlement. ECF No 84. Thereafter, Lead Plaintiff conferred with the Alger Funds and reached an agreement on proposed revisions to the procedures for Class Members to exclude themselves from the Settlement Class.

Lead Plaintiff submitted those agreed revisions with his reply papers in further support of the motion for preliminary approval on May 5, 2023. ECF No. 85.

28. Lead Counsel reviewed the confirmatory discovery produced by Defendants and was able to confirm that the Settlement reached in this Action is fair, reasonable, and adequate.

29. On November 17, 2023, the Parties filed a Joint Notice that Defendants had provided to Lead Plaintiff the confirmatory discovery contemplated in the Settlement, Lead Plaintiff had completed confirmatory discovery review and he confirmed that the Settlement is fair, reasonable and adequate to the Settlement Class, and that they believed that preliminary approval of the Settlement was appropriate. ECF No. 88.

30. On February 21, 2024, the Court entered an Order granting Lead Plaintiff's Motion for Preliminary Approval of the Proposed Settlement, which Order reflected the proposed schedule for finalizing the Proposed Settlement. ECF No. 91.

B. Reasons for the Settlement

31. Although Lead Plaintiff and Lead Counsel strongly believe that the claims asserted in this Action are meritorious and the evidence developed to date supports them, they recognized and acknowledge the substantial expense and duration of continued proceedings that would be necessary to prosecute the Action. Lead Plaintiff and Lead Counsel are also mindful of the inherent difficulty of proving claims under the federal securities laws and the possible defenses to the claims asserted in this Action, as well as the uncertainties presented by complex litigation. Defendants have denied, and continue to deny, Lead Plaintiff's allegations, and would undoubtedly continue to vigorously oppose the Action and mount strong defenses were the Action to continue.

32. For example, while Lead Plaintiff believes that his claims would have survived Defendants' motion to dismiss, he acknowledges that this result was far from guaranteed. Even

if the Action survived the Motion to Dismiss, the fact and expert discovery process would likely be time-consuming and expensive. For example, Lead Counsel anticipates that the fact and expert discovery process would require numerous document subpoenas to third parties such as those allegedly injured by Peloton's products and the U.S. Consumer Product Safety Commission, which subpoenas are notoriously difficult to enforce; retention of engineering, products liability, and financial expert witnesses; discovery motion practice, particularly in light of the fact that Lead Plaintiff challenged some of Defendants' privilege redactions during the confirmatory discovery process; production and review of thousands of pages of documents; and the taking of numerous fact and expert depositions.

33. Lead Plaintiff acknowledges that, notwithstanding his ability to further develop factual support for his claims through fact and expert discovery, the road to trial would involve numerous motions, including summary judgment, and require the preparation of expert reports and debate over witnesses, all of which would be time consuming and would monopolize valuable court resources.

34. Assuming that Lead Plaintiff filed a successful class certification motion and the claims in the Action were able to survive Defendants' likely motion for summary judgment, and the case proceeded to trial, Lead Plaintiff might not recover anything for the Class. While Lead Plaintiff is prepared to prove the complex factual and legal issues in this Action at trial, there is a substantial risk that the jury would not have agreed with his theory of the case. For example, the parties fundamentally disagree about the amount of damages in this case should Plaintiff prove his claims. Often this essential element is reduced to a "battle of the experts." A jury's reaction to conflicting expert testimony is unpredictable and Lead Plaintiff recognized the possibility that a jury could have been swayed by Defendants' experts and awarded little to no damages. Even if

Lead Plaintiff were to prevail at trial, Defendants might have appealed the decision. The appeals process can go on for months or even years, significantly prolonging the Action and jeopardizing any recovery awarded to the Class at trial should Defendants be victorious.

35. Notwithstanding the risks to recovery posed by a trial in this Action, the trial process is lengthy, complicated, and would be taxing on the Court and the attorneys involved.

36. In contrast to the foregoing, the Settlement represents an immediate and certain benefit for the Class. Lead Counsel, having evaluated the substantial risk, time, and expense required to prosecute this Action through trial and appeals, strongly believes that the Settlement is a favorable result for the Class.

C. The Settlement Terms

37. The Settlement, which the Court preliminarily approved, provides for the gross payment of $13,950,000 to secure a settlement of the claims asserted in the Action against Defendants. If approved, the Settlement will finally resolve Lead Plaintiff's allegations against Defendants and release all Released Claims against them in the Action.

38. All eligible Class Members who timely submit valid Proof of Claim Forms will receive a distribution from the Net Settlement Fund, which is the Settlement Fund minus administration expenses, any Taxes and Tax Expenses, and any awards granted by the Court to Lead Counsel and Lead Plaintiff. The Court will be asked to approve the distribution of the Net Settlement Fund at a future date, once the administration is complete.

39. Based on this declaration and for the reasons set forth in the accompanying memoranda, Lead Plaintiff respectfully submits that the terms of the Settlement and the Plan of Allocation are fair, reasonable, and adequate.

V. THE COURT'S PRELIMINARY APPROVAL ORDER AND LEAD PLAINTIFF'S DISSEMINATION OF NOTICE

A. Preliminary Approval Order

40. On April 17, 2023, Lead Plaintiff filed the Unopposed Motion for Preliminary Approval of Class Action Settlement ("Preliminary Approval Motion"), seeking preliminary approval of the Settlement, preliminary certification of the Class, approval of the manner and content of the proposed notice, and scheduling of the Settlement Hearing. *See* ECF Nos. 80-83.

41. On February 21, 2024, the Court issued the Preliminary Approval Order, which:

a) Granted preliminary approval of the Stipulation and the Settlement set forth therein, subject to further consideration at the Settlement Hearing;

b) Scheduled a Settlement Hearing for June 20, 2024 at 10:00 a.m. to determine whether (1) the proposed Settlement on the terms and conditions provided for in the Stipulation is fair, reasonable, and adequate and should be approved; (2) the proposed final Judgment as provided in the Stipulation should be entered; (3) the proposed Plan of Allocation for the proceeds of the Settlement is fair, reasonable, and adequate and should be approved; and (4) Lead Counsel's application for attorneys' fees, reimbursement of expenses, and an award to Lead Plaintiff should be granted:

c) Approved the appointment of Epiq Class Actions and Claims Solutions, Inc. ("Epiq") as the Claims Administrator to supervise and administer the notice procedure as well as the processing of the claims;

d) Approved the form, substance, and requirements of the Postcard Notice, Notice, Summary Notice, and Proof of Claim Form, and approved the plan for mailing, distribution, and/or publication of these documents;

e) Directed Lead Counsel to file with the Court proof of such mailing and publication no later than June 13, 2024;

f) Established procedures and deadlines for Class Members to object to the Settlement, Plan of Allocation, or the requests in the Fee Motion and to appear at the Settlement Hearing; and

g) Established procedures and deadlines for Class Members to submit Proof of Claim Forms or seek exclusion.

B. Notice

42. Pursuant to the Preliminary Approval Order, Lead Counsel served on Defendants' Counsel and filed with the Court the Mejia Declaration, filed concurrently herewith. The Mejia Declaration sets forth the efforts undertaken by Epiq to mail the Postcard Notice to Class Members, to publish the Summary Notice, and to establish the website www.PelotonSecuritiesSettlement.com and toll-free telephone helpline.

43. As detailed in the Mejia Declaration, beginning on March 13, 2024, Epiq mailed or caused to be mailed an aggregate total of 160,309 copies of the Postcard Notice to potential Class Members and nominees. *See* Mejia Decl. ¶17. The Summary Notice was published in *Investor's Business Daily* on March 4, 2024 and posted by *Globe Newswire* on March 6, 2024. *See id.* at ¶¶5-6.

44. Additionally, Epiq established a toll-free telephone helpline to accommodate potential Class Members who have questions about the Settlement and who can request that the Long Form Notice and claims forms be mailed to them. *See id.* at ¶¶20-21.

45. Epiq also set up the website to provide information about the proposed Settlement to Class Members and others. *See id.* at ¶18. The website makes available for viewing and downloading important documents, including the Notice, Proof of Claim Form, and the

Stipulation. *See id.* The website also lists the exclusion, objection, and claim deadlines as well as the date and time of the Settlement Hearing. *See id.*

46. As required by Rule 23 of the Federal Rules of Civil Procedure, due process, and the PSLRA, the Notice: (a) described the nature of the claims asserted in the Action; (b) included the case caption; (c) included a definition of the Settlement Class; (d) summarized the Settling Parties' reasons for entering into the Settlement; (e) listed the name, telephone number, and address for Lead Counsel; (f) disclosed that Lead Counsel intends to seek attorneys' fees of up to 28% of the Settlement Fund, plus reimbursement of expenses not to exceed $100,000, and an award for Lead Plaintiff up to $5,000; (g) provided the date, time, and location of the Settlement Hearing; (h) advised Settlement Class Members of their right to appear at the Settlement Hearing and instructed them that the date may change; (i) advised Class Members of their right to exclude themselves from the Class and the binding effect of doing so; (j) provided the deadline and procedure for opting out of or opposing the Settlement, Plan of Allocation, or award of attorneys' fees, expenses, or an award to Lead Plaintiff; (k) explained the consequences of remaining in the Settlement Class; (l) provided the manner in which to obtain more information, including the address for the designated website; and (m) explained how to access the case docket at the courthouse or on PACER. *See generally* Mejia Decl., Ex. C.

C. Reaction of the Class

47. The Postcard Notice provides that objections to the Settlement, Plan of Allocation, and/or the application for attorneys' fees, reimbursement of expenses, and an award for Lead Plaintiff must be received no later than May 30, 2024. *See* Mejia Decl., Ex. B.

48. The Postcard Notice provides that requests for exclusion from the Settlement must be received no later than May 29, 2024. *See id.*

49. Although 160,309 Postcard Notices have been mailed to potential Class Members and nominees as of April 23, 2024, no objections to the Settlement, the Plan of Allocation, and/or the application for attorneys' fees, reimbursement of expenses, and an award for Lead Plaintiff have been received. *See* Mejia Decl. ¶23.

50. Only two requests for exclusion have been received: one from Pratyush Mishra ("Mishra") and one from Bradford Neumann ("Neumann"). The Class is defined as "all persons or entities who purchased or otherwise acquired Peloton securities from September 11, 2020 to May 5, 2021, inclusive, and were damaged thereby." PA Order at 22 ¶2. Neither requester appears to be a Class Member who can submit a valid claim for recovery, therefore their requests for exclusion appear to be invalid.

51. Mishra's request appears to be invalid because Mishra did not purchase or acquire any Peloton securities during the Class Period and therefore is not a member of the Settlement Class. *See* Mejia Decl., Ex. D at 2-26.

52. Neumann's request appears to not be valid because his trades in options contracts resulted in gains on Peloton securities and is therefore not a Class Member because he was not "damaged thereby." *See* Mejia Decl., Ex. D at 28-79.

53. Lead Counsel in consultation with Epiq will make a final determination whether these two investors are included in the Class definition and/or suffered damages who would have qualified for participation in the Settlement in the first place.

54. If any objections or additional requests for exclusion are received, they will be addressed in Lead Plaintiff's reply papers.

D. Plan of Allocation

55. Pursuant to the Preliminary Approval Order, and as explained in the Notice, all Class Members who wish to participate in the Settlement must submit a Proof of Claim Form with supporting documentation no later than May 30, 2024. *See* Mejia Decl., Ex. C.

56. As set forth in the Notice, all Class Members who timely file a valid Proof of Claim Form and whose *pro rata* share of the Net Settlement Fund amounts to $10.00 or more will receive a distribution of the Settlement proceeds, after deduction of, *inter alia*, attorneys' fees, expenses, and taxes incurred on the Settlement Fund. *See* Mejia Decl., Ex. C (Claims Package) at 14. The distribution will be made in accordance with the Plan of Allocation set forth and described in detail in the Notice. *See id.* at 10-11.

57. The Plan of Allocation's objective is to equitably distribute the Net Settlement Fund among Authorized Claimants who suffered economic loss as a result of Defendants' alleged misconduct as opposed to losses caused by market or industry factors not related to the alleged fraud. *See id*.

58. Under the Plan of Allocation, the Claims Administrator will calculate each Authorized Claimant's Recognized Loss, as explained in the Notice. *See id*. at 11-13. The calculation of a Recognized Loss will depend on several factors, including when and for how much Class Members purchased or otherwise acquired their Peloton securities, and whether those securities were sold, and if sold, when and for how much. *See id.* In order to have a Recognized Loss under the Plan of Allocation, Authorized Claimants must have held through at least one of the corrective disclosures set forth in the Plan of Allocation. *See id.* The Claims Administrator will use the Recognized Loss formula to determine each Authorized Claimant's *pro rata* share to proportionately allocate the Net Settlement Fund to the Authorized Claimants. *See id.*

59. The Plan of Allocation was formulated with the assistance of Lead Plaintiff's damages consultant, and it tracks the theory of damages alleged in the Complaint. It was also reviewed and approved by Epiq, a claims administrator with substantial experience in claims administration.

60. The terms of the Plan of Allocation were fully disclosed in the Notice that was made available on the Action's website beginning on February 21, 2024. Mejia Decl. ¶18. To date, there have been no objections to the Plan of Allocation; and thus, Lead Plaintiff respectfully submits that it is fair, reasonable, and adequate and should be approved by the Court.

VI. LEAD COUNSEL'S APPLICATION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND AN AWARD FOR LEAD PLAINTIFF

A. Attorneys' Fees

61. Lead Counsel has represented the Class on a wholly contingent basis for over two years, not receiving any payment for its services or the expenses incurred in prosecuting this Action against Defendants and negotiating the Settlement. Throughout this time, Lead Counsel's dedication to recovering a favorable result for the Class has been expensive and challenging.

62. The Notice informed Class Members that Lead Counsel will apply for an award of attorneys' fees up to 28% of the Settlement Fund and reimbursement of expenses not to exceed $100,000. *See* Mejia Decl., Ex. C at 1.

63. Lead Counsel requests that the Court award a fee of 28% of the Settlement Fund, or $3,906,000 plus accrued interest.

64. As discussed in the Fee Motion, filed concurrently herewith, the requested fee is fair, adequate, and reasonable. In light of the factors including the favorable result achieved for the Class, the skill required, the quality of work performed, and the risk of pursuing claims on a

contingency basis, Lead Counsel respectfully submits that a fee of 28% of the Settlement Fund is justified and should be approved.

65. According to Lead Plaintiff's damages consultant, the $13,950,000 Settlement Amount will recover approximately 2% of the maximum potential damages available in this Action (assuming the proposed Class is certified and all claims and damages were proven). This is above the median ratio of 1.8% for recent securities class action settlements as determined by NERA Economic Consulting. *See* ECF No. 83-2 at 18. Based on Defendants' adamant denial of any liability, as well as the substantial time and expense of continued litigation, and the risks that financial risks faced by Peloton at the time the Parties engaged in settlement negotiations and reached the Settlement, this Settlement Amount represents a very favorable recovery for the Class.

66. Lead Counsel's expertise and persistence have been vital to obtaining such a favorable result for the Class. As set forth in its firm resume, attached as ***Exhibit 2*** hereto, the Faruqi Firm is a nationally-recognized class action firm with extensive experience litigating and negotiating settlements as lead or co-lead counsel in complex securities class actions.

67. In order to reach a successful resolution of this Action, Lead Counsel was required to litigate at a high skill level because Defendants were represented by Latham & Watkins LLP, which fought vigorously for its clients throughout the Action and were formidable opponents.

68. As set forth in the Faruqi Time Report, a true and correct copy of which is attached hereto as ***Exhibit 3***, Lead Counsel has committed thousands of hours to litigating this Action for more than two years, from the initial investigation to this final resolution. Specifically, Lead Counsel has devoted 2,748.50 hours to this Action, which includes time spent,

inter alia: (1) conducting an extensive investigation into the facts alleged in the Action, including conferring with an investigator and reviewing and analyzing press releases, SEC filings, conference call transcripts, and stock price movements; (2) conducting research for and briefing the lead plaintiff motion; (3) conducting complex legal research for and drafting the detailed AC with more than seventy pages of factual and legal allegations; (4) conducting legal research for and drafting a brief in opposition to Defendants' Transfer Motion; (5) conducting complex legal research for and drafting briefs in opposition to the Motion to Dismiss and Request for Judicial Notice; (6) preparing for and arguing in opposition to the Motion to Dismiss at the hearing; (7) consulting with a damages consultant to better understand the issues facing recovery for the Class; (8) conducting research for and drafting a mediation statement and a reply statement; (9) communicating with Lead Plaintiff throughout the Action; (10) engaging in a mediation session and corresponding with the mediator and Defendants' counsel after the session to reach a resolution of the claims; (11) negotiating with Defendants regarding the confirmatory discovery following the mediation; (12) reviewing over 16,000 pages of confirmatory discovery and interviewing two Peloton employees; (13) drafting the Settlement Stipulation, Postcard Notice, Notice, Summary Notice, Proof of Claim Form, and related materials; and (12) drafting the preliminary approval and final approval motion papers.

69. Based upon the hours expended by Lead Counsel, and the current billing rates for Lead Counsel's professionals, the total lodestar is $1,899,060. The lodestar results in a multiplier of 2.06 where the fee requested by Lead Counsel in the amount of $3,906,000 is approximately 2.06 times Lead Counsel's lodestar of $1,899,060.

70. Lead Counsel's time is taken from daily time records regularly prepared and maintained by the firm in the ordinary course of business. The hours expended in preparing the

application for fees and reimbursement of expenses have been excluded from Lead Counsel's total time.

71. The total number of hours Lead Counsel spent were reasonable and necessary to achieve the Settlement. Lead Counsel's hourly billing rates range from $675-1,250 for partners, $500-625 for associates, and $325-470 for paralegals. The hourly rates for attorneys and support staff, included in ***Exhibit 3***, are reasonable for the region and expertise of the attorneys.

B. Costs and Expenses

72. The expenses incurred by Lead Counsel in the prosecution of this Action are set forth in the accompanying Expense Report from the Faruqi Firm, a true and correct copy of which is attached hereto as ***Exhibit 4***. In total, Lead Counsel has incurred $88,996.15 in expenses.

73. The expenses in the Expense Report are taken from the books and records of the Faruqi Firm maintained in the ordinary course of business. The books and records are prepared from expense vouchers, check records, and other such documents. The expenses were reasonable and necessary for the effective and efficient prosecution of this Action and are the type that would normally be charged to a fee-paying client in the private legal marketplace.

74. The majority of this amount, $45,518.50, represents expenses primarily incurred by the private fact investigator and the damages consultant retained by Lead Counsel.

75. Lead Counsel hired L.R. Hodges & Associates, Ltd. to conduct a background fact investigation and to reach out to potential confidential witnesses who may be able to provide more insight into what was happening at Peloton during the Class Period.

76. Lead Counsel also retained an economic consulting firm, Stanford Consulting Group, Inc., to consult on the damages and loss causation issues present in this Action, and to assist with the preparation of the Plan of Allocation.

77. Lead Counsel respectfully submits that fees paid to the fact investigator and the damages consultant were reasonable and necessary to prosecute this Action to the point at which it settled.

78. The remainder of Lead Counsel's expenses, $43,477.65, reflect routine and typical expenditures incurred during the course of litigation, including mediation fees, e-discovery management, electronic research, court reporting fees, photocopying, postage, transportation and meals. All of these expenditures are the types of expenses incurred in similar class actions of this size and would be billed to a fee-paying client.

79. The total expenses, $88,996.15 are less than the $100,000 in potential expenses that the notices informed the Class may be incurred. Lead Counsel respectfully submits that these expenses are reasonable in light of the pace and duration of the Action and were necessarily incurred for its successful resolution. Lead Counsel understood that it might not recover any expenses in the event the Action was dismissed, and thus took steps to minimize costs wherever possible without jeopardizing its duty to zealously represent the Class.

