

CASEY M. FRANK, Individually and
on Behalf of All Others Similarly Situated,

Plaintiff,

v.

EDUCATION REALTY TRUST, INC., *et al.*,

Defendants.

IN THE

CIRCUIT COURT

FOR

BALTIMORE CITY, MARYLAND

Case No. 24-C-19-005518

Judge: Jeffrey M. Geller

CIVIL DIVISION

2022 JAN 13 PM 2:10

CIRCUIT COURT
BALTIMORE CITY

PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT

Plaintiff Casey M. Frank ("Plaintiff"), by and through his undersigned counsel, and pursuant to Maryland Rules 2-231, hereby moves this Court to enter an order ("Preliminary Approval and Scheduling Order"):

1. Preliminarily approving the \$10 million common fund secured to resolve the Action ("Settlement");
2. Preliminarily certifying the Action as an opt-out class action in connection with the Settlement;
3. Preliminarily certifying Plaintiff as Settlement Class representative and appointing Plaintiff's Counsel, Monteverde & Associates PC and Ademi LLP, as Co-Class Counsel for the Settlement Class;
4. Approving the form and content of the notice program to be sent to the Settlement Class concerning the proposed Settlement and the Settlement Hearing; and
5. Setting a date for the Settlement Hearing.

In support of this Motion, Plaintiff submits herewith the accompanying Memorandum of Law, the Declaration of Juan E. Monteverde, and the exhibit attached thereto.

Dated: January 13, 2022

Respectfully submitted,

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**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF SETTLEMENT**

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Plaintiff, Casey M. Frank (“Plaintiff”) respectfully submits this memorandum of law in support of his motion for entry of an order (“Preliminary Approval and Scheduling Order”): (i) preliminarily approving the \$10 million common fund secured to resolve the Action¹ (“Settlement”); (ii) preliminarily certifying the Action as an opt-out class action in connection with the Settlement; (iii) preliminarily certifying Plaintiff as Settlement Class representative and appointing Plaintiff’s Counsel, Monteverde & Associates PC (“Monteverde”) and Ademi LLP (“Ademi”), as Co-Class Counsel for the Settlement Class; (iv) approving the form and content of the notice program to be sent to the Settlement Class concerning the proposed Settlement and the Settlement Hearing; and (v) setting a date for the Settlement Hearing.

At the Settlement Hearing, the Court shall determine: (a) whether to grant final approval of the proposed Settlement on the terms and conditions provided for in the Stipulation as fair, reasonable, and adequate; (b) whether the Settlement Class should be finally certified for settlement purposes only; (c) whether the designation of Plaintiff as Settlement Class representative and Plaintiff’s Counsel as Co-Class Counsel should be made final; (d) whether to approve the Plan of Allocation as fair, reasonable, and adequate; (e) whether to enter an Order and Final Judgment dismissing the Action on the merits and with prejudice as to the Defendants and effectuating the releases described in the Stipulation; (f) whether to grant application of the Fee and Expense Award; and (g) such other matters as may properly come before the Court.

I. PRELIMINARY STATEMENT

Plaintiff was able to secure an excellent Settlement for the Settlement Class after three years of Litigation that included successfully defeating Defendants’ Motion to Dismiss and

¹ All capitalized terms not defined herein have the same meanings as set forth in the Stipulation and Agreement of Compromise, Settlement, and Release (“Stipulation”) dated January 11, 2022, and filed contemporaneously herewith as Exhibit 1 to the Declaration of Juan E. Monteverde in Support of Plaintiff’s Motion for Preliminary Approval of Settlement (“Monteverde Decl.”).

engaging in extensive discovery. Indeed, Plaintiff reviewed over 100,000 pages of documents produced by Defendants, Education Realty Trust, Inc.'s ("EdR") financial advisor, and 13 third parties involved in the sales process of EdR. Plaintiff also conducted 11 factual depositions. In addition, Plaintiff fully responded to all of Defendants' discovery requests and was deposed in connection with his motion to certify the Settlement Class, which Defendants never opposed. Plaintiff was committed to assisting in the Action, and with Plaintiff's Counsel, he was able to secure a significant Settlement. In fact, this Settlement represents 25% of the total realistic recoverable damages (*i.e.*, estimated to be \$40 million).² This Settlement immensely exceeds the 1.7% median recovery for analogous federal securities class actions in 2020.³ The Settlement was only achieved with a Mediator's Proposal made by JAMS mediator, Robert A. Meyer, after an all-day mediation and months of continued dialogue between the Settling Parties and the mediator. Therefore, as set forth below, the Settlement is fair, reasonable, and adequate, and warrants preliminary approval by this Court.

II. RELEVANT FACTUAL BACKGROUND AND PROCEDURAL HISTORY

A. Factual Background

On June 25, 2018, EdR and certain affiliates of Greystar Real Estate Partners, LLC (collectively, "Greystar") announced that they had entered into a Merger Agreement, pursuant to which Greystar would acquire all outstanding shares of EdR common stock ("Merger") for \$41.50 in cash per share ("Merger Consideration"). Upon consummation of the Merger, The

² The Settling Parties settled after exchanging expert reports. Plaintiff was likely going to seek damages at trial in excess of \$40 million, but recognized that a \$40 million judgment was the most realistic possible outcome. This figure represents approximately \$0.50 per share – representing the difference between the Merger Consideration (*i.e.*, \$41.50 per share) and the \$42 figure that other bidders like KKR & Co. Inc. ("KKR") or The Scion Group LLC ("Scion") may have realistically been willing to pay if properly pursued by EdR.

³ See Janeen McIntosh and Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2020 Full-Year Review*, 1, 20 (NERA Jan. 25, 2021) (Monteverde Decl., Exhibit 2).

Blackstone Group L.P. (“Blackstone”) was to enter into a joint venture with Greystar (together with the Merger, the “Transaction”). On August 13, 2018, EdR issued a Definitive Proxy Statement (“Proxy”) with the U.S. Securities and Exchange Commission (“SEC”) announcing that the special meeting of EdR’s shareholders to vote on the Transaction was set for September 14, 2018 (“Shareholder Vote”). On September 14, 2018, EdR’s shareholders voted to approve the Transaction, and a week later, on September 20th, the Transaction was consummated.

B. Procedural History

In connection with the Transaction, on August 22, 2018, Plaintiff filed his Class Action Complaint (“Complaint”) in the Circuit Court for Baltimore County, Maryland (“Circuit Court for Baltimore County”) against Defendants, and the case was assigned to Judge Mickey J. Norman with case number 03-C-18-008387. The Complaint alleged that Defendants breached their fiduciary duties by approving the Transaction and by adopting a portion of the bylaw on June 24, 2018, which designated this Court and the United States District Court for the District of Maryland, Baltimore Division, as the sole venues for claims of this nature (“Exclusive Venue Designation”), because the Exclusive Venue Designation exceeded the jurisdiction-selection permitted by Md. Corps. & Ass’ns Code § 2-113 and contravened Maryland’s venue statutes.

On September 11, 2018, Defendants attempted to preemptively bolster their anticipated ratification defense that they would later raise (and fail to prevail with) in their Motion to Dismiss (discussed below) by issuing a Form 8-K with the SEC containing additional information supplementing the Proxy, but that did not address the germane disclosure issues raised by Plaintiff nor disclose the flawed sales process uncovered by Plaintiff in discovery during the Litigation.

Then, on November 19, 2018, Plaintiff filed an Amended Class Action Complaint (“Amended Complaint”) in the Circuit Court for Baltimore County against Defendants claiming that in addition to the allegations raised in the Complaint, the Individual Defendants breached their fiduciary duties by, among other things: (i) abdicating control of the sales process to Defendant Churchey; and (ii) impeding other interested parties from making a superior offer.

In response, on January 15, 2019, Defendants filed a Motion to Dismiss the Amended Complaint, and also requested that the case be transferred to this Court. Defendants asserted the ratification defense claiming that EdR’s shareholders made a fully informed decision when they approved the Transaction. On February 28, 2019, Plaintiff filed his Opposition to Defendants’ Motion to Dismiss, and also requested that the Circuit Court for Baltimore County deem the Exclusive Venue Designation void and enjoin Defendants from enforcing it. In his Opposition, Plaintiff argued that the shareholders were not provided with material information that was necessary to evaluate the Transaction and the ratification defense could not help Defendants. Subsequently, on April 1, 2019, Defendants filed their Reply in support of their Motion to Dismiss. On September 30, 2019, Judge Norman denied the Motion to Dismiss but granted Defendants’ request to transfer the case to this Court.

Consequently, on October 25, 2019, this case was transferred to this Court and assigned to Judge Geller. On November 14, 2019, Defendants filed their Answer to Plaintiff’s Amended Complaint.

Then, on January 22, 2020, this Court entered a Stipulated Order Regarding Confidentiality of Discovery (“Confidentiality Agreement”), which allowed the commencement of discovery by the Settling Parties in the Action. Plaintiff conducted extensive discovery that included reviewing 90,539 pages of documents produced by Defendants, 8,505 pages of

documents produced by EdR's financial advisor in connection with the Transaction, Merrill Lynch, Pierce, Fenner & Smith Incorporated ("BofA"), and thousands of pages of documents produced by 13 third parties that included Scion, KKR, and other bidders involved in the sales process of EdR. Plaintiff also secured a sworn affidavit from Scion's President and co-founder, Robert Bronstein regarding Plaintiff's claims about the sales process of EdR. Moreover, Plaintiff participated in producing and responding to discovery requests from Defendants and also submitted himself for examination by Defendants at his deposition.

In an effort to resolve the Action, the Settling Parties agreed to submit to a mediation session with Mr. Meyer. On November 25, 2020, in preparation for the mediation, Plaintiff submitted to Mr. Meyer a 23-page mediation statement containing 14 exhibits related to evidence obtained during discovery. On December 2, 2020, the Settling Parties attended a mediation with Mr. Meyer, but were unable to reach a settlement. Thereafter, the Settling Parties continued to engage in informal settlement discussions with the assistance of Mr. Meyer throughout the remainder of the Litigation, and exchanged additional evidentiary documents and legal authorities in the process.

On January 25, 2021, Plaintiff filed his Motion for Class Certification under seal pursuant to the Confidentiality Agreement.

Thereafter, on May 14, 2021, Defendants deposed Plaintiff, and over the course of the next five months, Plaintiff took the following 11 depositions: (i) each of the seven Individual Defendants; (ii) EdR's former Chief Financial Officer, Edwin B. Brewer, Jr.; (iii) Christine Richards, EdR's former Chief Operating Officer and Executive Vice President; (iv) Robert A. Faith, Greystar Real Estate Partners' Founder, Chairman of the Board, and Chief Executive

Officer; and (v) Jeffrey Horowitz, BofA's Global Head of Real Estate, Gaming & Lodging at the time of the sales process.

In addition, Plaintiff retained a valuation expert, M. Travis Keath, and a corporate governance expert, Professor Stephen J. Lubben. On July 16, 2021, Plaintiff and Defendants exchanged their respective expert reports. On September 9, 2021, the Settling Parties exchanged rebuttal reports from each of their respective experts.

On November 4, 2021, following two months of formal settlement discussions facilitated by Mr. Meyer, Mr. Meyer issued a proposal to settle the Action for a \$10 million common fund and gave the Settling Parties 24 hours to accept or reject the proposal. The next day, the Settling Parties accepted Mr. Meyer's proposal. On November 16, 2021, the Settling Parties filed a Notice of Settlement informing the Court that a Settlement in principle for a \$10 million common fund had been reached. That same day, the Settling Parties memorialized the terms of the Settlement in a term sheet.

Thereafter, on January 11, 2022, the Settling Parties executed the Stipulation for the Settlement, which is now subject to this Court's preliminary approval, primarily to allow notice to be sent to the Settlement Class and to schedule a Settlement Hearing.

III. THE SETTLEMENT SHOULD BE PRELIMINARILY APPROVED

Pursuant to Rule 2-231(i) of the Maryland Rules of Civil Procedure of the Circuit Court ("Md. Rules"), a "class action shall not be dismissed or compromised without the approval" of the circuit court. While Maryland law requires final judicial approval of class action settlements, there is no express requirement for *preliminary* approval of such settlements. *See* Md. Rule 2-231(i). However, Maryland courts have adopted the procedures and standards developed by federal courts for review and approval of class actions. *See Shenker v. Polage*, 226 Md. App.

670, 682 (Md. Ct. Spec. App. 2016) (holding that because Md. Rule 2-231 does not articulate any standards against which a court should evaluate the fairness and adequacy of a settlement proposal, Maryland courts will look to “Federal Rule of Civil Procedure 23(e), the federal analogue to Rule 2-231(h)”); *Bond v. Slavin*, 157 Md. App. 340, 361 n. 33 (Md. Ct. Spec. App. 2004) (“When interpreting a Maryland Rule that is similar to a federal rule of Civil Procedure, we may look to federal decisions construing the corresponding federal rule for guidance.”). Under FRCP 23(e)(2), a court can only approve a settlement after finding that the settlement is fair, reasonable, and adequate. Moreover, it is undisputed that there is a “strong presumption in favor of finding” a class action settlement to be fair. *Shenker*, 226 Md. App. at 684; *Burton v. Hale*, 2020 Md. App. LEXIS 62, at *8 (Md. Ct. Spec. App. Jan. 24, 2020).

In accordance with federal jurisprudence, preliminary approval of a proposed settlement prior to the distribution of notice is the first step in a two-step process required before a class action may be settled. Courts describe the class action settlement process as follows:

While Rule 23(e) provides the legal standard for final approval, courts typically follow a two-step procedure to analyze and finalize a class action settlement. . . . First, upon motion by the parties, the court preliminarily approves a proposed settlement if the proposal is “within the range of possible approval,” after which the parties notify the proposed class members of the settlement. . . . Later, the court conducts a final approval “fairness hearing” to establish whether the proposed settlement is “fair, adequate and reasonable” within the meaning of Rule 23. . . . The fairness hearing also affords interested parties an opportunity to object to the proposed settlement.

Benway v. Res. Real Estate Servs., LLC, No. 05-3250, 2011 U.S. Dist. LEXIS 28425, at *14 (D. Md. Mar. 16, 2011) (internal citations omitted); *see also Boyd v. Bell Atlantic-Maryland, Inc.*, 390 Md. 60, 70 (2005) (“the court gave preliminary approval to the settlement and set in motion the process for notifying class members.”).

Importantly, preliminary approval does not implicate an adjudication on the merits of the settlement, but rather asks whether the settlement is within the range of possible approval:

[A] preliminary hearing is not, of course, a definitive proceeding on the fairness of the proposed settlement . . . [The court] should make clear that it is simply a determination that there is, in effect, “probable cause” to submit the proposal to members of the class and to hold a full-scale hearing on its fairness, at which all interested parties will have an opportunity to be heard and after which a formal finding on the fairness of the proposal will be made.

In re Mid-Atl. Toyota Antitrust Litig., 564 F. Supp. 1379, 1383 (D. Md. 1983); *see also In re Titanium Dioxide Antitrust Litig.*, No. 10-0318, 2013 U.S. Dist. LEXIS 130288, at *12-13 (D. Md. Sept. 11, 2013) (“[T]he court’s goal at the preliminary fairness hearing is to assess whether there is ‘probable cause to submit the proposal to members of the class and to hold a full-scale hearing on its fairness.’”).

Therefore, in order to evaluate whether to preliminarily approve a settlement, courts in Maryland generally look to the “fairness” and “adequacy” of the proposed settlement. *See Donaldson v. Primary Residential Mortg.*, 2021 U.S. Dist. LEXIS 101625, at *9 (D. Md. May 28, 2021); *Titanium Dioxide*, 2013 U.S. Dist. LEXIS 130288, at *13; *Toyota*, 564 F. Supp. at 1385.

A. The Settlement Is Prima Facie Fair

A proposed settlement is generally presumed fair and reasonable when it is the result of arm’s-length negotiations by experienced and informed counsel. *In re Mid-Atlantic Toyota Antitrust Litig.*, 585 F. Supp. 1553, 1559 (D. Md. 1984). The Settlement here is the result of hard-fought negotiations between the Settling Parties’ experienced and informed counsel and, therefore, is presumed to be fair and reasonable at this preliminary approval stage.

When the Settling Parties agreed to enter into the proposed Settlement, the Litigation had been ongoing for three years, and Plaintiff had just concluded an extensive discovery process with summary judgment and a potential trial looming. Indeed, after filing an Amended Complaint and successfully defeating Defendants’ Motion to Dismiss, Plaintiff embarked on a

thorough and diligent discovery process, which included reviewing over 100,000 pages of documents produced by Defendants, BofA, and 13 third parties. Plaintiff also fully and comprehensively responded to Defendants' discovery requests. Moreover, Plaintiff was deposed by Defendants, and Plaintiff took 11 depositions in the span of five months. Plaintiff also retained a valuation expert and a corporate governance expert, both of whom derived expert reports and rebuttal reports that Plaintiff exchanged with Defendants. In addition, at the start of discovery, Plaintiff filed his Motion for Class Certification and partook in a mediation session with Defendants. After this mediation session, the Settling Parties continued informal settlement discussions with the assistance of Mr. Meyer while pressing forward with the Litigation. On November 4, 2021, Mr. Meyer issued a proposal to settle the Action for a \$10 million common fund, which the Settling Parties accepted.

In short, because the Settlement is the result of arm's-length negotiations between experienced counsel, and was reached after hard-fought litigation and months of negotiations, the Settlement easily satisfies the relevant standard for assessing "fairness" in the context of a preliminary approval motion. *See Toyota*, 564 F. Supp. at 1383-84; *In Re Montgomery County Real Estate Antitrust Litig.*, 83 F.R.D. 305, 315 (D. Md. 1975); *see also Mid-Atlantic Toyota*, 585 F. Supp. at 1559 ("Although this Court has not prejudged the issue of fairness, the Court finds that probable cause exists that the [settlement] agreements in question were reached in an appropriate manner.")

B. The Settlement Is *Prima Facie* Adequate

In determining whether to deem a settlement "adequate," courts in Maryland consider the following factors: (1) the relative strength of plaintiff's case on the merits; (2) the existence of any difficulties of proof or strong defenses plaintiff is likely to encounter if the case goes to trial;

(3) the anticipated duration and expense of additional litigation; (4) the solvency of defendants and the likelihood of recovery on a litigated judgment; and (5) the degree of opposition to the settlement. *Cantu-Guerrero v. Lumber Liquidators, Inc.*, 952 F.3d 471, 484 (4th Cir. 2020); *Donaldson*, 2021 U.S. Dist. LEXIS 101625, at *9-10; *Shenker*, 226 Md. App. at 688. The adequacy requirement serves to determine whether a settlement falls “within the range of possible approval.” *Toyota*, 564 F. Supp. at 1385. As outlined below, consideration of these factors supports this Court finding that the Settlement is adequate and within the range of possible approval.

1. The Strengths and Weaknesses of the Action

Plaintiff is well-aware of the strengths and weakness of the Action, as he vigorously litigated the Action for three years and engaged in extensive discovery to better understand and fine-tune his claims against Defendants. Even before Plaintiff commenced discovery, the strength of his claims was affirmed by his success in defeating Defendants’ Motion to Dismiss. Therefore, the evidence Plaintiff obtained after reviewing over 100,000 pages of documents and taking 11 depositions only bolstered and verified the strength of his claims. However, Plaintiff’s unsuccessful mediation session and subsequent settlement discussions with Mr. Meyer allowed Plaintiff to continuously reflect on and evaluate his claims, including understanding their weaknesses. Below is a more in-depth discussion of the strengths and weaknesses of the Action.

The evidence Plaintiff obtained during discovery affirmed the strength of Plaintiff’s claims asserted in his Amended Complaint, namely that: (i) the Board abdicated control of the sales process to Defendant Churchey; (ii) the Board was unaware of material communications between Defendant Churchey and certain bidders; and (iii) Defendant Churchey steered the sales process in favor of Greystar by impeding other bidders like Scion and KKR from making

superior offers. Indeed, Plaintiff uncovered evidence that both KKR and Scion had separately communicated to Defendant Churchey their willingness to offer \$42 per share to acquire EdR, which is \$0.50 higher than the Merger Consideration. Plaintiff also uncovered evidence that Scion may have been willing to offer as high as \$43 per share but was either ignored or sidelined throughout the entire sales process despite being a credible bidder, and that Defendant Churchey had communicated to KKR that he would not engage with KKR unless they were willing to pay at least \$48 per share. Thus, Plaintiff had a strong case to present at trial.

However, even though Plaintiff believes in the strength of his claims, Plaintiff recognizes that he may have difficulty proving liability at trial. Defendants would argue that Defendant Churchey was not conflicted or self-interested in steering the sales process in favor of Greystar. In fact, Defendants would present evidence that Defendant Churchey left Greystar shortly after a transition process that followed the acquisition of EdR, and that any consideration that he received was customary with other merger deals.

2. The Anticipated Duration and Expense of Additional Litigation, the Solvency of Defendants and the Likelihood of Recovery on a Litigated Judgment, and the Degree of Opposition to the Settlement

In agreeing to the Settlement, Plaintiff considered the expense and the length of time necessary to continue prosecuting the claims against Defendants through to trial, after already enduring three years of costly litigation. Indeed, even if Plaintiff was able to survive Defendants' motion for summary judgment, he would still need to successfully prevail at a trial on the merits to achieve any recovery for the Settlement Class, all while facing the real possibility that – even if Plaintiff prevailed – the recovery obtained at trial might be less than the Settlement Amount. Moreover, Plaintiff faces the reality that Defendants would likely appeal any judgment and further delay any recovery for the Settlement Class.

In sum, after weighing all factors, Plaintiff believes that the Settlement is fair, reasonable, and adequate, and certainly within the range of possible approval, warranting this Court's preliminary approval.

Accordingly, as shown above, the Settlement warrants this Court's preliminary approval.

IV. PRELIMINARY CERTIFICATION OF THE SETTLEMENT CLASS UNDER MD. RULE 2-231 IS APPROPRIATE

Once a court has preliminarily approved a settlement on the initial findings that the settlement is fair, reasonable, and adequate, the court must conditionally determine whether the proposed settlement class can be properly certified for purposes of settlement only. *See Singleton v. Domino's Pizza, LLC*, 976 F. Supp. 2d 665, 673 (D. Md. 2013). Courts have long acknowledged the propriety of a settlement class. *See, e.g., Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 619-22 (1997). Pursuant to Md. Rule 2-231(b), a member of a plaintiff class may sue as a representative party on behalf of all persons similarly situated, only if: (1) the class is so numerous that joinder of all members is impracticable ("numerosity"); (2) there are questions of law or fact common to the class ("commonality"); (3) the claims of the representative party are typical of the claims of the class ("typicality"); and (4) the representative party will fairly and adequately protect the interests of the class ("adequacy"). Moreover, Md. Rules 2-231(c) provides that if one of the subsections are met, then a class action is properly maintainable. As such, Maryland courts may certify a proposed class if the class satisfies all four requirements of Md. Rule 2-231(b), and at least one subdivision of Md. Rule 2-231(c). *See Philip Morris, Inc. v. Angeletti*, 358 Md. 689, 727 (2000).

Courts in Maryland look to federal case law regarding class certification for guidance. *Ford Motor Credit Co. v. Ferrell*, 982 A.2d 1175, 1183 (Md. Ct. Spec. App. 2009) ("Maryland

Rule 2-231 and Federal Rule of Civil Procedure . . . 23 are similar. Maryland state courts sometimes look to the federal class action rule and federal cases interpreting that rule for guidance.”); *Philip Morris*, 358 Md. at 724.

Here, the Settlement Class meets all requirements under Md. Rule 2-231(b) and at least one subdivision of Md. Rule 2-231(c), and thus the Court should preliminarily certify the Settlement Class for settlement purposes.

A. The Settlement Class Satisfies the Requirements of Md. Rule 2-231(b)

As laid out above, Md. Rule 2-231(b) enumerates four prerequisites to class certification: (1) numerosity; (2) commonality; (3) typicality; and (4) adequacy. In analyzing a motion to certify a class, the court accepts as true the class representative’s allegations. *Philip Morris*, 358 Md. at 726 (“A court should accept the putative class representative plaintiffs’ allegations as true in making its decision on class certification.”). Here, the Settlement Class satisfies each of the four requirements, as shown below.

1. Numerosity Is Satisfied

Pursuant to Md. Rule 2-231(b)(1), the proposed class must be “so numerous that joinder of all members is impracticable.” Generally, courts hold that classes comprising of at least 40 members are sufficiently large to satisfy the impracticability requirement. *Donaldson*, 2021 U.S. Dist. LEXIS 101625, at *14; *Peoples v. Wendover Funding, Inc.*, 179 F.R.D. 492, 497 (D. Md. 1998); see also *Baehr, et al. v. Creig Northrop Team, P.C.*, WDQ-13-0933, 2014 U.S. Dist. LEXIS 11030, at *26 (D. Md. Jan. 29, 2014) (“A class consisting of as few as 25 to 30 members raises the presumption that joinder would be impractical.”). However, a plaintiff need not establish a class size with precision, rather a good-faith estimate will suffice. *Philip Morris*, 358 Md. at 732. In this case, there can be no doubt that the Settlement Class satisfies the numerosity

requirement, as the Settlement Class is comprised of 80,790,667 shares of EdR common stock, which were held by thousands of shareholders nationwide.

2. Commonality Is Satisfied

Md. Rule 2-231(b)(2) requires that there be “questions of law or fact common to the class.” The purpose of the commonality requirement is to promote “convenience, uniformity, and judicial economy” by ensuring that common issues among a class of people are only litigated once. *Philip Morris*, 358 Md. at 734. This requirement is easily met in this Action, as it only requires the class to share one common legal or factual issue. *Id.*; *Peoples*, 179 F.R.D. at 498. Indeed, the Settlement Class all held shares of EdR common stock during the Settlement Class Period and so all share common questions of law and fact, particularly regarding whether the Individual Defendants breached their fiduciary duties by approving the Transaction and distributing the misleading Proxy, and whether shareholders were damaged as a result.

3. Typicality Is Satisfied

Md. Rule 2-231(b)(3) requires that the “claims of the representative parties are typical of the claims of the class.” This requirement ensures a class representative’s interests are “squarely aligned” with the other class members. *Philip Morris*, 358 Md. at 737. The representative’s claims need not be identical, instead typicality is satisfied where the representative’s claims arise “from the same event or practice or course of conduct that gives rise to the claims of other class members, and if his or her claims are based on the same legal theory.” *Id.* at 737-38.

Here, as noted above, Plaintiff and the other Settlement Class Members all held shares of EdR common stock during the Settlement Class Period, and their claims arise from the Individual Defendants’ breaches of fiduciary duties in approving the Transaction and distributing

the misleading Proxy. Therefore, Plaintiff's claims are typical of the claims of the Settlement Class.

4. Adequacy Is Satisfied

Under Md. Rule 2-231(b)(4), class certification requires proof that the class representative will "fairly and adequately protect the interests of the class." Courts have held that this requirement is satisfied where: (1) the named plaintiff has no conflicts of interest with the other class members and will prosecute the action vigorously on behalf of the class; and (2) plaintiff's attorneys are qualified and experienced to conduct the litigation on behalf of the entire class. *Philip Morris*, 358 Md. at 741-42; *Peoples*, 179 F.R.D. at 499.