C. Award for Lead Plaintiff

80. Lead Counsel also respectfully requests that the Court grant an award of $5,000 to the Lead Plaintiff, Richard Neswick, to reimburse him for his services as representative of the Class.

81. As set forth in the Declaration of Richard Neswick, attached hereto as ***Exhibit 5***, Lead Plaintiff has taken his role very seriously. Mr. Neswick has dedicated at least 25 hours of his time to the Action by, *inter alia*:

a) Engaging in frequent telephone and email communications with Lead Counsel about this Action;

b) Reviewing documents filed and/or prepared in the Action, including the Complaint, the Motion to Dismiss briefing, mediation documents, and the Preliminary Approval Motion;

c) Virtually attending the mediation; and

d) Providing input on the mediation and settlement negotiations and authorizing the Settlement.

*See **Exhibit 5***.

82. The types of activities that Mr. Neswick engaged in to lead this litigation are precisely the type of efforts that courts have found support an award to class representatives. Because Mr. Neswick played an integral role in the Action, Lead Counsel respectfully submits that Lead Counsel should be reimbursed for the time and effect he devoted to actively representing the Class.

VII. LIST OF EXHIBITS

83. Attached as Exhibit 1 is a true and correct copy of the Court's Preliminary Approval Order, dated February 21, 2024,

84. Attached as Exhibit 2 is a true and correct copy of the Faruqi Firm's resume.

85. Attached as Exhibit 3 is a true and correct copy of the Faruqi Firm's Lodestar Report.

86. Attached as Exhibit 4 is a true and correct copy of the Faruqi Firm's Expense Report.

87. Attached as Exhibit 5 is a true and correct copy of the Declaration of Richard Neswick.

VIII. CONCLUSION

88. Lead Counsel respectfully submits that the Settlement should be granted final approval as fair, reasonable, and adequate; that the Plan of Allocation should be approved as fair, reasonable, and adequate; that attorneys' fees in the amount of 28% of the Settlement Fund, or $3,906,000, plus accrued interest, should be granted; that Lead Counsel's $88,996.15 in expenses should be reimbursed in full; and that Lead Plaintiff should be granted an award of $5,000 for the time and effort he put forth in representing the putative class.

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

Executed this 24th day of April 2024 at New York, NY.

/s/ James M. Wilson, Jr.
James M. Wilson, Jr.

EXHIBIT 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

IN RE PELOTON INTERACTIVE, INC. SECURITIES LITIGATION	:	**DECISION AND ORDER** 21-CV-2369 (CBA)(PK)

Peggy Kuo, United States Magistrate Judge:

Richard Neswick ("Neswick" or "Plaintiff") has filed an unopposed Motion for Preliminary Approval of Class Action Settlement ("Motion," Dkt. 81), which was referred to me for a decision by the Honorable Carol Bagley Amon. (Order dated January 26, 2024.) For the reasons stated below, the Motion is granted.

BACKGROUND

I. Factual and Procedural Background

Ashley Wilson ("Wilson") brought this action on March 29, 2021, against Peloton Interactive, Inc. ("Peloton"), John Foley, and Jill Woodworth (collectively, "Defendants") on behalf of herself and a putative class consisting of purchasers of Peloton securities between September 11, 2020, and April 16, 2021, alleging violations of the federal securities laws under the Securities Exchange Act of 1934. (Compl., Dkt. 1.)

In an Amended Complaint, filed May 6, 2021, Wilson alleged that Defendants made materially false and misleading statements regarding Peloton's business, operational and financial results, by failing to disclose several adverse facts regarding serious safety threats posed by Peloton's Tread+. (Am. Compl. ¶ 26, Dkt. 8.) The Amended Complaint further alleges that Defendants knew that

Peloton's public documents and statements were materially false and misleading and would be issued or disseminated to the investing public, and, as a result, the market price of Peloton's securities was artificially inflated. (*Id.* ¶¶ 48, 50.) The Amended Complaint expanded the class period to May 5, 2021. (*Id.* ¶ 1.)

A separate proceeding against Defendants, *Drori v. Peloton Interactive, Inc. et al*, No. 21-CV-2925 (CBA)(PK) (the "*Drori* Action"), was commenced on May 24, 2021, similarly alleging that Defendants made materially false and misleading statements by failing to disclose adverse facts regarding serious safety threats posed by Peloton's Tread+. (*See* Compl. ¶¶ 24, 48, 50 in *Drori* Action, Dkt. 1.)

Pursuant to an unopposed motion, this action was consolidated with the *Drori* Action and renamed *In re Peloton Interactive, Inc. Securities Litigation* ("Action"). (Order dated Nov. 16, 2021.) In addition, Richard Neswick was appointed as Lead Plaintiff, and Faruqi & Faruqi, LLP was appointed as Lead Counsel. (*Id.*)

On January 21, 2022, Plaintiff filed an Amended Class Action Complaint asserting substantially similar claims as the previous complaints, covering the same class period as the Amended Complaint, from September 11, 2020 to May 5, 2021, and adding more detailed allegations. (*See* "Am. Class Action Compl." Dkt. 45.)

On March 7, 2022, Defendants moved to dismiss the Amended Class Action Complaint. (Dkt. 51.) On December 15, 2022, the parties notified the Court that they had reached a settlement in principle after participating in mediation. ("Pl. Mem." at 3, Dkt. 82; Dkt. 77.) Defendants' motion to dismiss was thereafter dismissed as moot. (Order dated Feb. 23, 2023.)

On April 17, 2023, Plaintiff filed the Settlement Agreement ("Settlement Agreement" or "Stipulation," Dkt. 80), the Motion, a Memorandum in Support of the Motion, and the Declaration of James M. Wilson, Jr. ("Wilson Decl.," Dkt. 83.). Attached to the Settlement Agreement were a Proposed Preliminary Order (Ex. A to Motion, Dkt. 80-1), Proposed Notice of Class Action (Ex. A-

1 to Motion, Dkt. 80-2), Proposed Postcard Notice ("Postcard Notice," Ex. A-2 to Settlement Agreement, Dkt. 80-3), Proposed Claim Form ("Claim Form," Ex. A-3 to Settlement Agreement, Dkt. 80-4), Proposed Summary Notice ("Summary Notice," Ex. A-4 to Settlement Agreement, Dkt. 80-5), and a Proposed Final Order (Ex. B to Settlement Agreement, Dkt. 80-6.)

On May 8, 2023, after non-party Fred Alger Management, LLC filed a letter expressing concerns with the proposed procedures for Class Members to exclude themselves from the class settlement, Plaintiff filed an Amended Proposed Notice of Class Action ("Notice," Ex. 2 to "Wilson Decl. II," Dkt. 86-2) and Amended Proposed Preliminary Order ("Proposed Order," Ex. 4 to Wilson Decl. II, Dkt. 86-4.)

II. The Settlement Agreement and Procedure

Plaintiff and Defendants executed the Settlement Agreement on April 17, 2023. (Settlement Agreement at 44.) The parties stipulate, for settlement purposes only, to the certification of a Fed. R. Civ. P. 23(a) and 23(b)(3) settlement class ("Settlement Class" or "Class") comprised of all persons who purchased or otherwise acquired Peloton securities from September 11, 2020 to May 5, 2021, inclusive ("Class Period"), and were damaged thereby ("Settlement Class Members" or "Class Members").[1] (Settlement Agreement ¶ 1-vv, Dkt. 80.)

Under the terms of the Settlement Agreement, Defendants agree to pay a Settlement Amount of $13,950,000.00 into an escrow account, which, together with interest, will constitute a Settlement Fund. Defendants will pay or cause to be paid the Settlement Amount within 20 business days of the later of (1) the final approval of the Settlement Agreement, or (2) the Escrow Agent providing

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[1] Excluded from the Settlement Class are (i) Defendants; (ii) current and former officers and directors of Peloton; (iii) members of the immediate family of each of the Individual Defendants; (iv) all subsidiaries and affiliates of Peloton and the directors and officers of Peloton and their respective subsidiaries or affiliates; (v) all persons, firms, trusts, corporations, officers, directors, and any other individual or entity in which any Defendant has a controlling interest; (vi) the legal representatives, agents, affiliates, heirs, successors-in-interest or assigns of all such excluded parties; and (vii) any persons or entities who properly exclude themselves by filing a valid and timely request for exclusion. (Settlement Agreement ¶ 1-qq.)

Defendants' counsel a certain required form. (Settlement Agreement ¶¶ 1-r, 1-uu, 9.) In return, the putative Settlement Class agreed to release the allegations in the Amended Class Action Complaint or any of the prior complaints. [2]

After payment from the Settlement Fund for any taxes, costs, fees, and awards approved by the Court (Settlement Agreement ¶¶ 1-ee, 1-xx, 10, 12), the remaining "Net Settlement Fund" will be distributed to claimants on a *pro rata* basis pursuant to a "Plan of Allocation" to be approved by the Court based on losses claimed on the Claim Form. (Pl. Mem. at 12; Settlement Agreement ¶ 24; Notice at 7, 15-21.) The Claims Administrator will determine the validity of each submitted claim and the claimant's *pro rata* share. (*Id.* ¶ 24.) Potential Class Members may also exclude themselves from the Settlement Class, preserving their claims against Defendants, or object to the settlement. (Settlement Agreement ¶ 1-vv; Notice at 2, 5, 7, 11-13.)

Pursuant to the Plan of Allocation, any balance remaining in the Net Settlement Fund six months after the initial distribution of such funds will be used, first, to pay any amounts mistakenly omitted from the initial disbursement; second, to pay any additional settlement administration fees, costs, and expenses; and, finally, to make a second distribution to claimants who cashed their checks from the initial distribution and who would receive at least $10.00 after payment of the estimated administration fees, costs, and expenses incurred in making the second distribution. (Settlement

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[2] Explicitly excluded from the release are: "(1) all claims related to the enforcement of the Settlement; (2) asserted derivatively purportedly on behalf of Peloton in *In re Peloton Interactive, Inc. Derivative Litigation*, Case No. 1:21-cv-02862-CBA-PK (E.D.N.Y), *In re Peloton Interactive, Inc. Stockholder Derivative Litigation*, Case No. 2022-1051-KSJM (Del. Ch.), or *Manzella v. Cortese, et al.*, Case No. 2023-0224-KSJM (Del. Ch.) (together, the "Derivative Actions"); (3) asserted by plaintiff in its June 25, 2022 complaint filed in *Robeco Capital Growth Funds v. Peloton Interactive, Inc.*, Case No. 21-cv-9582 (S.D.N.Y.) ("SDNY Action") or any amended complaint properly filed in the SDNY Action in which that plaintiff asserts allegations that are substantially similar to those made in the June 25, 2022 complaint (which, for the avoidance of doubt, shall not include any claims that both (a) were asserted in the Complaint or any prior complaint in this Action, and (b) were not asserted in the June 25, 2022 complaint in the SDNY Action); or (4) any claims of any person or entity who or which submits a request for exclusion from the Settlement that is accepted by the Court." (Settlement Agreement ¶ 1-qq; *see* Settlement Agreement ¶¶ 5-8.)

Agreement ¶¶ 1-kk, 24; Notice at 22.) These redistributions will be repeated until the balance remaining in the Net Settlement Fund is *de minimis* and such remaining balance will then be distributed to a non-sectarian, not-for-profit organization. (Settlement Agreement ¶¶ 1-kk, 24; Notice at 22.)

To reach as many Class Members as possible, the Settlement Agreement proposes various means of notifying potential Class Members of the settlement.

Within five business days of entry of an order of preliminary approval ("Preliminary Approval Order"), Defendants will provide the Claims Administrator with an electronic list of holders of Peloton's publicly traded common stock during the Class Period, including those holders' names, addresses, and email addresses. (Settlement Agreement ¶ 22; Proposed Order ¶ 9.) Within 21 days of entry of the Preliminary Approval Order, the Claims Administrator will mail the Postcard Notice to those members of the Settlement Class that can be identified through reasonable effort. (Settlement Agreement ¶ 22.) Nominee purchasers will either forward the Postcard Notice to all their beneficial owners or provide the Claims Administrator with a list of their beneficial owners' names, addresses, and email addresses. (Notice at 22.)

The Postcard Notice briefly describes this lawsuit, the Class, and the basic terms of the Settlement Agreement; explains that Class Members can submit a Claim Form to qualify for payment, exclude oneself from the settlement, or object to the settlement; directs Class Members to the "Settlement Website" for further information; and announces the date of the Final Approval Hearing. (Postcard Notice at 2 (ECF pagination); *see* Pl. Mem. at 23-24.)

The Settlement Website contains the Notice, which includes a statement of plaintiff recovery (Notice at 1-3), a statement of potential outcome of case (*id.* at 3), a statement of attorneys' fees or costs to be sought (*id* at 3-4.), an identification of lawyers' representatives (*id.* at 4), and the reason for the settlement (*id.*). The Notice also provides a summary of the nature of the action (*id.* at 5-6); a description of the Settlement Class (*id.* at 6-7), the class claims, issues, or defenses (*id.* at 8-10), that a

Class Member may enter an appearance through an attorney if the member so desires (*id.* at 14), that the Court will exclude from the Class any Class Member who timely requests exclusion (*id.* at 11), the time and manner for requesting exclusion (*id.*), and the binding effect of a class judgment on Class Members (*id.* at 10-12).

The Settlement Website also contains the Claim Form, which provides detailed instructions to assist potential Class Members in determining if they are a member of the Class and instructions for returning the form. (*See generally* Claim Form.)

The Claims Administrator will be responsible for posting the Notice and Claim Form on the Settlement Website. (Settlement Agreement ¶¶ 1-ff, 22.) The Claims Administrator will also ensure that the Summary Notice is published in *Investor's Business Daily* and transmitted over *GlobeNewsire* within 14 days of entry of the Preliminary Approval Order. (Proposed Order ¶ 12; *see* Settlement Agreement ¶ 1-zz, 22; Pl. Mem. at 24.) The Summary Notice briefly describes the Class; explains that Class Members can qualify for payment by submitting a Claim Form, exclude oneself from the settlement, or object to the settlement; directs Class Members to the Settlement Website for further information; provides the contact information for proposed Class Counsel and the proposed Claims Administrator; and announces the date, time, and location of the Final Approval Hearing. (Summary Notice at 1-3.)

DISCUSSION

I. Preliminary Certification of Rule 23 Settlement Class

Plaintiff moves to certify the Settlement Class. (Settlement Agreement ¶ 1-vv, Dkt. 80.) Although "[t]he ultimate decision to certify the class for purposes of settlement cannot be made until the hearing on final approval of the proposed settlement," Fed. R. Civ. P. 23 Advisory Committee's Note to 2018 Amendment., the Court may grant preliminary approval after finding that it will "likely be able to. . . certify the class for purposes of judgment on the proposal." *In re Payment Card Interchange*

Fee & Merch. Disc. Antitrust Litig., 330 F.R.D. 11, 50 (E.D.N.Y. 2019) (quoting Fed. R. Civ. P. 23(e)(1)(B)(ii)).

To qualify for certification, a class must meet the prerequisites set forth in Rule 23 of the Federal Rules of Civil Procedure. A plaintiff seeking certification under Rule 23 has the burden to establish (1) numerosity, (2) commonality, (3) typicality, (4) adequacy of representation, (5) superiority of the class action over other procedures, and (6) predominance. *Mazzei v. Money Store*, 829 F.3d 260, 270 (2d Cir. 2016); *see* Fed. R. Civ. P. 23(a), (b)(3). The Second Circuit has also recognized an implied requirement of ascertainability. *Brecher v. Republic of Arg.*, 806 F.3d 22, 24 (2d Cir. 2015) ("Like our sister Circuits, we have recognized an 'implied requirement of ascertainability' in Rule 23 of the Federal Rules of Civil Procedure" (citation omitted)); *see McBean v. City of N.Y.*, 260 F.R.D. 120, 132-33 (S.D.N.Y. 2009). To certify a class, a district court must definitively assess each class certification element and find that each requirement is "established by at least a preponderance of the evidence." *In re U.S. Foodservice Inc. Pricing Litig.*, 729 F.3d 108, 117 (2d Cir. 2013) (quoting *Brown v. Kelly*, 609 F.3d 467, 476 (2d Cir. 2010)).

Plaintiff contends that for purposes of the settlement, the proposed Class meets the requirements of Rule 23. (Pl. Mem. at 16-17.) Despite the lack of opposition by Defendants, "the Court bears an independent responsibility to make a determination that every Rule 23 requirement is met before certifying a class." *Farinella v. Paypal, Inc.*, 611 F. Supp. 2d 250, 260-61 (E.D.N.Y. 2009).

A. Numerosity

Federal Rule of Civil Procedure 23(a)(1) requires that the proposed class be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). "[N]umerosity is presumed at a level of 40 members." *Consol. Rail Corp. v. Town of Hyde Park*, 47 F.3d 473, 483 (2d Cir. 1995). In securities class actions that relate "to publicly owned and nationally listed corporations, the numerosity

requirement may be satisfied by a showing that a large number of shares were outstanding and traded during the relevant period." *In re NYSE Specialists Sec. Litig.*, 260 F.R.D. 55, 69-70 (S.D.N.Y. 2009).

During the Class Period, Peloton securities were listed and traded on the NASDAQ Global Select Market. (Compl. ¶ 18; Pl. Mem. at 18.) As of April 30, 2021, 268,744,362 Peloton Class A shares were outstanding. (Pl. Mem. at 18 (citing Peloton Securities Exchange Commission Form 10-Q at 1 (filed May 7, 2021)).) Based on that information, it is a near certainty that the proposed Class contains at least 40 members. Accordingly, the numerosity requirement is met.

B. <u>Commonality</u>

Federal Rule of Civil Procedure 23(a)(2) requires that there are "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). The commonality requirement can be satisfied "where a single issue of law or fact is common to the class," *In re IndyMac Mortgage-Backed Sec. Litig.*, 286 F.R.D. 226, 233 (S.D.N.Y. 2012), so long as "the class members have suffered the same injury." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349-50 (2011) (citation omitted). Any common questions "must be of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each of the claims in one stroke." *Id.* at 350.

The proposed Class Members share common questions of law and fact regarding whether Defendants made misleading statements and omissions, Defendants' scienter in making those statements or omissions, and any damages sustained by investors as a result. These types of common questions are sufficient to satisfy commonality. *See Rodriguez v. CPI Aerostructures, Inc.*, No. 20-CV-0982 (ENV)(CLP), 2021 WL 9032223, at *8 (E.D.N.Y. Nov. 10, 2021) (finding commonality in securities fraud class action where common questions included "(i) whether defendants violated the securities law; (ii) whether defendants' public statements during the Class Period misrepresented or omitted material facts; (iii) whether defendants acted with scienter; (iv) whether defendants' alleged

misrepresentations and omissions caused compensable losses; (v) whether CPI's stock price was artificially inflated; and (vi) the extent of the class damages").

C. Typicality

Federal Rule of Civil Procedure 23(a)(3) requires that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). "Although the analysis of typicality and commonality 'tend to merge,' each is 'distinct.'" *Kurtz*, 321 F.R.D. at 532 (citing *Morangelli v. Chemed Corp.*, 275 F.R.D. 99, 104 (E.D.N.Y. 2011)). "'The commonality requirement tests the definition of the class itself,' while 'the typicality requirement focuses on how the named plaintiff's claims compare to the claims of the other class members.'" *Id.*

Plaintiff's claims are typical of the Class. His claims, and the claims of each Class Member, are based on the same alleged misrepresentations by Defendants which resulted in inflated stock prices and financial harms to investors. The claims of Plaintiff and other Class Members are so interrelated that the class claims will be fairly and adequately protected by Plaintiff. The typicality requirement is, thus, satisfied.