As to the first prong, Plaintiff has no conflicts of interest with any Settlement Class Member, and Plaintiff has been committed to obtaining the best result for the Settlement Class over the last three years. Indeed, Plaintiff has faithfully represented the Settlement Class by reviewing the complaints, other filings, and the mediation statement, producing documents in response to Defendants' discovery requests, communicating with Plaintiff's Counsel over the course of the Litigation, and most notably, missing a day of work to have his deposition taken.

Further, as to the second prong, in determining whether counsel is adequate to represent the interests of the settlement class, courts consider the vigor, experience, and diligence of counsel. *Consumer Prot. Div. v. Linton*, 2019 Md. App. LEXIS 340, at *56 (Md. Ct. Spec. App. Apr. 22, 2019). As reflected in their firm resumes, Plaintiff's Counsel have extensive experience vindicating the rights of shareholders in securities class actions in Maryland and nationally.⁴ Moreover, Plaintiff's Counsel's vigor and diligence in litigating the Action is exemplified by the significant Settlement they obtained for the Settlement Class. Indeed, Plaintiff's Counsel

⁴ Attached as Exhibit 3 to the Monteverde Decl. are the Monteverde Firm Resume and the Ademi Firm Resume (collectively, "Plaintiff's Counsel Firm Resumes").

successfully defeated Defendants' Motion to Dismiss, attempted to resolve the Action through mediation where they drafted a 23-page mediation statement containing 14 exhibits, reviewed over 100,000 pages of documents, took 11 depositions, retained two experts, and throughout it all continued to engage in settlement discussions with the assistance of Mr. Meyer.

For these reasons, Plaintiff and Plaintiff's Counsel have fairly and adequately protected the interests of the Settlement Class, and thus have met all four requirements of Md. Rule 2-231(b).

B. The Settlement Class Satisfies At Least One Subdivision of Md. Rule 2-231(c)

In addition to satisfying Md. Rule 2-231(b), a plaintiff seeking class certification must also satisfy at least one of the subdivisions of Md. Rule 2-231(c) indicating that the action is properly maintainable as a class action. Here, the Settlement Class is maintainable under Md. Rule 2-231(c).

1. Md. Rule 2-231(c)(1) Is Satisfied

The Settlement Class is maintainable pursuant to Md. Rule 2-231(c)(1)(A), because permitting individual actions to be prosecuted against Defendants arising out of the same Transaction regarding the same conduct would plainly create a risk of inconsistent or varying adjudications with respect to individual members of the Settlement Class that would establish incompatible standards of conduct for Defendants. Similarly, the Settlement Class is maintainable pursuant to Md. Rule 2-231(c)(1)(B), as those same individual actions would serve as “adjudications with respect to individual members of the class that would, as a practical matter be dispositive of the interests of the other members not parties to the adjudications”—namely, all other former EdR stockholders—“or substantially impair or impede their ability to protect their interests.”

2. Md. Rule 2-231(c)(3) Is Satisfied

Finally, the Settlement Class is properly maintainable pursuant to Md. Rule 2-231(c)(3). An action may be certified under Rule 2-231(c)(3) if: (i) questions of law or fact common to the members of the class predominate over any questions affecting only individual members; and (ii) a class action is superior to other available methods for the fair and efficient adjudication of the controversy. In weighing these requirements, the Rule provides for pertinent factors to consider: (a) the interest of members of the class in individually controlling the prosecution of separate actions; (b) the extent and nature of any litigation concerning the controversy already commenced by members of the class; (c) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (d) the difficulties likely to be encountered in the management of a class action.

As discussed above, as holders of EdR common stock during the Settlement Class Period, Settlement Class Members share the same common questions of law and fact that predominate over any other questions, namely whether the Individual Defendants breached their fiduciary duties by approving the Transaction and by distributing the misleading Proxy, and whether shareholders were damaged as a result.

Further, for the resolution of this Action, a class action is certainly the superior method for a fair and efficient adjudication. Indeed, the Stipulation provides Settlement Class Members with the ability to obtain prompt and certain relief through well-defined administrative procedures assuring due process. This includes the right of any Settlement Class Member dissatisfied with the Settlement to object to it, or to exclude themselves from the Settlement Class. The Settlement also relieves the substantial judicial burdens that would result from repeated adjudication of the same issues in hundreds to thousands of individualized trials against

Defendants, by affording settlement relief to the Settlement Class through certification as a class action. Moreover, since the Settling Parties seek to resolve this Action through the proposed Settlement, any manageability issues that could have arisen at trial are irrelevant. *See Amchem*, 521 U.S. at 620. Finally, the complexity of the claims asserted against Defendants and the high cost of individualized litigation make it unlikely that the vast majority of Settlement Class Members would be able to obtain relief without class certification. Accordingly, a class action is a superior method of adjudication for this Litigation.

In sum, all requirements of Md. Rule 2-231(b) and at least one subdivision of Md. Rule 2-231(c) are satisfied, warranting this Court's preliminary certification of the Settlement Class for settlement purposes only.

V. THE NOTICE PROGRAM SATISFIES DUE PROCESS AND MD. RULE 2-231(F)

Pursuant to Md. Rule 2-231(f), notice to the settlement class must advise members that: (i) the court will exclude from the class any member who so requests by a specific date; (ii) the judgment, whether favorable or not, will include all members who do not request exclusion; and (iii) any member who does not request exclusion and who desires to enter an appearance through counsel may do so. Here, the proposed form of the Notice of Pendency and Proposed Settlement of Class Action ("Notice")⁵ satisfies those three requirements.

The Notice includes detailed information on the process and requirements for Settlement Class Members wishing to exclude themselves from the Settlement Class. Notice at 8. Moreover, the Notice also provides that Settlement Class Members who do not exclude themselves from the Settlement Class will be bound by the terms of the Settlement. *Id.* at 1-2. Finally, the Notice

⁵ The Notice is attached as Exhibit A-1 to the Stipulation.

provides that Plaintiff's Counsel are representing the Settlement Class, but that Settlement Class Members who do not exclude themselves and want to be represented by their own counsel may hire a lawyer at their own expense. *Id.* at 8.

Further, "although no rigid standards govern the contents of settlement notice to class members . . . notice must fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings." *Mid-Atlantic Toyota*, 585 F. Supp. at 1563. In addition, "on its face the notice must be neutral and emphasize that the court is expressing no opinion on the merits of the case or the amount of the settlement." *Id.* Indeed, the notice must "consist of a very general description of the proposed settlement, including a summary of the monetary or other benefits that the class would receive and an estimation of attorneys' fees and other expenses." *Id.*

Here, the Notice is written in a neutral manner and outlines the basic terms of the Settlement. Notice at 2. The Notice details the factual background and procedural history of the Action, the reasons for and benefits of the Settlement to the Settlement Class, the Fee and Expense Award that Plaintiff will apply for, and a breakdown of the per share recovery Settlement Class Members will be entitled to. *Id.* at 2-4. Further, the Notice provides the location, date, and time of the Settlement Hearing, and the addresses and telephone numbers of Plaintiff's Counsel and Defendants' Counsel if Settlement Class Members have questions or seek additional information. *Id.* at 9-10. Last, the Notice indicates that Settlement Class Members have the following options in connection with the Settlement: (1) submit a Proof of Claim and Release ("Proof of Claim")⁶ to the Claims Administrator to become part of the Settlement Class and be bound by the Settlement; (2) exclude themselves from the Settlement (as discussed

⁶ The Proof of Claim is annexed hereto as Exhibit A-2 to the Stipulation.

above); (3) object to the Settlement; or (4) take no course of action resulting in no payment from the Settlement. *Id.* at 1-2, 8-10.

If this Court approves the form and content of the notice program, the Claims Administrator will mail a copy of the Notice and Proof of Claim via First-Class Mail to all Settlement Class Members who can be reasonably identified and will also post the Notice and Proof of Claim on its website. Thereafter, Monteverde will cause the Summary Notice⁷ to be published via *PRNewswire*. This practice effectuates the best means of notice, meets the requirements of Md. Rule 2-231(f) and due process, and is similar to notice programs used in other class action settlements in Maryland. *See e.g., Donaldson*, 2021 U.S. Dist. LEXIS 101625, at *7; *Mid-Atlantic Toyota*, 585 F. Supp. at 1560-63. Therefore, Plaintiff requests that the Court approve the proposed notice program in the manner and form detailed above.

VI. PROPOSED SCHEDULE OF EVENTS

The proposed Preliminary Approval and Scheduling Order includes the following schedule:

Notice mailed to the Settlement Class (“Notice Date”)	21 calendar days after entry of the Preliminary Approval and Scheduling Order
Summary Notice published	10 calendar days after the Notice Date
Deadline for filing briefs in support of the Settlement, certification of the Settlement Class, Plan of Allocation, or the request for the Fee and Expense Award	35 calendar days prior to the Settlement Hearing
Deadline for requesting exclusion from the Settlement Class and objecting to the Settlement, Plan of Allocation, or the request for the Fee and Expense Award	21 calendar days prior to the Settlement Hearing
File declaration confirming mailing and publishing of Notice, Proof of Claim, and Summary Notice	10 business days prior to the Settlement Hearing
Reply papers in support of the Settlement, Plan of Allocation, or the request for the Fee and Expense Award	7 calendar days prior to the Settlement Hearing

⁷ The Summary Notice is annexed hereto as Exhibit A-3 to the Stipulation.

Settlement Hearing	At the Court's convenience, but no less than 110 calendar days after entry of the Preliminary Approval and Scheduling Order
Last day for submitting Proof of Claim forms	120 calendar days after the Notice Date or such other time as set by the Court

VII. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that this Court enter the Preliminary Approval and Scheduling Order and set a Settlement Hearing to be held at the Court's convenience, but no less than 110 calendar days after entry of the Preliminary Approval and Scheduling Order.

Dated: January 13, 2022

Respectfully Submitted,

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Counsel for Plaintiff and the Putative Class

CASEY M. FRANK, Individually and
on Behalf of All Others Similarly Situated,

Plaintiff,

v.

EDUCATION REALTY TRUST, INC., *et al.*,

Defendants.

IN THE

CIRCUIT COURT

FOR

BALTIMORE CITY, MARYLAND

Case No. 24-C-19-005518

Judge: Jeffrey M. Geller

**DECLARATION OF JUAN E. MONTEVERDE IN SUPPORT OF PLAINTIFF'S
MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT**

I, Juan E. Monteverde, declare as follows:

1. I am the Founder and Managing Partner of the law firm Monteverde & Associates PC, Counsel for Plaintiff Casey M. Frank ("Plaintiff") and Counsel for the putative class in this Action. I am admitted *pro hac vice*. I submit this declaration in support of Plaintiff's Motion for Preliminary Approval of Settlement.

2. Attached hereto as **Exhibit 1** is a true and correct copy of the Stipulation and Agreement of Compromise, Settlement, and Release, dated January 11, 2022, which contains the following annexed exhibits:

- *Exhibit A* – [Proposed] Order of Preliminary Approval and for Notice and Scheduling
- *Exhibit A-1* – Notice of Pendency and Proposed Settlement of Class Action
- *Exhibit A-2* – Proof of Claim and Release
- *Exhibit A-3* – Summary Notice

- *Exhibit B* – Order and Final Judgment

3. Attached hereto as **Exhibit 2**: Janeen McIntosh and Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2020 Full-Year Review*, 1, 20 (NERA Jan. 25, 2021)

4. Attached hereto as **Exhibit 3**: Plaintiff’s Counsel Firm Resumes

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

Executed on January 12, 2022

/s/ Juan E. Monteverde
Juan E. Monteverde

Exhibit 1

CASEY M. FRANK, Individually and
on Behalf of All Others Similarly Situated,

Plaintiff,

v.

EDUCATION REALTY TRUST, INC., *et al.*,

Defendants.

**IN THE
CIRCUIT COURT**

FOR

BALTIMORE CITY, MARYLAND

Case No. 24-C-19-005518

Judge: Jeffrey M. Geller

**STIPULATION AND AGREEMENT OF
COMPROMISE, SETTLEMENT, AND RELEASE**

Plaintiff Casey M. Frank (“Plaintiff”), on the one hand, and Randall L. Churchey, Thomas Trubiana, John V. Arabia, Kimberly K. Schaefer, Howard A. Silver, John T. Thomas, Wendell W. Weakley (collectively, the “Individual Defendants”), and Education Realty Trust, Inc. (“EdR,” which together with the Individual Defendants, “Defendants,”) and Greystar Student Housing Growth and Income Trust (“Greystar” and together with EdR as successor by merger, the “Company”), on the other hand, have reached this Stipulation and Agreement of Compromise, Settlement, and Release (with the exhibits hereto, the “Stipulation”), in the above-captioned action *Frank v. Education Realty Trust, Inc., et al.*, Case No. 24-C-19-005518 (the “Action”) in the Circuit Court for Baltimore City, Maryland (the “Court”), subject to approval by the Court. Plaintiff, Defendants, and Greystar may be collectively referred to herein as the “Settling Parties.”

WHEREAS, on June 25, 2018, EdR and certain affiliates of Greystar Real Estate Partners, LLC (collectively, “Greystar Real Estate Partners”) announced that they had entered into an Agreement and Plan of Merger (“Merger Agreement”), pursuant to which Greystar Real Estate

Partners would acquire all outstanding shares of EdR common stock for \$41.50 in cash per share of EdR common stock (the “Transaction”);

WHEREAS, on August 13, 2018, EdR filed a Definitive Proxy Statement (“Proxy”) with the U.S. Securities and Exchange Commission (“SEC”) announcing that the special meeting of EdR’s shareholders to vote on the Transaction was set for September 14, 2018;

WHEREAS, on August 22, 2018, Plaintiff filed his Class Action Complaint (“Complaint”) in the Circuit Court for Baltimore County, Maryland (“Circuit Court for Baltimore County”) against Defendants, and the case was assigned to Judge Mickey J. Norman with case number 03-C-18-008387;

WHEREAS, the Complaint alleged that Defendants breached their fiduciary duties by approving the Transaction and by adopting a portion of the bylaw on June 24, 2018, which designated this Court and the United States District Court for the District of Maryland, Baltimore Division, as the sole venues for claims of this nature (“Exclusive Venue Designation”), because the Exclusive Venue Designation exceeded the jurisdiction-selection permitted by Md. Corps. & Ass’ns Code § 2-113 and contravened Maryland’s venue statutes;

WHEREAS, on September 14, 2018, EdR’s shareholders voted to approve the Transaction;

WHEREAS, on September 20, 2018, the Transaction was consummated (“Closing Date”);

WHEREAS, on November 19, 2018, Plaintiff filed an Amended Class Action Complaint (“Amended Complaint”) in the Circuit Court for Baltimore County against Defendants claiming that in addition to the allegations raised in the Complaint, the Individual Defendants breached their fiduciary duties by, among other things: (i) abdicating control of the sales process to Defendant Churchey; and (ii) impeding other interested parties from making a superior offer;

WHEREAS, on January 15, 2019, Defendants filed a Motion to Dismiss the Amended Complaint and also requested that the case be transferred to this Court;

WHEREAS, on February 28, 2019, Plaintiff filed his Opposition to Defendants' Motion to Dismiss and also requested that the Circuit Court for Baltimore County deem the Exclusive Venue Designation void and enjoin Defendants from enforcing it;

WHEREAS, on April 1, 2019, Defendants filed their Reply in support of their Motion to Dismiss;

WHEREAS, on September 30, 2019, Judge Norman denied Defendants' Motion to Dismiss but granted Defendants' request to transfer the case to this Court;

WHEREAS, on October 25, 2019, this case was transferred to this Court and assigned case number 24-C-19-005518, and later assigned to Judge Jeffrey M. Geller (the "Action");

WHEREAS, on November 14, 2019, Defendants filed their Answer to Plaintiff's Amended Complaint;

WHEREAS, on January 22, 2020, Judge Geller entered a Stipulated Order Regarding Confidentiality of Discovery ("Confidentiality Agreement"), which effectively marked the commencement of extensive discovery by the Settling Parties in the Action;

WHEREAS, Plaintiff conducted extensive discovery that included reviewing 90,539 pages of documents produced by Defendants, 8,505 pages of documents produced by EdR's financial advisor in connection with the Transaction, Merrill Lynch, Pierce, Fenner & Smith Incorporated ("BofA"), and thousands of pages of documents produced by 13 third parties, and Plaintiff responded to Defendants' Request for Production and First Set of Interrogatories;

WHEREAS, on December 2, 2020, the Settling Parties attended a mediation with Robert A. Meyer from JAMS but were unable to reach a settlement. Thereafter, the Settling Parties continued to engage in informal settlement discussions with the assistance of Mr. Meyer;

WHEREAS, on January 25, 2021, Plaintiff filed his Motion for Class Certification under seal pursuant to the Confidentiality Agreement;

WHEREAS, on May 14, 2021, Defendants took the deposition of Plaintiff;

WHEREAS, thereafter Plaintiff took the following eleven (11) depositions: (i) each of the seven Individual Defendants; (ii) EdR's former Chief Financial Officer, Edwin B. Brewer, Jr.; (iii) Christine Richards, EdR's former Chief Operating Officer and Executive Vice President; (iv) Robert A. Faith, Greystar Real Estate Partners' Founder, Chairman of the Board, and Chief Executive Officer; and (v) Jeffrey Horowitz, head of the BofA team that advised EdR in connection with the Transaction;

WHEREAS, Plaintiff also obtained an affidavit from The Scion Group LLC's ("Scion") President and co-founder, Robert Bronstein related to Plaintiff's claims about the sales process;

WHEREAS, Plaintiff retained a valuation expert, M. Travis Keath, and a corporate governance expert, Professor Stephen J. Lubben, and Defendants retained valuation expert Dr. Stuart C. Gilson and corporate governance expert Steven Davidoff Solomon, and subsequently on July 16, 2021, Plaintiff and Defendants exchanged their respective expert reports;

WHEREAS, on September 9, 2021, the Settling Parties exchanged rebuttal reports from each of their respective experts;

WHEREAS, on November 4, 2021, after two months of settlement discussions facilitated by Mr. Meyer, Mr. Meyer issued a proposal to settle the Action for a \$10 million common fund;

WHEREAS, the Settling Parties accepted Mr. Meyer's proposal, and on November 15, 2021, the Settling Parties filed a Notice of Settlement informing the Court that a settlement in principle for a \$10 million common fund had been reached to resolve the Action (the "Settlement");

WHEREAS, on November 16, 2021, the Settling Parties memorialized the terms of the Settlement in a term sheet;

WHEREAS, on January 11, 2022, the Settling Parties reduced the settlement terms into this Stipulation, which is now subject to this Court's approval; and

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, subject to approval by the Court, pursuant to Rule 2-231(i) of the Maryland Rules of Civil Procedure of the Circuit Court ("Maryland Rules"), in consideration of the benefits afforded herein, that the Action shall be compromised, settled, released, and dismissed with prejudice, upon and subject to the following terms and conditions:

DEFINITIONS

In addition to the terms defined elsewhere in this Stipulation, the following terms have the meanings specified below:

1. "Action" or "Litigation" means the above-captioned action *Frank v. Education Realty Trust, Inc., et al.*, Case No. 24-C-19-005518 in the Circuit Court for Baltimore City and includes all prior filings in the Circuit Court for Baltimore County, as well as all filings in the Circuit Court for Baltimore City.
2. "Authorized Claimant" means any Settlement Class Member whose claim for recovery has been allowed pursuant to the terms of the Plan of Allocation ultimately approved by the Court.
3. "Claimant" means a person or entity who or which submits a Proof of Claim and Release form to the Claims Administrator.
4. "Claims Administrator" means the firm to be selected by Plaintiff's Counsel that will provide and administer notice of the proposed Settlement to the Settlement Class Members.
5. "Court" means the Circuit Court for Baltimore City, Maryland.

6. “Defendants” means Education Realty Trust, Inc., Randall L. Churchey, Thomas Trubiana, John V. Arabia, Kimberly K. Schaefer, Howard A. Silver, John T. Thomas, and Wendell W. Weakley.

7. “Defendants’ Counsel” means the undersigned counsel for Defendants.

8. “Defendants’ Released Persons” means Defendant EdR, the Individual Defendants (Randall L. Churchey, Thomas Trubiana, John V. Arabia, Kimberly K. Schaefer, Howard A. Silver, John T. Thomas, and Wendell W. Weakley), Greystar Student Housing Growth and Income Trust (successor by merger to EdR), and any and all of their related parties, including, without limitation, as well as each of their respective past or present family members, spouses, heirs, trusts, trustees, executors, estates, administrators, beneficiaries, distributees, foundations, agents, employees, fiduciaries, partners, control persons, partnerships, general or limited partners or partnerships, joint ventures, member firms, limited liability companies, corporations, affiliates, parents, subsidiaries, divisions, associated entities, stockholders, principals, officers, managers, directors, managing directors, members, managing members, managing agents, predecessors, predecessors-in-interest, successors, successors-in-interest, assigns, financial or investment advisors, advisors, consultants, investment bankers, entities providing any fairness opinion, underwriters, brokers, dealers, lenders, commercial bankers, attorneys, personal or legal representatives, accountants, insurers, co-insurers, reinsurers, and associate.

9. “EdR” means Education Realty Trust, Inc.

10. “Escrow Account” means the account that is maintained by the Escrow Agent and into which the Settlement Amount shall be deposited. The funds deposited into the Escrow Account shall be invested in instruments backed by the full faith and credit of the U.S. Government or agency thereof, or if the yield on such instruments is negative, in an account fully insured by the U.S. Government or

an agency thereof.

11. “Escrow Agent” means Monteverde & Associates PC or its successor(s) or authorized agents.

12. “Final Approval” means when the Court has entered an Order and Final Judgment certifying the Settlement Class, approving the Settlement, dismissing the Action with prejudice on the merits as to the Defendants (and with Plaintiff and Plaintiff’s Counsel agreeing not to pursue fees or costs against the Defendants other than from the Fund pursuant to paragraph 60 herein), and providing for such release language as set forth in paragraphs 72, et seq. herein, with such Order and Final Judgment being final and no longer subject to further appeal or review, whether by affirmance on or exhaustion of any possible appeal or review, by writ of certiorari or otherwise, or by lapse of time.

13. “Fund” means the Settlement Amount held as a common fund in the Escrow Account, plus all interest and accretions thereto after being deposited into the Escrow Account controlled by the Escrow Agent, and which may be reduced by payments or deductions as provided for herein or by court order.

14. “Greystar” means Greystar Student Housing Growth and Income Trust, successor by merger to EdR. Greystar and EdR may collectively be referred to herein as the “Company.”

15. “Individual Defendants” means Randall L. Churchey, Thomas Trubiana, John V. Arabia, Kimberly K. Schaefer, Howard A. Silver, John T. Thomas, and Wendell W. Weakley.

16. “Liaison Counsel” means Levi & Korsinsky, LLP.

17. “Net Settlement Fund” means the Fund less: (i) any attorneys’ fees, expenses, and incentive award approved by the Court, (ii) any costs or expenses incurred in connection with administering the Settlement and/or distribution of monies from the Fund (other than expenses incurred by Defendants in connection with the provision of Notice in accordance with paragraph 67

herein), and (iii) any federal, state, or local taxes of any kind in connection with the Fund (including any penalties and the reasonable expenses and costs in connection with determining the amount of, and paying, any taxes owed by the Fund (including, without limitation, reasonable expenses of tax attorneys and accountants), and for the preparation, mailing, administration, and distribution costs and expenses relating to the filing or the failure to file all necessary or advisable tax returns).

18. “Notice” means the Notice of Pendency and Proposed Settlement of Class Action, substantially in the form attached hereto as Exhibit A-1.

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

20. “Person” means a natural person, individual, corporation, limited liability corporation, professional corporation, limited liability partnership, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity and all of their respective spouses, heirs, beneficiaries, executors, administrators, predecessors, successors, representatives, or assignees.

21. “Plaintiff” means Casey M. Frank.

22. “Plaintiff’s Counsel” means Monteverde & Associates PC and Ademi LLP, or any of their successors. No other law firm is included within the definition of Plaintiff’s Counsel.

23. “Plaintiff’s Released Claims” means any and all claims, rights and causes of action, duties, obligations, demands, actions, debts, sums of money, suits, contracts, agreements, promises, damages and liabilities, whether known or unknown, contingent or non-contingent, or suspected or unsuspected, including all claims arising under federal or state statutory or common law or any other law, rule or regulation, whether foreign or domestic, that arise out of or relate in any way to the

institution, prosecution, or settlement of the claims by Plaintiff, any other Settlement Class Members, Plaintiff's Counsel, or Liaison Counsel against the Defendants, except for claims relating to the enforcement of this Settlement.

24. "Plan of Allocation" means a plan or formula of allocation of the Fund, whereby the Fund shall be distributed to Authorized Claimants after payment of Notice and Administration Costs (defined below), Taxes and Tax Expenses (defined below), such attorneys' fees, costs, expenses (including time and expenses awarded by the Court to Plaintiff), and interest as may be awarded by the Court. Any Plan of Allocation is not part of the Stipulation, and Defendants and Defendants' Released Persons shall have no responsibility or liability with respect thereto.

25. "Preliminary Approval and Scheduling Order" means a proposed order of preliminary approval and for notice and scheduling described below, substantially in the form attached hereto as Exhibit A.

26. "Proof of Claim and Release" means the document, substantially in the form attached hereto as Exhibit A-2.

27. "Released Claims" means any and all claims, rights and causes of action, duties, obligations, demands, actions, debts, sums of money, suits, contracts, agreements, promises, damages and liabilities, whether known or unknown, contingent or non-contingent, derivative or direct, or suspected or unsuspected, including any claims arising under federal or state statutory or common law or any other law, rule or regulation, whether foreign or domestic, that have been asserted, could have been asserted, or could be asserted in the future against Defendants' Released Persons that arise out of or relate in any way to the Merger Agreement, the Transaction, the Proxy, or the Action; provided, however, that the Released Claims do not include any claims to enforce the Settlement or any claims against Settlement Class Members that properly seek to opt-out of the Settlement.

28. “Settlement” means the settlement of the Litigation as set forth in this Stipulation.

29. “Settlement Amount” means the principal amount of Ten Million Dollars (\$10,000,000.00) that the Company and/or its insurers shall pay or cause to be paid pursuant to paragraph 39 of this Stipulation. The Individual Defendants are not responsible for paying any portion of the Settlement Amount. No Defendant, including EdR, or any Defendants’ Released Person, including Greystar, shall have any obligation whatsoever to pay any amount over and above the principal amount of Ten Million Dollars (\$10,000,000.00). Such amount is to be paid as consideration for full and complete settlement of all of the Released Claims.

30. “Settlement Class” means all record holders and all beneficial holders of EdR common stock who purchased, sold, or held such stock during the period from and including June 25, 2018, date of execution of the Merger Agreement, through and including, September 20, 2018, the Closing Date, including any and all of their respective predecessors, successors, trustees, executors, administrators, estates, legal representatives, heirs, assigns and transferees. Excluded from the Settlement Class are: (i) Defendants; (ii) members of the immediate families of each Individual Defendant; (iii) EdR’s subsidiaries and affiliates; (iv) any entity in which any Defendant has a controlling interest; (v) the legal representatives, heirs, successors, administrators, executors, and assigns of each Defendant; and (vi) any Person or entity who properly excludes themselves by filing a valid and timely request for exclusion (collectively the “Excluded Stockholders”).

31. “Settlement Class Member” means any Person who falls within the definition of the Settlement Class as set forth in paragraph 30 of the Stipulation.

32. “Settlement Class Period” means the period commencing on June 25, 2018, and ending on September 20, 2018, inclusive.

33. “Settlement Hearing” means a hearing where the Court determines whether the Settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class.

34. “Settling Parties” means each of the Defendants and Greystar, on the one hand, and Plaintiff on behalf of himself and each of the Settlement Class Members, on the other hand.

35. “Stipulation” means this Stipulation and Agreement of Compromise, Settlement, and Release, including the exhibits thereto.

36. “Summary Notice” means the document, substantially in the form attached hereto as Exhibit A-3.

37. “Unknown Claims” means (i) any of the Plaintiff’s Released Claims which Plaintiff or any Settlement Class Member, or any of their agents or attorneys, does not know or suspect to exist in such Person’s favor at the time of the release of the Plaintiff’s Released Claims; and (ii) any of the Released Claims that the Defendants’ Released Persons do not know or suspect to exist in his, her, or its favor at the time of the release of the Released Claims, which, in the case of both (i) and (ii), if known by such Person, might have affected such Person’s decision with respect to this Settlement, including, without limitation, such Person’s decision not to object to this Settlement or not to exclude himself, herself, or itself from the Settlement Class. Unknown Claims include those Plaintiff’s Released Claims and Released Claims in which some or all of the facts comprising the claim may be suspected, or even undisclosed or hidden. With respect to any and all Plaintiff’s Released Claims and Released Claims, Plaintiff and Defendants shall expressly, and each of the Settlement Class Members and Defendants’ Released Persons shall be deemed to have, and by operation of the Order and Final Judgment shall have, expressly waived to the fullest extent permitted by law, the provisions, rights, and benefits of California Civil Code § 1542, which provides:

A general release does not extend to claims that the creditor or releasing party does not

know or suspect to exist in his or her favor at the time of executing the release, and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

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

SUBMISSION AND APPLICATION TO THE COURT

38. As soon as practicable after this Stipulation has been executed, Plaintiff shall submit a proposed Preliminary Approval and Scheduling Order seeking preliminarily approval of the Settlement and certification of the Settlement Class for settlement purposes only, and establishing the procedure for: (i) approval of the Notice, Proof of Claim and Release, and Summary Notice; and (ii) the Court's consideration for final approval of the proposed Settlement, class certification, and Plaintiff's application(s) for attorneys' fees, reimbursement of expenses, and an incentive award.

SETTLEMENT CONSIDERATION

39. In consideration for the full and final Settlement and releases (as defined herein) by Plaintiff and the Settlement Class and the dismissal with prejudice of the Action as to the Defendants, the Settling Parties have agreed that on behalf of the Defendants, the Company and/or its insurers shall cause the Settlement Amount to be paid into the Escrow Account no later than thirty (30) days after the later of (the "Due Date"): (i) entry of the Preliminary Approval and Scheduling Order by the Court; and (ii) receipt by pertinent insurance carrier(s) of each of (a) a copy of the Preliminary Approval and Scheduling Order as entered by the Court (which will be transmitted by Defendants' Counsel on the day received), (b) a W-9 for the Escrow Account, and (c) wire or mailing instructions for delivery to the Escrow Account.

ESCROW AGENT AND ESCROW ACCOUNT

40. The Escrow Agent shall open the Escrow Account in a federally insured financial institution to hold the Settlement Amount, plus any accrued interest, in a segregated account maintained by the Escrow Agent. Such funds will be returned by the Escrow Agent in the event that the Settlement or any of the dismissals are not upheld on appeal.

41. The Escrow Agent will invest the Fund only in instruments backed by the full faith and credit of the U.S. Government or fully insured by the U.S. Government or an agency thereof, and will reinvest the proceeds of these instruments as they mature in similar instruments at their then-current market rates. All costs and risks related to the investment of the Fund in accordance with the guidelines set forth in this paragraph shall be borne by the Fund and neither Defendants nor Defendants' Released Persons shall have any responsibility for, interest in, or liability whatsoever with respect to the funds held in the Escrow Account, including with respect to investment decisions, distribution of the Fund, or the actions of the Escrow Agent, or any transactions executed by the Escrow Agent.

42. The Escrow Agent shall not disburse the Fund except as provided by: (i) the Stipulation; (ii) an order of the Court; or (iii) prior written agreement of Defendants' Counsel. Subject to further order(s) and/or directions as may be made by the Court, or as provided in the Stipulation, the Escrow Agent is authorized to execute such transactions on behalf of the Settlement Class Members as are consistent with the terms of the Stipulation.

43. Neither Defendants nor Defendants' Released Persons shall have any responsibility for, interest in, or liability whatsoever with respect to, the actions of the Escrow Agent, or any transaction executed by the Escrow Agent. All funds held by the Escrow Agent shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed or returned pursuant to the Stipulation and/or further order(s) of the Court.

TAXES AND TAX EXPENSES

44. The Settling Parties and their counsel agree that the Fund should be treated as being at all times a "qualified settlement fund" within the meaning of Treas. Reg. §1.468B-1. The Settling

Parties shall not take a position in any filing or before any tax authority inconsistent with such treatment. In addition, the Escrow Agent shall timely make such elections as necessary or advisable to carry out the provisions of this section, including the “relation-back election” (as defined in Treas. Reg. §1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur. The Escrow Agent shall obtain and provide to Defendants the Fund’s federal taxpayer identification number before the Due Date.

45. For the purpose of §468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the “administrator” shall be the Escrow Agent. The Escrow Agent shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Fund (including, without limitation, the returns described in Treas. Reg. §1.468B-2(k)(1)). Such returns (as well as the election described in this section) shall be consistent with this section and in all events shall reflect that all taxes, including any estimated taxes, interest, or penalties (collectively, the “Taxes”) on the income earned by the Fund shall be paid out of the Fund as provided hereof.

46. All Taxes arising with respect to the income earned by the Fund shall be paid out of the Fund. Expenses and costs incurred in connection with the operation and implementation of this section (including, without limitation, expenses of tax attorneys and/or accountants, and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this section) (“Tax Expenses”) shall be paid out of the Fund without approval of the Defendants or the Court. In all events none of Defendants’ Released Persons or their counsel shall have any liability or

responsibility for the Taxes or the Tax Expenses. The Escrow Agent shall indemnify and hold each of Defendants' Released Persons and their counsel harmless for Taxes and Tax Expenses (including, without limitation, Taxes payable by reason of any such indemnification). Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Fund and shall be timely paid by the Escrow Agent out of the Fund without prior order from the Court, and the Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from any distribution to Settlement Class Members any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. §1.468B-2(1)(2)); neither any of Defendants' Released Persons, their insurance carriers, nor their counsel are responsible, nor shall they have any liability. The Settling Parties agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this section.

CLASS CERTIFICATION

47. For settlement purposes only, the Settling Parties agree that the Action shall be conditionally certified as an opt-out class pursuant to Maryland Rule 2-231. Certification of the Settlement Class (except for the Excluded Stockholders) is for settlement purposes only and is conditioned upon Final Approval.

48. The Excluded Stockholders hereby relinquish any right to receive any part of the Fund. The Excluded Stockholders shall endeavor to provide Plaintiff, within two business days after Final Approval of the Settlement and upon prior reasonable request by Plaintiff: (i) the names and mailing addresses for each of the Excluded Stockholders; (ii) the number of Excluded Shares held by such Excluded Stockholders; (iii) the account information (including financial institution and account numbers where the Excluded Shares were held) for such Excluded Stockholders; and (iv) any other

information pertaining to the Excluded Stockholders' holdings in EdR necessary and sufficient to permit the Claims Administrator to take appropriate steps to ensure that no Excluded Stockholder inadvertently receives any payment from the Fund.

49. In the event that any Excluded Stockholder learns that he, she, or it has received payment from the Fund, he, she, or it shall provide reasonable notice to Plaintiff and take steps reasonably requested by Plaintiff and the Claims Administrator to return promptly said funds to the Claims Administrator.

50. If the Settlement does not become final for any reason, Defendants reserve the right to oppose certification of Plaintiff or the Settlement Class in the Action or any future proceedings.

NOTICE

51. Plaintiff's Counsel are responsible for selecting a Claims Administrator to provide and administer notice of the proposed Settlement to the Settlement Class Members. Subject to the direction and approval of the Escrow Agent, the Claims Administrator shall pay from the Fund the costs and expenses reasonably and actually incurred in connection with providing notice to Settlement Class Members, mailing the Notice and Proof of Claim and Release and publishing Summary Notice (such amount shall include, without limitation, the actual costs of publication, printing and mailing the notice, and reimbursement to nominee owners for forwarding notice to their beneficial owners), assisting with the filing of claims, administering and distributing the Net Settlement Fund to Authorized Claimants, processing Proofs of Claim and Releases, and paying escrow fees and costs, if any, and the administrative expenses incurred and fees charged by the Claims Administrator in connection with providing notice and processing the submitted claims (together, the "Notice and Administration Costs"). All Notice and Administration Costs shall be paid from the Fund. In the

event that the Settlement does not become final, any money paid or incurred for the above purposes shall not be returned or repaid to EdR or its insurers.

52. Notice of the proposed Settlement shall be provided by the Claims Administrator by mailing Notice to all stockholders of record of EdR, in accordance with the Preliminary Approval and Scheduling Order. Plaintiff's Counsel shall, at least ten (10) business days before the Settlement Hearing, file with the Court an appropriate affidavit or declaration, regarding preparation and distribution of the Notice, Proof of Claim and Release, and Summary Notice.

OPT-OUT RIGHTS

53. Prospective Settlement Class Members shall have the right to opt-out of, and request exclusion from, the Settlement Class and the Settlement. Any prospective Settlement Class Member who does not timely and validly request exclusion from the Settlement Class and Settlement shall be a Settlement Class Member and shall be bound by the terms of this Stipulation, the Settlement, and the Order and Final Judgment. Any prospective Settlement Class Member who timely and validly requests exclusion from the Settlement Class and Settlement shall be excluded from the Settlement Class and the Settlement as an Excluded Stockholder.

54. The Notice shall describe the procedure whereby prospective Settlement Class Members may exclude themselves from the Settlement Class and Settlement, which shall, at a minimum, provide that any such requests must be made in writing, no later than twenty-one (21) calendar days prior to the Settlement Hearing, and be mailed and postmarked to the address designated in the Notice.

55. Notwithstanding anything else contained in this Stipulation, if more than a certain number to be kept confidential and filed under seal ("Blow Up Number") of the prospective Settlement Class Members request exclusion, then Defendants may, in their sole discretion, elect to terminate this

Stipulation. Prior to termination of the Stipulation and within five (5) business days from the day they determine that the number of Settlement Class Members who have requested exclusion exceeds the Blow Up Number, and in any event, at least fifteen (15) days prior to the Settlement Hearing, Defendants will notify Plaintiff's Counsel, in writing, that they have received the Blow Up Number of Requests for Exclusion. Plaintiff's Counsel will then have ten (10) days to attempt to cause retraction of any election of exclusion by Settlement Class Members or any group thereof. To retract a prior Request for Exclusion, the Settlement Class Member must provide to the Settling Parties, at least three (3) days prior to the Settlement Hearing, or any adjournment thereof, a written notice stating his, her, or its desire to retract the Request for Exclusion from the Settlement Class. If Plaintiff's Counsel cannot cause sufficient retractions three (3) days prior to the Settlement Hearing, Defendants may terminate this Stipulation. In that event, (a) this Stipulation shall terminate and become null and void, the Preliminary Approval and Scheduling Order and all of its provisions shall be vacated by its own terms, and the Action shall revert to the status that existed prior to the execution date of this Stipulation, including no certification of a class; and (b) no term of this Stipulation or any draft thereof, or of the negotiation, documentation, or other part or aspect of the Settling Parties' settlement discussions, shall have any effect, nor shall any such matter be admissible in evidence for any purpose in the Action, or in any other proceeding. Any dispute among the parties concerning the interpretation or application of this blow-up provision may be presented to the Court for resolution upon the application of any party hereto.

ORDER AND FINAL JUDGMENT

56. If the Settlement (including any modification thereto made with the consent of the Settling Parties) shall be approved by the Court following the Settlement Hearing as fair, reasonable,

adequate, and in the best interests of the Settlement Class, then the Settling Parties shall request that the Court enter an Order and Final Judgment.

57. The Order and Final Judgment shall, among other things, provide for the full and complete dismissal of the Action with prejudice as to the Defendants and for the full, final, and forever settlement, release, relinquishment, and discharge of the Released Claims, as well as a permanent injunction barring any and all manner of the Released Claims, by any Settlement Class Member in his, her, or its capacity as a purchaser, seller, or holder of EdR stock (collectively, the “Releasing Persons”) against Defendants’ Released Persons; provided, however, that the Released Claims do not include any claims to enforce the Settlement or any claims by Settlement Class Members that properly seek to opt-out of the Settlement.

58. Furthermore, Defendants and Defendants’ Released Persons shall be deemed to have, and by operation of the Order and Final Judgment shall have, fully, finally, and forever released, relinquished, and discharged Plaintiff, the Settlement Class Members, Plaintiff’s Counsel, and Liaison Counsel from all Plaintiff’s Released Claims or the administration or distribution of the Fund in accordance with the terms of this Stipulation; provided, however, that such release shall not affect any claims to enforce the terms of the Stipulation or the Settlement.

59. Moreover, each and all of the Settlement Class Members shall be deemed to have, and by operation of the Order and Final Judgment shall have, fully, finally, and forever released, relinquished, and discharged Plaintiff, Plaintiff’s Counsel, and Liaison Counsel from all claims, demands, rights, actions or causes of action, liabilities, damages, losses, obligations, judgments, suits, fees, expenses, costs, matters and issues of any kind or nature whatsoever, based upon or arising out of the institution, prosecution, assertion, settlement or resolution of the Action or the Released Claims

or the administration or distribution of the Fund; provided, however, that such release shall not affect any claims to enforce the terms of the Stipulation or the Settlement.

FINAL COURT APPROVAL

60. As defined above, Final Approval of the Settlement shall occur when the Court has entered an Order and Final Judgment (in accordance with paragraphs 56, et seq.) certifying the Settlement Class for settlement purposes only, approving the Settlement, dismissing the Action with prejudice on the merits as to the Defendants (and with Plaintiff and Plaintiff's Counsel agreeing not to pursue fees or costs against the Defendants other than from the Fund pursuant to this paragraph), and providing for such release language as set forth in paragraphs 72, et seq. herein; and such Order and Final Judgment is final and no longer subject to further appeal or review, whether by affirmance on or exhaustion of any possible appeal or review, by writ of certiorari or otherwise, or by lapse of time.

DISTRIBUTION OF THE FUND

61. After the Court enters an Order and Final Judgment, and Final Approval has been obtained as to such Order and Final Judgment, the Net Settlement Fund will be distributed as described in the Plan of Allocation to the Settlement Class Members (except for Excluded Stockholders). The Plan of Allocation is set forth in the Notice attached hereto as Exhibit A-1.

62. Solely for the purpose of facilitating the Claims Administrator's distribution of the Fund, Defendants have provided Plaintiff with a list or report of the holders of record of EdR common stock as of the Closing Date, containing each holder's name, address, the number of shares owned, and any other information necessary to provide notice to the Settlement Class.

CONDITIONS OF SETTLEMENT

63. Defendants have denied and continue to deny that he, she, or it has committed any breach of fiduciary duty or violation of any other law or engaged in any of the wrongful acts alleged in the Action and expressly maintains that he, she, or it diligently and scrupulously complied with his, her, or its fiduciary and other legal duties, to the extent such duties exist, and is entering into this Stipulation solely because the Settlement would eliminate the burden, expense, distraction, and uncertainties inherent in further litigation.

64. Plaintiff's Counsel believes that Plaintiff's claims were at all relevant times meritorious and continue to have merit, and that Plaintiff and Plaintiff's Counsel are only entering into this Stipulation solely because they believe that the Settlement will provide a significant benefit to EdR's stockholders. Plaintiff and Plaintiff's Counsel concluded that the Settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class, and that it is reasonable to pursue the Settlement based upon the terms and procedures outlined herein and in light of the risks attendant to litigation.

65. The Settlement is expressly conditioned upon fulfillment of each of the following (once each is fulfilled, the "Effective Date"):

- (a) Execution of this Stipulation and such other documents as may be required to obtain final Court approval of the Settlement and Stipulation in a form satisfactory to the Settling Parties;
- (b) The Court has entered the Preliminary Approval and Scheduling Order;
- (c) The Settlement Amount has been deposited into the Escrow Account;
- (d) Defendants have not exercised their option to terminate the Stipulation (discussed below);

- (e) Entry of the Order and Final Judgment approving the proposed Settlement, approving final certification of the Settlement Class as an opt-out class for settlement purposes only, providing for the dismissal with prejudice of the Action as to Defendants (including Plaintiff), and approving the grant of releases discussed in paragraphs 72, et seq. herein; and
- (f) Final Approval of the Order and Final Judgment.

66. Prior to Final Approval of the Settlement, Defendants may, but are not obligated to, render this Stipulation null and void in the event that any claim relating to the subject matter of the Action is commenced or prosecuted against any of the Defendants' Released Persons and (subject to a motion by such Released Person(s)) such claims are not dismissed with prejudice or stayed in contemplation of the dismissal of the Action pursuant to the Settlement.

67. Defendants shall have the right (but not the obligation) to terminate the Settlement and to declare this Stipulation null and void and of no force and effect if the Settlement does not obtain Final Approval for any reason. If Defendants exercise this right, then this Stipulation shall not be deemed: (a) to prejudice in any way the respective claims, defenses, or positions of the Settling Parties with respect to the Action, including, but not limited to, any objection by any Defendant to any order or judgment or proposed order or judgment arising from any proposed settlement of claims by Plaintiff and any other Defendants, and any objection by Defendants to certification of the Settlement Class; or (b) to entitle any party to the recovery of costs and expenses incurred in connection with the intended implementation of the Settlement; provided, however, that EdR and/or its successor in interest shall be responsible for paying the costs of providing the notice to the Settlement Class regardless of whether the Settlement is approved.

68. In the event that the proposed Settlement is rendered null and void for any reason, the existence of or the provisions contained in this Stipulation shall not be deemed to prejudice in any way the respective claims, defenses, or positions of Plaintiff or Defendants with respect to the Action, including, but not limited to, the right to object to or oppose any order or judgment or proposed order or judgment arising from any proposed settlement of claims by Plaintiff and any other Defendants, and the right of the Defendants to oppose the certification of the Settlement Class in any future proceedings; nor shall they be deemed a presumption, a concession, or an admission by Plaintiff or any of the Defendants of any fault, liability or wrongdoing as to any facts, claims, or defenses that have been or might have been alleged or asserted in the Action or any other action or proceeding or each thereof; nor shall they be interpreted, construed, deemed, invoked, offered, or received in evidence or otherwise used by any Person in the Action or in any other action or proceeding.

ATTORNEYS' FEES, EXPENSES, AND INCENTIVE AWARD

69. Plaintiff's Counsel will submit an application for fees, expenses, and awards to be paid out of the Fund ("Fee and Expense Award") for: (i) reimbursement of Plaintiff's Counsel's expenses; (ii) an award of attorneys' fees based on the financial recovery to the Settlement Class; (iii) any interest on such attorneys' fees and expenses at the same rate and for the same periods as earned by the Fund (until paid); and (iv) a reasonable incentive award for Plaintiff for his time and effort in this Action. Defendants agree not to oppose such Fee and Expense Award application.

70. The Court may consider and rule upon the fairness, reasonableness, and adequacy of the Settlement independently of any Fee and Expense Award. The Fee and Expense Award, as awarded by the Court, shall be paid to Plaintiff's Counsel from the Fund, as ordered, within three (3) business days upon the execution by the Court both of the Order and Final Judgment and an order for the Fee and Expense Award, notwithstanding the existence of any timely filed objection thereto, any

appeal or potential for appeal therefrom, or collateral attack on the Settlement, any part thereof, or the Fee and Expense Award. The Court's failure to approve any requested Fee and Expense Award, in whole or in part, shall have no effect on the Settlement, and final resolution by the Court of any requested Fee and Expense Award shall not be a precondition to dismissal of the Action. In the event that the Settlement does not obtain, for any reason, Final Approval in accordance with paragraph 60, Plaintiff's Counsel are obligated to refund Defendants the full amount of the Fund, respectively, including without limitation the amount(s) by which the Fund was reduced in connection with any such Fee and Expense Award. In the event that the Settlement does obtain Final Approval in accordance with the terms and conditions set forth herein, and a Fee and Expense Award is nevertheless reversed or modified on appeal, Plaintiff's Counsel are obligated to refund to the Fund the amount by which any such Fee and Expense Award was reduced and all interest accrued or accumulated thereon, and to distribute all such amounts to the Settlement Class on a pro rata basis consistent with the provisions for distribution of monies from the Fund set forth in paragraph 61, et seq. herein.

71. Any Fee and Expense Award awarded by the Court shall be paid solely from the Fund. Except as provided above, Defendants and Defendants' Released Persons shall have no obligation to pay or reimburse any fees, expenses, costs, or damages alleged or incurred by any Settlement Class Member, by Plaintiff, by Plaintiff's Counsel, by Liaison Counsel, or by any other attorneys, experts, advisors, or representatives retained by Plaintiff or Plaintiff's Counsel with respect to this Action or the Released Claims. Defendants and Defendants' Released Persons shall have no responsibility or liability with respect to any fee and expense allocation between or among Plaintiff's Counsel.

EFFECT OF RELEASE

72. The Releasing Persons and Plaintiff acknowledge, and the Settlement Class Members by operation of law shall be deemed to have acknowledged, that they may discover facts in addition to or different from those they now know or believe to be true with respect to the Released Claims, but that it is the Defendants' Released Persons' and Plaintiff's intention and, by operation of law, the intention of the Settlement Class Members, to completely, fully, finally, and forever compromise, settle, release, discharge, extinguish, and dismiss any and all Released Claims (including Unknown Claims), known or unknown, suspected or unsuspected, contingent or absolute, accrued or unaccrued, apparent or unapparent, which now exist, or heretofore existed, or may hereafter exist, and without regard to the subsequent discovery of additional or different facts.

73. The Settlement is intended to extinguish all of the Released Claims and, consistent with such intention, upon Final Approval of the Settlement, Plaintiff shall expressly waive, relinquish, and release, and the Releasing Persons and each Settlement Class Member shall be deemed to have, and by operation of the Order and Final Judgment by the Court shall have, waived, relinquished, and released the provisions, rights, and benefits of any state, federal, or foreign law or principle of common law, which may have the effect of limiting the release set forth in this Stipulation. This shall include a waiver by Plaintiff, the Releasing Persons, and the Settlement Class of any rights pursuant to Section 1542 of the California Civil Code (or any similar, comparable, or equivalent provision of any federal, state, or foreign law, or principle of common law), which provides:

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

Plaintiff acknowledges, and the Releasing Persons and each Settlement Class Member shall be deemed by operation of the entry of Order and Final Judgment approving the Settlement to have acknowledged, that the foregoing waiver was separately bargained for, is an integral element of the Settlement, and was relied upon by each and all of the Defendants in entering into this Settlement.

74. Upon Final Approval, Defendants shall be deemed to have, and by operation of the judgment shall have, fully, finally, and forever released, relinquished, settled, extinguished, dismissed with prejudice, and discharged Plaintiff, Plaintiff's Counsel, and Liaison Counsel from any and all claims that have been or could have been asserted in the Action or any forum, which arise out of or relate in any way to the institution, prosecution, settlement, or dismissal of the Action, including any claims of bad faith or abuse of process against Plaintiff, Plaintiff's Counsel, or Liaison Counsel relating to their prosecution of the Action, except that this release shall not apply to the rights and obligations created by this Stipulation.

BEST EFFORTS

75. The Settling Parties and their counsel agree to cooperate fully with one another in seeking the Court's approval of this Stipulation and the Settlement, and to use their reasonable best efforts to effect, take, or cause to be taken all actions, and to do, or cause to be done, all things reasonably necessary, proper or advisable under applicable laws, regulations and agreements to consummate and make effective, as promptly as practicable, this Stipulation and the Settlement provided for hereunder (including, but not limited to, using their best efforts to resolve any objections raised to the Settlement) and the dismissal of the Action with prejudice and without costs, fees, or expenses to any party (except as provided for by paragraphs 69, et seq. herein).

76. Without further order of the Court, the Settling Parties may agree to reasonable extensions of time not expressly set forth by the Court in order to carry out any provisions of this Stipulation.

77. The Settling Parties also agree to use their reasonable best efforts to prevent, stay, seek dismissal of, or oppose entry of, any interim or final relief in favor of any Settlement Class Member in any other litigation against any of the Settling Parties, which litigation challenges the Settlement or involves, directly or indirectly, a Released Claim.

NOT A CLAIMS-MADE SETTLEMENT

78. This is not a claims-made settlement. As of the Effective Date, no Defendant, Defendants' Released Persons, or other Person shall have any right to the return of the Fund or any portion thereof for any reason. Upon the Effective Date, any and all remaining interest or right of Defendants or Defendants' Released Persons in or to the Fund, if any, shall be absolutely and forever extinguished. If the conditions specified in paragraph 65 hereof are not met, then this Stipulation shall be cancelled and terminated subject to paragraph 67, unless Plaintiff's Counsel and Defendants' Counsel mutually agree in writing to proceed with the Settlement.

STAY OF PROCEEDINGS

79. Pending Final Approval, Plaintiff and Plaintiff's Counsel agree to stay immediately the Action and not to initiate any other proceedings other than those incident to the Settlement itself.

80. The Settling Parties will request the Court to order (in the Preliminary Approval and Scheduling Order) that, pending final determination of whether the Settlement should be approved, Plaintiff and all Settlement Class Members are barred and enjoined from commencing, prosecuting, instigating, or in any way participating in the commencement or prosecution of any action asserting

any of the Released Claims, either directly, representatively, derivatively or in any other capacity, against any of the Defendants or Defendants' Released Persons.

STIPULATION NOT AN ADMISSION

81. The provisions contained in this Stipulation shall not be deemed a presumption, concession, or an admission by any of the Defendants of any fault, liability, or wrongdoing as to any facts or claims alleged or asserted in the Action, or any other actions or proceedings, and shall not be interpreted, construed, deemed, invoked, offered, or received in evidence or otherwise used by any Person in the Action, or in any other action or proceeding, whether civil, criminal or administrative, except for any litigation or judicial proceeding seeking to enforce or interpret the terms of this Stipulation or the Settlement contemplated herein.

MISTAKE

82. In entering into the Settlement, Plaintiff assumes the risk of any mistake of fact or law if Plaintiff should later discover that any fact he relied upon in entering into the Settlement is not true, or that his understanding of the facts or law was incorrect, and in such event Plaintiff shall not be entitled to seek rescission of the Settlement, or otherwise attack the validity of the Settlement, based on any such mistake. The Settlement is intended to be final and binding upon Plaintiff regardless of any mistake of fact or law.