D. Adequacy

Federal Rule of Civil Procedure 23(a)(4) requires that the class representatives must "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). In determining the adequacy of representation by class representatives and class counsel, courts consider "whether (1) plaintiff's interests are antagonistic to the interest[s] of other members of the class and (2) plaintiff's attorneys are qualified, experienced and able to conduct the litigation." *Mikhlin v. Oasmia Pharm. AB*, No. 19-CV-4349 (NGG)(RER), 2021 WL 1259559, at *4 (E.D.N.Y. Jan. 6, 2021) (alteration in original) (quoting *Cordes & Co. Fin. Servs. v. A.G. Edwards & Sons, Inc.*, 502 F.3d 91, 99 (2d Cir. 2007)). "'An adequate class representative is one who has 'an interest in vigorously pursuing the claims of the class' and 'no interests antagonistic to the interests of other class members.'" *Id.* (quoting *Denney v. Deutsche*

Bank AG, 443 F.3d 253, 268 (2d Cir. 2006)). "Courts find class counsel qualified when they are experienced and 'knowledge[able] in the area of complex class actions.'" *Cymbalista v. JPMorgan Chase Bank, N.A.*, No. 20-CV-456 (RPK)(LB), 2021 WL 7906584, at *5 (E.D.N.Y. May 25, 2021) (alteration in original) (quoting *In re Payment Card*, 330 F.R.D. at 33), *R&R adopted*, Order dated Nov. 22, 2021.

Plaintiff's interests here "are aligned with other class members' interests because they suffered the same injuries," namely that they all purchased Peloton securities at allegedly artificially inflated prices during the Class Period as a result of Defendants' alleged misleading statements and omissions. *In re GSE Bonds Antitrust Litig.*, 414 F. Supp. 3d 686, 692 (S.D.N.Y. 2019). Plaintiff seeks monetary relief on his own behalf and on behalf of the Class. (Am. Class Action Compl. ¶¶ 1, 11, 145, 176; Settlement Agreement at 1, 6.) There is no basis for finding that Plaintiff lacks a shared interest with other Class Members. *See, e.g.*, *Yang v. Focus Media Holding Ltd.*, No. 11-CV-9051 (CM)(GWG), 2014 WL 4401280, at *12 (S.D.N.Y. Sept. 4, 2014) (finding adequacy where "Plaintiff, like all Class Members, purchased Focus Media ADSs at artificially inflated prices during the Class Period as a result of Defendants' alleged materially false and misleading statements and was damaged thereby").

Proposed Class Counsel, Faruqi & Faruqi, LLP, are qualified, experienced, and have been actively involved throughout the pendency of this litigation. (*See* Faruqi & Faruqi, LLP Firm Resume, Ex. 1 to Wilson Decl., Dkt. 83-1; Pl. Mem. at 2-3, 22.) Since its appointment as Lead Counsel (*see* Order dated Nov. 16, 2021), Faruqi & Faruqi, LLP has engaged in confirmatory discovery, motion practice, and mediation ultimately resulting in settlement. (Pl. Mem. at 2-3.) Faruqi & Faruqi, LLP has brought dozens of similar actions across the country. (Faruqi & Faruqi, LLP Firm Resume at 1-3.)

Plaintiff and proposed Class Counsel are adequate representatives of the Class. Thus, the adequacy requirement is met.

E. Ascertainability

The implied requirement of ascertainability demands "only that a class be defined using objective criteria that establish a membership with definite boundaries." *In re Petrobras Sec.*, 862 F.3d 250, 264 (2d Cir. 2017).

The proposed Class is easily ascertainable. The Class is limited to those individuals who purchased or otherwise acquired Peloton securities from September 11, 2020 to May 5, 2021, and were damaged thereby.

F. Rule 23(b)(3)

Federal Rule of Civil Procedure 23(b)(3) requires that "questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3).

1. Predominance

The predominance requirement "tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation" and is achieved "if resolution of some of the legal or factual questions that qualify each class member's case as a genuine controversy can be achieved through generalized proof, and if these particular issues are more substantial than the issues subject only to individualized proof." *Moore v. PaineWebber, Inc.*, 306 F.3d 1247, 1252 (2d Cir. 2002) (quoting *Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 623 (1997)).

Here, common issues predominate as all members of the Settlement Class suffered the same alleged harms resulting from the same alleged misrepresentations, which are subject to generalized proof and applicable to the entire Class. The Settlement Class is thus sufficiently cohesive to meet the predominance requirement.

2. *Superiority*

The superiority requirement considers:

> (A) the class members' interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action.

Morangelli, 275 F.R.D. at 116 (citing Fed. R. Civ. P. 23(b)(3)). In assessing a settlement-only class certification, "a district court need not inquire whether the case, if tried, would present intractable management problems," because there will not be a trial. *Amchem*, 521 U.S. at 620.

"In general, securities suits easily satisfy the superiority requirement of Rule 23." *City of Westland Police and Fire Retirement System v. Metlife, Inc.*, No. 12-CV-256 (LAK)(AJP), 2017 WL 3608298, at *15 (S.D.N.Y. Aug 22, 2017). "Consolidating a class involving so many potential plaintiffs would promote judicial economy." *Stinson v. City of N.Y.*, 282 F.R.D. 360, 383 (S.D.N.Y. 2012). A class action is also far superior to requiring the claims to be tried individually "given that the likely monetary relief is not likely to exceed the costs of pursuing an individual claim." *Hill v. City of N.Y.*, No. 13-CV-6147 (PKC)(JO), 2019 WL 1900503, at *10 (E.D.N.Y. Apr. 29, 2019); *see also Stinson*, 282 F.R.D. at 383 ("the relatively small amount of damages suffered by each individual plaintiff decreases the possibility of individual lawsuits being filed"). The superiority requirement is met because a class action is superior to alternative forms of adjudication of these claims.

* * *

For the foregoing reasons, I find that preliminary certification of the Settlement Class, with preliminary approval of Plaintiff serving as Class Representative, is warranted under Federal Rules of Civil Procedure 23(a) and 23(b)(3) because the Court will likely be able to certify the Class after the final approving hearing.

II. Appointment of Class Counsel, Claims Administrator, and Escrow Agent

Plaintiff requests, with no opposition from Defendants, that the Court appoint Faruqi & Faruqi, LLP, as Class Counsel.

When appointing class counsel, courts must consider:

> (i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class.

Fed. R. Civ. P. 23(g)(1)(a).

As discussed in Section 1.D, *supra*, Faruqi & Faruqi, LLP has engaged in confirmatory discovery, motion practice, and mediation relating to this case. Faruqi & Faruqi, LLP has significant experience handling class action litigation, including securities fraud litigation. The Court finds that Faruqi & Faruqi, LLP are qualified and adequate and, therefore, preliminarily appoints them as Class Counsel (Faruqi & Faruqi, LLP hereinafter referred to as "Class Counsel").

The Court appoints Epiq Systems, Inc. ("Epiq") as the Claims Administrator to administer the Settlement. The Court also appoints Huntington National Bank ("Huntington") as the Escrow Agent to manage and administer the Settlement Fund for the benefit of the Settlement Class.

III. Preliminary Approval of Proposed Settlement Agreement

"A class action settlement approval procedure typically occurs in two stages: (1) preliminary approval—where 'prior to notice to the class, a court makes a preliminary evaluation of fairness,' and (2) final approval—where 'notice of a hearing is given to the class members, [and] class members and settling parties are provided the opportunity to be heard on the question of final court approval.'" *In re Payment Card*, 330 F.R.D. at 27 (alteration in original) (quoting *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, No. 11-CV-5450 (NRB), 2016 WL 7625708, at *2 (S.D.N.Y. Dec. 21, 2016)).

Factors relevant to the Court's decision whether to approve a proposed class action settlement include "(1) adequacy of representation, (2) existence of arm's-length negotiations, (3) adequacy of

relief, and (4) equitableness of treatment of class members." *Id.* (citing Fed. R. Civ. P. 23(e)(2)). Courts look to the nine "*Grinnell* factors to fill in any gaps and complete the analysis." *Cymbalista* 2021 WL 7906584, at *5 (collecting cases). These include:

> (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

City of Detroit v. Grinnell Corp., 495 F.2d 448, 463 (2d Cir. 1974) (citations omitted), *abrogated on other grounds by Goldberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000); *accord Charron v. Wiener*, 731 F.3d 241, 247 (2d Cir. 2013).

Considering both the procedural and substantive factors set forth in Fed. R. Civ. P. 23(e)(2), as well as the *Grinnell* factors, as discussed below, I find that the Court will likely be able to approve the parties' proposed Settlement Agreement as fair, reasonable, and adequate.

A. Rule 23(e)(2) Factors

1. *Adequate Representation by Class Representatives and Class Counsel – Fed R. Civ. P. 23(e)(2)(A)*

In determining the adequacy of representation by class representatives and class counsel, courts consider "whether (1) plaintiff's interests are antagonistic to the interest[s] of other members of the class and (2) plaintiff's attorneys are qualified, experienced and able to conduct the litigation." *Mikhlin* 2021 WL 1259559, at *4 (alteration in original) (quoting *Cordes & Co. Fin. Servs.*, 502 F.3d at 99).[3]

[3] "Because this factor is 'nearly identical to the Rule 23(a)(4) prerequisite of adequate representation in the class certification context,'" the Court's consideration of this factor is guided by Rule 23(a)(4) case law. *Mikhlin*, 2021 WL 1259559, at *4 n.3 (quoting *In re Payment Card*, 330 F.R.D. at 30 n.25).

As discussed in Section I.D, *supra*, Plaintiff and Class Counsel are adequate representatives of the Class. This factor weighs in favor of preliminary approval.

2. Arm's Length Negotiation – Fed. R. Vic. P. 23(e)(2)(B)

A class settlement "reached through arm's-length negotiations between experienced, capable counsel knowledgeable in complex class litigation . . . 'enjoy[s] a presumption of fairness.'" *In re GSE Bonds*, 414 F. Supp. 3d at 693 (quoting *In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 173-74 (S.D.N.Y. 2000)); *accord Mikhlin*, 2021 WL 1259559, at *5.

The Settlement Agreement was reached as the result of a "lengthy mediation session" conducted by David Murphy of Phillips ADR, "a well-respected and highly experienced mediator and former securities litigator." (Pl. Mem. at 3, 7; Settlement Agreement ¶¶ G, 45.) Settlement negotiations were conducted at arm's length with experienced legal counsel who were fully competent to assess the strengths and weaknesses of their respective clients' claims or defenses. (Pl. Mem. at 7; Settlement Agreement ¶ 45.)

This factor weighs in favor of preliminary approval.

3. Adequate Relief for the Class – Fed R. Civ. P. 23(e)(2)(C)

In evaluating whether the proposed settlement provides adequate relief for the class, the Court considers: "(i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including the timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3)." Fed. R. Civ. P. 23(e)(2)(C).

***a.* Costs, Risks, and Delay of Trial and Appeal – Fed. R. Civ. P. 23(e)(2)(C)(i)**

The first factor set forth under Rule 23(e)(2)(C), "the 'costs, risks, and delay of trial and appeal,' 'subsumes several *Grinnell factors*,' including the complexity, expense and likely duration of litigation, the risks of establishing liability, the risks of establishing damages, and the risks of maintaining the

class through trial." *Mikhlin*, 2021 WL 1259559, at *5 (quoting *In re Payment Card*, 330 F.R.D. at 36); *accord Cymbalista*, 2021 WL 7906584, at *6.

Courts favor settlement when it "results in 'substantial and tangible present recovery, without the attendant risk and delay of trial.'" *In re Payment Card*, 330 F.R.D. at 36 (quoting *Sykes v. Harris*, No. 09-CV-8486 (DC), 2016 WL 3030156, at *12 (S.D.N.Y. May 24, 2016) (citation omitted)). Class action lawsuits "have a well-deserved reputation as being most complex." *Id.* (quoting *In re Sumitomo Copper Litig.*, 189 F.R.D. 274, 281 (S.D.N.Y. 1999) (citation omitted)); *see also Garland v. Cohen & Krassner*, No. 08-CV-4626 (KAM)(RLM), 2011 WL 6010211, at *7 (E.D.N.Y. Nov. 29, 2011) ("Given the complexity of any class action lawsuit . . . it is reasonable to assume that absent the instant Settlement, continued litigation would have required extensive time and expense.").

"In considering the risks of establishing liability, the court 'need only assess the risks of litigation against the certainty of recovery under the proposed settlement.'" *Mikhlin*, 2021 WL 1259559, at *5 (quoting *In re Glob. Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 459 (S.D.N.Y. 2004)). "Settlement is favored in cases in which 'plaintiffs would have faced significant legal and factual obstacles to proving their case.'" *Id.* (quoting *In re Glob. Crossing*, 225 F.R.D. at 459).

Although Plaintiff believes that his claims are meritorious and supported by evidence, he acknowledges that further litigation poses significant risks and additional costs. Indeed, courts have long recognized that securities class action litigation "is notably difficult and notoriously uncertain." *In re Sumitomo Copper Litig.*, 189 F.R.D. at 281 (cleaned up). Were this case to proceed in litigation, Defendants would likely refile their motion to dismiss. If the case survived, the parties would move forward with substantial fact discovery, potential motions for summary judgment, trial, post-trial motions, and appeals—all of which would increase Plaintiff's risk and expenses. (*See* Pl. Mem. at 9.) The agreed upon settlement avoids the costs and expenses associated with extended litigation.

The parties have stipulated to Rule 23 class certification for settlement purposes only. (Settlement Agreement ¶ 2.) If this case were to proceed instead of settling, Defendants, who contest Plaintiff's allegations, could oppose class certification, furthering the uncertainty of Plaintiff prevailing. *See In re Payment Card*, 330 F.R.D. at 40 (finding this factor "'weighs in favor of settlement' where 'it is likely that defendants would oppose class certification' if the case were to be litigated" (quoting *Garland*, 2011 WL 6010211, at *8)).

In sum, the "costs, risks and delay of trial and appeal" are significant and weigh in favor of preliminary approval of the proposed settlement. *See* Fed. R. Civ. P. 23(e)(2)(C)(i).

b. **<u>Effectiveness of Proposed Method of Distributing Relief – Fed. R. Civ. P. 23(e)(2)(C)(ii)</u>**

A court must consider the effectiveness of the parties' "proposed method of distributing relief to the class, including the method of processing class-member claims." Fed. R. Civ. P. 23(e)(2)(C)(ii). "[U]niform relief to all [class members] … constitutes effective distribution." *Berni v. Barilla G. e R. Fratelli, S.p.A.*, 332 F.R.D. 14, 33 (E.D.N.Y. 2019), *vacated and remanded on other grounds sub nom.* 964 F.3d 141 (2d Cir. 2020). "A plan for allocating settlement funds 'need not be perfect[,]'" and "need only have a reasonable, rational basis, particularly if recommended by experienced and competent class counsel." *Mikhlin*, 2021 WL 1259559, at *6 (first quoting *In re EVCI Career Colleges Holding Corp. Sec. Litig.*, No. 05-CV-10240 (CM), 2007 WL 2230177, at *11 (S.D.N.Y. July 27, 2007); then quoting *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 344 (S.D.N.Y. 2005)).

The Settlement Agreement includes a detailed proposal for calculating and distributing the payout to each Class Member. The parties have selected a Claims Administrator, Epiq, who will be responsible for processing claims and an Escrow Agent, Huntington, for distributing the payout to each Class Member. (Settlement Agreement ¶¶ 21, 30.) As detailed above, *supra* pp. 4-6, Epiq will implement the Plan of Allocation uniformly to all members of the Settlement Class that submit valid and timely claims. Moreover, the proposed Notice, Postcard Notice, and Summary Notice adequately

describe the Settlement Agreement and provide, or direct Class Members to, resources that provide clear explanations of how to make a claim, opt out of the Class, or object to the Settlement Agreement.

The distribution plan appears fair and equitable. This factor, therefore, weighs in favor of preliminary approval.

c. **Terms of Proposed Award of Attorneys' Fees, Including Timing of Payment – Fed R. Civ. P. 23(e)(2)(C)(iii)**

"When analyzing the proposed settlement agreement for final approval, this Court will review Plaintiffs' application for attorneys' fees, taking into account the interests of the class." *Hart v. BHH, LLC*, 334 F.R.D. 74, 79 (S.D.N.Y. 2020). One method for calculating attorneys' fees, which is the trend in this Circuit, is the "'percentage of the fund' method." *McGreevy v. Life Alert Emergency Response, Inc.*, 258 F. Supp. 3d 380, 384 (S.D.N.Y. 2017). Under this method, the Court considers whether the requested fees are reasonable as compared to the settlement amount. *Id.* at 385. Factors to consider include fees awarded in similar cases, the risks to class counsel, and the lodestar calculation. *Id.* at 384 (citing *Goldberger*, 209 F. 3d. 43).

Class Counsel intends to apply for an award of attorneys' fees "in an amount up to 28% of the Settlement Amount, plus accrued interest, and expenses in an amount not to exceed $100,000." (Pl. Mem. at 10; Notice at 3-4; *see* Settlement Agreement ¶ 18.) Plaintiff will seek an award not to exceed $5,000 "for his reasonable costs and expenses in connection with representing the Settlement Class." (Pl. Mem. at 11; Notice at 3-4.) Class Counsel has not yet submitted a lodestar calculation. The Court, therefore, cannot assess the reasonableness of the requested attorneys' fees until a motion for final settlement approval is filed.

This factor weighs neither for nor against preliminary approval.

d. **Other Agreements by the Parties – Fed R. Civ. P. 23(e)(2)(C)(iv)**

The parties are required to "identify[] any agreement made in connection with the [settlement] proposal." Fed. R. Civ. P. 23(e)(3). The parties disclosed that they have entered into a confidential

Supplemental Agreement concerning the criteria which Defendants may use to "terminate the Settlement and render the Stipulation null and void in the event that requests for exclusion from the Settlement Class exceed certain agreed upon criteria." (Pl. Mem. at 11) (cleaned up). "This type of agreement is standard in securities class action settlements and has no negative impact on the fairness of the [s]ettlement." *Christine Asia Co., Ltd. v. Yun Ma*, No. 15-MD-02631 (CM)(SDA), 2019 WL 5257534 at *15 (S.D.N.Y. Oct. 16, 2019).

4. Equitable Treatment of Class Members Relative to Each Other – Fed. R. Civ. P. 23(e)(2)(D)

A court must consider whether the proposed settlement "treats class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2)(D). A court may consider "whether the apportionment of relief among class members takes appropriate account of differences among their claims, and whether the scope of the release may affect class members in different ways that bear on the apportionment of relief." Fed. R. Civ. P. 23 Advisory Committee's Note to 2018 Amendment.

As stated in section III.A.3.b, *supra*, the method of distribution appears fair and equitable. Class Members "will receive a *pro rata* share of the recovery based upon their claimed losses consistent with the Action's allegations." (Pl. Mem. at 12; *see* Settlement Agreement ¶ 24.) Accordingly, the Settlement Agreement treats all claimants uniformly.

This factor weighs in favor of preliminary approval.

B. Remaining Grinnell Factors

The *Grinnell* factors not covered by Rule 23(e)(2)(C)(i) are the reaction of the class to the settlement, the stage of the proceedings and the amount of discovery completed, the ability of the defendants to withstand a greater judgment, the range of the settlement fund in light of the best possible recovery, and the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation. A court's consideration of the stage of the proceedings and the amount of discovery completed "is intended to assure the Court 'that counsel for plaintiffs have

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weighed their position based on a full consideration of the possibilities facing them.'" *In re Glob. Crossing*, 225 F.R.D. at 458 (quoting *Klein ex rel. Ira v. PDG Remediation, Inc.*, No. 95-CV-4954 (DAB), 1999 WL 38179, at *2-3 (S.D.N.Y. Jan. 28, 1999)).