ENTIRE AGREEMENT; AMENDMENTS

83. This Stipulation constitutes the entire agreement among the Settling Parties with respect to the subject matter hereof and may be modified or amended only by a writing signed by the signatories hereto.

GOVERNING LAW AND FORUM

84. This Stipulation and the Settlement contemplated by it shall be governed by, and construed in accordance with, the laws of the State of Maryland, without regard to conflicts of laws principles. Any action to enforce or interpret this Stipulation and the Settlement contemplated by it shall be brought in the Circuit Court for Baltimore City, and the Settling Parties hereby consent to such jurisdiction and waive any objections thereto in any such action.

85. Plaintiff and Defendants acknowledge and agree, and by operation of law each Settlement Class Member shall be deemed to acknowledge and agree, that any controversy that may arise under this Stipulation is likely to involve complex and difficult issues, and therefore, hereby irrevocably and unconditionally waive any right he, she, or it may have to a trial by jury in respect of any litigation initiated by a party hereto or by a Settlement Class Member directly or indirectly arising out of or relating to the Settlement or this Stipulation. Plaintiff and each Defendant certify and acknowledge, and by operation of law each Settlement Class Member shall be deemed to certify and acknowledge that: (i) no representative, agent, or attorney of any other party has represented, expressly or otherwise, that such other party would not, in the event of litigation, seek to enforce either of such waivers; (ii) he, she, or it understands and has considered the implications of such waivers; (iii) he, she, or it makes such waivers voluntarily; and (iv) he, she, or it has been induced to enter into this Stipulation by, among other things, the mutual waivers and certifications in this paragraph.

SUCCESSORS AND ASSIGNS

86. This Stipulation, and all rights and powers granted hereby, shall be binding upon and inure to the benefit of the Settling Parties and their respective agents, executors, heirs, successors, affiliates, and assigns.

REPRESENTATION AND WARRANTY

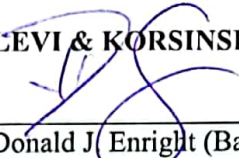
87. Plaintiff and Plaintiff's Counsel represent that: (i) Plaintiff was an EdR stockholder at all relevant times and continued to hold his stock in EdR as of the date of the Transaction; and (ii) none of Plaintiff's claims or causes of action referred to in the Action or this Stipulation, or any claims Plaintiff could have alleged, have been assigned, encumbered, or in any manner transferred in whole or in part.

AUTHORITY

88. The undersigned attorneys represent and warrant that they have the authority from their client(s) to enter into this Stipulation and bind their client(s) thereto.

Date: January 11, 2022

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Date: January 11, 2022

HOGAN LOVELLS US LLP

u/ PERMISSION 

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*Counsel for Defendant Greystar Student
Housing Growth and Income, successor by
merger to Education Realty Trust, Inc.*

Date: January 11, 2022

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Date: January 11, 2022

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Housing Growth and Income, successor by
merger to Education Realty Trust, Inc.*

Date: January 11, 2022

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JHaims@mofo.com

Counsel for Individual Defendants

Exhibit A

CASEY M. FRANK, Individually and
on Behalf of All Others Similarly Situated,

Plaintiff,

v.

EDUCATION REALTY TRUST, INC., *et al.*,

Defendants.

**IN THE
CIRCUIT COURT**

FOR

BALTIMORE CITY, MARYLAND

Case No. 24-C-19-005518

Judge: Jeffrey M. Geller

**[PROPOSED] ORDER OF PRELIMINARY APPROVAL AND FOR NOTICE AND
SCHEDULING**

Plaintiff Casey M. Frank (“Plaintiff”), on the one hand, and Randall L. Churchey, Thomas Trubiana, John V. Arabia, Kimberly K. Schaefer, Howard A. Silver, John T. Thomas, Wendell W. Weakley (collectively, the “Individual Defendants”), and Education Realty Trust, Inc. (“EdR,” which together with the Individual Defendants, “Defendants,”) and Greystar Student Housing Growth and Income Trust (“Greystar” and together with EdR as successor by merger, the “Company,” and collectively with Plaintiff and the Defendants, the “Settling Parties”), having applied to the Circuit Court for Baltimore City, Maryland (the “Court”) pursuant to Maryland Rule 2-231(i) for an order approving the proposed Settlement of the above-captioned Action and determining certain matters in connection with the proposed Settlement as to all Defendants and for dismissal of the Action with prejudice on the merits as to Defendants, in accordance with the terms and conditions of the Stipulation and Agreement of Compromise, Settlement, and Release entered into by the Settling Parties and dated January 11, 2022 (the “Stipulation”); the Stipulation contemplating final certification by the Court of the Settlement Class, solely for the purposes of settlement; and the Court having read and considered the Stipulation and accompanying documents; and all Settling Parties having consented to the entry

of this Order of Preliminary Approval and for Notice and Scheduling (the “Order”).

IT IS HEREBY ORDERED this ____ day of _____, 2022, that:

1. Except for terms defined herein, the Court adopts and incorporates the definitions in the Stipulation for purposes of this Order.

2. The Court preliminarily approves the Stipulation, including all exhibits thereto, and the Settlement set forth therein, and preliminarily finds that the Settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class (as defined below) to warrant notice to the Settlement Class Members and to schedule a final fairness hearing (“Settlement Hearing”), at which time the Court will hear any objections (subject to the procedures described below) and consider whether to enter an Order and Final Judgment approving the Settlement.

3. For settlement purposes only, the Action shall be preliminarily certified pursuant to Maryland Rules 2-231(a)-(c), and maintained as an opt-out class action, with the class defined as all record holders and all beneficial holders of EdR common stock who purchased, sold, or held such stock during the period from and including June 25, 2018, date of execution of the Merger Agreement, through and including, September 20, 2018, the Closing Date, including any and all of their respective predecessors, successors, trustees, executors, administrators, estates, legal representatives, heirs, assigns, and transferees (the “Settlement Class”). Excluded from the Settlement Class are: (i) Defendants; (ii) members of the immediate families of each Individual Defendant; (iii) EdR’s subsidiaries and affiliates; (iv) any entity in which any Defendant has a controlling interest; (v) the legal representatives, heirs, successors, administrators, executors, and assigns of each Defendant; and (vi) any Person or entity who properly excludes themselves by filing a valid and timely request for exclusion (collectively the “Excluded Stockholders”).

4. For settlement purposes only, Plaintiff is hereby certified as the Settlement Class representative, and Plaintiff's Counsel, Monteverde & Associates PC and Ademi LLP, are appointed as Co-Class Counsel for the Settlement Class.

5. The Settlement Hearing shall be held on [_____, 2022], at [____:____.____].m. Eastern Time (a date one hundred and ten (110) calendar days after the Court signs and enters this Order), at the Circuit Court for Baltimore City, Clarence M. Mitchell, Jr. Courthouse, 100 North Calvert St., Baltimore, MD 21202 or via a remote link to determine: (a) whether the Court should grant final approval of the proposed Settlement on the terms and conditions provided for in the Stipulation as fair, reasonable, and adequate and in the best interests of the Settlement Class Members; (b) whether the Settlement Class should be finally certified for purposes of Settlement, and whether the designation of Plaintiff as Class representative and Plaintiff's Counsel as Co-Class Counsel should be made final; (c) whether the Court should approve the Plan of Allocation of the Settlement as fair, reasonable, and adequate, and in the best interests of the Settlement Class; (d) whether the Court should enter an Order and Final Judgment dismissing the Action on the merits and with prejudice as to the Defendants, and effectuating the releases described in the Stipulation; (e) whether the Court should grant the application of the Fee and Expense Award; and (f) such other matters as may properly come before the Court.

6. The Court reserves the right to approve the Settlement at or after the Settlement Hearing with such modification(s) as may be consented to by the Settling Parties to the Stipulation and without further notice to the Settlement Class.

7. The Court approves, in form and content, the Notice of Pendency and Proposed Settlement of Class Action ("Notice"), substantially in the form attached as Exhibit A-1 to the Stipulation, the Proof of Claim and Release form ("Proof of Claim and Release"), substantially in the

form attached as Exhibit A-2 to the Stipulation, and the Summary Notice, substantially in the form attached as Exhibit A-3 to the Stipulation, and finds that the mailing and distribution of the Notice, Proof of Claim and Release, and Summary Notice, as set forth in paragraphs 8-9 below, will fully satisfy the requirements of Maryland Rule 2-231(f) and other applicable law, and is the best notice practicable, and shall constitute due and sufficient notice of the Settlement and the Settlement Hearing and all other matters referred to in the Notice and Summary Notice. The date and time of the Settlement Hearing shall be included in the Notice and Summary Notice before they are mailed and published, respectively. All fees, costs, and expenses incurred in notifying Settlement Class Members shall be paid from the Fund and in no event shall any of the Defendants or Defendants' Released Persons bear any responsibility for such fees, costs, or expenses. All Settlement Class Members (except Excluded Stockholders) shall be bound by all determinations and judgments in the Litigation concerning the Settlement, including, but not limited to, the releases provided for therein, whether favorable or unfavorable to the Settlement Class, regardless of whether such Persons seek or obtain by any means, including, without limitation, by submitting a Proof of Claim and Release or any similar document, any distribution from the Fund or the Net Settlement Fund.

8. The Claims Administrator shall make reasonable efforts to identify all Settlement Class Members, and not later than , 2022 (a date twenty-one (21) calendar days after the Court signs and enters this Order) (the "Notice Date"), the Claims Administrator shall cause a copy of the Notice and Proof of Claim and Release, substantially in the forms annexed hereto, to be mailed by First-Class Mail to all Settlement Class Members who can be identified with reasonable effort and to be posted on the Settlement website at www.com.

9. Not later than , 2022 (a date ten (10) calendar days after the Notice Date), Monteverde & Associates PC shall cause the Summary Notice to be published via *PRNewswire*.

10. Not later than _____, 2022 (a date ten (10) business days prior to the Settlement Hearing), Plaintiff's Counsel shall file with the Court proof, by affidavit or declaration, of such distribution of the Notice, Proof of Claim and Release, and Summary Notice.

11. Nominees who held, purchased, or acquired EdR common stock for the benefit of another Person during the Settlement Class Period shall be requested to send the Notice and Proof of Claim and Release to such beneficial owners of EdR common stock within fifteen (15) calendar days after receipt thereof, or, send a list of the names and addresses of such beneficial owners to the Claims Administrator within fifteen (15) calendar days of receipt thereof, in which event the Claims Administrator shall promptly mail the Notice and Proof of Claim and Release to such beneficial owners.

12. Settlement Class Members who wish to participate in the Settlement shall complete and submit the Proof of Claim and Release in accordance with the instructions contained therein. Unless the Court orders otherwise, all Proofs of Claim and Releases must be postmarked or submitted electronically no later than _____, 2022 (a date one hundred and twenty (120) calendar days from the Notice Date). Any Settlement Class Member who fails to submit a Proof of Claim and Release within the time provided, or whose Proof of Claim and Release is otherwise not approved, shall in all other respects be bound by all of the terms of the Stipulation and the Settlement, including the terms of the Order and Final Judgment and the releases provided for therein, and will be barred from asserting any Released Claims against any of the Defendants or Defendants' Released Persons. Notwithstanding the foregoing, Plaintiff's Counsel shall have the discretion (but not the obligation) to accept late-submitted claims for processing by the Claims Administrator so long as distribution of the Net Settlement Fund is not materially delayed thereby. No person shall have any claim against

Plaintiff, Plaintiff's Counsel, or the Claims Administrator by reason of the decision to exercise or not exercise such discretion.

13. The Proof of Claim and Release submitted by each Settlement Class Member must, unless otherwise ordered by the Court: (i) be properly completed, signed and submitted in a timely manner in accordance with the provisions of this paragraph; (ii) be accompanied by adequate supporting documentation for the transactions reported therein, in the form of broker confirmation slips, broker account statements, an authorized statement from the broker containing the transactional information found in a broker confirmation slip, or such other documentation deemed adequate by Plaintiff's Counsel or the Claims Administrator; (iii) include in the Proof of Claim and Release a certification of current authority to act on behalf of the Settlement Class Member if the person executing the Proof of Claim and Release is acting in a representative capacity; (iv) be complete and contain no material deletions or modifications of any of the printed matter contained therein; and (v) be signed under penalty of perjury.

14. By submitting a Proof of Claim and Release, a Settlement Class Member will be deemed to have submitted to the jurisdiction of this Court with respect to the Settlement Class Member's claim, including, but not limited to, all releases provided for in the Stipulation and in the Order and Final Judgment.

15. Any Settlement Class Member may enter an appearance in the Litigation, at his, her, or its own expense, individually or through counsel of their own choice. If they do not enter an appearance, they will be represented by Plaintiff's Counsel and Liaison Counsel.

16. Any Person falling within the definition of the Settlement Class may, upon request, be excluded or "opt-out" from the Settlement Class. Any such Person must submit to the Claims Administrator a request for exclusion ("Request for Exclusion"), by First-Class Mail such that it is

received no later than , 2022 (a date twenty-one (21) calendar days before the Settlement Hearing). A Request for Exclusion must be signed and state: (a) the name, address, and telephone number of the Person requesting exclusion; (b) the number of shares of EdR common stock held, purchased, acquired, or sold during the Settlement Class Period and the dates held during the Settlement Class Period; and (c) that the Person wishes to be excluded from the Settlement Class. All Persons who submit valid and timely Requests for Exclusion in the manner set forth in this paragraph shall have no rights under the Stipulation, shall not share in the distribution of the Net Settlement Fund, and shall not be bound by the Stipulation or any Order and Final Judgment.

17. Plaintiff's Counsel shall cause to be provided to Defendants' Counsel copies of all Requests for Exclusion and a list of all Settlement Class Members who have requested exclusion, and any written revocation of Requests for Exclusion, as expeditiously as possible and in any event no later than , 2022 (a date seventeen (17) calendar days prior to the Settlement Hearing).

18. Any Settlement Class Member may appear and object if he, she, or it has any reason why the proposed Settlement should not be approved as fair, reasonable, adequate, and in the best interests of the Settlement Class, or why a judgment should not be entered thereon, why the Plan of Allocation should not be approved, why the requested Fee and Expense Award should not be awarded to Plaintiff or Plaintiff's Counsel; provided, however, that no Settlement Class Member or any other Person shall be heard or entitled to contest the approval of the terms and conditions of the proposed Settlement, or, if approved, the Order and Final Judgment to be entered thereon approving the same, or the order approving the Plan of Allocation, any Fee and Expense Award to be awarded to Plaintiff and Plaintiff's Counsel, unless written objections and copies of any papers and briefs are received via mail and in electronic format by Monteverde & Associates PC, Juan E. Monteverde, The Empire State Building, 350 Fifth Avenue, Suite 4405, New York, NY 10118, Email:

jmonteverde@monteverdelaw.com; Hogan Lovells US LLP, Jon Talotta, 8350 Broad Street, 17th Floor, Tysons, VA 21202, Email: jon.talotta@hoganlovells.com; and Morrison & Foerster LLP, Joel Haims, 250 West 55th Street, New York, NY 10019, Email: jhaims@mfo.com, no later than _____, 2022 (a date twenty-one (21) calendar days before the Settlement Hearing) and said objections, papers, and briefs are filed with the Clerk of Court of the Circuit Court for Baltimore City located at 111 North Calvert Street, Room 412, Baltimore, MD 21202, no later than _____, 2022 (a date fourteen (14) days before the Settlement Hearing). Any such objection must: (a) indicate the objector's name, address, and telephone number; (b) specify the reason(s) for the objection; (c) identify the date(s), price(s), and number(s) of shares of EdR common stock held, purchased, acquired, or sold during the Settlement Class Period by the objector; (d) provide documents demonstrating such holding(s), purchase(s), acquisition(s) and/or sale(s); and (e) be signed by the objector. Any Settlement Class Member who does not make his, her, or its objection in the manner provided for herein shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the proposed Settlement as incorporated in the Stipulation, to the Plan of Allocation, or to the Fee and Expense Award, unless otherwise ordered by the Court. Attendance at the Settlement 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 a Fee and Expense Award are required to indicate in their written objection their intention to appear at the Settlement Hearing. Settlement Class Members do not need to appear at the Settlement Hearing or take any other action to indicate their approval of the Settlement.

19. All funds held by the Escrow Agent shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to the Stipulation and/or further order(s) of the Court.

20. All papers in support of the Settlement, Plan of Allocation, and application for the Fee and Expense Award shall be filed and served no later than , 2022 (a date thirty-five (35) calendar days prior to the Settlement Hearing) and any reply papers shall be filed and served no later than , 2022 (a date seven (7) calendar days prior to the Settlement Hearing).

21. Defendants and Defendants' Released Persons shall have no responsibility for the Plan of Allocation, any application for a Fee and Expense Award by Plaintiff and Plaintiff's Counsel, and such matters will be considered separately from whether the Settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class.

22. At or after the Settlement Hearing, the Court shall determine whether the Plan of Allocation and the Fee and Expense Award should be approved.

23. All reasonable expenses incurred in identifying and notifying Settlement Class Members as well as administering the Fund shall be paid as set forth in the Stipulation. In the event the Court does not approve the Settlement, or it otherwise fails to become effective, neither Plaintiff, Plaintiff's Counsel, nor Liaison Counsel, shall have any obligation to repay any amounts actually and properly incurred or disbursed pursuant to paragraph 51 of the Stipulation.

24. Neither the Stipulation, nor any of its terms or provisions, nor any of the negotiations, discussions, proceedings connected with it, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the Settlement may be construed as an admission, concession, or presumption by or against any of the Defendants or Defendants' Released Persons of the truth of any of the allegations in the Action, or of any liability, fault, or wrongdoing of any kind; or as a waiver by any of the Settling Parties of any arguments, defenses, or claims he, she, or it may have in the event the Stipulation is terminated; or offered or received in evidence, or otherwise used by any person in the Action, or in any other action or proceeding, whether civil, criminal, or administrative, in any

court, administrative agency, or other tribunal, except in connection with any proceeding to enforce the terms of the Stipulation and Settlement.

25. All proceedings in the Action, other than such proceedings as may be necessary to carry out the terms and conditions of the Settlement, are hereby stayed and suspended until further order of the Court. Pending final determination of whether the Settlement should be approved, Plaintiff and all Settlement Class Members are barred and enjoined from commencing, prosecuting, instigating, or in any way participating in the commencement or prosecution of any action asserting any Released Claims, either directly, representatively, derivatively or in any other capacity, against any of the Defendants or any of the Defendants' Released Persons.

26. If the Settlement (including any amendment or modification thereto made with the consent of the Settling Parties as provided for in the Stipulation) is not approved by the Court or shall not become effective for any reason whatsoever in accordance with the terms and conditions set forth in the Stipulation, the Settlement and temporary Settlement Class certification herein, and any actions taken or to be taken in connection therewith (including this Order and any judgment entered herein), shall be terminated and shall become void and of no further force and effect, except for the obligation of the Company to pay for any Notice and Administration Costs provided for by this Order. In that event, neither the Stipulation, nor any provision contained in the Stipulation, nor any action undertaken pursuant thereto, nor the negotiation thereof by any party shall be deemed an admission or received as evidence in this or any other action or proceeding.

27. The Court may, for good cause, extend any of the deadlines set forth in this Order without further notice to Settlement Class Members.

DATED: _____

HON. JEFFREY M. GELLER
CIRCUIT COURT FOR BALTIMORE CITY

Exhibit A-1

NOTICE OF PENDENCY AND PROPOSED SETTLEMENT OF CLASS ACTION

TO: ALL RECORD HOLDERS AND ALL BENEFICIAL HOLDERS OF EDUCATION REALTY TRUST, INC. (“EDR”) COMMON STOCK WHO PURCHASED, SOLD, OR HELD SUCH STOCK DURING THE PERIOD FROM AND INCLUDING JUNE 25, 2018, THE DATE THE MERGER AGREEMENT WAS EXECUTED CONCERNING THE MERGER BETWEEN GREYSTAR STUDENT HOUSING GROWTH AND INCOME TRUST (“GREYSTAR”) AND EDR (“TRANSACTION”), THROUGH AND INCLUDING SEPTEMBER 20, 2018, THE DATE THE TRANSACTION WAS CONSUMMATED (“CLOSING DATE”), INCLUDING ANY AND ALL OF THEIR RESPECTIVE PREDECESSORS, SUCCESSORS, TRUSTEES, EXECUTORS, ADMINISTRATORS, ESTATES, LEGAL REPRESENTATIVES, HEIRS, ASSIGNS AND TRANSFEREES (THE “SETTLEMENT CLASS”).

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. YOUR RIGHTS MAY BE AFFECTED BY PROCEEDINGS IN THIS LITIGATION. PLEASE NOTE THAT IF YOU ARE A SETTLEMENT CLASS MEMBER, YOU MAY BE ENTITLED TO SHARE IN THE PROCEEDS OF THE SETTLEMENT DESCRIBED IN THIS NOTICE. TO CLAIM YOUR SHARE OF THE SETTLEMENT PROCEEDS, YOU MUST SUBMIT A VALID PROOF OF CLAIM AND RELEASE FORM (“PROOF OF CLAIM”) **POSTMARKED OR SUBMITTED ONLINE ON OR BEFORE [INSERT DATE].**

This Notice of Pendency and Proposed Settlement of Class Action (“Notice”) has been sent to you pursuant to Maryland Rule 2-231(f) and (g)(2) and by Order of the Circuit Court for Baltimore City, Maryland (the “Court”). The purpose of this Notice is to inform you of the proposed Settlement of the above-captioned Litigation¹ (the “Settlement”) and of the hearing to be held by the Court to consider whether the proposed Settlement, final certification of the Settlement Class, Plan of Allocation, and Plaintiff and his counsel’s application for attorneys’ fees, expenses and an incentive award are fair, reasonable, and adequate, and in the best interests of the Settlement Class Members. This Notice describes the rights you may have as a Settlement Class Member and what steps you may take in relation to the Settlement and this Litigation, or, alternatively, what steps you must take if you wish to be excluded from the Settlement Class.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
SUBMIT A PROOF OF CLAIM	The only way to receive a payment. Proofs of Claim must be postmarked or submitted online on or before [Insert Date] .
EXCLUDE YOURSELF	Receive no payment. This is the only option that allows you to ever bring a lawsuit against Defendants concerning the legal claims at issue in this litigation. Exclusions must be received no later than [Insert Date] .
OBJECT	Write to Plaintiff’s Counsel, Defendants’ Counsel, and the Court about why you oppose the Settlement, the Plan of Allocation, and the Fee and Expense Award. You will still be a Settlement Class Member. Objections must be received by the Court and counsel on or before [Insert Date] .
GO TO A HEARING	Ask to speak in Court about the fairness of the Settlement. Requests to speak must be received by the Court and counsel on or before [Insert Date] . You are not required to attend the hearing.

¹ All capitalized terms used in this Notice that are not otherwise defined herein shall have the meanings provided in the Stipulation and Agreement of Compromise, Settlement, and Release (“Stipulation”), which, along with other important documents, is available on the Settlement website, **www.url.com**.

DO NOTHING	Receive no payment from the Settlement. Settlement Class Members who do nothing remain bound by the terms of the Settlement.
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SUMMARY OF THIS NOTICE

Statement of Settlement Class Recovery

Pursuant to the Settlement described herein, the Settlement Amount is \$10 million. A Settlement Class Member's actual recovery will be a proportion of the Net Settlement Fund determined by that Claimant's claim as compared to the total claims of all Settlement Class Members who submit acceptable Proofs of Claim. An individual Settlement Class Member may receive more or less than the estimated average amount provided below depending on the number of claims submitted. *See* Plan of Allocation as set forth at page 11 below for more information on your claim.

Statement of Potential Outcome of Litigation

The Settling Parties disagree on both liability and damages and do not agree on the amount of damages per share of EdR common stock that would be recoverable if the Settlement Class prevailed on each claim alleged. Defendants deny that they are liable to the Settlement Class and deny that the Settlement Class have suffered any damages.

Reasons for the Settlement

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

Statement of Attorneys' Fees, Expenses, and Incentive Award Sought

Plaintiff's Counsel have not received any payment for their services in conducting this Litigation on behalf of the Settlement Class, nor have they been paid for their litigation expenses. If the Settlement is approved by the Court, Plaintiff's Counsel will apply to the Court for an award of attorneys' fees not to exceed one-third of the Fund, plus expenses not to exceed \$200,000 in connection with the Litigation. Since the Litigation's inception in August of 2018, Plaintiff's Counsel have expended considerable amounts of time and effort in the prosecution of this Litigation on a contingent fee basis and advanced the expenses of the Litigation in the expectation that, if they were successful in obtaining a recovery for the Settlement Class, they would be paid from such recovery. In this type of litigation, it is customary for counsel to be awarded a percentage of the common fund recovery as their attorneys' fees. In addition, as part of Plaintiff's Counsel's application for an award of fees and expenses, Plaintiff may seek up to \$10,000 for a reasonable incentive award for his time and expenses in connection with his representation of the Settlement Class (collectively, the "Fee and Expense Award"). The requested Fee and Expense Award is approximately \$0.08 per allegedly damaged share, but the average cost per allegedly damaged share will vary depending on the number of valid and timely Proofs of Claim submitted.

Further Information

For further information regarding the Litigation, this Notice, or to review the Stipulation, please visit the website: www.url.com or contact the Claims Administrator toll-free at 1-phone. You may also contact Plaintiff's Counsel: Juan E. Monteverde, Monteverde & Associates PC, The Empire State Building, 350 Fifth Avenue, Suite 4405, New York, NY 10118, Tel.: (212) 971-1341, www.monteverdela.com.

Please Do Not Call the Court or Defendants with Questions About the Settlement.

BASIC INFORMATION

1. Why did I get this Notice package?

You or someone in your family may have purchased, sold, or held EdR common stock during the time period from and including June 25, 2018, through and including September 20, 2018 (“Settlement Class Period”).

The Court directed that this Notice be sent to Settlement Class Members because they have a right to know about the proposed Settlement of this class action lawsuit, and about all of their options, before the Court decides whether to approve the Settlement.

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

The Court in charge of the Litigation is the Circuit Court for Baltimore City, Maryland, and the case is known as *Frank v. Education Realty Trust, Inc., et al.*, Case No. 24-C-19-005518 (the “Action” or “Litigation”). The case has been assigned to the Honorable Jeffrey M. Geller. Casey M. Frank is the plaintiff in this Action (referred to as “Plaintiff” in this Notice), and the parties who were sued and who have now settled are called the “Defendants.”

2. What is this lawsuit about?

On June 25, 2018, EdR and certain affiliates of Greystar Real Estate Partners, LLC (collectively, “Greystar Real Estate Partners”) announced that they had entered into an Agreement and Plan of Merger (“Merger Agreement”), pursuant to which Greystar Real Estate Partners would acquire all outstanding shares of EdR common stock for \$41.50 in cash per share of EdR common stock (the “Transaction”).

On August 13, 2018, EdR filed a Definitive Proxy Statement (“Proxy”) with the U.S. Securities and Exchange Commission (“SEC”) announcing that the special meeting of EdR’s shareholders to vote on the Transaction was set for September 14, 2018.

On August 22, 2018, Plaintiff filed his Class Action Complaint (“Complaint”) in the Circuit Court for Baltimore County, Maryland (“Circuit Court for Baltimore County”) against Defendants, and the case was assigned to Judge Mickey J. Norman with case number 03-C-18-008387. The Complaint alleged that Defendants breached their fiduciary duties by approving the Transaction and by adopting a portion of the bylaw on June 24, 2018, which designated the Circuit Court for Baltimore City and the United States District Court for the District of Maryland, Baltimore Division, as the sole venues for claims of this nature (“Exclusive Venue Designation”), because the Exclusive Venue Designation exceeded the jurisdiction-selection permitted by Md. Corps. & Ass’ns Code § 2-113 and contravened Maryland’s venue statutes.

On September 14, 2018, EdR’s shareholders voted to approve the Transaction, and on September 20, 2018, the Transaction was consummated (“Closing Date”).

On November 19, 2018, Plaintiff filed an Amended Class Action Complaint (“Amended Complaint”) in the Circuit Court for Baltimore County against Defendants claiming that in addition to the allegations raised in the Complaint, the Individual Defendants breached their fiduciary duties by, among other things: (i) abdicating control of the sales process to Defendant Churchey; and (ii) impeding other interested parties from making a superior offer. In response, on January 15, 2019, Defendants filed a Motion to Dismiss the Amended Complaint and also requested that the case be transferred to the Circuit Court for Baltimore City. On February 28, 2019, Plaintiff filed his Opposition to Defendants’ Motion to Dismiss and also requested that the Circuit Court for Baltimore County deem the Exclusive Venue Designation void and enjoin Defendants from enforcing it. Then, on April 1, 2019, Defendants filed their Reply in support of their Motion to Dismiss.

On September 30, 2019, Judge Norman denied Defendants’ Motion to Dismiss but granted Defendants’ request to transfer the case to the Circuit Court for Baltimore City. On October 25, 2019, this case was transferred to the Circuit Court for Baltimore City and assigned case number 24-C-19-005518, and later assigned to Judge Jeffrey M. Geller (the “Action”).

On November 14, 2019, Defendants filed their Answer to Plaintiff's Amended Complaint.

On January 22, 2020, Judge Geller entered a Stipulated Order Regarding Confidentiality of Discovery ("Confidentiality Agreement"), which effectively marked the commencement of extensive discovery by the Settling Parties in the Action. Plaintiff conducted extensive discovery that included reviewing 90,539 pages of documents produced by Defendants, 8,505 pages of documents produced by EdR's financial advisor in connection with the Transaction, Merrill Lynch, Pierce, Fenner & Smith Incorporated ("BofA"), and thousands of pages of documents produced by 13 third parties, and Plaintiff responded to Defendants' Request for Production and First Set of Interrogatories.

On December 2, 2020, the Settling Parties attended a mediation with Robert A. Meyer from JAMS but were unable to reach a settlement. Thereafter, the Settling Parties continued to engage in informal settlement discussions with the assistance of Mr. Meyer.

On January 25, 2021, Plaintiff filed his Motion for Class Certification under seal pursuant to the Confidentiality Agreement.

On May 14, 2021, Defendants took the deposition of Plaintiff. Thereafter, Plaintiff took the following eleven (11) depositions: (i) each of the seven Individual Defendants; (ii) EdR's former Chief Financial Officer, Edwin B. Brewer, Jr.; (iii) Christine Richards, EdR's former Chief Operating Officer and Executive Vice President; (iv) Robert A. Faith, Greystar Real Estate Partners' Founder, Chairman of the Board, and Chief Executive Officer; and (v) Jeffrey Horowitz, head of the BofA team that advised EdR in connection with the Transaction.

Plaintiff also obtained an affidavit from Robert Bronstein, President and co-founder of The Scion Group LLC, a bidder formerly interested in the acquisition of EdR, regarding Plaintiff's claims about the sales process.

Moreover, Plaintiff retained a valuation expert, M. Travis Keath, and a corporate governance expert, Professor Stephen J. Lubben, and Defendants retained valuation expert Dr. Stuart C. Gilson and corporate governance expert Steven Davidoff Solomon, and subsequently on July 16, 2021, Plaintiff and Defendants exchanged their respective expert reports. Then, on September 9, 2021, the Settling Parties exchanged rebuttal reports from each of their respective experts.

On November 4, 2021, after two months of settlement discussions facilitated by Mr. Meyer, Mr. Meyer issued a proposal to settle the Action for a \$10 million common fund. The Settling Parties accepted Mr. Meyer's proposal, and on November 15, 2021, the Settling Parties filed a Notice of Settlement informing the Court that the Settlement in principle for a \$10 million common fund had been reached to resolve the Action. On November 16, 2021, the Settling Parties memorialized the terms of the Settlement in a term sheet.

On January 11, 2022, the Settling Parties reduced the settlement terms into this Stipulation, which is now subject to Court approval.

3. Why is this a class action?

In a class action, one or more people called a plaintiff sues on behalf of people who have similar claims. All of the people with similar claims are referred to as a class or class members. One court resolves the issues for all class members, except for those class members who exclude themselves from the class.

4. Why is there a settlement?

The Court has not decided in favor of or against the Defendants or the Settlement Class. Instead, both sides agreed to the Settlement to avoid the costs and risks of further litigation, including trial and appeals. Plaintiff agreed to the Settlement because Plaintiff (advised by Plaintiff's Counsel) considered the Settlement Amount to be a favorable recovery compared to the risk-adjusted possibility of recovery after trial and appeals, in light of Defendants' legal arguments that the Individual Defendants did not breach their fiduciary duties in connection with the Transaction, and their factual arguments that Defendants believed they complied with all applicable laws, and that the Settlement Class had not sustained any damages. The Defendants have denied and continue to deny any wrongdoing by or liability

against them arising out of any of the conduct, statements, acts, or omissions alleged, or that could have been alleged, in the Litigation. Plaintiff and Plaintiff's Counsel believe the Settlement is in the best interest of all Settlement Class Members, in light of the real possibility that continued litigation could result in no recovery at all.

WHO IS IN THE SETTLEMENT?

To see if you will get money from this Settlement, you first must be a Settlement Class Member.

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

The Court directed that everyone who fits this description is a Settlement Class Member: all record holders and all beneficial holders of EdR common stock who purchased, sold, or held such stock during the period from and including June 25, 2018, date of execution of the Merger Agreement, through and including, September 20, 2018, the Closing Date, including any and all of their respective predecessors, successors, trustees, executors, administrators, estates, legal representatives, heirs, assigns, and transferees. Under the Plan of Allocation proposed by Plaintiff's Counsel and described below, only Settlement Class Members who were record holders or beneficial holders of EdR common stock at the Closing Date on September 20, 2018, and who submit a valid Proof of Claim to the Claims Administrator may share in the recovery. Certain persons are excluded from the Settlement Class, as described below.

6. Are there exceptions to being included?

Excluded from the Settlement Class are: (i) Defendants; (ii) members of the immediate families of each Individual Defendant; (iii) EdR's subsidiaries and affiliates; (iv) any entity in which any Defendant has a controlling interest; (v) the legal representatives, heirs, successors, administrators, executors, and assigns of each Defendant; and (vi) any Person or entity who properly excludes themselves by filing a valid and timely request for exclusion (collectively the "Excluded Stockholders").

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

If you are still not sure whether you are included, you can ask for free help. You can contact the Claims Administrator toll-free at [1phone](tel:18009555888) or visit the Settlement website at www.url.com, or you can fill out and return the Proof of Claim enclosed with this Notice package, to see if you qualify.

THE SETTLEMENT BENEFITS – WHAT YOU GET

8. What does the Settlement provide?

In exchange for the Settlement and the release of the Released Claims (defined below) as well as dismissal of the Litigation, Defendants have agreed that a payment of \$10 million will be made by EdR, through its insurance carriers, to be distributed, after taxes, fees, and expenses, among all Authorized Claimants.

9. How much will my payment be?

Pursuant to the Settlement described herein, the Settlement Amount is \$10,000,000.00. Under the Plan of Allocation proposed by Plaintiff's Counsel, only Settlement Class Members who were record holders or beneficial holders of EdR common stock at the Closing Date on September 20, 2018, and who submit a valid Proof of Claim to the Claims Administrator, may share in the recovery, pro rata with their stock holdings (the proposed "Plan of Allocation"). Your actual recovery will be a proportion of the Net Settlement Fund determined by your claim as compared to the total claims of all eligible Settlement Class Members who submit acceptable Proofs of Claim. You may receive more or less than the estimated average amount provided below depending on the number of claims submitted. Plaintiff's Counsel estimates that approximately 80,790,667 shares of EdR common stock are in the Settlement Class. Assuming 100% of the shares in the Settlement Class submit a valid proof of claim, the average distribution will be approximately \$0.12 per share, before payment of expenses of notice and administration of the Settlement, Taxes and Tax Expenses, and the Fee and Expense Award described in Question 17 below (estimated to be approximately \$0.08 per share), and

interest as may be awarded by the Court (the “Net Settlement Fund”). Historically, fewer than all eligible investors submit claims, resulting in higher average distributions per share.

The Net Settlement Fund will be distributed to Settlement Class Members who submit valid, timely Proof of Claim forms (“Claimants”) on a pro rata basis. However, no distributions will be made to Claimants who would otherwise receive a distribution of less than \$5.00.

Defendants expressly deny that any damages were suffered by Plaintiff or the Settlement Class.

Payments shall be conclusive against all Claimants. No Person shall have any claim against Plaintiff, Plaintiff’s Counsel, Liaison Counsel, the Claims Administrator, Defendants, and Defendants’ Released Persons, or any Person designated by Plaintiff’s Counsel based on distributions made substantially in accordance with the Stipulation and the Settlement contained therein, or further order(s) of the Court. No Settlement Class Member shall have any claim against Defendants or Defendants’ Released Persons for any Released Claims. All Settlement Class Members who fail to complete and file a valid and timely Proof of Claim shall be barred from participating in distributions from the Net Settlement Fund (unless otherwise ordered by the Court), but otherwise shall be bound by all of the terms of the Stipulation, including the terms of any judgment entered and the releases given.

HOW YOU GET A PAYMENT – SUBMITTING A CLAIM FORM

10. How can I receive a payment?

To qualify for a payment, you must submit a Proof of Claim. A Proof of Claim is enclosed with this Notice or it may be downloaded at www.url.com. Read the instructions carefully, fill out the Proof of Claim, include all the documents the form asks for, sign it, and return it so that it is postmarked, if mailed, or received, if submitted online, no later than _____, 2022. Pursuant to its directions, the Proof of Claim may be submitted online at www.url.com.

11. When would I receive my payment?

The Court will hold a Settlement Hearing on _____, 2022, to decide whether to approve the Settlement. Settlement Class Members should check the Settlement Class website or the Court’s site in advance of the Settlement Hearing to determine whether that hearing will occur in person or via a remote link, and whether the date has changed. The Settlement Hearing date may change without further notice to the Settlement Class. If the Court approves the Settlement, there might be appeals. It is always uncertain how appeals would be resolved by the appellate court, and resolving them can take time, perhaps more than a year. It also takes time for all the Proofs of Claim to be processed. Please be patient.

12. What am I giving up to receive a payment or to stay in the Settlement Class?

Unless you timely and validly exclude yourself, you are staying in the Settlement Class, and that means that you cannot sue, continue to sue, or be part of any other lawsuit against Defendants or Defendants’ Released Persons about the Released Claims in this case. It also means that all of the Court’s orders will apply to you and legally bind you and you will release your claims in this case against Defendants and Defendants’ Released Persons. The terms of the release are included in the enclosed Proof of Claim form and are also set forth below:

- “Plaintiff’s Released Claims” means any and all claims, rights and causes of action, duties, obligations, demands, actions, debts, sums of money, suits, contracts, agreements, promises, damages and liabilities, whether known or unknown, contingent or non-contingent, or suspected or unsuspected, including all claims arising under federal or state statutory or common law or any other law, rule or regulation, whether foreign or domestic, that arise out of or relate in any way to the institution, prosecution, or settlement of the claims by Plaintiff, any other Settlement Class Members, Plaintiff’s Counsel, or Liaison Counsel against the Defendants, except for claims relating to the enforcement of this Settlement.
- “Released Claims” means any and all claims, rights and causes of action, duties, obligations, demands, actions, debts, sums of money, suits, contracts, agreements, promises, damages and liabilities, whether

known or unknown, contingent or non-contingent, derivative or direct, or suspected or unsuspected, including any claims arising under federal or state statutory or common law or any other law, rule or regulation, whether foreign or domestic, that have been asserted, could have been asserted, or could be asserted in the future against Defendants' Released Persons that arise out of or relate in any way to the Merger Agreement, the Transaction, the Proxy, or the Action; provided, however, that the Released Claims do not include any claims to enforce the Settlement or any claims against Settlement Class Members that properly seek to opt-out of the Settlement.

- "Unknown Claims" means (i) any of the Plaintiff's Released Claims which Plaintiff or any Settlement Class Member, or any of their agents or attorneys, does not know or suspect to exist in such Person's favor at the time of the release of the Plaintiff's Released Claims; and (ii) any of the Released Claims that the Defendants' Released Persons do not know or suspect to exist in his, her, or its favor at the time of the release of the Released Claims, which, in the case of both (i) and (ii), if known by such Person, might have affected such Person's decision with respect to this Settlement, including, without limitation, such Person's decision not to object to this Settlement or not to exclude himself, herself, or itself from the Settlement Class. Unknown Claims include those Plaintiff's Released Claims and Released Claims in which some or all of the facts comprising the claim may be suspected, or even undisclosed or hidden. With respect to any and all Plaintiff's Released Claims and Released Claims, Plaintiff and Defendants shall expressly, and each of the Settlement Class Members and Defendants' Released Persons shall be deemed to have, and by operation of the Order and Final Judgment shall have, expressly waived to the fullest extent permitted by law, the provisions, rights, and benefits of California Civil Code § 1542, which provides:

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

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

You may maintain your own lawsuit only if you exclude yourself from the Settlement.

EXCLUDING YOURSELF FROM THE SETTLEMENT CLASS

If you do not want a payment from this Settlement, and you want to keep the right to sue the Defendants and Defendants' Released Persons, on your own, about the legal issues in this Litigation, then you must take steps to remove yourself from the Settlement. This is called excluding yourself.

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

To exclude yourself from the Settlement, you must send a letter by mail saying that you want to be excluded from the Settlement Class in *Frank v. Education Realty Trust, Inc., et al.*, Case No. 24-C-19-005518. You must provide the following information: (a) name; (b) address; (c) telephone number; (d) the amount of EdR common stock bought, sold, or held during the period from and including June 25, 2018, through and including September 20, 2018; and (e) a statement that you wish to be excluded from the Settlement Class. You must mail your exclusion request postmarked no later than _____, 2022 to:

Education Realty Trust, Inc. Securities Litigation
c/o INSERT

You cannot exclude yourself on the phone or by e-mail. If you ask to be excluded, you will not receive any settlement payment, and you may not object to the Settlement. If you are excluded from the Settlement Class, you will not be legally bound by the terms of this Settlement.

14. If I do not exclude myself, can I sue the Defendants and the Defendants' Released Persons for the same thing later?

No. Unless you exclude yourself, you give up any rights to sue the Defendants and the Defendants' Released Persons for any and all Released Claims. If you have a pending lawsuit against the Defendants or the Defendants' Released Persons regarding any Released Claims, speak to your lawyer in that case immediately. You must exclude yourself from this Litigation to continue your own lawsuit. Remember, the exclusion deadline is _____, 2022.

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

No. If you exclude yourself, you may not send in a Proof of Claim to ask for any money.

THE LAWYERS REPRESENTING YOU

16. Do I have a lawyer in this case?

Yes. Monteverde & Associates PC and Ademi LLP are serving as Co-Class Counsel and Levi & Korsinsky, LLP is serving as Liaison Counsel, to lead the Litigation which Plaintiff brought on behalf of himself and all other Settlement Class Members. You will not be charged directly for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

17. How will the lawyers be paid?

This Action has been pending since 2018. Plaintiff's Counsel have not been paid for their services on behalf of Plaintiff and the Settlement Class, nor for their substantial expenses. The fee requested is to compensate Plaintiff's Counsel for their work investigating the facts, litigating the case from inception in 2018 and negotiating the Settlement.

Plaintiff's Counsel will request the Court to award attorneys' fees not to exceed one-third of the Settlement Amount, plus expenses not to exceed \$200,000 in connection with the Litigation, plus interest on such fees and expenses at the same rate as earned by the Fund. Such sums as may be approved by the Court will be paid from the Fund.

OBJECTING TO THE SETTLEMENT

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

18. How do I tell the Court that I object to the proposed Settlement?

You can ask the Court to deny approval by filing an objection. You cannot ask the Court to order a different settlement; the Court can only approve or reject the Settlement. If the Court denies approval, no settlement payments will be sent out and the Litigation will continue. If that is what you want to happen, you must object.

Any objection to the proposed Settlement must be in writing. If you file a timely written objection, you may, but are not required to, appear at the Settlement Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney. All written objections and supporting papers must (a) clearly identify the case name and number (*Frank v. Education Realty Trust, Inc., et al.*, Case No. 24-C-19-005518), (b) include your name, address, telephone number, and your signature, (c) identify the date(s), price(s), and number(s) of shares of EdR common stock you held, acquired, or sold during the Settlement Class Period, and state the reasons why you object, and (d) you must also include copies of documents demonstrating such holding(s), acquisition(s), and/or sale(s). Your objection must be filed with the Court and mailed or delivered and emailed to each of the following addresses such that it is received no later than **[INSERT DATE]**.

COURT	PLAINTIFF'S COUNSEL	DEFENDANTS' COUNSEL
Clerk of Court Circuit Court for Baltimore City, Maryland 111 North Calvert St., Room 412 Baltimore, MD 21202	Juan E. Monteverde Monteverde & Associates PC The Empire State Building 350 Fifth Avenue, Suite 4405 New York, NY 10118 jmonteverde@monteverdelaw.com	Jon Talotta Hogan Lovells US LLP 8350 Broad Street, 17 th Floor Tysons, VA 21202 jon.talotta@hoganlovells.com Joel Haims Morrison & Foerster LLP 250 West 55 th Street New York, NY 10019 jhaims@mofo.com

19. What is the difference between objecting and excluding myself?

Objecting is simply telling the Court that you do not like something about the proposed Settlement, the Plan of Allocation, or the Fee and Expense Award. You can object only if you stay in the Settlement Class. Excluding yourself is telling the Court that you do not want to be part of the Settlement Class.

THE COURT'S SETTLEMENT HEARING

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

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

The Court will hold a Settlement Hearing at **___: ___ .m., on ___ day, _____, 2022**. Settlement Class Members should check the Settlement Class website in advance of the Settlement Hearing to determine whether that hearing will occur in person at the Circuit Court for Baltimore City, Clarence M. Mitchell, Jr. Courthouse, 100 North Calvert St., Baltimore, MD 21202, or via a remote link. At the hearing the Court will consider: (a) whether the Court should grant final approval of the proposed Settlement on the terms and conditions provided for in the Stipulation as fair, reasonable, and adequate and in the best interests of the Settlement Class Members; (b) whether the Settlement Class should be finally certified for purposes of Settlement, and whether the designation of Plaintiff as Class representative and Plaintiff's Counsel as Co-Class Counsel should be made final; (c) whether the Court should approve

the Plan of Allocation of the Settlement as fair, reasonable, and adequate and in the best interests of the Settlement Class Members; (d) whether the Court should enter an Order and Final Judgment dismissing the Action on the merits and with prejudice as to the Defendants and effectuating the releases described in the Stipulation; (e) whether the Court should award the Fee and Expense Award to Plaintiff and Plaintiff's Counsel; and (f) such other matters as may properly come before the Court.

21. Do I have to come to the hearing?

No. Plaintiff's Counsel will answer questions the Court may have, but you are welcome to come at your own expense. If you send an objection or statement in support of the Settlement, you are not required to come to Court to discuss it. As long as you mailed your objection on time, the Court will consider it. You may also pay your own lawyer to attend, but you are not required to do so. Settlement Class Members do not need to appear at the hearing or take any other action to indicate their approval.

22. May I speak at the hearing?

If you object to the Settlement, the Plan of Allocation, or the Fee and Expense Award, you may ask the Court for permission to speak at the Settlement Hearing. To do so, you must include with your objection (see Question 18 above) a statement saying that it is your "Notice of Intention to Appear in the *Education Realty Trust, Inc. Securities Litigation*." Persons who intend to object to the Settlement, the Plan of Allocation, and/or any Fee and Expense Award, and desire to present evidence at the Settlement 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 Settlement Hearing.

You cannot speak at the hearing if you exclude yourself.

IF YOU DO NOTHING

23. What happens if I do nothing at all?

If you do nothing, you will get no money from this Settlement. But, unless you exclude yourself, you will not be able to start a lawsuit or be part of any other lawsuit against the Defendants or any other Defendants' Released Persons about the issues raised in this case ever again.

GETTING MORE INFORMATION

24. Are there more details about the proposed Settlement?

This Notice summarizes the proposed Settlement. For the precise terms and conditions of the Settlement, please see the Stipulation and Agreement of Compromise, Settlement, and Release available at www.url.com, by contacting Plaintiff's Counsel, Monteverde & Associates PC at (212) 971-1341, or by visiting the office of the Clerk of Court of the Circuit Court for Baltimore City at 111 North Calvert St., Room 412, Baltimore, MD 21202, between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding Court holidays.

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.

25. How do I get more information?

For more information, you can visit www.url.com or call toll-free [1-phone](tel:1-800-123-4567). You can also contact the attorney for Plaintiff, listed below:

Juan E. Monteverde
Monteverde & Associates PC
350 Fifth Ave, Suite 4405
New York, NY 10118
(212) 971-1341

PLAN OF ALLOCATION OF NET SETTLEMENT FUND AMONG SETTLEMENT CLASS MEMBERS

Plaintiff's Counsel have proposed a Plan of Allocation described below in Question 26, which will be submitted for the Court's approval. The Net Settlement Fund (the Settlement Amount plus interest less Taxes, Tax Expenses, Notice and Administration Costs, and the Fee and Expense Award) will be distributed to Settlement Class Members who, in accordance with the terms of the Stipulation, are entitled to a distribution from the Net Settlement Fund pursuant to any plan of allocation or any order of the Court and who submit a valid and timely Proof of Claim under the Plan of Allocation described below.

26. How will my claim be calculated?

As stated above, the Settlement Amount is \$10,000,000. Under the Plan of Allocation proposed by Plaintiff's Counsel, only Settlement Class Members who were record holders or beneficial holders of EdR common stock at the Closing Date on September 20, 2018, and who submit a valid Proof of Claim to the Claims Administrator, may share in the recovery, pro rata with their stock holdings (the proposed "Plan of Allocation"). Your actual recovery will be a proportion of the Net Settlement Fund determined by your claim as compared to the total claims of all eligible Settlement Class Members who submit acceptable Proofs of Claim. You may receive more or less than the estimated average amount provided below depending on the number of claims submitted. The Court may approve this proposed Plan of Allocation, or modify it, without additional notice to the Settlement Class. Any order modifying the Plan of Allocation will be posted on the Settlement website, www.url.com.

As of September 20, 2018, the Closing Date, there were approximately 81,341,958 shares of EdR common stock outstanding. Of those 81,341,958 shares of EdR common stock outstanding, EdR's directors and officers owned approximately 551,291 shares (excluded shares), meaning that the Settlement Class is comprised of 80,790,667 shares of EdR common stock as of September 20, 2018. Assuming that all of the shares held by Settlement Class Members participate in the Settlement, Plaintiff's Counsel estimates that the average distribution will be approximately \$0.12 per share of EdR common stock before the deduction of Court-approved fees and expenses, as described in Question 17 above (estimated to be approximately \$0.08 per share), and the cost of notice and claims administration. Historically, less than all eligible investors submit claims, resulting in higher average distributions per share. The Net Settlement Fund will be distributed to Settlement Class Members who submit valid, timely Proof of Claim forms ("Claimants") on a pro rata basis. However, no distributions will be made to Claimants who would otherwise receive a distribution of less than \$5.00.

Payments shall be conclusive against all Authorized Claimants. No Person shall have any claim against Plaintiff, Plaintiff's Counsel, Liaison Counsel, the Claims Administrator, Defendants, or Defendants' Released Persons, or any Person designated by Plaintiff's Counsel based on distributions made substantially in accordance with the Stipulation and the Settlement contained therein, or further order(s) of the Court. No Settlement Class Member shall have any claim against Defendants or Defendants' Released Persons for any Released Claims. All Settlement Class Members who fail to complete and submit a valid and timely Proof of Claim shall be barred from participating in distributions from the Net Settlement Fund (unless otherwise ordered by the Court), but otherwise shall be bound by all of the terms of the Stipulation, including the terms of any judgment entered and the releases given.

SPECIAL NOTICE TO NOMINEES

The Court has ordered that if you held any EdR common stock at any point in time from June 25, 2018, through September 20, 2018, as nominee for a beneficial owner, then, within fifteen (15) calendar days after you receive this Notice, you must either: (1) send a copy of this Notice by first class mail to all such Persons; or (2) provide a list of the names and addresses of such Persons to the Claims Administrator:

Education Realty Trust, Inc. Securities Litigation
c/o INSERT

If you choose to mail the Notice and Proof of Claim yourself, you may obtain from the Claims Administrator (without cost to you) as many additional copies of these documents as you will need to complete the mailing.

Regardless of whether you choose to complete the mailing yourself or elect to have the mailing performed for you, you may obtain reimbursement for or advancement of reasonable administrative costs actually incurred or expected to be incurred in connection with forwarding the Notice and which would not have been incurred but for the obligation to forward the Notice, upon submission of appropriate documentation to the Claims Administrator.

DO NOT TELEPHONE THE COURT REGARDING THIS NOTICE

DATED: _____

**BY ORDER OF THE COURT
CIRCUIT COURT FOR
BALTIMORE CITY, MARYLAND**

Exhibit A-2

PROOF OF CLAIM AND RELEASE

I. GENERAL INSTRUCTIONS

1. To recover as a Settlement Class Member based on your claims in the action entitled *Frank v. Education Realty Trust, Inc., et al.*, Case No. 24-C-19-005518 (the “Litigation”), you must complete on page 3 and sign on page 6 hereof, this Proof of Claim and Release. If you fail to submit a properly addressed (as set forth in paragraph 3 below) Proof of Claim and Release, postmarked or received by the date shown below, your claim may be rejected and you may be precluded from any recovery from the Net Settlement Fund created in connection with the proposed Settlement of the Litigation.

2. Submission of this Proof of Claim and Release, however, does not assure that you will share in the proceeds of the Settlement.

3. YOU MUST MAIL OR SUBMIT ONLINE YOUR COMPLETED AND SIGNED PROOF OF CLAIM AND RELEASE, ACCOMPANIED BY COPIES OF THE DOCUMENTS REQUESTED HEREIN, NO LATER THAN _____, 2022 TO THE COURT-APPOINTED CLAIMS ADMINISTRATOR IN THIS CASE, AT THE FOLLOWING ADDRESS:

Education Realty Trust, Inc. Securities Litigation

c/o INSERT

Online Submissions: www.url.com

If you are NOT a Settlement Class Member (as defined in the Notice of Pendency and Proposed Settlement of Class Action (the “Notice”)), DO NOT submit a Proof of Claim and Release.