The Court will not know the Class's reaction to the proposed settlement until after notice has been provided to the Class. I, therefore, am unable to consider this factor at this stage of the proceedings. *See Mikhlin*, 2021 WL 1259559, at *4 n.2; *Caballero ex rel. Tong v. Senior Health Partners, Inc.*, Nos. 16-CV-0326 (CLP), 18-CV-2380 (CLP), 2018 WL 4210136, at *11 (E.D.N.Y. Sept. 4, 2018).

With regard to the remaining factors, the parties represent that "[a]lthough the Settlement was achieved early in the litigation, it was reached only after the parties on both sides had a comprehensive understanding of the potential risks and procedural hurdles facing further litigation." (Pl. Mem. at 13.) For example, prior to the mediation, Class Counsel "conducted a through investigation . . . consulted with investigators who conducted an investigation . . . and consulted with damages experts to evaluate the Settlement Class's damages and loss causation issues." (*Id.*) The terms of the Settlement Agreement are comprehensive and provide Class Members with clearly described monetary relief which is reasonable in light of the risks and inherent uncertainty of trial. Although Defendants could likely withstand a greater judgment, "this factor standing alone does not mean that the settlement is unfair." *Philemon v. Aries Capital Partners, Inc.*, No. 18-CV-1927 (CLP), 2019 WL 13224983, at *12 (E.D.N.Y. July 1, 2019).

Class Counsel appears to have filed the Motion with "a thorough understanding of the strengths and weaknesses of their case," *In re Citigroup Inc. Bond Litig.*, 296 F.R.D. 147, 156 (S.D.N.Y. 2013), and "the requisite information to make [an] informed decision[] about the relative benefits of litigating or settling." *In re Glob. Crossing*, 225 F.R.D. at 458.

This factor weighs in favor of preliminary approval of the settlement agreement.

* * *

Having weighed the Rule 23(e)(2) and *Grinnell* factors, I find that the Court will likely be able to approve the proposed settlement as fair, reasonable, and adequate.

IV. Distribution of the Class Notice

Once a court has determined that it will likely be able to approve the proposed settlement and certify the class, it "must direct notice in a reasonable manner to all class members who would be bound by the proposal." Fed. R. Civ. P. 23(e)(1)(B).

The Private Securities Litigation Reform Act of 1995 ("PSLRA") requires that any proposed settlement agreement disseminated to the class must include (1) a statement of plaintiff recovery, (2) a statement of potential outcome of case, (3) a statement of attorneys' fees or costs sought, (4) an identification of lawyers' representatives, (5) the reason for settlement, and (6) any other information as required by the Court. 15 U.S.C. § 78u-4(a)(7).

For Rule 23(b)(3) classes, "the court must direct to class members the best notice that is practicable under the circumstances" which includes "individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). The notice "must clearly and concisely state in plain, easily understood language" the following information:

> (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3).

Fed. Civ. P. 23(c)(2)(B).

"There are no rigid rules to determine whether a settlement notice to the class satisfies constitutional or Rule 23(e) requirements . . . Notice is adequate if it may be understood by the average class member." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 114 (2d Cir. 2005) (citation omitted). At the same time, "[c]ourts in this Circuit have explained that a Rule 23 Notice will satisfy

due process when it describes the terms of the settlement generally, informs the class about the allocation of attorneys' fees, and provides specific information regarding the date, time, and place of the final approval hearing." *Mikhlin*, 2021 WL 1259559, at *12 (quoting *In re Payment Card*, 330 F.R.D. at 58).

As described, *infra* pp. 5-6, Epiq, as Claims Administrator, will mail the Postcard Notice to those members of the Settlement Class that can be identified through reasonable effort. (Settlement Agreement ¶ 22.) The Postcard Notice directs potential Class Members to the Settlement Website where the Claim Form and Notice provides more detailed information about the settlement. (Postcard Notice at 2 (ECF pagination).) In addition, Epiq will ensure publication of the Summary Notice in *Investor's Business Daily* and transmission over *GlobeNewsire*. (Proposed Order ¶ 12; *see* Settlement Agreement ¶ 1-zz, 22; Pl. Mem. at 24.)

Because the Postcard Notice, Notice, and Summary Notice provide reasonable notice to Settlement Class Members and clearly and concisely states in plain, easily understood language the requisite information, I find that the proposed forms of notice are reasonable under Rule 23 and satisfy constitutional due process.

CONCLUSIONS

1. The Court has reviewed the Settlement Agreement and preliminarily approves the settlement set forth therein, subject to further consideration at the Final Approval Hearing described below.
2. Pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure, and for purposes of this settlement only, the action is preliminarily certified as a class action on behalf of all persons or entities who purchased or otherwise acquired Peloton securities from September 11, 2020 to May 5, 2021, inclusive, and were damaged thereby. Excluded from the Settlement Class are (i) Defendants; (ii) current and former officers and directors of Peloton; (iii) members of the

immediate family of each of the Individual Defendants; (iv) all subsidiaries and affiliates of Peloton and the directors and officers of Peloton and their respective subsidiaries or affiliates; (v) all persons, firms, trusts, corporations, officers, directors, and any other individual or entity in which any Defendant has a controlling interest; (vi) the legal representatives, agents, affiliates, heirs, successors-in-interest or assigns of all such excluded parties; and (vii) any persons or entities who properly exclude themselves by filing a valid and timely request for exclusion.

3. The Court finds, for purposes of settlement only, that the prerequisites for a class action under Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been satisfied in that: (a) the number of Settlement Class Members is so numerous that joinder of all members is impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the claims of Plaintiff are typical of the claims of the Settlement Class he seeks to represent; (d) Plaintiff and Lead Counsel have and will continue to fairly and adequately represent the interests of the Settlement Class; (e) the questions of law and fact common to the Members of the Settlement Class predominate over any questions affecting only individual Settlement Class Members; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for purposes of settlement only, Plaintiff is certified as the Class Representative on behalf of the Settlement Class, and Lead Counsel is hereby appointed as Class Counsel.

5. A Final Approval Hearing shall be held before this Court on June 19, 2024 at 10:00 a.m. at the United States District Court for the Eastern District of New York, Theodore Roosevelt United States Courthouse, 225 Cadman Plaza East, Brooklyn, NY 11201, Courtroom 11C South, to determine whether the proposed settlement of the Action on the terms and conditions

provided for in the Settlement Agreement is fair, reasonable, and adequate and should be approved by the Court, whether a Judgment should be entered, and whether the proposed Plan of Allocation is fair, reasonable, and adequate and should be approved; to determine the amount of fees and expenses to be awarded to Class Counsel; and to determine any award to Plaintiff pursuant to 15 U.S.C. § 78u-4(a)(4). The Court may adjourn the Final Approval Hearing without further notice to the members of the Settlement Class.

6. The Court approves, as to form and content, the Notice, the Postcard Notice, and the Claim Form and finds that the mailing and distribution of the Postcard Notice and Notice substantially in the manner and form set forth in ¶¶ 11-12 of this Order meet the requirements of Federal Rule of Civil Procedure 23, the PSLRA, and due process, and is the best notice practicable under the circumstances and constitutes due and sufficient notice to all Persons entitled hereto.

7. The firm of Epiq Systems, Inc. is appointed to supervise and administer the notice program as well as the processing of claims as more fully set forth below.

8. The Court approves the appointment of Huntington National Bank as the Escrow Agent to manage and administer the Settlement Fund for the benefit of the Settlement Class.

9. Not later than five (5) business days after the date of this Order, Peloton shall provide to Lead Counsel transfer records in electronic searchable form containing the names and addresses of Persons who may have purchased or acquired Peloton securities during the Class Period, to the extent that information is available from Peloton's transfer agent. This information shall be kept confidential and shall not be used for any purpose other than to provide the notice contemplated by this Order.

10. Not later than twenty-one (21) calendar days after the date of this Order, the Claims Administrator, shall mail the Postcard Notice to the list of record holders of Peloton securities,

and shall post to its website at www.PelotonSecuritiesSettlement.com the Settlement Agreement and its exhibits, this Order, and a copy of the Notice and Claim Form.

11. The Claims Administrator shall use reasonable efforts to give notice to nominee purchasers such as brokerage firms and other persons and entities that purchased or acquired Peloton securities during the Class Period as record owners but not as beneficial owners. Those nominees shall either forward the Postcard Notice to all such beneficial owners or provide a list of the known names, addresses, and email addresses to the Claims Administrator, who shall send the Postcard Notice to such beneficial owners.

12. The Court approves the form of the Summary Notice and directs the Claims Administrator to have the Summary Notice be published in *Investor's Business Daily* and transmitted over *GlobeNewswire* within fourteen (14) calendar days after the date of this Order.

13. Class Counsel shall, at least seven (7) calendar days prior to the Final Approval Hearings, file with the Court proof of mailing of the Postcard Notice and proof of publishing of the Summary Notice.

14. The form and content of the notice program, and the methods herein of notifying the Settlement Class of the Settlement terms and conditions meet the requirements of Rule 23 of the Federal Rules of Civil Procedure, the PSLRA, 15 U.S.C. § 78u-4(a)(7), and due process, constitute the best notice practicable under the circumstances, and constitute sufficient notice to all those entitled to notice.

15. In order to be eligible to receive a distribution from the Net Settlement Fund, all claimants must submit a properly executed Claim Form to the Claims Administrator, electronically or at the address indicated in the Notice, postmarked or submitted electronically no later than May 21, 2024, or such deadline as the Court may further order. Any Settlement Class Member who does not timely submit a Claim Form shall be barred from sharing in the distribution of the

Net Settlement Fund, unless otherwise ordered by the Court, but shall remain bound by all determinations and judgments in this Action concerning the Settlement, as provided in paragraph 17 of this Order. Notwithstanding the foregoing, Class Counsel may, in its discretion, accept late submitted claims for processing by the Claims Administrator so long as distribution of the Net Settlement Fund to Authorized Claimants is not materially delayed thereby.

16. Any Settlement Class Members may enter an appearance in this Action at their own expense, individually or through counsel of their choice. If any Settlement Class Member does not enter an appearance, they will be represented by Class Counsel.

17. Settlement Class Members shall be bound by all orders, determinations, and judgments in this Action concerning the Settlement, unless they timely request exclusion from the Settlement Class by emailing or mailing such request to the addresses designated in the Notice so it is received on or before May 29, 2024. Such request for exclusion must state the name, address and telephone number of the person seeking exclusion, must state that the sender requests to be "excluded from the Class and does not wish to participate in the settlement in *In re Peloton Interactive, Inc. Securities Litigation*, No. 21-cv-2369 (CBA)(PK) (E.D.N.Y.)," be signed by such person, and provide the transaction information required by the Notice.

18. Putative Settlement Class Members who timely and validly request exclusion from the Settlement Class shall not be eligible to receive any payment out of the Net Settlement Fund as described in the Settlement Agreement and Notice.

19. The Court will consider any Settlement Class Member's objection to the Settlement, the Plan of Allocation, the application for an award of attorneys' fees, expenses, and/or an award to Plaintiff only if such Settlement Class Members have served by hand or by mail their written objection and supporting papers, such that they are received on or before twenty-one (21)

calendar days before the Final Approval Hearing, by the Clerk of Court, Lead Counsel, and Defendants' Counsel at the addresses set forth below:

Clerk's Office
Clerk of the Court
United States District Court
Eastern District of New York
Theodore Roosevelt Courthouse
225 Cadman Plaza East
Brooklyn, NY 11201

Lead Counsel
James M. Wilson, Jr.
FARUQI & FARUQI, LLP
685 Third Avenue, 26th Floor
New York, NY 10017

Defendants' Counsel
Andrew B. Clubok
LATHAM & WATKINS, LLP
555 Eleventh Street, NW, Suite 1000
Washington, DC 20004

Any Settlement Class Member who does not make an objection in the manner provided for in the Notice shall be deemed to have waived such objection and shall forever before closed from making any objection to any aspect of the Settlement, to the Plan of Allocation, or to the requests for attorneys' fees, expenses, or Plaintiff's award, unless otherwise ordered by the Court, but shall otherwise be bound by the Judgment to be entered and the releases to be given. Attendance at the hearing is not necessary, however, persons wishing to be heard orally in opposition to the approval of the Settlement, the Plan of Allocation, and/or the application for an award of attorneys' fees, expenses, and an award to the Plaintiff are required to indicate in their written objection their intention to appear at the hearing. Persons who intend to object to Settlement, the Plan of Allocation, and/or the application for an award of attorneys' fees, expenses, and an award to Plaintiff and desire to present evidence at the Final Approval

Hearing must include in their written objections the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the Final Approval Hearing.

20. Settlement Class Members do not need to appear at the hearing or take any other action to indicate their approval.

21. Pending final determination of whether the Settlement should be approved, Plaintiff, Settlement Class Members, and anyone who acts or purports to act on their behalf, shall not institute, commence, or prosecute any action which asserts Released Claims against Defendants Releasees.

22. As provided in the Settlement Agreement, the Escrow Agent may advance at the direction of Class Counsel up to $655,000 from the Settlement Fund prior to the Effective Date to pay Notice and Administration Expenses. For any additional Notice and Administration Expenses above $655,000, Class Counsel shall obtain Court approval for payments out of the Escrow Account.

23. All papers in support of the request for final approval of the Settlement Agreement, Plan of Allocation, and any application by Class Counsel for attorneys' fees and expenses or by Plaintiff for his costs and expenses shall be filed and served on or before April 24, 2024. Any reply papers shall be filed and served by June 12, 2024.

Dated: Brooklyn, New York
February 21, 2024

SO ORDERED:

Peggy Kuo
PEGGY KUO
United States Magistrate Judge

EXHIBIT 2

Faruqi & Faruqi, LLP focuses on complex civil litigation, including securities, antitrust, wage and hour, consumer, and pharmaceutical class actions as well as shareholder derivative and merger and transactional litigation. The firm is headquartered in New York, and maintains offices in California, Pennsylvania and Georgia.

Since its founding in 1995, Faruqi & Faruqi, LLP has served as lead or co-lead counsel in numerous high-profile cases which have provided significant recoveries to investors, consumers and employees.

PRACTICE AREAS

SECURITIES FRAUD LITIGATION

From its inception, Faruqi & Faruqi, LLP has devoted a substantial portion of its practice to class action securities fraud litigation. In *In re PurchasePro.com, Inc. Securities Litigation*, No. CV-S-01-0483 (JLQ) (D. Nev.), as co-lead counsel for the class, Faruqi & Faruqi, LLP secured a $24.2 million settlement in a securities fraud litigation even though the corporate defendant was in bankruptcy. As noted by Senior Judge Justin L. Quackenbush in approving the settlement, ***"I feel that counsel for plaintiffs evidenced that they were and are skilled in the field of securities litigation."***

Other past achievements include: *In re Olsten Corp. Sec. Litig.*, No. 97-CV-5056 (RDH) (E.D.N.Y.) (recovered $24.1 million dollars for class members) (Judge Hurley stated: "The quality of representation here I think has been excellent."), *In re Tellium, Inc. Sec. Litig.*, No. 02-CV-5878 (FLW) (D.N.J.) (recovered $5.5 million dollars for class members); *In re Mitcham Indus., Inc. Sec. Litig.*, No. H-98-1244 (S.D. Tex.) (recovered $3 million dollars for class members despite the fact that corporate defendant was on the verge of declaring bankruptcy), and *Ruskin v. TIG Holdings, Inc.*, No. 98 Civ. 1068 LLS (S.D.N.Y.) (recovered $3 million dollars for class members).

Recently, Faruqi & Faruqi, LLP, as sole lead counsel, won a historic appeal in the United States Court of Appeals for the Fourth Circuit in *Zak v. Chelsea Therapeutics Inc. Int'l, Ltd.*, Civ. No. 13-2730 (2015), where the Court reversed a trial court's *scienter* ruling for the first time since the enactment of the Private Securities Litigation Reform Act of 1995 ("PSLRA"). The Court remanded the case to the district court, where Faruqi & Faruqi, LLP defeated defendants' motion to dismiss and subsequently obtained final approval of a $5.5 million settlement for the class. *McIntyre v. Chelsea Therapeutics Int'l, LTD*, No. 12-CV-213 (MOC) (DCK) (W.D.N.C.). In *In re Tahoe Resources, Inc. Securities Litigation*, No. 17-cv-01868-RFB-NJK (D. Nev.), Faruqi & Faruqi, LLP served as sole lead counsel for the class, defeated defendants' motion to dismiss and subsequently obtained final approval of a $19.5 million settlement for the class. In *In re Avalanche Biotechnologies Sec. Litig.*, No. 3:15-cv-03185-JD (N.D. Cal.), Faruqi &

Faruqi, LLP served as sole lead counsel for the class in the federal court action, and, together with counsel in the parallel state court action, secured final approval of a $13 million global settlement of both actions on January 19, 2018. In *Larkin v. GoPro, Inc.*, No. 4:16-CV-06654-CW (N.D. Cal.), the court denied defendants' motion to dismiss, and on September 20, 2019, Faruqi & Faruqi, LLP, as sole lead counsel, secured final approval of a $6.75 million settlement for the class. In *Rihn v. Acadia Pharmaceuticals, Inc.*, No. 3:15-cv-00575-BTM-DHB (S.D. Cal.), the court denied defendants' first motion to dismiss, and on January 8, 2018, Faruqi & Faruqi, LLP, as sole lead counsel for the class, secured final approval of a $2.95 million settlement for the class, which represented approximately 36% of the total recognized losses claimed by the class. In *In re Geron Corp., Sec. Litig.*, No. 14-CV-1424 (CRB) (N.D. Cal.), Faruqi & Faruqi, LLP, as sole lead counsel for the class, defeated defendants' motion to dismiss and, on July 21, 2017, obtained final approval of a settlement awarding $6.25 million to the class. Also, in *In re Dynavax Techs. Corp. Sec. Litig.*, No. 13-CV-2796 (CRB) (N.D. Cal.), Faruqi & Faruqi, LLP, as sole lead counsel for the class, defeated defendants' motion to dismiss, and on February 6, 2017, secured final approval of a $4.5 million settlement on behalf of the class. In *In re L&L Energy, Inc. Sec. Litig.*, No. 13-cv-6704 (RA) (S.D.N.Y.), Faruqi & Faruqi, LLP, as co-lead counsel, obtained final approval on July 31, 2015 of a $3.5 million settlement for the class. In *In re Ebix, Inc. Securities Litigation*, No. 11-cv-2400 (RWS) (N.D. Ga.), the court denied defendants' motion to dismiss and Faruqi & Faruqi, LLP, as sole lead counsel, obtained final approval on June 13, 2014 of a $6.5 million settlement for the class. In *Shapiro v. Matrixx Initiatives, Inc.*, No. CV-09-1479 (PHX) (ROS) (D. Ariz.), Faruqi & Faruqi, LLP, as co-lead counsel for the class, defeated defendants' motion to dismiss, succeeded in having the action certified as a class action, and secured final approval of a $4.5 million settlement for the class. *See also Lowthorp v. Mesa Air Group, Inc., et al.*, No. 2:20-cv-00648-MTL (D. Ariz.) (as sole lead counsel, obtained final approval of a $5 million settlement on behalf of the class); *In re Longwei Petroleum Inv. Holding Ltd. Sec. Litig.*, No. 13 Civ. 214 (HB) (S.D.N.Y.) (as sole lead counsel, obtained final approval of a $1.34 million settlement on behalf of the class); *Simmons v. Spencer, et al.*, No. 13 Civ. 8216 (RWS) (S.D.N.Y.) (as co-lead counsel obtained final approval of settlement awarding $1.5 million to the class); *In re: Revolution Lighting Technologies, Inc. Securities Litigation*, No. 1:19-cv-00980-JPO (S.D.N.Y.) (where, as sole lead counsel, the firm obtained final approval of $2,083,333.33 settlement); *Sterrett v. Sonim Techs., Inc.*, No. 3:19-cv-06416-MMC (N.D. Cal.) (where, as sole lead counsel, the firm obtained final approval of $2 million settlement); *Rudani v. Ideanomics, Inc.*, No. 1:19-cv-06741-GBD (S.D.N.Y.) (where, as sole lead counsel, the firm obtained final approval of $5 million settlement); *In re CV Scis., Inc. Sec. Litig.*, No.