4. If you are a Settlement Class Member and you do not timely request exclusion in connection with the proposed Settlement, you will be bound by the terms of any judgment entered in the Litigation, including the releases provided therein, WHETHER OR NOT YOU SUBMIT A PROOF OF CLAIM AND RELEASE.

II. CLAIMANT IDENTIFICATION

Pursuant to the Plan of Allocation proposed by Plaintiff’s Counsel, only Settlement Class Members who were record holders or beneficial holders of Education Realty Trust, Inc. (“EdR”) common stock as of September 20, 2018, the date the Transaction was consummated (“Closing Date”), and who submit a valid Proof of Claim and Release to the Claims Administrator may share in the recovery.

If you purchased, sold, or held EdR common stock during the period from and including June 25, 2018, through and including September 20, 2018 (the “Settlement Class Period”), and held the shares in your name, you are both the beneficial holder, purchaser, or acquirer of the stock and the record holder, purchaser, or acquirer of the stock. If, however, you held, purchased, or acquired EdR common stock during the Settlement Class Period and the shares were registered in the name of a third party, such as a nominee or brokerage firm, you are the beneficial holder, purchaser, or acquirer of the stock, but not the record holder, purchaser, or acquirer of the stock. The third party is the record holder, purchaser, or acquirer of the stock.

Use Part I of this form entitled “Claimant Identification” to identify each holder, purchaser, or

acquirer of record (“nominee”), if different from the beneficial holder, purchaser, or acquirer of the common stock which form the basis of this claim. THIS CLAIM MUST BE FILED BY THE ACTUAL BENEFICIAL HOLDER(S), PURCHASER(S), OR ACQUIRER(S), OR THE LEGAL REPRESENTATIVE OF SUCH HOLDER(S), PURCHASER(S), OR ACQUIRER(S) OF THE EDR COMMON STOCK UPON WHICH THIS CLAIM IS BASED.

All joint holders, purchasers, or acquirers must sign this claim. Executors, administrators, guardians, conservators, and trustees must complete and sign this claim on behalf of persons represented by them and their authority must accompany this claim and their titles or capacities must be stated. The Social Security (or taxpayer identification) number and telephone number of the beneficial owner may be used in verifying the claim. Failure to provide the foregoing information could delay verification of your claim or result in rejection of the claim.

If you are acting in a representative capacity on behalf of a Settlement Class Member (for example, as an executor, administrator, trustee, or other representative), you must submit evidence of your current authority to act on behalf of that Settlement Class Member. Such evidence would include, for example, letters testamentary, letters of administration, or a copy of the trust documents.

NOTICE REGARDING ELECTRONIC FILES: Certain Claimants with large numbers of transactions may request to, or may be requested to, submit information regarding their transactions in electronic files. **All Claimants MUST submit a manually signed paper Proof of Claim and Release listing all their transactions whether or not they also submit electronic copies.** If you wish to file your claim electronically, you must contact the Claims Administrator at info@insert.com to obtain the required file layout. No electronic files will be considered to have been properly submitted unless the Claims Administrator issues to the Claimant a written acknowledgement of receipt and acceptance of electronically submitted data.

III. CLAIM FORM

Use Part II of this form entitled “Holdings in EdR Common Stock” to state the number of shares of EdR common stock that you held at the Closing Date on September 20, 2018. You must provide copies of broker confirmations or other documentation of your holdings in EdR common stock as attachments to your claim. If any such documents are not in your possession, please obtain a copy or equivalent documents from your broker because these documents are necessary to prove and process your claim. Failure to provide this documentation could delay verification of your claim or result in rejection of your claim.

IN THE CIRCUIT COURT FOR
BALTIMORE CITY, MARYLAND
Frank v. Education Realty Trust, Inc., et al.
Case No. 24-C-19-005518

PROOF OF CLAIM AND RELEASE

Must Be Postmarked or Received No Later Than:
_____, 2022

Please Type or Print

PART I: CLAIMANT IDENTIFICATION

Name:		
Address:		
City:	State:	Zip or Postal Code:
Foreign Province:	Foreign Country:	
Day Phone:	Evening Phone:	
Email:		
Claimant Type (Individual, Joint, Corporation, etc.): _____		
Record Owner's Name: (If different from beneficial owner listed above)		
Social Security Number (for individuals):	OR	Taxpayer Identification Number (for estates, trusts, corporations, etc.)

PART II: HOLDINGS IN EDR COMMON STOCK

A. Number of shares of EdR common stock you held at the Closing Date on September 20, 2018: _____

Proof enclosed? _____ yes _____ no

YOUR SIGNATURE ON PAGE 6 WILL CONSTITUTE YOUR ACKNOWLEDGMENT OF THE RELEASE DESCRIBED IN PART IV BELOW.

SUBMISSION TO JURISDICTION OF COURT AND ACKNOWLEDGMENTS

I (We) submit this Proof of Claim and Release under the terms of the Stipulation and Agreement of Compromise, Settlement, and Release described in the Notice. I (We) also submit to the jurisdiction of the Circuit Court for Baltimore City, Maryland, with respect to my (our) claim as a Settlement Class Member and for purposes of enforcing the release set forth herein. I (We) further acknowledge that I am (we are) bound by and subject to the terms of any judgment that may be entered in the Litigation. I (We) agree to furnish additional information to the Claims Administrator to support this claim if requested to do so. I (We) have not submitted any other claim in connection with the purchase or acquisition of EdR common stock (or holding EdR common stock) during the period from and including June 25, 2018, the date the Merger Agreement was executed, through and including September 20, 2018, the Closing Date,

and know of no other person having done so on my (our) behalf.

IV. RELEASE

1. I (We) hereby acknowledge full and complete satisfaction of, and do hereby fully, finally and forever release, covenant not to sue, relinquish, and discharge each and all of the Defendants and the Defendants' Released Persons from the Released Claims as provided in the Stipulation and Agreement of Compromise, Settlement, and Release.

2. "Defendants' Released Persons" means, Defendant EdR, the Individual Defendants (Randall L. Churchey, Thomas Trubiana, John V. Arabia, Kimberly K. Schaefer, Howard A. Silver, John T. Thomas, and Wendell W. Weakley), Greystar Student Housing Growth and Income Trust (successor by merger to EdR), and any and all of their related parties, including, without limitation, as well as each of their respective past or present family members, spouses, heirs, trusts, trustees, executors, estates, administrators, beneficiaries, distributees, foundations, agents, employees, fiduciaries, partners, control persons, partnerships, general or limited partners or partnerships, joint ventures, member firms, limited liability companies, corporations, affiliates, parents, subsidiaries, divisions, associated entities, stockholders, principals, officers, managers, directors, managing directors, members, managing members, managing agents, predecessors, predecessors-in-interest, successors, successors-in-interest, assigns, financial or investment advisors, advisors, consultants, investment bankers, entities providing any fairness opinion, underwriters, brokers, dealers, lenders, commercial bankers, attorneys, personal or legal representatives, accountants, insurers, co-insurers, reinsurers, and associate.

3. "Released Claims" means any and all claims, rights and causes of action, duties, obligations, demands, actions, debts, sums of money, suits, contracts, agreements, promises, damages and liabilities, whether known or unknown, contingent or non-contingent, derivative or direct, or suspected or unsuspected, including any claims arising under federal or state statutory or common law or any other law, rule or regulation, whether foreign or domestic, that have been asserted, could have been asserted, or could be asserted in the future against Defendants' Released Persons that arise out of or relate in any way to the Merger Agreement, the Transaction, the Proxy, or the Action; provided, however, that the Released Claims do not include any claims to enforce the Settlement or any claims against Settlement Class Members that properly seek to opt-out of the Settlement.

4. "Plaintiff's Released Claims" means any and all claims, rights and causes of action, duties, obligations, demands, actions, debts, sums of money, suits, contracts, agreements, promises, damages and liabilities, whether known or unknown, contingent or non-contingent, or suspected or unsuspected, including all claims arising under federal or state statutory or common law or any other law, rule or regulation, whether foreign or domestic, that arise out of or relate in any way to the institution, prosecution, or settlement of the claims by Plaintiff, any other Settlement Class Members, Plaintiff's Counsel, or Liaison Counsel against the Defendants, except for claims relating to the enforcement of this Settlement.

5. "Unknown Claims" means (i) any of the Plaintiff's Released Claims which Plaintiff or any Settlement Class Member, or any of their agents or attorneys, does not know or suspect to exist in such Person's favor at the time of the release of the Plaintiff's Released Claims; and (ii) any of the Released Claims that the Defendants' Released Persons do not know or suspect to exist in his, her, or its favor at the time of the release of the Released Claims, which, in the case of both (i) and (ii), if known by such Person, might have affected such Person's decision with respect to this Settlement, including, without limitation, such Person's decision not to object to this Settlement or not to exclude himself, herself, or itself from the Settlement Class. Unknown Claims include those Plaintiff's Released Claims and Released Claims in which some or all of the facts comprising the claim may be suspected, or even undisclosed or hidden. With respect to any and all Plaintiff's Released Claims and Released Claims, Plaintiff and

Defendants shall expressly, and each of the Settlement Class Members and Defendants' Released Persons shall be deemed to have, and by operation of the Order and Final Judgment shall have, expressly waived to the fullest extent permitted by law, the provisions, rights, and benefits of California Civil Code § 1542, which provides:

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

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

6. This release shall be of no force or effect unless and until the Court approves the Stipulation and Agreement of Compromise, Settlement, and Release and the Settlement becomes effective on the Effective Date.

7. I (We) hereby warrant and represent that I (we) have not assigned or transferred or purported to assign or transfer, voluntarily or involuntarily, any claim or matter released pursuant to this release or any other part or portion thereof.

8. I (We) hereby warrant and represent that I (we) have included information (including supporting documentation) about the number of shares of EdR stock held by me (us) at the Closing Date on September 20, 2018.

9. I (We) hereby warrant and represent that I am (we are) not a Defendant or other person excluded from the Settlement Class.

I declare under penalty of perjury under the laws of Maryland and the United States of America that the foregoing information supplied by the undersigned is true and correct.

Executed this _____ day of _____ (Month/Year)

in _____

(City)

(State/Country)

(Sign your name here)

(Type or print your name here)

(Capacity of person(s) signing, *e.g.*, Beneficial Purchaser or Acquirer, Executor or Administrator)

ACCURATE CLAIMS PROCESSING TAKES A SIGNIFICANT AMOUNT OF TIME. THANK YOU FOR YOUR PATIENCE.

Reminder Checklist:

1. Please sign the above release and declaration.
2. Remember to attach copies of supporting documentation, if available.
3. Do not send originals of stock certificates or other documentation as they will not be returned.
4. Keep a copy of your Proof of Claim and Release and all supporting documentation for your records.
5. If you desire an acknowledgment of receipt of your Proof of Claim and Release, please send it Certified Mail, Return Receipt Requested.
6. If you move, please send your new address to the address below.
7. Do not use red pen or highlighter on the Proof of Claim and Release or supporting documentation.

THIS PROOF OF CLAIM AND RELEASE MUST BE SUBMITTED ONLINE BY [REDACTED], 2022, OR, IF MAILED, POSTMARKED NO LATER THAN [REDACTED], 2022, ADDRESSED AS FOLLOWS:

Education Realty Trust, Inc. Securities Litigation
c/o INSERT

Exhibit A-3

SUMMARY NOTICE

TO: ALL RECORD HOLDERS AND ALL BENEFICIAL HOLDERS OF EDUCATION REALTY TRUST, INC. (“EDR”) COMMON STOCK WHO PURCHASED, SOLD, OR HELD SUCH STOCK DURING THE PERIOD FROM AND INCLUDING, JUNE 25, 2018, THE DATE THE MERGER AGREEMENT WAS EXECUTED CONCERNING THE MERGER BETWEEN GREYSTAR STUDENT HOUSING GROWTH AND INCOME TRUST (“GREYSTAR”) AND EDR (“TRANSACTION”), THROUGH AND INCLUDING SEPTEMBER 20, 2018, THE DATE THE TRANSACTION WAS CONSUMMATED (“CLOSING DATE”), INCLUDING ANY AND ALL OF THEIR RESPECTIVE PREDECESSORS, SUCCESSORS, TRUSTEES, EXECUTORS, ADMINISTRATORS, ESTATES, LEGAL REPRESENTATIVES, HEIRS, ASSIGNS, AND TRANSFEREES.

YOU ARE HEREBY NOTIFIED, pursuant to an Order of the Circuit Court for Baltimore City, Maryland, that a hearing will be held on _____, 2022, at ____:____ __.m., before the Honorable Jeffrey M. Geller. Settlement Class Members should check the Settlement Class website in advance of the Settlement Hearing to determine whether that hearing will occur in person at the Circuit Court for Baltimore City, Maryland, Clarence M. Mitchell, Jr. Courthouse, 100 North Calvert St., Baltimore, MD 21202, or via a remote link. The hearing will be held for the purpose of determining: (a) whether the Court should grant final approval of the proposed Settlement of \$10 million on the terms and conditions provided for in the Stipulation as fair, reasonable, and adequate, and in the best interests of the Settlement Class Members; (b) whether the Settlement Class should be finally certified for purposes of Settlement, and whether the designation of Plaintiff as Class representative and Plaintiff’s Counsel as Co-Class Counsel should be made final; (c) whether the Court should approve the Plan of Allocation of the Settlement as fair, reasonable, and adequate, and in the best interests of the Settlement Class Members; (d) whether the Court should enter an Order and Final Judgment dismissing the Action on the merits and with prejudice as to the Defendants and effectuating the releases described in the Stipulation; (e) whether the application of Plaintiff’s Counsel for the payment of attorneys’ fees and expenses

and an incentive award for Plaintiff should be approved; and (f) such other matters as may properly come before the Court.

IF YOU PURCHASED, SOLD, OR HELD EDR COMMON STOCK DURING THE PERIOD FROM AND INCLUDING JUNE 25, 2018, THROUGH AND INCLUDING SEPTEMBER 20, 2018 (THE “SETTLEMENT CLASS PERIOD”), YOUR RIGHTS MAY BE AFFECTED BY THE SETTLEMENT OF THIS LITIGATION, INCLUDING THE RELEASE AND EXTINGUISHMENT OF CLAIMS YOU MAY POSSESS RELATING TO YOUR PURCHASE OR ACQUISITION OF EDR COMMON STOCK DURING THE SETTLEMENT CLASS PERIOD. If you have not received a detailed Notice of Pendency and Proposed Settlement of Class Action (“Notice”) and a copy of the Proof of Claim and Release form, you may obtain copies by writing to *Education Realty Trust, Inc. Securities Litigation*, Claims Administrator, 1-
phone, or on the Internet at www.url.com. If you are a Settlement Class Member, in order to share in the distribution of the Net Settlement Fund, you must submit a Proof of Claim and Release by mail (*postmarked no later than _____, 2022*), or online at www.url.com *no later than _____, 2022*, establishing that you are entitled to recovery.

If you purchased, sold, or held EdR common stock during the Settlement Class Period and you desire to be excluded from the Settlement Class, you must submit a request for exclusion so that it is *received no later than _____, 2022*, in the manner and form explained in the detailed Notice referred to above. All Settlement Class Members who do not timely and validly request exclusion from the Settlement Class will be bound by any judgment entered in the Litigation pursuant to the Stipulation and Agreement of Compromise, Settlement, and Release.

Any objection to the Settlement, the Plan of Allocation, Plaintiff’s Counsel’s request for the payment of attorneys’ fees and expenses, and any incentive award to Plaintiff must be received

by each of the following recipients via hard copy and email *no later than* _____,

2022:

CLERK OF COURT
CIRCUIT COURT FOR
BALTIMORE CITY, MARYLAND
111 North Calvert Street, Room 412
Baltimore, MD 21202

Plaintiff's Counsel:
Monteverde & Associates PC
Juan E. Monteverde
The Empire State Building
350 Fifth Avenue, Suite 4405
New York, NY 10118
jmonteverde@monteverdelaw.com

Defendants' Counsel:
Hogan Lovells US LLP
Jon Talotta
Thomas Hunt
8350 Broad Street, 17th Floor
Tysons, VA 21202
jon.talotta@hoganlovells.com
thomas.hunt@hoganlovells.com

Morrison & Foerster LLP
Joel Haims
250 West 55th Street
New York, NY 10019
JHaims@mofo.com

PLEASE DO NOT CONTACT THE COURT OR THE CLERK'S OFFICE REGARDING THIS NOTICE. If you have any questions about the Settlement, you may contact Monteverde & Associates PC, at the address listed above.

Dated: _____

BY ORDER OF THE COURT
CIRCUIT COURT FOR
BALTIMORE CITY, MARYLAND

Exhibit B

CASEY M. FRANK, Individually and
on Behalf of All Others Similarly Situated,

Plaintiff,

v.

EDUCATION REALTY TRUST, INC., *et al.*,

Defendants.

IN THE

CIRCUIT COURT

FOR

BALTIMORE CITY, MARYLAND

Case No. 24-C-19-005518

Judge: Jeffrey M. Geller

ORDER AND FINAL JUDGMENT

A hearing having been held before this Court on [REDACTED], 2022, pursuant to the Court's Order of Preliminary Approval and for Notice and Scheduling, dated [REDACTED], 2022 (the "Preliminary Approval and Scheduling Order"), upon the Stipulation and Agreement of Compromise, Settlement, and Release, dated January 11, 2022 (the "Stipulation"), which Preliminary Approval and Scheduling Order and Stipulation are incorporated herein by reference, of the above-captioned Action, and the Settlement contemplated thereby, which Stipulation was entered into between Plaintiff Casey M. Frank ("Plaintiff"), on the one hand, and Randall L. Churchey, Thomas Trubiana, John V. Arabia, Kimberly K. Schaefer, Howard A. Silver, John T. Thomas, Wendell W. Weakley (collectively, the "Individual Defendants"), and Education Realty Trust, Inc. ("EdR," which together with the Individual Defendants, "Defendants,") and Greystar Student Housing Growth and Income Trust ("Greystar" and together with EdR as successor by merger, the "Company," and collectively with Plaintiff and the Defendants, the "Settling Parties"), all by and through their undersigned attorneys; and the Circuit Court for Baltimore City, Maryland (the "Court") having determined that notice of said hearing was given to the Settlement Class in accordance with the Preliminary Approval and

Scheduling Order and that said notice was adequate and sufficient; and the Settling Parties having appeared by their attorneys of record; and the attorneys for the respective Settling Parties having been heard in support of the Settlement, and an opportunity to be heard having been given to all other persons desiring to be heard as provided in the notice; and the entire matter of the Settlement having been considered by the Court;

IT IS HEREBY ORDERED this _____ day of _____, 2022, as follows:

1. Unless otherwise defined herein, all defined terms shall have the meanings as set forth in the Stipulation.

2. The Notice of Pendency and Proposed Settlement of Class Action (“Notice”) and the Proof of Claim and Release have been given to the Settlement Class (as defined herein) pursuant to and in the manner directed by the Preliminary Approval and Scheduling Order, proof of the dissemination of the notice has been filed with the Court, and a full opportunity to be heard has been offered to all Settling Parties, the Settlement Class, and Persons in interest. The Notice provided the Settlement Class Members with their right to object to any aspect of the proposed Settlement, exclude themselves from the Settlement Class, and/or appear at the Settlement Hearing. The form and manner of the Notice is hereby determined to have been the best notice practicable under the circumstances and to have been given in full compliance with each of the requirements of Rule 2-231(f) and 2-231(g)(2) of the Maryland Rules, due process, and applicable law, and it is further determined that all Settlement Class Members, except those that properly excluded themselves from the Settlement Class, are bound by the Order and Final Judgment herein.

3. Pursuant to Maryland Rule 2-231, the Court hereby affirms its finding from the Preliminary Approval and Scheduling Order that for purposes of settlement only, the

prerequisites for a class action have been satisfied in that: (i) the Settlement Class (as defined below) is so numerous that joinder of all members is impracticable. As of September 20, 2018, the Closing Date of the Transaction, there were approximately 80,790,667 shares of EdR common stock that comprised the Settlement Class; (ii) there are questions of law and fact common to the Settlement Class, including whether Defendants breached their fiduciary duties in connection with approval of the Transaction; (iii) Plaintiff's claims are typical of the claims of the Settlement Class; (iv) Plaintiff and Plaintiff's Counsel have fairly and adequately protected the interests of the Settlement Class; (v) the prosecution of separate actions by individual members of the Settlement Class would create a risk of inconsistent and varying adjudications, which would establish incompatible standards of conduct for the Defendants; (vi) as a practical matter, the disposition of this Action will influence the disposition of any pending or future identical cases brought by absent Settlement Class Members; and (vii) there were allegations that the Defendants acted or refused to act on grounds generally applicable to the Settlement Class. Therefore, the requirements of Maryland Rule 2-231 have been satisfied, and the Action has been properly maintained as a class action.

4. The Action is hereby finally certified as an opt-out class action pursuant to Maryland Rule 2-231, and the Settlement Class is defined as: all record holders and all beneficial holders of EdR common stock who purchased, sold, or held such stock during the period from and including June 25, 2018, date of execution of the Merger Agreement, through and including, September 20, 2018, the Closing Date, including any and all of their respective predecessors, successors, trustees, executors, administrators, estates, legal representatives, heirs, assigns, and transferees. Excluded from the Settlement Class are: (i) Defendants; (ii) members of the immediate families of each Individual Defendant; (iii) EdR's subsidiaries and affiliates; (iv) any

entity in which any Defendant has a controlling interest; (v) the legal representatives, heirs, successors, administrators, executors, and assigns of each Defendant; and (vi) any Person or entity who properly excludes themselves by filing a valid and timely request for exclusion (collectively, the “Excluded Stockholders”).

5. Administration of the Fund shall be accomplished pursuant to the Plan of Allocation.

6. Plaintiff is hereby certified as Class representative, and Plaintiff’s Counsel, Monteverde & Associates PC and Ademi LLP, are hereby appointed as Co-Class Counsel for the Settlement Class.

7. The Settlement is found to be fair, reasonable, adequate, and in the best interests of the Settlement Class, and it is hereby approved pursuant to Maryland Rule 2-231(i). The Settling Parties are hereby authorized and directed to comply with and to consummate the Settlement in accordance with its terms and provisions, and the Clerk is directed to enter and docket this Order and Final Judgment in the Action.

8. This Order and Final Judgment shall not constitute any evidence or admission by any of the Settling Parties that any acts of wrongdoing have been committed by any of the Settling Parties and should not be deemed to create any inference that there is any liability therefore.

9. The Action is hereby dismissed (i) with prejudice in its entirety as to the Defendants and against Plaintiff and all Settlement Class Members on the merits, and (ii) without costs (except as specifically provided below).

10. Any and all manner of claims, rights and causes of action, duties, obligations, demands, actions, debts, sums of money, suits, contracts, agreements, promises, damages and

liabilities, whether known or unknown, contingent or non-contingent, derivative or direct, or suspected or unsuspected, including any claims arising under federal or state statutory or common law or any other law, rule or regulation, whether foreign or domestic, that have been asserted, could have been asserted, or could be asserted in the future by the Releasing Persons against Defendants and Defendants' Released Persons, that arise out of or relate in any way to the Released Claims (including Unknown Claims), are hereby dismissed with prejudice, barred, settled, and released; provided, however, that the Released Claims do not include any claims to enforce the Settlement or any claims against Settlement Class Members that properly seek to opt-out of the Settlement.

11. The Releasing Persons are hereby permanently barred and enjoined from asserting, commencing, prosecuting, assisting, instigating, continuing, or in any way participating in the commencement or prosecution of any action, whether directly, representatively, derivatively, or in any other capacity, asserting any claims that are, or relate in any way to, the Released Claims (including Unknown Claims) that are released pursuant to this Order and Final Judgment or under the Stipulation against Defendants or any of the Defendants' Released Persons, except for claims relating to the enforcement of this Settlement.

12. Defendants and Defendants' Released Persons shall be deemed to have, and by operation of this Order and Final Judgment shall have, fully, finally, and forever released, relinquished, settled, extinguished, dismissed with prejudice, and discharged Plaintiff, the Settlement Class Members, Plaintiff's Counsel, and Liaison Counsel from any and all claims that have been or could have been asserted in the Action or any forum, which arise out of or relate in any way to the institution, prosecution, settlement, or dismissal of the Released Claims (including Unknown Claims), or the administration/distribution of the Fund, except that this

release shall not apply to the rights and obligations created by this Stipulation.

13. Moreover, the Settlement Class shall be deemed to have, and by operation of the Order and Final Judgment shall have, fully, finally, and forever released, relinquished, and discharged Plaintiff, Plaintiff's Counsel, and Liaison Counsel from all claims based upon or arising out of the institution, prosecution, assertion, settlement or resolution of the Released Claims, or the administration/distribution of the Fund, except that this release shall not apply to the rights and obligations created by this Stipulation.

14. Plaintiff's Counsel are awarded attorneys' fees and reimbursement of expenses in the aggregate amount of \$_____, plus any interest on such attorneys' fees and expenses at the same rate and for the same periods as earned by the Fund (until paid), which amount the Court finds to be fair and reasonable, and which shall be paid out of the Fund in accordance with the terms of the Stipulation and per the instructions of the Claims Administrator. Plaintiff is hereby awarded an incentive award in the aggregate amount of \$_____, which amount the Court finds to be fair and reasonable, and which shall be paid out of the Fund in accordance with the terms of the Stipulation and per the instructions of the Claims Administrator.

15. Without affecting the finality of this Order and Final Judgment in any way, this Court reserves jurisdiction over all matters necessary to effectuate the Settlement and its administration/distribution.

Dated: _____

HON. JEFFREY M. GELLER
CIRCUIT COURT FOR BALTIMORE CITY

Exhibit 3

MONTEVERDE & ASSOCIATES PC
ATTORNEYS AT LAW

Firm Résumé

NEW YORK OFFICE
The Empire State Building
350 Fifth Avenue, Suite 4405
New York, NY 10118
Tel: (212) 971-1341
Fax: (212) 202-7880

CALIFORNIA OFFICE
600 Corporate Pointe
600 W. Corporate Pointe, Suite 1170
Culver City, CA 90230
Tel: (213) 446-6652
Fax: (212) 202-7880

MONTEVERDE & ASSOCIATES PC

ATTORNEYS AT LAW

Monteverde & Associates PC was founded in 2016 and is a national class action law firm committed to protecting shareholders from corporate wrongdoing. The firm has significant experience litigating Mergers & Acquisitions and Securities Class Actions, protecting investors and recovering damages in the process. The legal team at the firm is passionate about all its cases and works tirelessly to obtain the best possible outcome for our clients. The firm is recognized as a preeminent securities firm listed in the Top 50 in the 2018, 2019 and 2020 ISS Securities Class Action Services Report.