2:18-cv-01602-JAD-BNM (D. Nev.) (where. as sole lead counsel, the firm obtained final approval of $712,500 settlement).

Additionally, Faruqi & Faruqi, LLP is serving as court-appointed lead counsel in the following cases:

- *Halman Aldubi Provident and Pension Funds Ltd. v. Teva Pharmaceuticals Industries Ltd.*, No. 20-4660-KSM (E.D. Pa.) (appointed as sole lead counsel for the class);
- *In Re Peloton Interactive, Inc. Securities Litigation*, No. 1:21-cv-02369-CBA-PK (S.D.N.Y.) (appointed as sole lead counsel for the class);
- *Aramic LLC v. Revance Therapeutics, Inc.*, No. 5:21-cv-09585-EJD (N.D. Cal.) (appointed as sole lead counsel for the class);
- *In re: Lumen Technologies, Inc. Securities Litigation*, No. 3:12-cv-00286-TAD-KDM (W.D. La.) (appointed as co-lead counsel for the class);
- *Murphy v. Argo Blockchain plc*, No. 1:23-cv-00572-NRM-SJB (E.D.N.Y.) (appointed as sole lead counsel for the class);
- *Kain v. Ampio Pharmaceuticals, Inc.*, No. 1:22-cv-02105-WJM-MEH (D. Colo.) (appointed as sole lead counsel for the class);
- *Johnson v. Luminar Technologies, Inc.*, No. 6:23-cv-982-PGB-LHP (M.D. Fla.) (appointed as sole lead counsel for the class);
- *Lim v. Hightower*, No. 4:23-cv-01454-BYP (N.D. Ohio) (appointed sole lead counsel for the class); and
- *Clifton v. Willis*, No. 1:22-cv-03161-DDD-JPO (D. Colo.) (appointed sole lead counsel for the class).

SHAREHOLDER MERGER AND TRANSACTIONAL LITIGATION

Faruqi & Faruqi, LLP is nationally recognized for its excellence in prosecuting shareholder class actions brought nationwide against officers, directors and other parties responsible for corporate wrongdoing. Most of these cases are based upon state statutory or common law principles involving fiduciary duties owed to investors by corporate insiders as well as Exchange Act violations.

Faruqi & Faruqi, LLP has obtained significant monetary and therapeutic recoveries, including millions of dollars in increased merger consideration for public shareholders; additional disclosure of significant material information so that shareholders can intelligently gauge the fairness of the terms of proposed transactions and other types of therapeutic relief designed to increase competitive bids and protect shareholder value. As noted by Judge Timothy S. Black of the United States District Court for the Southern District of Ohio in appointing lead counsel *Nichting v. DPL Inc.*, Case No. 3:11-cv-141 (S.D. Ohio), "[a]lthough all of the firms seeking appointment as Lead Counsel have impressive resumes, the Court is most impressed with Faruqi & Faruqi."

For example, in *Hall v. Berry Petroleum Co.*, No. 8476-VCG (Del. Ch.), Faruqi & Faruqi, LLP as sole lead counsel was credited by the Delaware Chancery Court with contributing to an increase in exchange ratio in an all-stock transaction that provided Berry Petroleum Co. stockholders with an additional $600 million in consideration for their shares as well as the disclosure of additional material information

regarding the transaction. The court noted at the settlement hearing "[t]he ability of petitioning counsel [Faruqi] is known to the Court, and plaintiff's counsel [Faruqi] are well versed in the prosecution of corporate law actions." Faruqi & Faruqi, LLP achieved a similar result in *In Re Energysolutions, Inc. Shareholder Litigation*, Cons. C.A. No. 8203-VCG (Del. Ch.), in which the Faruqi Firm, as co-lead counsel, was credited in part with an increase in the merger consideration from $3.75 to $4.15 in cash per Energysolution share by the acquirer Energy Capital, and credited with additional material disclosures distributed to stockholders. In approving the settlement of the case and noting that the price increase amounted to an extra $36 million for stockholders, the Delaware Court stated that the standing and ability of the stockholders' counsel, including Faruqi & Faruqi, LLP and its co-counsel, is "…among the highest in our bar." *See In Re Energysolutions, Inc. S'holder Litig.*, Cons. C.A. No. 8203-VCG (Del. Ch. Feb. 11, 2014). In *In Re Jefferies Group, Inc. Shareholders Litigation*, C.A. No. 8059-CB (Del. Ch.), Faruqi & Faruqi, LLP acted as co-lead counsel representing Jeffries Group, Inc. stockholders in challenging the transaction with Leucadia National Corporation. After years of vigorous litigation, the parties reached a settlement that recovered $70 million additional consideration for the former Jeffries Group Inc. stockholders.

In *In re Playboy Enterprises, Inc. Shareholders Litigation*, Consol. C.A. No. 5632-VCN (Del. Ch.), Faruqi & Faruqi, LLP achieved a substantial post close settlement of $5.25 million. In *In re Cogent, Inc. Shareholders Litigation*, Consol. C.A. No. 5780-VC (Del. Ch.) Faruqi & Faruqi, LLP, as co-lead counsel, obtained a post-close cash settlement of $1.9 million after two years of hotly contested litigation; In *Rice v. Lafarge* North *America, Inc., et al.*, No. 268974-V (Montgomery Cty., Md. Circuit Ct.), Faruqi & Faruqi, LLP, as co-lead counsel represented the public shareholders of Lafarge North America ("LNA") in challenging the buyout of LNA by its French parent, Lafarge S.A., at $75.00 per share. After discovery and intensive injunction motions practice, the price per share was increased from $75.00 to $85.50 per share, or a total benefit to the public shareholders of $388 million. The Lafarge court gave Class counsel, including Faruqi & Faruqi, LLP, shared credit with a special committee appointed by the company's board of directors for a significant portion of the price increase.

Similarly, in *In re: Hearst-Argyle Shareholder Litig.,* Lead Case No. 09-Civ-600926 (N.Y. Sup. Ct.) as co-lead counsel for plaintiffs, Faruqi & Faruqi, LLP litigated, in coordination with Hearst-Argyle's special committee, an increase of over 12.5%, or $8,740,648, from the initial transaction value offered for Hearst-Argyle Television Inc.'s stock by its parent company, Hearst Corporation. Faruqi & Faruqi, LLP, in *In re Alfa Corp. Shareholder Litig.*, Case No. 03-CV-2007-900485.00 (Montgomery Cty, Ala. Cir. Ct.) was instrumental, along with the Company's special committee, in securing an increased share price for Alfa Corporation shareholders of $22.00 from the originally-proposed $17.60 per share offer, which represented

over a $160 million benefit to class members, and obtained additional proxy disclosures to ensure that Alfa shareholders were fully-informed before making their decision to vote in favor of the merger, or seek appraisal.

Moreover, in *In re Fox Entertainment Group, Inc. S'holders Litig.*, Consolidated C.A. No. 1033-N (Del. Ch. 2005), Faruqi & Faruqi, LLP, a member of the three (3) firm executive committee, and in coordination with Fox Entertainment Group's special committee, created an increased offer price from the original proposal to shareholders, which represented an increased benefit to Fox Entertainment Group, Inc. shareholders of $450 million. Also, in *In re Howmet Int'l S'holder Litig.*, Consolidated C.A. No. 17575 (Del. Ch. 1999) Faruqi & Faruqi, LLP, in coordination with Howmet's special committee, successfully obtained an increased benefit to class members of $61.5 million dollars).

Recently, in *In re Orchard Enterprises, Inc. Stockholder Litigation*, C.A. No. 7840-VCL (Del. Ch.), Faruqi & Faruqi, LLP acted as co-lead counsel with two other firms. That action involved the approval of a merger by Orchard's Board of Directors pursuant to which Dimensional Associates LLC would cash-out the stock of Orchard's minority common stockholders at a price of $2.05 per share and then take Orchard private. On April 11, 2014, the parties reached an agreement to settle their claims for a payment of $10.725 million to be distributed among the Class, which considerably exceeded the $2.62 per share difference between the $2.05 buyout price and the $4.67 appraisal price determined in *In re Appraisal of The Orchard Enterprises, Inc.*, C.A. No. 5713-CS, 2012 WL 2923305 (Del. Ch. July 18, 2012).

Faruqi also has noteworthy successes in achieving injunctive or declaratory relief pre and post close in cases where corporate wrongdoing deprives shareholders of material information or an opportunity to share in potential profits. In *In re Harleysville Group, Inc. S'holders Litigation*, C.A. Bo. 6907-VCP (Del. Ch. 2014), Faruqi as sole lead counsel obtained significant disclosures for stockholders pre-close and secured valuable relief post close in the form of an Anti-Flip Provision providing former stockholders with 25% of any profits in Qualifying Sale. In April 2012, Faruqi as sole lead obtained an unprecedented injunction in *Knee v. Brocade Communications Systems, Inc.*, No. 1-12-CV-220249, slip op. at 2 (Cal. Super. Ct. Apr. 10, 2012) (Kleinberg, J.). In *Brocade*, Faruqi, as sole lead counsel for plaintiffs, successfully obtained an injunction enjoining Brocade's 2012 shareholder vote because certain information relating to projected executive compensation was not properly disclosed in the proxy statement. (Order After Hearing [Plaintiff's Motion for Preliminary Injunction; Motions to Seal]). In *Kajaria v. Cohen*, No. 1:10-CV-03141 (N.D. Ga., Atlanta Div.), Faruqi & Faruqi, LLP, succeeded in having the district court order Bluelinx Holdings Inc., the target company in a tender offer, to issue additional material disclosures to its recommendation statement to shareholders before the expiration of the tender offer.

SHAREHOLDER DERIVATIVE LITIGATION

Faruqi & Faruqi, LLP has extensive experience litigating shareholder derivative actions on behalf of corporate entities. This litigation is often necessary when the corporation has been injured by the wrongdoing of its officers and directors. This wrongdoing can be either active, such as the wrongdoing by certain corporate officers in connection with purposeful backdating of stock-options, or passive, such as the failure to put in place proper internal controls, which leads to the violation of laws and accounting procedures. A shareholder has the right to commence a derivative action when the company's directors are unwilling or unable, to pursue claims against the wrongdoers, which is often the case when the directors themselves are the wrongdoers.

The purpose of the derivative action is threefold: (1) to make the company whole by holding those responsible for the wrongdoing accountable; (2) the establishment of procedures at the company to ensure the damaging acts can never again occur at the company; and (3) make the company more responsive to its shareholders. Improved corporate governance and shareholder responsiveness are particularly valuable because they make the company a stronger one going forward, which benefits its shareholders. For example, studies have shown the companies with poor corporate governance scores have 5-year returns that are 3.95% below the industry average, while companies with good corporate governance scores have 5-year returns that are 7.91 % above the industry-adjusted average. The difference in performance between these two groups is 11.86%. *Corporate Governance Study: The Correlation between Corporate Governance and Company Performance*, Lawrence D. Brown, Ph.D., Distinguished Professor of Accountancy, Georgia State University and Marcus L. Caylor, Ph.D. Student, Georgia State University. Faruqi & Faruqi, LLP has achieved all three of the above stated goals of a derivative action. The firm regularly obtains significant corporate governance changes in connection with the successful resolution of derivative actions, in addition to monetary recoveries that inure directly to the benefit of the company. In each case, the company's shareholders indirectly benefit through an improved market price and market perception.

In *In re UnitedHealth Group Incorporated Derivative Litig.*, Case No. 27 CV 06-8065 (Minn. 4th Judicial Dist. 2009) Faruqi & Faruqi, LLP, as co-lead counsel for plaintiffs, obtained a recovery of more than $930 million for the benefit of the Company and corporate governance reforms designed to make UnitedHealth a model of corporate responsibility and transparency. ***At the time, the settlement reached was believed to be the largest settlement ever in a derivative case***. *See* "UnitedHealth's Former Chief

to Repay $600 Million," Bloomberg.com, December 6, 2007 ("the settlement . . . would be the largest ever in a 'derivative' suit . . . according to data compiled by Bloomberg.").

As co-lead counsel in *Weissman v. John, et al.*, Cause No. 2007-31254 (Tex. Harris County 2008) Faruqi & Faruqi, LLP, diligently litigated a shareholder derivative action on behalf of Key Energy Services, Inc. for more than three years and caused the company to adopt a multitude of corporate governance reforms which far exceeded listing and regulatory requirements. Such reforms included, among other things, the appointment of a new senior management team, the realignment of personnel, the institution of training sessions on internal control processes and activities, and the addition of 14 new accountants at the company with experience in public accounting, financial reporting, tax accounting, and SOX compliance.

More recently, Faruqi & Faruqi, LLP concluded shareholder derivative litigation in *The Booth Family Trust, et al. v. Jeffries, et al.*, Lead Case No. 05-cv-00860 (S.D. Ohio 2005) on behalf of Abercrombie & Fitch Co. Faruqi & Faruqi, LLP, as co-lead counsel for plaintiffs, litigated the case for six years through an appeal in the U.S. Court of Appeals for the Sixth Circuit where it successfully obtained reversal of the district court's ruling dismissing the shareholder derivative action in April 2011. Once remanded to the district court, Faruqi & Faruqi, LLP caused the company to adopt important corporate governance reforms narrowly targeted to remedy the alleged insider trading and discriminatory employment practices that gave rise to the shareholder derivative action.

The favorable outcome obtained by Faruqi & Faruqi, LLP in *In re Forest Laboratories, Inc. Derivative Litigation*, Lead Civil Action No. 05-cv-3489 (S.D.N.Y. 2005) is another notable achievement for the firm. After more than six years of litigation, Faruqi & Faruqi, LLP, as co-lead counsel, caused the company to adopt industry-leading corporate governance measures that included rigorous monitoring mechanisms and Board-level oversight procedures to ensure the timely and complete publication of clinical drug trial results to the investing public and to deter, among other things, the unlawful off-label promotion of drugs.

ANTITRUST LITIGATION

The attorneys at Faruqi & Faruqi, LLP represent direct purchasers, competitors, third-party payors, and consumers in a variety of individual and class action antitrust cases brought under Sections 1 and 2 of the Sherman Act. These actions, which typically seek treble damages under Section 4 of the Clayton Act, have been commenced by businesses and consumers injured by anticompetitive agreements to fix prices or allocate markets, conduct that excludes or delays competition, and other monopolistic or conspiratorial conduct that harms competition.

Actions for excluded competitors. Faruqi & Faruqi represents competitors harmed by anticompetitive practices that reduce their sales, profits, and/or market share. One representative action is *Babyage.com, Inc., et al. v. Toys "R" Us, Inc., et al*. where Faruqi & Faruqi was retained to represent three internet retailers of baby products, who challenged a dominant retailer's anticompetitive scheme, in concert with their upstream suppliers, to impose and enforce resale price maintenance in violation of §§ 1 and 2 of the Sherman Act and state law. The action sought damages measured as lost sales and profits. This case was followed extensively by the Wall Street Journal. After several years of litigation, this action settled for an undisclosed amount.

Actions for direct purchasers. Faruqi & Faruqi represents direct purchasers who have paid overcharges as a result of anticompetitive practices that raise prices. These actions are typically initiated as class actions. A representative action on behalf of direct purchasers is *Rochester Drug Co-Operative, Inc. v. Warner Chilcott Public Limited Company, et al.*, No. 12-3824 (E.D. Pa.), in which Faruqi & Faruqi was appointed co-lead counsel for the proposed plaintiff class under Federal Rule of Civil Procedure 23(g). Faruqi & Faruqi's attorneys are counsel to direct purchasers (typically wholesalers) in multiple such class actions.

Actions for third-party payors. Faruqi & Faruqi represents, both in class actions and in individual actions, insurance companies who have reimbursed their policyholders at too high a rate due to anticompetitive prices that raise prices. One representative action is *In re Tricor Antitrust Litigation*, No. 05-360 (D. Del.), where Faruqi & Faruqi represented PacifiCare and other large third-party payors challenging the conduct of Abbott Laboratories and Laboratories Fournier in suppressing generic drug competition, in violation of §§ 1 and 2 of the Sherman Act. The *Tricor* litigation settled for undisclosed amount in 2010.

Results. Faruqi & Faruqi's attorneys have consistently obtained favorable results in their antitrust engagements. Non-confidential results include the following: *In re Skelaxin (Metaxalone) Antitrust Litig.,* No. 12-md-2343, (E.D. Tenn.) ($73 million settlement); *In re Wellbutrin XL Antitrust Litig.*, No. 08-2431 (E.D. Pa.) ($37.5 million partial settlement); *In re Iowa Ready-Mixed Concrete Antitrust Litigation*, No. C 10-4038 (N.D. Iowa) ($18.5 million settlement); *In re Metoprolol Succinate Direct Purchaser Antitrust Litigation*, 06-52 (D. Del.) ($20 million settlement); *In re Ready-Mixed Concrete Antitrust Litigation*, No. 05-979 (S.D. Ind.) ($40 million settlement); *Rochester Drug Co-Operative, Inc., et al. v. Braintree Labs, Inc.*, No. 07-142-SLR (D. Del.) ($17.25 million settlement).

A more complete list of Faruqi & Faruqi's active and resolved antitrust cases can be found on its web site at *www.faruqilaw.com*.

CONSUMER PROTECTION LITIGATION

Attorneys at Faruqi & Faruqi, LLP have advocated for consumers' rights, successfully challenging some of the nation's largest and most powerful corporations for a variety of improper, unfair and deceptive business practices. Through our efforts, we have recovered hundreds of millions of dollars and other significant remedial benefits for our consumer clients.

For example, in *Bates v. Kashi Co., et al.*, Case No. 11-CV-1967-H BGS (S.D. Cal. 2011), as co-lead counsel for the class, Faruqi & Faruqi, LLP secured a $5.0 million settlement fund on behalf of California consumers who purchased Kashi products that were deceptively labeled as "nothing artificial" and "all natural." The settlement provides class members with a full refund of the purchase price in addition to requiring Kashi to modify its labeling and advertising to remove "All Natural" and "Nothing Artificial" from certain products. As noted by Judge Marilyn L. Huff in approving the settlement, *"Plaintiffs' counsel has extensive experience acting as class counsel in consumer class action cases, including cases involving false advertising claims."* Moreover, in *Thomas v. Global Vision Products*, Case No. RG-03091195 (California Superior Ct., Alameda Cty.), Faruqi & Faruqi, LLP served as co-lead counsel in a consumer class action lawsuit against Global Vision Products, Inc., the manufacturer of the Avacor hair restoration product and its officers, directors and spokespersons, in connection with the false and misleading advertising claims regarding the Avacor product. Though the company had declared bankruptcy in 2007, Faruqi & Faruqi, LLP, along with its co-counsel, successfully prosecuted two trials to obtain relief for the class of Avacor purchasers. In January 2008, a jury in the first trial returned a verdict of almost $37 million against two of the creators of the product. In November 2009, another jury awarded plaintiff and the class more than $50 million in a separate trial against two other company directors and officers. This jury award represented the largest consumer class action jury award in California in 2009 (according to VerdictSearch, a legal trade publication).

Additionally, in *Rodriguez v. CitiMortgage, Inc.*, Case No. 11-cv-04718-PGG-DCF (S.D.N.Y. 2011), Faruqi & Faruqi, LLP, as co-lead class counsel, reached a significant settlement with CitiMortgage related to improper foreclosure practices of homes owned by active duty servicemembers. The settlement was recently finalized pursuant to a Final Approval Order dated October 6, 2015, which provides class members with a monetary recovery of at least $116,785.00 per class member, plus the amount of any lost equity in the foreclosed property.

Below is a non-exhaustive list of settlements where Faruqi & Faruqi, LLP and its partners have served as lead or co-lead counsel:

- *In re Sinus Buster Products Consumer Litig.,* Case No. 1:12-cv-02429-ADS-AKT (E.D.N.Y. 2012). The firm represented a nationwide class of purchasers of assorted cold, flu and sinus products. A settlement was obtained, providing class members with a cash refund up to $10 and requiring defendant to discontinue the marketing and sale of certain products.
- *In re: Alexia Foods, Inc. Litigation.,* Case No. 4:11-cv-06119 (N.D. Cal. 2011). The firm represented a proposed class of all persons who purchased certain frozen potato products that were deceptively advertised as "natural" or "all natural." A settlement was obtained, providing class members with the cash refunds up to $35.00 and requiring defendant to cease using a synthetic chemical compound in future production of the products.
- *In re: Haier Freezer Consumer Litig.*, Case No. 5:11-CV-02911-EJD (N.D. Cal. 2011). The firm represented a nationwide class of consumers who purchased certain model freezers, which were sold in violation of the federal standard for maximum energy consumption. A settlement was obtained, providing class members with cash payments of between $50 and $325.80.
- *Loreto v. Coast Cutlery Co.*, Case No. 11-3977 SDW-MCA (D.N.J. 2011) The firm represented a proposed nationwide class of people who purchased stainless steel knives and multi-tools that were of a lesser quality than advertised. A settlement was obtained, providing class members with a full refund of the purchase price.
- *Rossi v Procter & Gamble Company.*, Case No. 11-7238 (D.N.J. 2011). The firm represented a nationwide class of consumers who purchased deceptively marketed "Crest Sensitivity" toothpaste. A settlement was obtained, providing class members with a full refund of the purchase price.
- *In re: Michaels Stores Pin Pad Litig.*, Case No. 1:11-CV-03350 CPK (N.D. Ill. 2011). The firm represented a nationwide class of persons against Michaels Stores, Inc. for failing to secure and safeguard customers' personal financial data. A settlement was obtained, which provided class members with monetary recovery for unreimbursed out-of-pocket losses incurred in connection with the data breach, as well as up to four years of credit monitoring services.
- *Kelly, v. Phiten*, Case No. 4:11-cv-00067 JEG (S.D. Iowa 2011). The firm represented a proposed nationwide class of consumers who purchased Defendant Phiten USA's jewelry and other products, which were falsely promoted to balance a user's energy flow. A settlement was obtained, providing class members with up to 300% of the cost of the product and substantial injunctive relief requiring Phiten to modify its advertising claims.
- *In re: HP Power-Plug Litigation,* Case No. 06-1221 (N.D. Cal. 2006). The firm represented a proposed nationwide class of consumers who purchased defective laptops manufactured by defendant. A settlement was obtained, which provided full relief to class members, including among other benefits a cash payment up to $650.00 per class member, or in the alternative, a repair free-of-charge and new limited warranties accompanying repaired laptops.
- *Delre v. Hewlett-Packard Co.*, C.A. No. 3232-02 (N.J. Super. Ct. 2002). The firm represented a proposed nationwide class of consumers (approximately 170,000 members) who purchased, HP dvd-100i dvd-writers ("HP 100i") based on misrepresentations regarding the write-once ("DVD+R") capabilities of the HP 100i and the compatibility of DVD+RW disks written by HP 100i with DVD players and other optical storage devices. A settlement was obtained, which provided full relief to class members, including among other benefits, the replacement of defective HP 100i with its more current, second generation DVD writer, the HP 200i, and/or refunds the $99 it had charged some consumers to upgrade from the HP 100i to the HP 200i prior to the settlement.

In addition, Faruqi & Faruqi, LLP and its partners are currently serving as lead or co-lead counsel in the following class action cases:

- *Dei Rossi et al. v. Whirlpool Corp.,* Case No. 2:12-cv-00125-TLN-JFM (E.D. Cal. 2012) (representing a certified class of people who purchased mislabeled KitchenAid brand refrigerators from Whirlpool Corp.)
- *In re: Scotts EZ Seed Litigation*, Case No. 7:12-cv-04727-VB (S.D.N.Y. 2012) (representing a certified class of purchasers of mulch grass seed products advertised as a superior grass seed product capable of growing grass in the toughest conditions and with half the water.)
- *Forcellati et al., v Hyland's, Inc. et al.,* Case No. 2:12-cv-01983-GHK-MRW (C.D. Cal. 2012) (representing a certified nationwide class of purchasers of children's cold and flu products.)
- *Avram v. Samsung Electronics America, Inc., et al.,* Case No. 2:11-cv-06973 KM-MCA (D.N.J. 2011) (representing a proposed nationwide class of persons who purchased mislabeled refrigerators from Samsung Electronics America, Inc. for misrepresenting the energy efficiency of certain refrigerators.)
- *Dzielak v. Whirlpool Corp., et al*., Case No. 12-CIV-0089 SRC-MAS (D.N.J. 2011) (representing a proposed nationwide class of purchasers of mislabeled Maytag brand washing machines for misrepresenting the energy efficiency of such washing machines.)
- *In re: Shop-Vac Marketing and Sales Practices Litigation,* Case No. 4:12-md-02380-YK (M.D. Pa. 2012) (representing a proposed nationwide class of persons who purchased vacuums or Shop Vac's with overstated horsepower and tank capacity specifications.)
- *In re: Oreck Corporation Halo Vacuum And Air Purifiers Marketing And Sales Practices Litigation*, MDL No. 2317 (the firm was appointed to the executive committee, representing a proposed nationwide class of consumers who purchased vacuums and air purifiers that were deceptively advertised effective in eliminating common viruses, germs and allergens.)

EMPLOYMENT PRACTICES LITIGATION

Faruqi & Faruqi, LLP is a recognized leader in protecting the rights of employees. The firm's Employment Practices Group is committed to protecting the rights of current and former employees nationwide. The firm is dedicated to representing employees who may not have been compensated properly by their employer or who have suffered investment losses in their employer-sponsored retirement plan. The firm also represents individuals (often current or former employees) who assert that a company has allegedly defrauded the federal or state government.

Faruqi & Faruqi represents current and former employees nationwide whose employers have failed to comply with state and/or federal laws governing minimum wage, hours worked, overtime, meal and rest breaks, and unreimbursed business expenses. In particular, the firm focuses on claims against companies for (i) failing to properly classify their employees for purposes of paying them proper overtime pay, or (ii) requiring employees to work "off-the-clock," and not paying them for all of their actual hours worked.

In prosecuting claims on behalf of aggrieved employees, Faruqi & Faruqi has successfully defeated summary judgment motions, won numerous collective certification motions, and obtained significant monetary recoveries for current and former employees. In the course of litigating these claims, the firm has been a pioneer in developing the growing area of wage and hour law. In *Creely, et al. v. HCR ManorCare,*

Inc., C.A. No. 3:09-cv-02879 (N.D. OH), Faruqi & Faruqi, along with its co-counsel, obtained one of the first decisions to reject the application of the Supreme Court's Fed. R. Civ. P. 23 certification analysis in *Wal-Mart Stores, Inc. v. Dukes et. al.,* 131 S. Ct. 2541 (2011) to the certification process of collective actions brought pursuant to the Fair Labor Standards Act of 1938 ("FLSA"). The firm, along with its co-counsel, also recently won a groundbreaking decision for employees seeking to prosecute wage and hour claims on a collective basis in *Symczyk v. Genesis Healthcare Corp. et al.*, No. 10-3178 (3d Cir. 2011). In *Symczyk,* the Third Circuit reversed the district court's ruling that an offer of judgment mooted a named plaintiff's claim in an action asserting wage and hour violations of the FLSA. Notably, the Third Circuit also affirmed the two-step process used for granting certification in FLSA cases. The *Creely* decision, like the Third Circuit's *Genesis* decision, will invariably be relied upon by courts and plaintiffs in future wage and hour actions.

Some of the firm's notable recoveries include *Bazzini v. Club Fit Management, Inc.,* C.A. No. 08-cv-4530 (S.D.N.Y. 2008), wherein the firm settled a FLSA collective action lawsuit on behalf of tennis professionals, fitness instructors and other health club employees on very favorable terms. Similarly, in *Garcia, et al., v. Lowe's Home Center, Inc., et al.*, C.A. No. GIC 841120 (Cal. Sup. Ct. 2008), Faruqi & Faruqi served as co-lead counsel and recovered $1.6 million on behalf of delivery workers who were unlawfully treated as independent contractors and not paid appropriate overtime wages or benefits.

The firm's Employment Practices Group also represents participants and beneficiaries of employee benefit plans covered by the Employee Retirement Income Security Act of 1874 ("ERISA"). In particular the firm protects the interests of employees in retirement savings plans against the wrongful conduct of plan fiduciaries. Often, these retirement savings plans constitute a significant portion of an employee's retirement savings. ERISA, which codifies one of the highest duties known to law, requires an employer to act in the best interests of the plan's participants, including the selection and maintenance of retirement investment vehicles. For example, an employer who administers a retirement savings plan (often a 401(k) plan) has a fiduciary obligation to ensure that the retirement plan's assets (including employee and any company matching contributions to the plan) are directed into appropriate and prudent investment vehicles.

Faruqi & Faruqi has brought actions on behalf of aggrieved plan participants where a company and/or certain of its officers breached their fiduciary duty by allowing its retirement plans to invest in shares of its own stock despite having access to materially negative information concerning the company which materially impacted the value of the stock. The resulting losses can be devastating to employees' retirement accounts. Under certain circumstances, current and former employees can seek to hold their employers accountable for plan losses caused by the employer's breach of their ERISA-mandated duties.

The firm's Employment Practices Group also represents whistleblowers in actions under both federal and state False Claims Acts. Often, current and former employees of business entities that contract with, or are otherwise bound by obligations to, the federal and state governments become aware of wrongdoing that causes the government to overpay for a good or service. When a corporation perpetrates such fraud, a whistleblower may sue the wrongdoer in the government's name to recover up to three times actual damages and additional civil penalties for each false statement made. Whistleblowers who initiate such suits are entitled to a portion of the recovery attained by the government, generally ranging from 15% to 30% of the total recovery.

False Claims Act cases often arise in context of Medicare and Medicaid fraud, pharmaceutical fraud, defense contractor fraud, federal government contractor fraud, and fraudulent loans and grants. For instance, in *United States of America, ex rel. Ronald J. Streck v. Allergan, Inc. et al*., No. 2:08-cv-05135-ER (E.D. Pa.), Faruqi & Faruqi represents a whistleblower in an un-sealed case alleging fraud against thirteen pharmaceutical companies who underpaid rebates they were obliged to pay to state Medicaid programs on drugs sold through those programs.

Based on its experience and expertise, the firm has served as the principal attorneys representing current and former employees in numerous cases across the country alleging wage and hour violations, ERISA violations and violations of federal and state False Claims Acts.

ATTORNEYS

NADEEM FARUQI

Mr. Faruqi is Co-Founder and a Managing Partner of Faruqi & Faruqi, LLP. Mr. Faruqi oversees all aspects of the firm's practice areas. Mr. Faruqi has acted as sole lead or co-lead counsel in many notable class or derivative action cases, such as: *In re Olsten Corp. Secs. Litig.*, C.A. No. 97-CV-5056 (E.D.N.Y.) (recovered $25 million dollars for class members); *In re PurchasePro, Inc., Secs. Litig.*, Master File No. CV-S-01-0483 (D. Nev. 2001) ($24.2 million dollars recovery on behalf of the class in securities fraud action); *In re Avatex Corp. S'holders Litig.*, C.A. No. 16334-NC (Del. Ch. 1999) (established certain new standards for preferred shareholders rights); *Dennis v. Pronet, Inc.*, C.A. No. 96-06509 (Tex. Dist. Ct.) (recovered over $15 million dollars on behalf of shareholders); *In re Tellium, Inc. Secs. Litig.*, C.A. No. 02-CV-5878 (D.N.J.) (class action settlement of $5.5 million); *In re Tenet Healthcare Corp. Derivative Litig.*, Lead Case No. 01098905 (Cal. Sup. Ct. 2002) (achieved a $51.5 million benefit to the corporation in derivative litigation).

Upon graduation from law school, Mr. Faruqi was associated with a large corporate legal department in New York. In 1988, he became associated with Kaufman Malchman Kirby & Squire, specializing in shareholder litigation, and in 1992, became a member of that firm. While at Kaufman Malchman Kirby & Squire, Mr. Faruqi served as one of the trial counsel for plaintiff in *Gerber v. Computer Assocs. Int'l, Inc.*, 91-CV-3610 (E.D.N.Y. 1991). Mr. Faruqi actively participated in cases such as: *Colaprico v. Sun Microsystems*, No. C-90-20710 (N.D. Cal. 1993) (recovery in excess of $5 million on behalf of the shareholder class); *In re Jackpot Secs. Enters., Inc. Secs. Litig.*, CV-S-89-805 (D. Nev. 1993) (recovery in excess of $3 million on behalf of the shareholder class); *In re Int'l Tech. Corp. Secs. Litig.*, CV 88-440 (C.D. Cal. 1993) (recovery in excess of $13 million on behalf of the shareholder class); and *In re Triangle Inds., Inc. S'holders Litig.*, C.A. No. 10466 (Del. Ch. 1990) (recovery in excess of $70 million).

Mr. Faruqi earned his Bachelor of Science Degree from McGill University, Canada (B.Sc. 1981), his Master of Business Administration from the Schulich School of Business, York University, Canada (MBA 1984) and his law degree from New York Law School (J.D., *cum* laude, 1987). Mr. Faruqi was Executive Editor of New York Law School's Journal of International and Comparative Law. He is the author of "Letters of Credit: Doubts As To Their Continued Usefulness," Journal of International and Comparative Law, 1988. He was awarded the Professor Ernst C. Stiefel Award for Excellence in Comparative, Common and Civil Law by New York Law School in 1987.

Mr. Faruqi is licensed to practice law in New York and is admitted to the United States District Courts for the Southern, Eastern and Western Districts of New York, and the District of Colorado, and the United States Court of Appeals for the Second and Third Circuits.

LUBNA M. FARUQI

Ms. Faruqi is Co-Founder and a Managing Partner of Faruqi & Faruqi, LLP. Ms. Faruqi is involved in all aspects of the firm's practice. Ms. Faruqi has actively participated in numerous cases in federal and state courts which have resulted in significant recoveries for shareholders.

Ms. Faruqi was involved in litigating the successful recovery of $25 million to class members in *In re Olsten Corp. Secs. Litig.*, C.A. No. 97-CV-5056 (E.D.N.Y.). She helped to establish certain new standards for preferred shareholders in Delaware in *In re Avatex Corp. S'holders Litig.*, C.A. No. 16334-NC (Del. Ch. 1999). Ms. Faruqi was also lead attorney in *In re Mitcham Indus., Inc. Secs. Litig.*, Master File No. H-98-1244 (S.D. Tex. 1998), where she successfully recovered $3 million on behalf of class members despite the fact that the corporate defendant was on the verge of declaring bankruptcy.

Upon graduation from law school, Ms. Faruqi worked with the Department of Consumer and Corporate Affairs, Bureau of Anti-Trust, the Federal Government of Canada. In 1987, Ms. Faruqi became associated with Kaufman Malchman Kirby & Squire, specializing in shareholder litigation, where she actively participated in cases such as: *In re Triangle Inds., Inc. S'holders Litig.*, C.A. No. 10466 (Del. Ch. 1990) (recovery in excess of $70 million); *Kantor v. Zondervan Corp.*, C.A. No. 88 C5425 (W.D. Mich. 1989) (recovery of $3.75 million on behalf of shareholders); and *In re A.L. Williams Corp. S'holders Litig.*, C.A. No. 10881 (Del. Ch. 1990) (recovery in excess of $11 million on behalf of shareholders).

Ms. Faruqi graduated from McGill University Law School at the age of twenty-one with two law degrees: Bachelor of Civil Law (B.C.L.) (1980) and a Bachelor of Common Law (L.L.B.) (1981).

Ms. Faruqi is licensed to practice law in New York and is admitted to the United States District Court for the Southern District of New York.

PETER KOHN

Mr. Kohn is a Partner in Faruqi & Faruqi, LLP's Pennsylvania office and Co-Chair of the firm's Antitrust Litigation Practice Group.

Prior to joining the firm, Mr. Kohn was a shareholder at Berger & Montague, P.C., where he prepared for trial several noteworthy lawsuits under the Sherman Act, including *In re Buspirone Patent & Antitrust Litigation*, MDL No. 1410 (S.D.N.Y.) ($220M settlement), *In re Cardizem CD Antitrust Litigation*, No. 99-MD-1278 (E.D. Mich.) ($110M settlement), *Meijer, Inc. v. Warner-Chilcott*, No. 05-2195 (D.D.C.) ($22M settlement), *In re Relafen Antitrust Litigation*, No. 01-12239 (D. Mass.) ($175M settlement), *In re Remeron Direct Purchaser Antitrust Litigation*, No. 03-cv-0085 (D.N.J.) ($75M settlement), *In re Terazosin Hydrochloride Antitrust Litigation*, No. 99-MDL-1317 (S.D. Fla.) ($72.5M settlement), and *In re Tricor Direct Purchaser Antitrust Litig.*, No. 05-340 (D. Del.) ($250M settlement). The court appointed him as co-lead counsel for the plaintiffs in *In re Pennsylvania Title Ins. Antitrust Litig.*, No. 08cv1202 (E.D. Pa.) (pending action on behalf of direct purchasers of title insurance alleging illegal cartel pricing under § 1 of the Sherman Act).

A sampling of Mr. Kohn's reported cases in the antitrust arena includes *In re Solodyn (Minocycline Hydrochloride) Antitrust Litig.*, Civil Action No. 14-md-02503-DJC, 2015 U.S. Dist. LEXIS 125999 (D. Mass. Aug. 14, 2015) (denying motion to dismiss reverse payment claims under the Sherman Act); *King Drug Co. of Florence v. Cephalon, Inc.*, 88 F. Supp. 3d 402 (E.D. Pa. 2015) (reverse payment claims under the Sherman Act survived summary judgment); *In re Suboxone (Buprenorphine Hydrochloride & Naloxone) Antitrust Litig.*, 64 F. Supp. 3d 665 (E.D. Pa. 2014) (denying motion to dismiss product hopping claims

under the Sherman Act); *In re Lidoderm Antitrust Litig.*, 74 F. Supp. 3d 1052 (N.D. Cal. 2014) (denying motion to dismiss reverse payment claims under the Sherman Act); *Mylan Pharms., Inc. v. Warner Chilcott Pub.*, No. 12-3824, 2013 U.S. Dist. LEXIS 152467 (E.D. Pa. June 11, 2013) (denying motion to dismiss product hopping claims under the Sherman Act); *In re Hypodermic Prods. Antitrust Litig.*, 484 Fed. Appx. 669 (3d Cir. 2012) (issue of direct purchaser standing under Illinois Brick); *Wallach v. Eaton Corp.*, 814 F. Supp. 2d 428 (D. Del. 2011) (application of the Third Circuit's "complete involvement" exception to the in pari delicto doctrine); *Delaware Valley Surgical Supply Inc. v. Johnson & Johnson*, 523 F.3d 1116 (9th Cir. 2008) (issue of direct purchaser standing under *Illinois Brick*); *Babyage.com, Inc. v. Toys "R" Us, Inc.*, 558 F. Supp.2d 575 (E.D. Pa. 2008) (denying defendants' motion to dismiss following the Supreme Court's decisions in *Twombly* and *Leegin*, and for the first time in the Third Circuit adopting the Merger Guidelines method of relevant market definition); *J.B.D.L. Corp. v. Wyeth-Ayerst Laboratories, Inc.*, 485 F.3d 880 (6th Cir. 2007) (affirming summary judgment in exclusionary contracting case); and *Babyage.com, Inc. v. Toys "R" Us, Inc.*, 458 F. Supp.2d 263 (E.D. Pa. 2006) (discoverability of surreptitiously recorded statements prior to deposition of declarant).