The attorneys at Monteverde & Associates have been involved in a number of cases recovering substantial amounts of money for shareholders or investors through their litigation efforts, including in the selected list of cases below:

TARGET COMPANY ACQUIRED	INCREASED CONSIDERATION OR SETTLEMENT FUND
American Capital (2018)	\$17.5 million
Apollo Education (2017)	\$54 million
ClubCorp (2019)	\$5 million
Comverge (2017)	\$5.9 million
EnergySolutions (2014)	\$36 million
Envision Healthcare (2021)	\$17.4 million
Force Protection (2012)	\$11 million
Hansen Medical (2019)	\$7.5 million
Jaguar Animal (pending)	\$2.6 million
Jefferies Group (2015)	\$70 million
Mavenir Systems (2016)	\$3 million
MRV Communications (2021)	\$1.9 million
Orchard Enterprises (2014)	\$10.725 million
Syntroleum (2016)	\$2.8 million
Transgenomic (2020)	\$1.95 million
West Marine (2020)	\$2.5 million
US Geothermal (2020)	\$6.5 million

Monteverde & Associates has also changed the law in the 9th Circuit, by lowering the standard of liability under Section 14(e) of the Exchange Act from scienter to negligence to better protect shareholders. *Varjabedian v. Emulex Corp.*, 888 F.3d 399 (9th Cir. 2018).

Juan E. Monteverde

Mr. Monteverde is the founder and managing partner for the firm. Mr. Monteverde has over a decade of experience advocating shareholder rights. Mr. Monteverde regularly handles high profile M&A cases seeking to maximize shareholder value and has obtained monetary relief for shareholders.

Mr. Monteverde has also broken new ground when it comes to challenging proxies related to compensation issues post Dodd-Frank Act. *Knee v. Brocade Comm'ns Sys., Inc.*, No. 1-12-CV-220249, slip op. at 2 (Cal. Super. Ct. Santa Clara Cnty. Apr. 10, 2012) (Kleinberg, J.) (enjoining the 2012 shareholder vote related to executive compensation proxy disclosures). Mr. Monteverde also argued successfully before the 9th Circuit to change the law and lowered the standard of liability under Section 14(e) of the Exchange Act from scienter to negligence to better protect shareholders. *Varjabedian v. Emulex Corp.*, 888 F.3d 399 (9th Cir. 2018).

Mr. Monteverde has been selected by Super Lawyers as a New York Metro Rising Star in 2013, 2017 - 2019, and by Martindale-Hubbell as a Top Rated Lawyer 2017 – 2020.

Mr. Monteverde speaks regularly at ABA, PLI, ACI and other conferences regarding merger litigation or executive compensation issues. Below is a list of published articles by Mr. Monteverde:

- Fair To Whom? Examining Delaware's Fair Summary Standard
- A Review of Trados and Its Impact
- Emerging Trends in Say-on-Pay Disclosure
- Battling for Say on Pay Transparency

Mr. Monteverde graduated from California State University of Northridge (B.S. Finance) and St. Thomas University School of Law (J.D., *cum laude*), where he served as a Law Review Staff Editor.

Mr. Monteverde is admitted to practice law in the State of New York, 2007.

David E. Bower

Mr. Bower is of counsel with the firm since 2016 and has extensive experience in securities and consumer class actions as well as corporate litigation and complex commercial litigation matters.

Mr. Bower has been in the private practice of law since 1981. Prior to forming his own law firm, Law Offices of David E. Bower, in 1996, Mr. Bower practiced for two years with the law firm Hornberger & Criswell where he supervised and coordinated complex business litigation. From 1989 to 1994, he was a partner with the law firm Rivers & Bower where he handled business, construction, real estate, insurance, and personal injury litigation and business and real estate transactions. From 1984 to 1989, he practiced in the insurance bad faith defense and complex litigation department of the Los Angeles, California based law firm of Gilbert, Kelley, Crowley & Jennett. From 1981 to 1984, he practiced law in New York as a partner with the law firm Boysen, Scheffer & Bower. Mr. Bower has extensive trial experience and has tried over 100 cases.

Mr. Bower is a graduate of the Mediation Training Program at UCLA and has a certification in Advanced Mediation Techniques. He has presided in over 200 mediations since becoming certified and is currently on the Los Angeles Superior Court Pay Panel of mediators and arbitrators. He was previously the President of the Board of A New Way of Life Reentry Project, a non-profit serving ex-convicts seeking reentry into society as productive citizens.

Mr. Bower is admitted to practice law in the State of New York, 1982, and California, 1985.

Beth Keller

Ms. Keller is of counsel with the firm since 2018 and has extensive experience in securities class actions as well as corporate governance reform.

For the last 16 years, she has focused her legal practice on shareholder rights litigation. Prior to working with Monteverde & Associates, Ms. Keller was a Partner at Faruqi & Faruqi, LLP, a nationally recognized securities firm based in New York City, where she litigated shareholder class and derivative actions, and served as head of the firm's Shareholder Derivative Litigation Department. She later became a founding Member of the boutique securities firm, Hynes Keller & Hernandez, LLC, where she was involved in all aspects of the firm's shareholder advocacy practice.

Ms. Keller has extensive litigation experience and has served as lead or co-lead counsel in numerous complex cases in which she has achieved substantial corporate governance measures and/or financial recoveries for the corporation and its stockholders.

Ms. Keller is admitted to practice law in the State of New York, 2003 and New Jersey, 2002.

Miles D. Schreiner

Mr. Schreiner is a senior associate with the firm from its inception in 2016 and has experience in securities and consumer class action litigation.

Prior to joining the firm, Mr. Schreiner was an associate at a national class action firm where he represented clients in securities and consumer class action litigation. Mr. Schreiner also previously gained experience in complex litigation as an associate at a New York City firm that represents plaintiffs in civil RICO actions. Mr. Schreiner is a *cum laude* graduate of Brooklyn Law School, where he was a Dean's Merit Scholar and served as a Law Review Editor. While in law school, Mr. Schreiner developed practical skills through internships with the Kings County Supreme Court Law Department, the Office of General Counsel at a major New York hospital, and a boutique law firm that specializes in international fraud cases.

Below is a list of published articles by Mr. Schreiner:

- Fair To Whom? Examining Delaware's Fair Summary Standard
- The Delaware Courts' Increasingly Laissez Faire Approach To Directorial Oversight
- Money-Back Guarantees Unlikely to Satisfy 'Superiority'
- A Deadly Combination: The Legal Response to America's Prescription Drug Epidemic

Mr. Schreiner graduated from Tulane University (B.A. in Political Science, *cum laude*) and Brooklyn Law School (J.D., *cum laude*).

Mr. Schreiner has been selected by Super Lawyers as a 2018 and 2019 New York Metro Rising Star.

Mr. Schreiner is admitted to practice law in the State of New York (2013) and New Jersey (2012).

John W. Baylet

John W. Baylet is an associate with the firm since 2017 and has experience in financial services and securities class action litigation.

Prior to joining the firm, Mr. Baylet gained experience at an internship with the U.S. Securities and Exchange Commission in the New York Regional Office. Before that, Mr. Baylet also attained knowledge in the securities industry at an internship with the New York State Department of Financial Services and an international brokerage firm and FCM.

Mr. Baylet graduated from University of Georgia (B.B.A. in Finance) and New York Law School (J.D.). During law school, Mr. Baylet was a Global Law Fellow Scholar, associate for the Center for Business and Financial Law, competitor and coach for the Moot Court Association, Public Service Certificate recipient, and winner of the Ruben S. Fogel Commencement Award.

Mr. Baylet is admitted to practice law in the State of New York, 2017.

Rossella Scarpa

Rossella Scarpa started in the firm in 2019 as a law clerk and became an associate in 2021. She has experience in financial services and securities class action litigation.

Ms. Scarpa graduated from Binghamton University (B.A. Economics and Political Science) in 2017 and from St. John's University School of Law (J.D.) in 2020. During law school, she was the Articles & Notes Editor for the St. John's American Bankruptcy Institute Law Review. Additionally, Ms. Scarpa was co-chair for the 2019 FINRA Triathlon Competition hosted by St. John's. Ms. Scarpa was also a legal intern for the St. John's Securities Arbitration Clinic.

Ms. Scarpa externed for Magistrate Judge Katharine Parker of the United States District Court for the Southern District of New York.

Ms. Scarpa is admitted to practice law in the State of New York, 2021.

Jonathan Lerner

Mr. Lerner is an attorney experienced in commercial litigation.

Before joining the firm, Mr. Lerner worked for a real estate litigation firm handling foreclosure litigation and federal consumer protection litigation, and has a successful track record in New York appellate courts. He also has further experience counseling individuals involved in consumer protection disputes and landlord and tenant negotiations. During law school, Mr. Lerner was a legal intern with the school's consumer protection litigation clinic, where he investigated fraudulent business practices directed at elderly New York City residents.

Mr. Lerner is admitted to practice law in the State of New York, 2019.

Ahmed Khattab

Mr. Khattab is an attorney experienced in complex litigation with prior class action litigation experience. He earned his Bachelor's degree from Rutgers University and his Juris Doctorate from the Syracuse University College of Law, where he served as an Associate Member of the Moot Court Honor Society, National Trial Team and Corporate Law Society.

Prior to joining the firm, Mr. Khattab was an associate at a general liability/complex litigation firm in NY and gained experience at the Litigation Bureau of the New York State Office of the Attorney General. Mr. Khattab also served as a judicial law clerk and mediator for the New Jersey Superior Court.

Mr. Khattab is admitted to practice law in the State of New York, 2021.



**ATTORNEYS AT LAW
MILWAUKEE | MADISON**

FIRM BIOGRAPHY

Ademi LLP litigates securities, antitrust, and consumer class actions. We also practice federal bankruptcy law and federal appellate law.

The Firm's Attorneys

Guri Ademi graduated from the University of Wisconsin—Milwaukee *magna cum laude* in 1990 and the University of Wisconsin Law School in 1993, serving as a Notes and Comments Editor for the *Wisconsin Law Review*. After interning with Judge Thomas Curran of the Eastern District of Wisconsin, he was an associate with Quarles & Brady LLP in its corporate finance and antitrust groups from 1993 to 2000 and an associate with Whyte Hirschboeck Dudek S.C. in its securities and antitrust groups from 2000 to 2001. He joined Ademi LLP in 2001 and heads its securities litigation practice group. Guri is recognized as a *Wisconsin Super Lawyer in Wisconsin Super Lawyers* every year since 2011.

Shpetim Ademi, the firm's founder, graduated *cum laude* from the University of Wisconsin—Milwaukee in 1992, with honors in philosophy and history and an honors thesis in philosophy. He graduated from the University of Wisconsin Law School in 1996. After interning with Judge Charles B. Schudson of the Wisconsin Court of Appeals, 1st District, he founded the Southside Law Office in 1996 and serves as managing partner of Ademi LLP and heads its antitrust and consumer litigation groups. Shpetim is recognized as a *Wisconsin Super Lawyer in Wisconsin Super Lawyers* every year since 2009. Shpetim was included on *Super Lawyers' Top 50 Wisconsin* list for 2016, 2018, 2019, 2020 and 2021. Finally, Shpetim was also included on *Super Lawyers' Top 25 Milwaukee* list for 2016, 2019, 2020 and 2021.

John D. Blythin graduated *cum laude* from the University of Wisconsin-Madison in 1999, with a degree in political science and from University of Wisconsin Law School in 2003. He is of counsel, practicing in securities, antitrust, and consumer litigation. John is also admitted to practice in the State of Illinois.

Mark A. Eldridge graduated from Marquette University in 2006, with a double major in Journalism and Psychology and from Marquette University Law School in 2014. He is an associate, practicing in securities, antitrust, and consumer litigation. Mark is listed as a *Rising Star* in *Wisconsin Super Lawyers 2021*.

Jesse Fruchter graduated *cum laude* from State University of New York College of Environmental Science and Forestry in 2005, with a B.S. in Environmental Biology. Jesse also obtained his M.S. in Plant Biology from Southern Illinois University in 2012. Jesse graduated *cum laude* from the University of Wisconsin Law School in 2017. He is an associate, practicing in securities, antitrust, and consumer litigation. Jesse is listed as a *Rising Star* in *Wisconsin Super Lawyers 2021*.

Ben J. Slatky graduated with distinction from the University of Wisconsin in 2007 with a B.A. in Philosophy and English Literature. Ben also obtained his M.A. in English Literature from University of York in 2011. Ben graduated from the University of Wisconsin Law School in 2017. He is an associate, practicing in securities, antitrust, and consumer litigation. Ben is listed as a *Rising Star* in *Wisconsin Super Lawyers 2021*.

FIRM HIGHLIGHTS

SECURITIES CLASS ACTIONS

IN RE: SPIEGEL, INC. SECURITIES LITIGATION (N. D. IL 2002)

Represented the class as Co-Lead counsel. Settlement of \$17.5 million.

IN RE: EFUNDS CORPORATION SECURITIES LITIGATION (D. AZ 2002)

Represented the class as Co-Lead counsel. Settlement of \$2.5 million.

IN RE: SYNTROLEUM CORP. SHAREHOLDER LITIGATION (TULSA COUNTY OK 2013)

Represented the class as Co-Class counsel. Additional consideration of \$2.8 Million.

IN RE: METAVANTE TECHNOLOGIES, INC. SECURITIES LITIGATION (MILWAUKEE COUNTY, WI 2009)

Represented the class as Co-Lead counsel. Settlement of additional disclosures to shareholders.

IN RE: JOURNAL MEDIA GROUP, INC. SHAREHOLDER LITIGATION (MILWAUKEE COUNTY, WI 2015)

Represented the class as Co-Lead counsel. Settlement of additional disclosures to shareholders.

IN RE: QUOVADX INC. SECURITIES LITIGATION (D. CO 2003)

Represented the lead plaintiff and class as counsel. Settlement of \$9 million.

IN RE: DHB INC. SECURITIES LITIGATION (E.D.N.Y. 2005)

Represented one of the lead plaintiffs and the class as counsel. Settlement estimate of \$64 million.

IN RE: NORTHWESTERN CORP. SECURITIES LITIGATION (D.S.D. 2003)

Represented secondary offering shareholders and certain bondholders. Settlement of \$40 million.

IN RE: RAYOVAC, INC.. SECURITIES LITIGATION (W.D. WI 2003)

Represented the class as *Liaison* counsel. Settlement of \$4 million.

IN RE: MERGE TECHNOLOGIES (MILWAUKEE COUNTY, WI 2006)

Represented the class as *Liaison* counsel. Settlement of corporate governance reforms.

KANDEL V. GEHL COMPANY, ET AL. (WASHINGTON COUNTY, WI 2008)

Represented the class as *Liaison* counsel. Settlement of additional disclosures to shareholders.

IN RE: TOMOTHERAPY, INC. SECURITIES LITIGATION (W.D. WI 2008)

Represented the class as *Liaison* counsel. Settlement of \$5 million.

IN RE: PUSKALA V. KOSS CORPORATION (E.D. WI 2010)

Represented the class as *Liaison* counsel. Settlement of \$1 million.

IN RE ENERGY SOLUTIONS, INC. SHAREHOLDER LITIGATION (DEL. CH. 2013)

Represented the class as Co-Counsel. Increased merger consideration by approximately \$36 million.

AMO V. INTEGRYS ENERGY GROUP, INC. (MILWAUKEE COUNTY, WI 2014)

Represented the class as *Liaison* counsel. Settlement of additional disclosures to shareholders.

IN RE WAUSAU PAPER CORP. SHAREHOLDER LITIGATION (MILWAUKEE COUNTY, WI 2015)

Represented the class as *Liaison* counsel. Settlement of additional disclosures to shareholders.

REPRESENTATIVE RECENTLY FILED SECURITIES CLASS ACTIONS:

AURORA CANNABIS INC. (D.N.J)	GRUBHUB INC. (N.D. ILL.)
AGRIA CORP. (S.D.N.Y.)	IMPAX LABORATORIES, INC. (S.D. CA)
CARBONITE, INC (D. MASS.)	IMPERIAL CHEMICALS (S.D.N.Y.)
CORN PRODUCTS INTERNATIONAL, INC. (N.D. IL)	MEREDITH CORPORATION (S.D. IA)
CORUS BANKSHARES, INC. (N.D. IL)	NUSKIN ENTERPRISES, INC. (D. UT)
DIRECT GENERAL CORPORATION (M.D. TN)	OCA, INC. (E.D. LA)
ESCALA, INC. (S.D.N.Y.)	PARAMETRIC CORPORATION (D. MA)
FIFTHTHIRD CORPORATION (N.D. OH)	PETCO ANIMAL SUPPLIES, INC. (S.D. CA)
FIRST ENERGY CORP (S.D. OH)	TRIPATH TECHNOLOGIES (C.D. CA)

REPRESENTATIVE RECENTLY FILED DERIVATIVE, CORPORATE GOVERNANCE AND BUYOUT CLASS ACTIONS:

AMERICAN REALTY CAPITAL HEALTHCARE TRUST, INC. (MD)	INTERMAGNETICS GENERAL CORP. (NY)
ANWORTH MORTGAGE ASSET CORP. (CA)	JOY GLOBAL INC. (WI)
BEAR STATE FINANCIAL HOLDINGS LLC (AR)	KEANE, INC. (MA)
CRAFT BREW ALLIANCE INC. (OR)	NORTHSTAR ASSET MANAGEMENT GROUP (MD)
CONNECTICUT WATER SERVICE, INC. (CT)	PERSPECTA INC. (NV)
COMMUNITYONE BANCORP. (W.D. NC)	RIGGS NATIONAL CORP. (DE)
CRAFT BREW ALLIANCE, INC. (OR)	RITA MEDICAL SYSTEMS, INC. (CA)
EDUCATION REALTY TRUST, INC. (MD)	STEC, INC. (CA)
EMC INSURANCE GROUP INC. (IA)	STERLING BANCORP.(NY)
GOLDEN WEST FINANCIAL CORP. (CA)	VECTREN CORPORATION (S.D. IND)

ANTITRUST CLASS ACTIONS

EDWARDS ET AL V. NATIONAL MILK PRODUCERS FEDERATION ET AL. (N.D. CAL 2011)

Represent the class of indirect purchasers as co-class counsel. Settlements of \$52 million.

IN RE: POLYURETHANE FOAM ANTITRUST LITIGATION MDL DKT. NO. 2196 (N.D. OH 2010)

Represented the class of indirect purchasers as co-class counsel. Settlements of over \$151 million.

AL'S DISCOUNT PLUMBING LLC, ET AL. V. VIEGA LLC, (M.D. PA 2019)

Represented the class of indirect purchasers as co-class counsel. Settlement valued at \$15 million.

IN RE: INTERIOR MOLDED DOORS INDIRECT PURCHASER ANTITRUST LITIGATION, (E.D. VA 2018)

Represent the class of indirect purchasers as co-class counsel. Settlement of \$19.5 million pending.

IN RE: AUTOMOTIVE WIRE HARNESS SYSTEMS ANTITRUST LITIGATION MDL No. 2311 (E. D. MI 2011)

Represent the indirect purchaser class as co-counsel. Settlements of over \$1.2 billion.

IN RE: PACKAGED SEAFOOD PRODUCTS ANTITRUST LITIGATION - MDL DKT. 2670 (S.D. CAL 2015)

Represent the indirect purchaser class of end users as co-counsel. Settlements of \$20 million pending.

IN RE: CATHODE RAY TUBE ANTITRUST LITIGATION - MDL DKT. NO. 1917 (N.D. CAL 2008)

Represent the class of indirect purchasers as co-class counsel. Settlements of over \$609 million pending.

IN RE: AUTOMOTIVE REFINISHING PAINT ANTITRUST LITIGATION - MDL DKT. NO. 1426 (E.D. PA 2001)

Acted as co-counsel for the class of direct purchasers in more than 20 lawsuits brought against the major car paint manufacturers, including Sherwin Williams, Akzo Nobel, DuPont, PPG Industries and BASF. Settlement of more than \$108 million.

IN RE: FRESH AND PROCESS POTATOES ANTITRUST LITIGATION. - MDL DKT. NO. 2186 (E.D. PA 2010)

Represented the class of indirect purchasers as co-class counsel. Settlement of over \$5 million.

IN RE: INTERNATIONAL AIR TRANSPORTATION SURCHARGE ANTITRUST Lit. - MDL DKT. NO. 1793 (N.D. CAL 2006)

Represented the class as co-counsel. Settlement of over \$200 million.

BLESSING ET AL V. SIRIUS XM RADIO INC. (S.D. NY 2009)

Represented the class as co-counsel. Settlement valued at over \$180 million.

FOND DU LAC BUMPER EXCHANGE INC V. JUI LI ENTERPRISE COMPANY LTD ET AL (E.D. WI 2010)

Represented the third-party payor indirect purchaser class as a *Liaison* Counsel. Settlements of \$8 million.

IN RE: TEXT MESSAGING ANTITRUST LITIGATION - MDL DKT. NO. 1997 (N.D. IL 2008)

Represented the proposed class on plaintiff's steering committee.

IN RE: POTASH ANTITRUST LITIGATION - MDL DKT. NO. 1996 (N.D. IL 2008)

Represented the indirect purchaser class as co-counsel. Settlement of \$21.5 million.

REPRESENTATIVE RECENTLY FILED ANTITRUST CLASS ACTIONS:

IN RE: HARD DISK DRIVE SUSPENSION ASSEMBLIES ANTITRUST LITIGATION - MDL DKT. 2918, (N.D. CAL 2019)

IN RE: QUALCOMM ANTITRUST LITIGATION - MDL DKT. 2773 (N.D. CAL 2017)

IN RE: DOMESTIC AIRLINE TRAVEL ANTITRUST LITIGATION - MDL DKT. No. 2656 (D.C. 2015)

IN RE: DISPOSABLE CONTACT LENS ANTITRUST LITIGATION - MDL DKT. No. 2626 (M.D. FL 2015)

IN RE: KEURIG GREEN MOUNTAIN SINGLE-SERVE COFFEE ANTITRUST LITIGATION - MDL Dkt. No. 2542 (S.D. NY 2014)

IN RE VEHICLE CARRIER SERVICES ANTITRUST LITIG., MDL No. 2471 (N.J. 2013)

IN RE: ELECTRONIC BOOKS ANTITRUST LITIGATION - MDL DKT. No. 2293 (S.D. NY 2011)

IN RE: PHOTOCROMIC LENS ANTITRUST LITIGATION - MDL DKT. No. 2173 (M.D. FL 2010)

IN RE: MUSICAL INSTRUMENTS AND EQUIPMENT ANTITRUST LITIGATION - MDL DKT. No. 2121 (S.D. CAL 2009)

IN RE: PROCESSED EGG PRODUCTS ANTITRUST LITIGATION - MDL DKT. No. 2002 (E.D. PA 2008)

IN RE: AFTER MARKET AUTO FILTERS ANTITRUST LITIGATION - MDL DKT. No. 1957 (N.D. IL 2008)

IN RE: PACKAGED ICE ANTITRUST LITIGATION - MDL DKT. No. 1952 (E.D. MI 2008)

IN RE: CHOCOLATE CONFECTIONARY - MDL DKT. No. 1917 (N.D. PA 2008)

LAFLAMME ET AL. V. SOCIETE AIR FRANCE ET AL., (E.D. NY 2008)

CONSUMER CLASS ACTIONS

MCKINNIE V. CHASE BANK (E.D. WI 2008)

Represented the class as Lead Counsel under the Electronic Funds Transfer Act. Settlement of \$2.1 million.

ORI V. FIFTH THIRD BANK AND FISERVE, INC. (E.D. WI 2008)

Represented the class on the Lead Class Counsel Committee under the Fair Credit Reporting Act. Settlement valued at over \$3 million.

IN RE: LIBERTY REFUND ANTICIPATION LOAN LITIGATION MDL DKT. NO. 2334 (N.D. IL 2012)

Represented the class on the Lead Counsel Executive Committee. Settlement of \$5.3 million.

LIPTAI V. SPECTRUM BRANDS HOLDINGS, INC. ET AL (DANE COUNTY. WI 2018)

Represented the class as Co-Lead Counsel. Settlement of \$2.25 with additional equitable relief.

IN RE: WELLS FARGO AUTO INSURANCE MARKETING AND SALES PRACTICES LITIGATION MDL DKT. 2797 (C. D. CAL 2017)

Represented the class as co-counsel. Settlement estimate pending of over \$432 million.

IN RE: DOLLAR GENERAL CORP. MOTOR OIL MARKETING AND SALES PRACTICES LITIGATION MDL No. 2709 (W. D. Mo 2016)

We represent the certified class of Wisconsin consumers as co-lead counsel and several other class states as co-counsel. Settlement of over \$28.5 million.

IN RE: PILOT FLYING J FUEL REBATE CONTRACT LITIGATION MDL No. 2358 (2013)

Represented the class as Settlement Class Counsel. Settlement valued at \$72 million of full refund plus interest to the class.

IN RE: BOA CREDIT PROTECTION MARKETING AND SALES PRACTICES LITIGATION MDL DKT. No. 2269 (N.D. CAL 2011)

Represented the proposed class as co-counsel. Settlement of \$20 million.

IN RE: CHASE BANK USA, N.A., "CHECK LOAN" CONTRACT LITIGATION - MDL DKT. No. 2032 (N.D. CAL 2009)

Represented the proposed class as co-counsel. Settlement of \$100 million.

KARDONICK ET AL., V. J.P. MORGAN & CO. CHASE (S.D. FL 2010)

Represented the class as co-counsel. Settlement of \$21.5 Million.

IN RE: SAMSUNG TOP-LOAD WASHING MACHINE MARKETING, SALES PRACTICES AND PRODUCTS LIABILITY- MDL DKT. 2792 (W. D. OK 2017)

Represented the class as co-counsel. Settlement estimate pending of over \$125 million available to class members.

IN RE: COUNTRYWIDE FINANCIAL CORP. CUSTOMER DATA SECURITY BREACH MDL DKT. No. 1998 (W.D. KY 2008)

Represented the class as co-counsel. Settlement value estimated at over \$200 million.

IN RE: HEARTLAND PAYMENT SYSTEMS, INC., CUSTOMER DATA SECURITY BREACH MDL DKT. No. 2046 (S.D. TX 2009)

Represented the class as a member of the Steering Committee. Settlement valued at over \$4.5 million.

NEWMAN ET AL V. COMPLYRIGHT, INC., (N.D. IL 2018)

Represented the class as co-counsel. Settlement of over \$3 million.

IN RE: HYUNDAI HORSEPOWER LITIGATION CA. SUP. CT. (2003)

Represented United States and Canadian class of purchasers of Hyundai motor vehicles as co-counsel. Settlement of more than \$100 million.

IN RE SONY PS3 "OTHER OS" LITIGATION, (N.D. CAL 2010)

Represented the class as co-counsel. Settlement of 3.75 million.

PERDUE ET AL V. HY-VEE, INC. (C.D. IL 2019)

Represented the class as co-counsel. Preliminary approval granted

IN RE WAWA, INC. DATA BREACH LITIGATION (E.D. PA 2019)

Represented the class as co-counsel. Settlement value up to \$44 million subject to court approval.

IN RE OCEAN BANK FINANCIAL CORP. PRE-SCREENING LITIGATION - MDL DKT. NO. 1998 (N.D. IL 2006)

Represented a Wisconsin class as Lead Counsel under the Fair Credit Reporting Act.

BERNAL V. AMERICAN MONEY CENTERS, INC. (E.D. WI 2005)

Represented a Wisconsin class as Lead Counsel under the Fair Credit Reporting Act.