Mr. Kohn is a 1989 graduate of the University of Pennsylvania (B.A., English) and a 1992 *cum laude* graduate of Temple University Law School, where he was senior staff for the *Temple Law Review* and received awards for trial advocacy. Mr. Kohn was recognized as a "recommended" antitrust attorney in the Northeast in 2009 by the Legal 500 guide (www.legal500.com) and was chosen by his peers as a "SuperLawyer" in Pennsylvania in 2009 - 2013, and 2016. Mr. Kohn was an invited speaker at the ABA Section of Antitrust Law's 2016 Spring Meeting in Washington, D.C., for the Health Care & Pharmaceuticals and State Enforcement Committee's program, "Exclusionary or Not? Product Hopping and REMS." He was also invited to speak for the ABA Section of Antitrust Law's program "Product Hopping Cases: Where Are We and Where Are We Headed" in December 2015, as well as Harris Martin Publishing's Antitrust Pay-for-Delay Litigation Conference in 2014 and 2015. In 2011, Mr. Kohn was selected as a Fellow in the Litigation Counsel of America, a trial lawyer honorary society composed of less than one-half of one percent of American lawyers. He is a member of the bars of the Supreme Court of Pennsylvania (1992-present), the United States District Court for the Eastern District of Pennsylvania (1995-present), the United States District Court for the Eastern District of Michigan (2010-present), the United States Court of Appeals for the Third Circuit (2000-present), the United States Court of Appeals for the Sixth Circuit (2005-present), the United States Court of Appeals for the Ninth Circuit (2016-present), and the United States Court of Appeals for the Federal Circuit (2011-present).

JOSEPH T. LUKENS

Mr. Lukens is a Partner in Faruqi & Faruqi, LLP's Pennsylvania office and Co-Chair of the firm's Antitrust Litigation Practice Group.

Mr. Lukens was a shareholder at the Philadelphia firm of Hangley Aronchick Segal Pudlin & Schiller, where he represented large retail pharmacy chains as opt-out plaintiffs in numerous lawsuits under the Sherman Act. Among those lawsuits were *In re Brand Name Prescription Drugs Antitrust Litigation* (MDL 897, N.D. Ill.), *In re Terazosin Hydrochloride Antitrust Litigation* (MDL 1317, S.D. Fla.), *In re TriCor Direct Purchaser Antitrust Litigation* (05-605, D. Del.), *In re Nifedipine Antitrust Litigation* (MDL1515, D.D.C.), *In re OxyContin Antitrust Litigation* (04-3719, S.D.N.Y), and *In re Chocolate Confectionary Antitrust Litigation* (MDL 1935, M.D. Pa.). While the results in the opt-out cases are confidential, the parallel class actions in those matters which are concluded have resulted in settlements exceeding $1.1 billion.

Earlier in his career, Mr. Lukens concentrated in commercial and civil rights litigation at the Philadelphia firm of Schnader, Harrison, Segal & Lewis. The types of matters that Mr. Lukens handled included antitrust, First Amendment, contracts, and licensing. Mr. Lukens also worked extensively on several notable *pro bono* cases including *Commonwealth v. Morales*, which resulted in a rare reversal on a second post-conviction petition in a capital case in the Pennsylvania Supreme Court.

Mr. Lukens graduated from LaSalle University (B.A. Political Science, *cum laude*, 1987) and received his law degree from Temple University School of Law (J.D., *magna cum laude*, 1992) where he was an editor on the *Temple Law Review* and received several academic awards. After law school, Mr. Lukens clerked for the Honorable Joseph J. Longobardi, Chief Judge for the United States District Court for the District of Delaware (1992-93). Mr. Lukens is a member of the bars of the Supreme Court of Pennsylvania (1992-present), the United States Supreme Court (1996-present); the United States District Court for the Eastern District of Pennsylvania (1993-present), the United States Court of Appeals for the Third Circuit (1993-present), and the United States Court of Appeals for the District of New Jersey (1994-present).

Mr. Lukens has several publications, including: *Bringing Market Discipline to Pharmaceutical Product Reformulations*, 42 Int'l Rev. Intel. Prop. & Comp. Law 698 (September 2011) (co-author with Steve Shadowen and Keith Leffler); *Anticompetitive Product Changes in the Pharmaceutical Industry*, 41 Rutgers L.J. 1 (2009) (co-author with Steve Shadowen and Keith Leffler); *The Prison Litigation Reform Act: Three Strikes and You're Out of Court — It May Be Effective, But Is It Constitutional?,* 70 Temp. L. Rev. 471

(1997); *Pennsylvania Strips The Inventory Search Exception From Its Rationale – Commonwealth v. Nace*, 64 Temp. L. Rev. 267 (1991).

JAMES M. WILSON, JR.

James M. Wilson, Jr. is a Partner in Faruqi & Faruqi LLP's New York office and Co-Chair of the firm's Securities Litigation Practice Group and is a lead attorney on several large securities class actions.

Prior to joining Faruqi & Faruqi, Mr. Wilson was a partner at Chitwood Harley Harnes, LLP, and a senior associate with Reed Smith, LLP. Mr. Wilson has represented institutional pension funds, corporations and individual investors in courts around the country and obtained significant recoveries, including the following securities class actions: *In re ArthroCare Sec. Litig*. No. 08-0574 (W.D. Tex.) ($74 million); *In re Maxim Integrated Prod. Sec. Litig.*, No. 08-0832 (N.D. Cal.) ($173 million); *In re TyCom Ltd. Sec. Litig.*, MDL No. 02-1335 (D.N.H.) ($79 million); and *In re Providian Fin. Corp. Sec. Litig.*, No. 01-3952 (N.D. Cal.). Mr. Wilson also has obtained significant relief for shareholders in merger suits, including the following: *In re Zoran Corporation Shareholders Litig.*, No. 6212-VCP (Del. Chancery); and *In re The Coca-Cola Company Shareholder Litigation*, No. 10-182035 (Fulton County Superior Ct.).

Mr. Wilson has authored numerous articles addressing current developments including the following Expert Commentaries published by Lexis Nexis: *The Liability Faced By Financial Institutions From Exposure To Subprime Mortgages; Losses Attributable To Sub-Prime Mortgages; The Supreme Court's Decision in Stoneridge Investment Partners, LLC v. Scientific-Atlanta, Inc. et al.; Derivative Suite by LLC Members in New York: Tzolis v. Wolff*, 10 N.Y.3d 100 (Feb. 14, 2008).

Mr. Wilson obtained his undergraduate degree from Georgia State University (B.A. 1988), his law degree from the University of Georgia (J.D. 1991), and Masters in Tax Law from New York University (LL.M. 1992). He is licensed to practice law in Georgia and New York and is admitted to the United States District Courts for Middle and Northern Districts of Georgia, the Eastern and Southern Districts of New York, the Eastern District of Michigan and the District of Colorado, and the United States Courts of Appeals for the Second, Fifth and Eleventh Circuits.

ROBERT W. KILLORIN

Robert W. Killorin is a Partner with the firm and is based in the Atlanta Georgia office and is a member of the firm's Institutional Investor Practice Group and Co-Chair of the firm's Securities Litigation Practice Group. His practice is focused on shareholder merger and securities litigation. Mr. Killorin is a lead attorney on several large securities class actions. Mr. Killorin is an accomplished trial lawyer with over

twenty years of experience in civil litigation. Prior to joining Faruqi & Faruqi, Mr. Killorin was a partner at the firm of Chitwood Harley Harnes, LLP where he specialized in complex securities litigation. Mr. Killorin has represented numerous individual plaintiffs, as well as institutional pension funds, corporations and individual investors in courts around the country. He has obtained significant recoveries, including the following securities class actions: *In re FireEye, Inc. Sec. Litig.,* No. 14-266866 ($10 million settlement pending); *In re ArthroCare Sec. Litig.* No. 08-0574 (W.D. Tex.) ($74 million); *In re Maxim Integrated Prod. Sec. Litig.*, No. 08-0832 (N.D. Cal.) ($173 million); *In re TyCom Ltd. Sec. Litig.*, MDL No. 02-1335 (D.N.H.) ($79 million); and *In re Providian Fin. Corp. Sec. Litig.*, No. 01-3952 (N.D. Cal.). Mr. Killorin has obtained significant relief for shareholders in merger suits, including the following: *In re The Coca-Cola Company Shareholder Litigation*, No. 10-182035 (Fulton County Superior Ct.).

Mr. Killorin authored "Preparing Clients to Testify" – Chapter 19 of *Civil Trial Practice, Winning Techniques of Successful Trial Attorneys*, Lawyers and Judges Publishing Company (2000), and has written articles and lectured on various legal topics. He is listed in Who's Who in American Law and is an AV® Preeminent™ Peer Review Rated attorney.

Mr. Killorin obtained his undergraduate degree from Duke University (B.A., cum laude, 1980) and his law degree from the University of Georgia (J.D. 1983) where he was on the national mock trial team and a national moot court team. He is licensed to practice law in Georgia and is admitted to the United States Supreme Court, the United States Courts of Appeals for the Tenth and Eleventh Circuits, and the United States District Courts for Middle and Northern Districts of Georgia.

BRADLEY J. DEMUTH

Bradley J. Demuth's practice is focused on complex antitrust litigation with particular expertise in cases involving pharmaceutical overcharges resulting from delayed generic entry schemes, price fixing, and other anticompetitive conduct. Mr. Demuth is a Partner in the firm's New York office.

Upon graduating, cum laude, from American University Washington College of Law (1999), Mr. Demuth served as a law clerk to the United States Court of Appeals for the Second Circuit. While thereafter associated with Cadwalader, Wickersham & Taft LLP and Skadden, Arps, Slate, Meager & Flom LLP, Mr. Demuth successfully represented several national and multinational corporate defendants in a wide range of antitrust and other commercial disputes. His antitrust experience includes litigating issues in the pharmaceutical, high-tech, professional sports, consumer goods, luxury goods, financial benchmarking, commodities, and industrial materials contexts. In 2008, Mr. Demuth received the Pro Bono Service Award for briefing and arguing an appeal made to the New York Supreme Court Appellate Term (1st Dep't) on

behalf of displaced low-income tenants. From 2009-2010, Mr. Demuth served as a Special Assistant Corporation Counsel and acting lead trial counsel for the City of New York, where among other favorable resolutions, he obtained a verdict for the City after a two-week trial in Richardson v. City of New York (Index. No. 14216-99).

Upon joining the Plaintiffs' bar in 2012, Mr. Demuth has made notable contributions in several high-profile pharmaceutical antitrust cases that resulted in significant recoveries, including in:

- American Sales Company, LLC v. Pfizer, Inc. (E.D. Va.) (re Celebrex) (October 2017 $94 million dollar settlement pending final approval);
- In re Aggrenox Antitrust Litigation (D. Conn.) ($146 million settlement);
- Castro v. Sanofi Pasteur, Inc. (D.N.J.) (re Menactra) ($61.5 million settlement); and
- In re Flonase Antitrust Litigation (E.D. Pa.) ($150 million settlement).

Mr. Demuth is also currently involved in several other pending high-profile pharmaceutical antitrust matters including: In re Generic Pharmaceutical Pricing Antitrust Litigation (E.D. Pa.); In re Restasis (Cyclosporine Ophthalmic Emulsion) Antitrust Litigation (E.D.N.Y.); and In re Intuniv Antitrust Litigation (D. Mass.).

Mr. Demuth is a member of the New York State bar and is admitted to practice before the United States Court of Appeals for the Second Circuit, and the United States District Courts for the Southern and Eastern Districts of New York and the District of Colorado.

TIMOTHY J. PETER

Timothy J. Peter is a Partner in Faruqi & Faruqi, LLP's Pennsylvania office and Chair of the firm's Consumer Protection Litigation Practice Group.

Prior to joining Faruqi & Faruqi, Mr. Peter was an Associate at Cohen Placittella & Roth, P.C. where he was involved in such high profile litigation as: *In re Vioxx Products Liability Litigation* ($8.25 million recovery for the Commonwealth of Pennsylvania) and *In re Evergreen Ultra Short Opportunities Fund Securities Litigation* ($25 million class action securities settlement in which participating class members will recover over 65% of their losses). In addition, Mr. Peter played an important role in the resolution of *In re Minerva Group LP v. Mod-Pac Corp., et al.*, in which defendants increased the price of an insider buyout from $8.20 to $9.25 per share, a significant victory for shareholders. Prior to attending law school, Mr. Peter worked for one of largest financial institutions in the world where he gained significant insight into the inner workings of the financial services industry.

Mr. Peter is a 2009 cum laude graduate of the Michigan State University College of Law, where he

served as an associate editor of the Journal of Medicine and Law. He received his undergraduate degree in Economics from the College of Wooster in 2002.

Mr. Peter is admitted to practice in the Commonwealth of Pennsylvania and the U.S. District Court for the Eastern District of Pennsylvania.

ADAM STEINFELD

Adam Steinfeld is a Partner in Faruqi & Faruqi, LLP's New York office. He practices in the area of antitrust litigation with a focus on competition in the pharmaceutical industry.

Mr. Steinfeld has litigated successfully with significant contributions in *In re Buspirone Patent & Antitrust Litigation*, MDL No. 1410 (S.D.N.Y.) ($220M settlement); *In re Cardizem CD Antitrust Litigation*, No. 99-MD-1278 (E.D. Mich.) ($110M settlement); *In re Relafen Antitrust Litigation*, No. 01-12239 (D. Mass.) ($175M settlement); *In re Remeron Direct Purchaser Antitrust Litigation*, No. 03-cv-0085 (D.N.J.) ($75M settlement); *In re Terazosin Hydrochloride Antitrust Litigation*, No. 99-MDL-1317 (S.D. Fla.) ($72.5M settlement); *In re Tricor Direct Purchaser Antitrust Litig.*, No. 05-340 (D. Del.) ($250M settlement); and *Mylan Pharms., Inc. v. Warner Chilcott*, No. 12-cv-3824 (E.D. Pa.) ($12 million settlement).

Prior to joining Faruqi & Faruqi, Mr. Steinfeld was associated with Grant and Eisenhofer, P.A. (2011-2015) and a partner at Garwin, Gerstein and Fisher, LLP, New York (1997-2009).

Mr. Steinfeld is the author of Nuclear Objections: The Persistent Objector and the Legality of the Use of Nuclear Weapons, 62 Brooklyn L. Rev. 1635 (winter, 1996).

Mr. Steinfeld received his law degree from Brooklyn Law School (J.D., 1997) where he was an editor on the Brooklyn Law Review and received several academic awards. Mr. Steinfeld is a member of the bars of the States of New York, New Jersey and Massachusetts; and is admitted to practice before the United States District Courts for the District New Jersey, Eastern District of New York, Southern District of New York, and Western District of New York. Mr. Steinfeld graduated from Brandeis University (B.A., Politics, 1994).

INNESSA MELAMED HUOT

Innessa M. Huot is a Partner in the firm's New York office and Chair of the firm's Employment Practice Group.

Ms. Huot represents workers across the country in both individual and class action lawsuits. Ms. Huot has litigated cases in both federal and state courts, involving FLSA claims, state wage and hour violations, discrimination and harassment claims, retaliation matters, FMLA and ADA violations, breach of

contract disputes, and other employment-related violations. Ms. Huot has served as lead or co-lead counsel in numerous cases filed against major businesses and corporations and has successfully recovered millions of dollars on behalf of her clients.

Serving as lead or co-lead counsel, some of Ms. Huot's more recent non-confidential class action settlements include the following: *Feliciano, et al. v. Metro. Transp. Auth., et al.*, No. 18-cv-00026-VSB (S.D.N.Y. Feb. 21, 2020) ($5.4 million settlement); *Morell, et al. v. NYC Green Transp. Grp., LLC, et al.,* No. 1:18-cv-00918-PKC-VMS (E.D.N.Y. May 8, 2019) ($700,000 settlement, representing 100% of wage damages and an additional 75% of liquidated damages); *Izzio, et al. v. Century Golf Partners Mgmt., L.P.*, 3:14-cv-03194-M (N.D. Tex. Feb. 13, 2019) ($1.425 million settlement); *Reeves, et al. v. La Pecora Bianca, Inc, et al.,* No. 151153/2018 (N.Y. Sup. Ct.) ($462,500 settlement, representing 100% of economic damages); *Ackerman v. New York Hospital Medical Center of Queens*, No. 702965/2013 (N.Y. Sup. Ct.) ($550,000 settlement); *Run Them Sweet, LLC v. CPA Global LTD, et al.*, No. 1:16-cv-1347 (E.D. Va. Oct. 6, 2017) ($5.6 million settlement); *Strong, et al. v. Safe Auto Ins. Grp., Inc., et al.*, Case No. 2:16-cv-765 (S.D. Ohio Aug. 28, 2017) ($250,000 settlement, representing 82% of unpaid overtime and statutory damages); and *Foster, et al. v. L-3 Commc'ns EoTech, Inc., et al.*, No. 6:15-cv-03519-BCW (W.D. Mo. July 7, 2017) ($51 million settlement).

Ms. Huot has been designated a "Super Lawyer" each year since 2017 and has been selected for inclusion into the America's Top 100 High Stakes Litigators list. Ms. Huot is active in multiple bar associations, including the Brooklyn Bar Association's Young Lawyers Section, American Bar Association's Section of Labor and Employment, and the National Employment Lawyers Association (NELA).

Ms. Huot earned her J.D., *magna cum laude*, from Pace Law School and her M.B.A. in Finance, *summa cum laude*, from Pace Lubin School of Business. Ms. Huot graduated from Syracuse University with a B.A., *summa cum laude*, in Political Science and International Relations.

Ms. Huot is licensed to practice law in New York, New Jersey, and Connecticut and is admitted to practice before the United States District Courts for the Southern District, Eastern District, Western District, and Northern District of New York, the District of New Jersey, and the Second Circuit Court of Appeals.

KATHERINE M. LENAHAN

Katherine M. Lenahan is a Partner in Faruqi & Faruqi, LLP's New York office.

Prior to joining Faruqi & Faruqi, Ms. Lenahan practiced securities litigation at Entwistle & Cappucci LLP. Ms. Lenahan gained further experience through internships for the Honorable Sherry Klein Heitler, Administrative Judge for Civil Matters, First Judicial District, and the Kings County District Attorney's Office.

Ms. Lenahan graduated from Fordham University (B.A., Political Science, *magna cum laude*, 2009) and Fordham University School of Law (J.D., 2012). While at Fordham Law School, Ms. Lenahan served as an associate editor of the Fordham Intellectual Property, Media and Entertainment Law Journal and was a fellow at the Center on Law and Information Policy.

Ms. Lenahan is licensed to practice law in New York, and is admitted to the United States District Court for the Southern District of New York, and the United States Courts of Appeals for the Second and Ninth Circuits.

KRISTYN FIELDS

Kristyn Fields' practice is focused on antitrust litigation. Ms. Fields is a Partner in the firm's New York office.

Prior to joining F&F, Ms. Fields interned for the Honorable Martin Marcus, New York Supreme Court, Bronx County. As well, Ms. Fields participated in the Brooklyn Law Incubator & Policy Clinic providing pro bono counsel to emerging start-up companies. While at Brooklyn Law School, Ms. Fields served as an Executive Articles Editor of the Brooklyn Journal of Corporate, Financial & Commercial Law. Also, Ms. Fields was a member of the Moot Court Honor Society.

Ms. Fields earned her J.D. from Brooklyn Law School (2016). Ms. Fields earned her undergraduate degree from Boston College (B.A., Political Science, 2013).

Ms. Fields is licensed to practice law in New York.

RAYMOND N. BARTO

Raymond N. Barto's practice is focused on antitrust litigation. Mr. Barto is a Partner in the firm's New York office.

Prior to joining F&F, Mr. Barto was an associate at a prominent New York City law firm where he represented consumers, shareholders, and employees in class action cases that involved consumer fraud, breach of fiduciary duty, and ERISA.

While at Brooklyn Law School, Mr. Barto served as an Articles Editor for the Brooklyn Law Review. As well, Mr. Barto served as an intern to the Honorable Judge William Pauley III of the United States District Court for the Southern District of New York; the United States Attorney's Office for the Eastern District of New York; the litigation department for Marsh & McLennan Companies; and the Kings County District Attorney's Office.

Mr. Barto earned his J.D, cum laude, from Brooklyn Law School (2013). Mr. Barto earned his undergraduate degree from Fordham University (B.A., History, 2007).

Mr. Barto is licensed to practice law in New York and New Jersey.

DAVID CALVELLO

David Calvello is a Partner in Faruqi & Faruqi, LLP's New York office where his focus is litigating Antitrust matters.

Mr. Calvello graduated from the University of Richmond (B.S., 2011) with a double major in Finance and Political Science and Pace Law School (J.D., *magna cum laude*, 2014). He is licensed to practice law in New York and New Jersey and is admitted to practice before the United States District Court for New Jersey.

Prior to joining Faruqi & Faruqi, Mr. Calvello was as an Associate at Kaufman Borgeest & Ryan, LLP where he focused primarily on insurance coverage matters with respect to Directors & Officers (D&O), Errors & Omissions (E&O), and Professional Liability lines of coverage. In law school, Mr. Calvello served as an editor on the Pace International Law Review and received the New Rochelle Bar Association Award upon graduation. He was also very active in moot court competitions, and competed in the Willem C. Vis International Commercial Arbitration Moot held in Vienna, Austria.

LISA OMOTO

Lisa Omoto is a Partner in Faruqi & Faruqi, LLP's Los Angeles office and focuses her practice on consumer protection litigation.

Prior to joining the firm, Ms. Omoto was a litigator at a prominent defense firm where she defended corporations and individuals in a wide variety of complex disputes in federal and state courts.

Ms. Omoto graduated from Boston College (B.A., 2010) and Santa Clara University School of Law (J.D., 2014). She is licensed to practice law in the State of California and is admitted to practice in the United States District Courts for the Eastern, Central, and Northern Districts of California.

STEPHEN G. DOHERTY

Stephen Doherty is Senior Counsel in the Pennsylvania office of Faruqi & Faruqi, LLP. Mr. Doherty practices in the area of antitrust law and is significantly involved in prosecuting antitrust class actions on behalf of direct purchasers of brand name and generic drugs and charging pharmaceutical manufacturers with price fixing and with illegally blocking the market entry of less expensive competitors.

Earlier in his career, Mr. Doherty litigated consumer fraud and employment discrimination cases in both state and federal courts in Pennsylvania and New Jersey. He has served on numerous volunteer boards, including Gilda's Club of Delaware Valley and the BCBA Pro Bono Committee, has served as a volunteer instructor for VITA Education Services, and as a pro bono lawyer for the Consumer Bankruptcy Assistance Project.

Mr. Doherty is a 1992 graduate of Temple University Law School, where he was senior staff for the Temple Law Review and received several academic awards and is the author of Joint Representation Conflicts of Interest: Toward A More Balanced Approach, 65 Temp. L. Rev. 561 (1992). Mr. Doherty is a 1988 graduate of Dickinson College (B.A., Anthropology and Latin American Studies).

NEILL CLARK

Neill Clark is Of Counsel in Faruqi and Faruqi, LLP's Pennsylvania office.

Before joining the firm, Mr. Clark was an associate at Berger & Montague, P.C. where he was significantly involved in prosecuting antitrust class actions on behalf of direct purchasers of brand name drugs and charging pharmaceutical manufacturers with illegally blocking the market entry of less expensive competitors.

Eight of those cases have resulted in substantial settlements totaling over $950 million: *In re Cardizem CD Antitrust Litig*. settled in November 2002 for $110 million; *In re Buspirone Antitrust Litig.* settled in April 2003 for $220 million; *In re Relafen Antitrust Litig*. settled in February 2004 for $175 million; *In re Platinol Antitrust Litig*. settled in November 2004 for $50 million; *In re Terazosin Antitrust Litig*. settled in April 2005 for $75 million; *In re Remeron Antitrust Litig*. settled in November 2005 for $75 million; *In re Ovcon Antitrust Litig*. settled in 2009 for $22 million; and *In re Tricor Direct Purchaser Antitrust Litig*. settled in April 2009 for $250 million.

Mr. Clark was also principally involved in a case alleging a conspiracy among hospitals and the Arizona Hospital and Healthcare Association to depress the compensation of per diem and traveling nurses, *Johnson et al. v. Arizona Hospital and Healthcare Association et al.*, No. CV07-1292 (D. Ariz.).

Mr. Clark was selected as a "Rising Star" by Pennsylvania Super Lawyers and listed as one of the Top Young Lawyers in Pennsylvania in the December 2005 edition of Philadelphia Magazine. Two cases in which he has been significantly involved have been featured as "Noteworthy Cases" in the NATIONAL LAW JOURNAL articles, "The Plaintiffs' Hot List" (*In re Tricor Antitrust Litig*. October 5, 2009 and *Johnson v. Arizona Hosp. and Healthcare Ass'n.*, October 3, 2011).

Mr. Clark graduated cum laude from Appalachian State University in 1994 and from Temple University Beasley School of Law in 1998, where he earned seven "distinguished class performance" awards, an oral advocacy award and a "best paper" award.

SHAWN R. CLARK

Shawn Clark's practice is focused on employment litigation. Mr. Clark is an Associate in the firm's New York office.

Mr. Clark represents workers in all aspects of high-impact employment litigation in federal and state courts. Mr. Clark has litigated cases involving FLSA claims, state wage and hour violations, discrimination and harassment, retaliation, FMLA and ADA violations, breach of contract, and other employment-related violations. He has frequently appeared as first and second chair in bench and jury trials in the Southern and Eastern Districts of New York and has successfully recovered millions of dollars on behalf of his clients.

Prior to joining Faruqi & Faruqi, Mr. Clark worked as an attorney at a number of prominent New York firms representing employees in employment matters. Immediately following law school, Shawn began his legal career at the New York City Police Department and New York City Law Department as a legal fellow and Assistant Corporation Counsel.

Mr. Clark has been designated a Super Lawyers Rising Star each year since 2015 and has been selected for inclusion to the National Trial Lawyers Top 100 and the Million Dollar Advocates Forum. An active member of the legal community, Mr. Clark is a member of the National Employment Lawyers Association/New York and the Federal Bar Council.

Mr. Clark earned his J.D. in 2010 from New York University School of Law, where he was a Dean's Scholar and an Articles Editor for the Journal of Legislation and Public Policy. Mr. Clark graduated magna cum laude from the Macaulay Honors College at Hunter College with a Bachelor of Arts in Political Science and Religion.

Mr. Clark is licensed to practice law in New York and is admitted to practice before the United States District Courts for the Southern and Eastern Districts of New York as well as the Second Circuit Court of Appeals.

FINN DUSENBERY

Finn Dusenbery's practice is focused on employment litigation. Mr. Dusenbery is an associate in the firm's New York Office.

Prior to joining F&F, Mr. Dusenbery was an associate at a prominent plaintiffs' employment firm representing employees on an individual and class basis in wage and hour cases. His litigation experiences there included a case against Hearst for workers who delivered the San Francisco Chronicle along with another case against Vail Resorts on behalf of ski instructors and other employees. Prior to that, Mr. Dusenbery worked at another plaintiffs' employment firm that brought class action wage and hour cases against large retail companies, such as Target and Walmart.

Mr. Dusenbery earned his law degree from Brooklyn Law (J.D. 2012). At Brooklyn Law, Mr. Dusenbery was awarded the highest academic scholarship along with serving as an intern for the United States Magistrate Judge Viktor Pohorelsky. As well, Mr. Dusenbery obtained his undergraduate degree from Columbia College, Columbia University (2008). At Columbia University, Mr. Dusenbery was awarded English Department honors and received the Bunner prize for the best senior thesis on American literature.

Mr. Dusenbery is licensed to practice law in New York and the United States District Courts for the Southern and Eastern Districts of New York.

TAYLOR J. CRABILL

Taylor Crabill's practice is focused on employment litigation. Mr. Crabill is an Associate in the firm's New York Office.

Prior to joining F&F, Mr. Crabill was an associate at a prominent New York firm where he represented employees on an individual and class basis on employment law matters, including, but not limited to, discrimination, retaliation, sexual harassment, whistleblower retaliation, and breach of contract. Also, during law school, Mr. Crabill was an extern for the United States District Court Judge Edgardo Ramos and was a member of Fordham Law's Moot Court Board and the Brendan Moore Trial Advocacy Center.

Mr. Crabill earned his J.D. from Fordham University School of Law (J.D. 2017) and earned his undergraduate degree from Queens College (B.A., Political Science and Economics, 2011).

Mr. Crabill is licensed to practice law in New York and the United States District Courts for the Southern, Eastern, Western, and Northern Districts of New York, as well as the United States Court of Appeals for the Second Circuit.

KYLE J. CONWAY

Kyle J. Conway's practice is focused on Consumer Protection litigation. Mr. Conway is an associate in Faruqi & Faruqi's Pennsylvania office.

Prior to joining F&F, Mr. Conway worked with the Delaware Department of State's Corporations Division. As well, Mr. Conway has practiced law in the areas of insurance defense and family law.

Mr. Conway received his J.D. cum laude, from Villanova University Charles Widger School of Law (2018). In law school, Mr. Conway was the Managing Editor of the Environmental Law Journal. Mr. Conway received his undergraduate degree, summa cum laude, from the University of Pittsburg (2015).

Mr. Conway is licensed to practice law in the Commonwealth of Pennsylvania.

MATTHEW A. CONRAD

Matthew A. Conrad is an associate in the New York office of Faruqi & Faruqi. Mr. Conrad is focused on F&F's securities litigation practice.

Prior to joining Faruqi & Faruqi, Mr. Conrad was an associate at a regional defense firm where he represented business entities in construction, premises, and product liability actions in state and federal courts. While in law school, Mr. Conrad interned with the Financial Industry Regulatory Authority ("FINRA") and the New Jersey Bureau of Securities. Mr. Conrad also served as the Submissions Editor for Cardozo's International and Comparative Law Review.

Mr. Conrad earned his J.D. from Benjamin N. Cardozo School of Law (2018). As well, Mr. Conrad earned his undergraduate degree from the University of Maryland (2015).

Mr. Conrad is admitted to practice in New York State. Mr. Conrad is also admitted to practice in the Southern District of New York.

CAMILO BURR

Camilo Burr's practice is focused on employment and personal injury litigation. Mr. Burr is an Associate in the firm's New York office.

Prior to joining the firm, Mr. Burr interned with the firm's securities litigation practice group. Additionally, Mr. Burr gained further litigation experience as a legal intern at the Neighborhood Defender Service of Harlem. As well, Mr. Burr participated in the Brooklyn Law Mediation Clinic, providing pro bono mediation services at the Kings County Small Claims Court.

Mr. Burr earned his J.D. from Brooklyn Law School (2019) and his undergraduate degree from Boston University (B.A., Political Science; Minor in Archaeology, 2012).

Mr. Burr is licensed to practice law in New York.

THANH T. HOANG

Thanh T. Hoang's practice focuses on securities litigation. Thanh is an associate in the firm's New York office.

Before joining Faruqi & Faruqi, LLP, Ms. Hoang began her legal career as an Assistant District Attorney at the Kings County District Attorney's Office. There, she represented the People of the State of New York in criminal proceedings and gained experience in complex investigations and litigation issues.

Ms. Hoang earned her dual degree Master of Public Administration and Juris Doctorate with an Advanced Certificate in Forensic Accounting from John Jay College of Criminal Justice and City University of New York School of Law (2021). Ms. Hoang earned her Bachelor of Science in Physics and Mathematics from University of Arkansas (2014).

Ms. Hoang is licensed to practice law in New York.

EXHIBIT 3

PELOTON
FARUQI & FARUQI, LLP
TIME REPORT

				Categories **				
PROFESSIONAL*	HOURS	RATE	LODESTAR	1	2	3	4	5
NADEEM FARUQI (P)	20.00	$1,250	$25,000.00					20
JAMES "JOSH" WILSON (P)	571.40	$950	$542,830.00	22.7	128.7	49	184	187
ROBERT KILLORIN (P)	259.50	$950	$246,525.00	7	2.2	33	23	194.3
KATHERINE LENAHAN (P)	109.70	$700	$76,790.00	0.6	0.2		0.2	108.7
MEGAN REMMEL (P)	627.80	$675	$423,765.00	0.2	159.4	7.1	160.1	301
DANIEL WEISS (A)	10.00	$625	$6,250.00	9.9	0.1			
THOMAS PAPAIN (A)	391.30	$575	$224,997.50		0.1	0.5	1.6	389.1
DYLAN WEEKS (A)	285.70	$500	$142,850.00	3.2	46	24.6	62.7	149.2
CHRISTINA PANEQUE (A)	201.30	$500	$100,650.00	4.9	94	1.8	41.5	59.1
DEREK BEHNKE (PL)	134.00	$470	$62,980.00	10.4	17.8	4.5	52.8	48.5
ANTHONY ALOISE (PL)	0.50	$470	$235.00		0.5			
MATTHEW GONZALES (PL)	9.30	$375	$3,487.50				8.4	0.9
NICHOLAS HALLORAN (PL)	44.00	$350	$15,400.00	1.3	37.7		5	
EVELYN ZHENG (PL)	12.00	$325	$3,900.00					12
CHRISTIAN CARRANO (PL)	72.00	$325	$23,400.00	9	46		7	10
TOTALS	**2,748.50**		**$1,899,060.00**	**69.20**	**532.70**	**120.50**	**546.30**	**1,479.80**

*(P) - Partner; (SC) - Senior Counsel
(OC) - Of Counsel; (A) - Associate
(PL) - Paralegal

Categories:**

(1) Lead Plaintiff Appointment: Time spent attending to matters related to the lead plaintiff appointment process, including monitoring cases filed, client communications, factual and legal research, and drafting and editing the lead plaintiff briefing.

(2) Amended Complaint: Time spent working on the amended complaint (ECF No. 45), including factual investigation, legal research, drafting, communicating with the client, service, and research for potential future amendments.

(3) Motion to Transfer: Time spent responding to the motion to transfer (ECF No. 40), including legal research, drafting the brief, and communicating with the client.

(4) Motion To Dismiss: Time spent responding to the motion to dismiss (ECF No. 51) and request for judicial notice (ECF No. 54), including drafting the responses to these documents; responding to Defendants' notice of supplemental authority (ECF No. 73); conducting legal research in connection with these responses and motions; preparing for and attending the hearing on the motion to dismiss; and communicating with the client about these matters.

(5) Mediation, Settlement, and Confirmatory Discovery: Time spent on mediation and settlement-related matters, including conferring with a damages consultant; conducting research for and drafting the mediation statement and reply mediation statement; preparing for and attending the mediation; negotiating with Defendants regarding confirmatory discovery; reviewing the confirmatory discovery Defendants produced; conferring with Defendants' counsel regarding follow-up questions to their productions; preparing for interviews with two employees as part of the confirmatory discovery process; interviewing the two employees; retaining the claims adminstrator; drafting, reviewing, and editing the settlement stipulation and related documents; drafting Lead Plaintiff's preliminary approval motion papers (ECF Nos. 81-86); drafting the final approval motion papers; and communicating with the client, defense counsel, and the mediator about mediation and/or settlement-related matters.

EXHIBIT 4

PELOTON **FARUQI & FARUQI, LLP** **EXPENSE REPORT**	
CATEGORY	**AMOUNT**
e-Discovery Management & Other Research Fees	$19,164.51
Courier & Overnight Delivery Services	$63.00
Court Reporting Service	$603.08
Damages Consultant Fees	$23,473.00
Investigator Fees	$22,045.50
Mediation Fees	$22,500.00
Postage	$138.80
Reproduction (Internal)	$628.80
Telephone/Fax	$320.00
Meals & Travel Expenses (Local)	$59.46
TOTAL:	**$88,996.15**

EXHIBIT 5

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

IN RE PELOTON INTERACTIVE, INC. SECURITIES LITIGATION

Case No. 1:21-cv-02369-CBA-PK

CLASS ACTION

DECLARATION OF RICHARD NESWICK

I, Richard Neswick, declare as follows:

1. I am the Court-appointed Lead Plaintiff in the above-captioned securities class action (the "Action"). I have personal knowledge of the statements herein, and, if called as a witness, could and would competently testify thereto.

2. I respectfully submit this declaration in support of Lead Counsel's motion for an award of attorneys' fees and expenses, and my request for an award of $5,000 for my reasonable costs and expenses directly related to the representation of the Class in this Action.

3. On November 16, 2021, this Court appointed me to serve as Lead Plaintiff in this Action. I have taken my role as Lead Plaintiff seriously and have dedicated my personal time and energy to overseeing the Action.

4. In fulfillment of my responsibility to all members of the proposed Class, I performed various duties in furtherance of the litigation of this Action, including:

a) Engaging in telephone and email communications with Lead Counsel about the Action throughout the litigation;

b) Collecting information concerning my transactions in Peloton Interactive, Inc. ("Peloton") and providing them to Lead Counsel;

c) Submitting a sworn certification as part of the Lead Plaintiff appointment process to provide information about my Peloton transactions and my understanding of the Lead Plaintiff's duties, among other things;

d) Reviewing documents filed and/or prepared in the Action, including the amended class action complaint, motion to dismiss briefing, mediation documents, and the motion for preliminary approval of the settlement; and

e) Attending the mediation virtually that lasted approximately 9 hours.

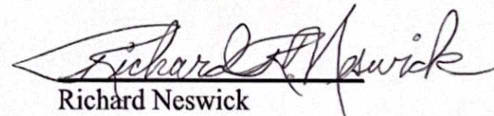
5. Additionally, I authorized Lead Counsel to enter into the settlement of this Action for $13,950,000. Prior to providing that authorization, I learned about the risks and uncertainties posed by further litigation with guidance from Lead Counsel. I then weighed these considerations against the benefits provided by the settlement, along with advice from my attorneys, and determined that the settlement is a fair, reasonable, and adequate result for the Settlement Class under these circumstances.

6. I understand that in cases such as this, the Court may award a reasonable sum for the time a class representative has devoted to representing the Settlement Class.

7. While it is difficult to provide the Court with an hourly rate for my time because I am currently retired, I believe that a total of $5,000 is reasonable for the time I spent on this litigation. I conservatively estimate that I have devoted at least 25 hours to monitoring and participating in this Action as described above. This is time that I otherwise would have devoted to my personal life or other business or investment endeavors.

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

Dated: April 18, 2024



Richard Neswick