REPRESENTATIVE RECENTLY FILED CONSUMER CLASS ACTIONS:

ANDERSON V. FOREFRONT DERMATOLOGY SC ET AL (E.D. WI 2021)

WOLLBRINCK V. BRIDGEMAN FOODS II INC ET AL (E.D. WI 2021)

IN RE: ERIE COVID-19 BUSINESS INTERRUPTION PROTECTION INS. LITIG. MDL No. (W.D. P.N. 2021)

IN RE: CAPITAL ONE CONSUMER DATA SECURITY BREACH LITIGATION MDL No. 2915 (E.D. VA 2019)

IN RE: AMERICAN MEDICAL COLLECTION AGENCY, INC., CUSTOMER DATA SECURITY BREACH LITIGATION MDL No. 2904 (D. N.J. 2019)

BLOCK V. WISCONSIN HOSPITALITY GROUP LLC (E.D. WI 2019)

IN RE: INTEL CORP. CPU MARKETING, SALES PRACTICES AND PRODUCTS LIABILITY LITIGATION MDL No. 2828 (2018)

Exhibit 2

25 January 2021



Recent Trends in Securities Class Action Litigation: 2020 Full-Year Review

COVID-19-Related Filings Accounted for 10% of Total Filings

Filings Declined, Driven Primarily by Fewer Merger Objections Filed

Even After Excluding “Mega” Settlements, Recent Settlement Values Remained High

By Janeen McIntosh and Svetlana Starykh

Foreword

I am excited to share NERA's Recent Trends in Securities Class Action Litigation: 2020 Full-Year Review. This year's edition builds on work carried out over many years by members of NERA's Securities and Finance Practice. In this year's report, we continue our analyses of trends in filings and resolutions and present information on new developments, including case filings related to COVID-19. Although space does not permit us to present all the analyses the authors have undertaken while working (remotely!) on this year's edition, we hope you will contact us if you want to learn more about our work in and related to securities litigation. On behalf of NERA's Securities and Finance Practice, I thank you for taking the time to review our work and hope you find it informative.

Dr. David Tabak
Managing Director



Recent Trends in Securities Class Action Litigation: 2020 Full-Year Review

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Even After Excluding “Mega” Settlements, Recent Settlement Values Remained High

By Janeen McIntosh and Svetlana Starykh¹

25 January 2021

Introduction and Summary

There were 326 federal securities class actions filed in 2020, a decline of 22% from 2019.² Despite this decline, filings for 2020 remained higher than pre-2017 levels, with the exception of 2001, when numerous IPO laddering cases were filed. In addition to a decline in the aggregate number of new cases filed, there was also a decline within each of the five types of cases we consider, though the decline within each category of cases was not consistent in magnitude. As a result, the percentage of new filings that were Rule 10b-5, Section 11, and/or Section 12 cases increased to 64% in 2020. As in 2019, in 2020, the electronic technology and technology services sector had the most securities class action filings. Of cases filed in 2020, 23% were filed against defendants in this sector, followed closely by defendants in the health technology and services sector, which accounted for 22% of new filings. For the first time in the five years ending December 2020, claims related to accounting issues, regulatory issues, or missed earnings guidance were not the most common allegation included in federal securities class action complaints. Instead, for cases filed in 2020, 35% of complaints included an allegation related to misled future performance. The Second, Third, and Ninth Circuits continue to represent a significant proportion of new cases filed in 2020, accounting for more than three-fourths of filings.

The emergence of the COVID-19 pandemic has led to associated filings. Since March 2020, when the first such lawsuit was filed, there have been 33 cases filed with COVID-19-related claims included in the complaint through December 2020. Nearly 25% of these COVID-19 case filings were against defendants in the health technology and health services sector—the highest for any sector—and 21% were filed against defendants in the finance sector.

In 2020, 320 cases were resolved, marking a slight increase from the total number of cases resolved in 2019, but remaining below the number of cases resolved in 2017 and 2018. Despite 2020 aggregate resolutions falling within the historical range for 2011–2019, both the number of cases settled and the number of cases dismissed reached 10-year record levels—settled cases reaching a record low and dismissed cases reaching a record high.

The average settlement value in 2020 was \$44 million, more than a 50% increase over the 2019 average of \$28 million but still below the 2018 value. Limiting to settlements under \$1 billion, the 2020 average settlement value was \$30 million, which is lower than the overall average of \$44

million after excluding the American Realty Capital Properties settlement of \$1.025 billion. Excluding the American Realty Capital Properties settlement, the median annual settlement value for 2020 was \$13 million, the highest recorded median value in the last 10 years.

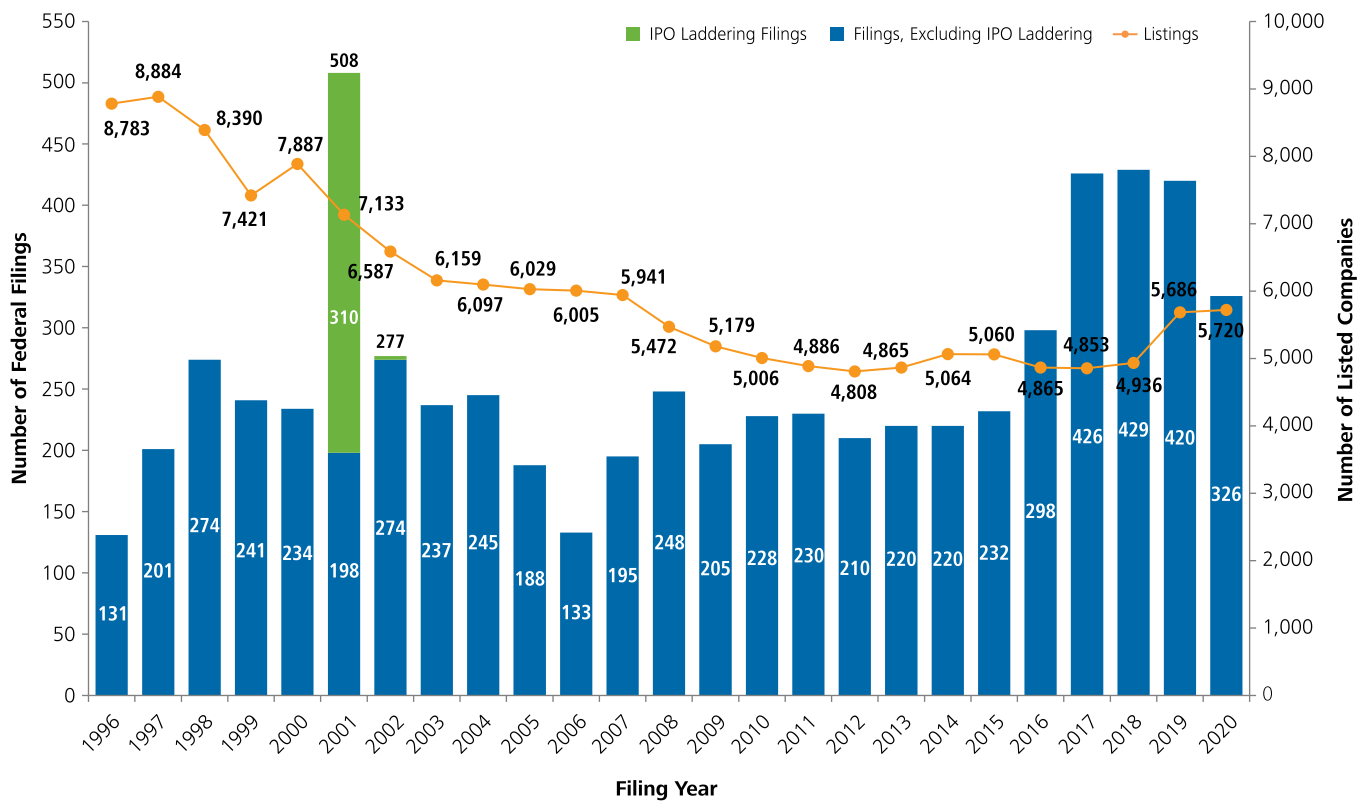
Trends in Filings

Trend in Federal Cases Filed

For the first time since 2016, annual new securities class action filings declined to less than 400 cases.³ Between 2015 and 2017, new filings grew significantly, by approximately 80%, and remained stable with between 420 and 430 annual filings from 2017 to 2019. There were 326 new case filed in 2020, which, despite the decline, is still higher than the average of 223 observed in the 2010–2015 period. Whether this decline in new filings is the end of the general higher level of filings observed in recent years or a short-term byproduct of the implications of the COVID-19 pandemic is yet to be determined. See Figure 1.

As of October 2020, there were 5,720 companies listed on the NYSE and Nasdaq exchanges.⁴ The increase in the number of listed companies in 2020 is a continuation of a general growth trend since 2017. As a result of the decline in the number of new filings and the growth in the number of listed companies in 2020, the ratio of new filings to listed companies declined to 5.7%, the lowest ratio in the last five years. However, this ratio remains higher than the ratios in the first 20 years following the implementation of the PSLRA in 1995.

Figure 1. **Federal Filings and Number of Companies Listed in the United States**
January 1996–December 2020

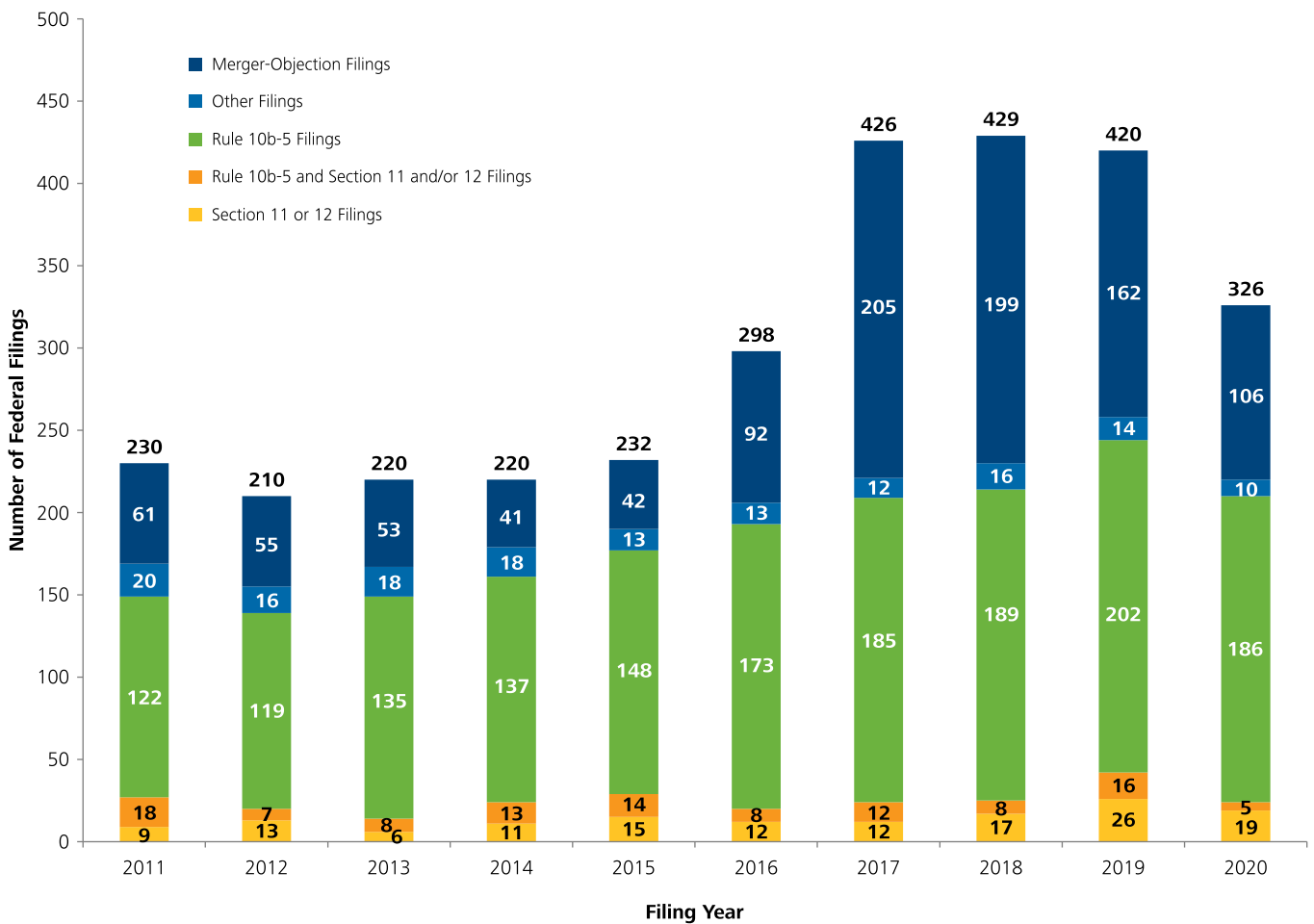


Note: Listed companies include those listed on the NYSE and Nasdaq. Listings data obtained from World Federation of Exchanges (WFE). The 2020 listings data is as of October 2020.

Federal Filings by Type

The decline in federal cases differed by type of case with the largest percentage decline observed among the Rule 10b-5 and Section 11 or Section 12 category of cases. Despite differences in the magnitude of change over the past 12 months, collectively and within each individual category, federal filings of securities class action (SCA) suits decreased. New filings of Rule 10b-5 and Section 11 or Section 12 cases in 2020 declined by more than 65% when compared to 2019. Filings of merger objections, other securities class action cases, and Section 11/Section 12 cases each declined by between 25% and 35%, while Rule 10b-5 cases declined by less than 10%. As a result of the relatively low level of decline in Rule 10b-5 cases, the proportion of new filings that were Rule 10b-5, Section 11, and/or Section 12 cases (standard cases) increased from 58% of new filings in 2019 to 64% of new filings in 2020. See Figure 2.

Figure 2. **Federal Filings by Type**
January 2011–December 2020



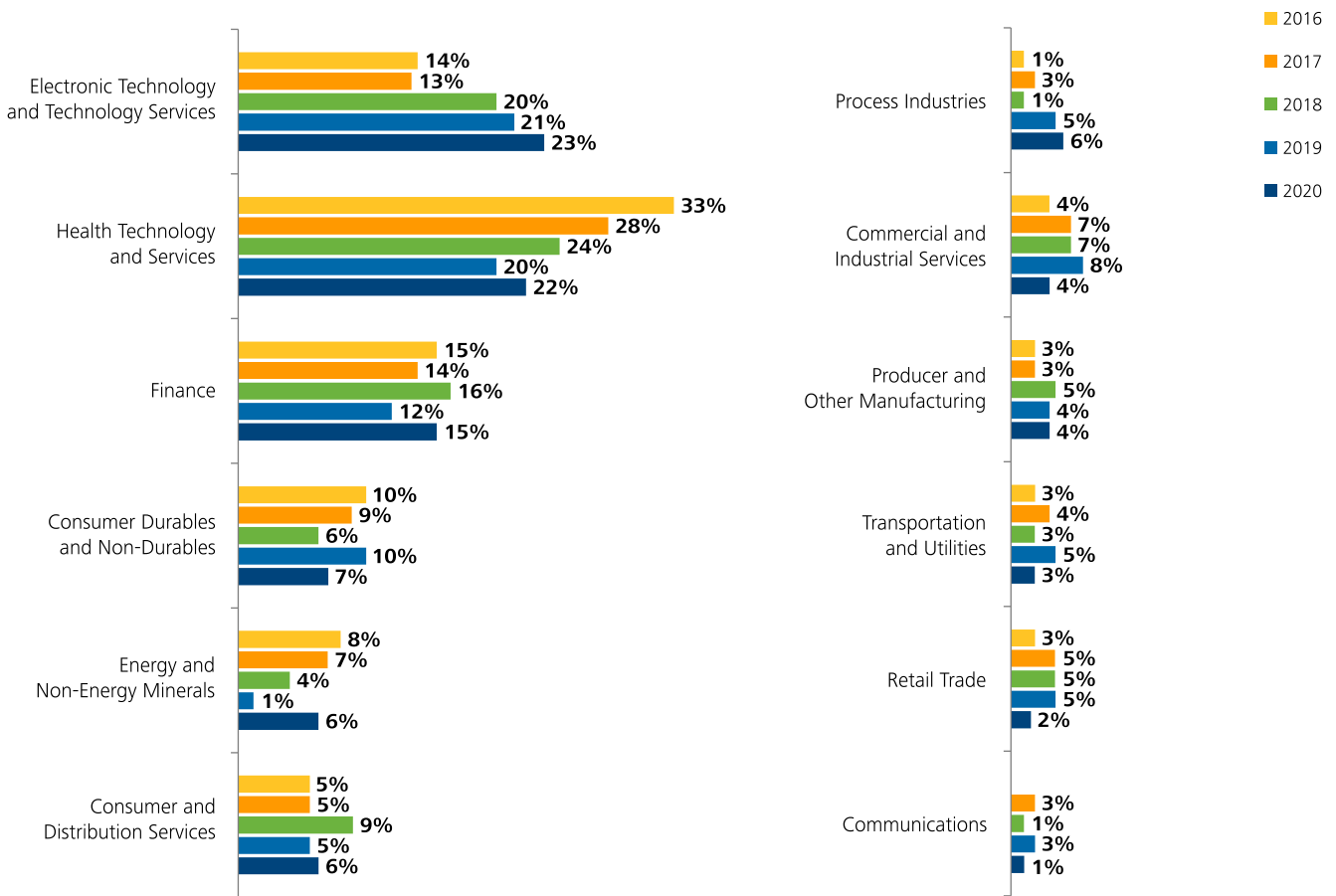
Federal Filings by Sector

Over the 2015–2018 period, the largest proportion of SCA suits filed were against defendants in the health technology and services sector. Because of a gradual downward trend in the proportion of cases filed against companies of this sector between 2016 and 2019, and an accompanying growth in the proportion of cases filed against defendants in the electronic technology and technology sector, in 2020, the electronic technology and technology services sector represented the largest proportion of new cases filed. In 2020, 23% of filings were against defendants in this sector, followed closely by defendants in the health technology and services sector, which accounted for 22% of new filings.

The finance sector observed an increase in the proportion of cases filed against defendants in this sector, from 12% in 2019 to 15% in 2020, while defendants in the consumer durables and non-durables sector observed a decline from 10% to 7%. The energy and non-energy minerals, consumer and distribution services, and process industries sectors each accounted for at least 5% of cases filed in 2020. See Figure 3.

Figure 3. **Percentage of Federal Filings by Sector and Year**

Excludes Merger Objections
January 2016–December 2020

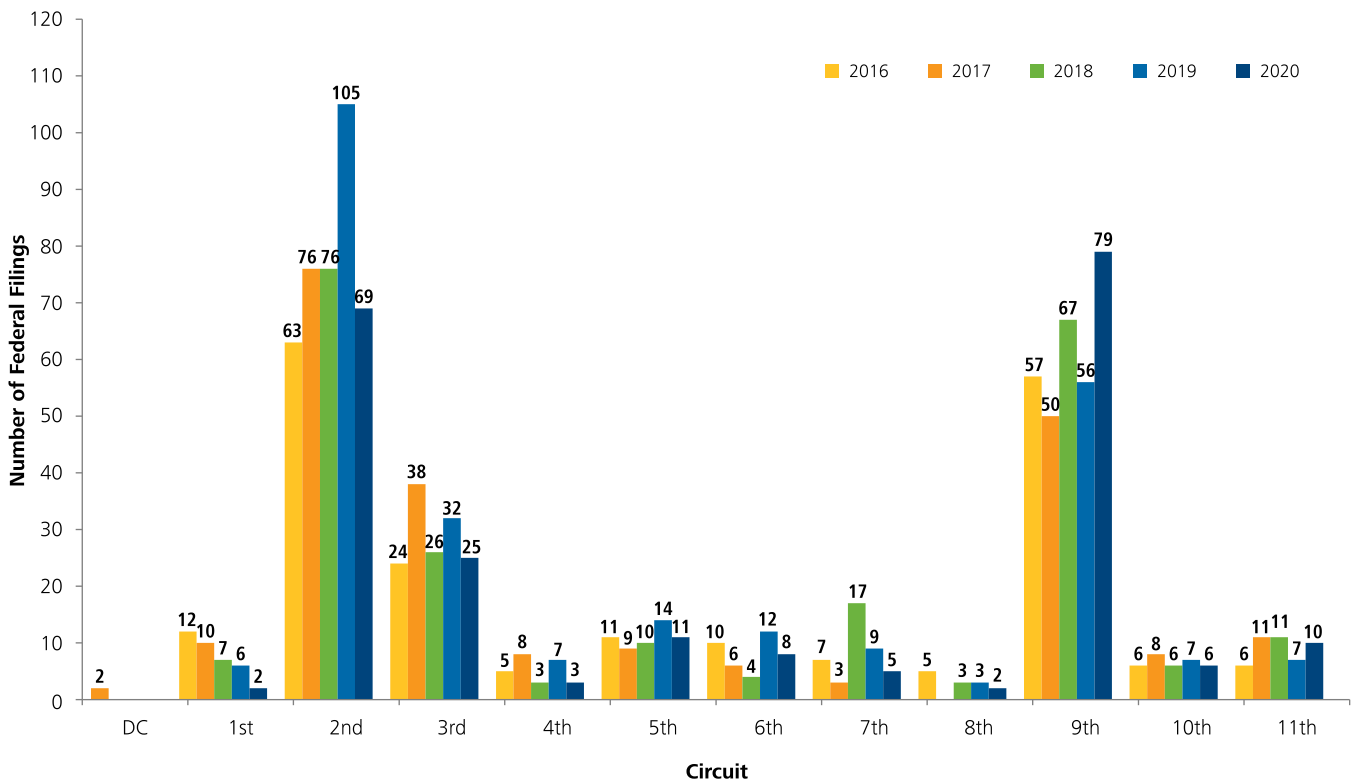


Note: This analysis is based on the FactSet Research Systems, Inc. economic sector classification. Some of the FactSet economic sectors are combined for presentation.

Federal Filings by Circuit

Historically, the Second Circuit—which includes Connecticut, New York, and Vermont—has received the highest number of cases filed. In 2019, we observed a spike in new non-merger-objection filings in the Second Circuit, a pattern that did not persist in 2020. Over the last 12 months, only 69 new cases were filed in the Second Circuit, the lowest level of new cases since 2017. The Third and Ninth Circuits continue to be high-activity jurisdictions for SCA cases, with 25 and 79 cases filed in 2020 in these circuits, respectively. While the number of cases filed in the Second and Third Circuits declined, the Ninth Circuit observed a 41% increase in filings. Taken together, these trends resulted in the Ninth Circuit accounting for the highest proportion of new filings for the first time in the last five years. Combined, the Second, Third, and Ninth Circuits continue to account for a significant proportion of new cases filed, increasing slightly to 79% of all the new non-merger-objection cases filed in 2020. See Figure 4.

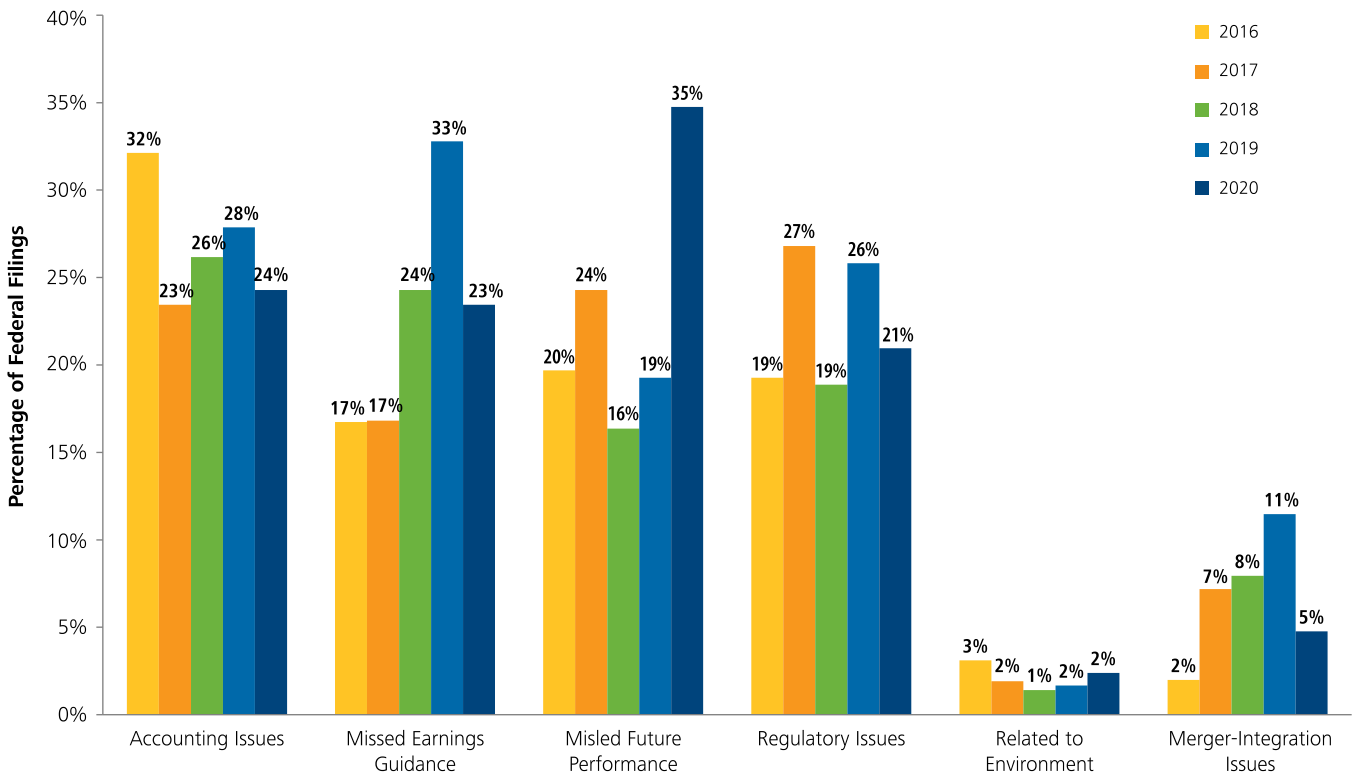
Figure 4. **Federal Filings by Circuit and Year**
Excludes Merger Objections
January 2016–December 2020



Allegations

Over the past three years, there has been year-to-year variation in the most frequently occurring allegation in shareholder class action suits filed.⁵ In 2018, the most common allegation included in complaints was related to accounting issues, with 26% of cases including such a claim. This pattern is consistent with the distributions observed in recent years; claims related to accounting issues remain one of the most common and frequent allegations included in complaints. In 2019, we observed a spike in cases involving allegations of missed earnings guidance, with over 30% of cases involving a related claim. However, the proportion of cases alleging claims related to missed earnings guidance decreased to 23% in 2020. For cases filed in 2020, there emerged a new common allegation; 35% of the complaints included a claim related to misled future performance. This is the first time in the last five years that this allegation has been included in more complaints than those alleging accounting issues, missed earnings guidance, or regulatory issues. Although there was an upward trend in the frequency of cases involving allegations related to merger integration issues between 2016 and 2019, this pattern did not continue in 2020, with this category falling to only 5% of cases from 11% in 2019. See Figure 5.

Figure 5. **Allegations**
Shareholder Class Actions with Alleged Violations of Rule 10b-5, Section 11, and/or Section 12
January 2016–December 2020

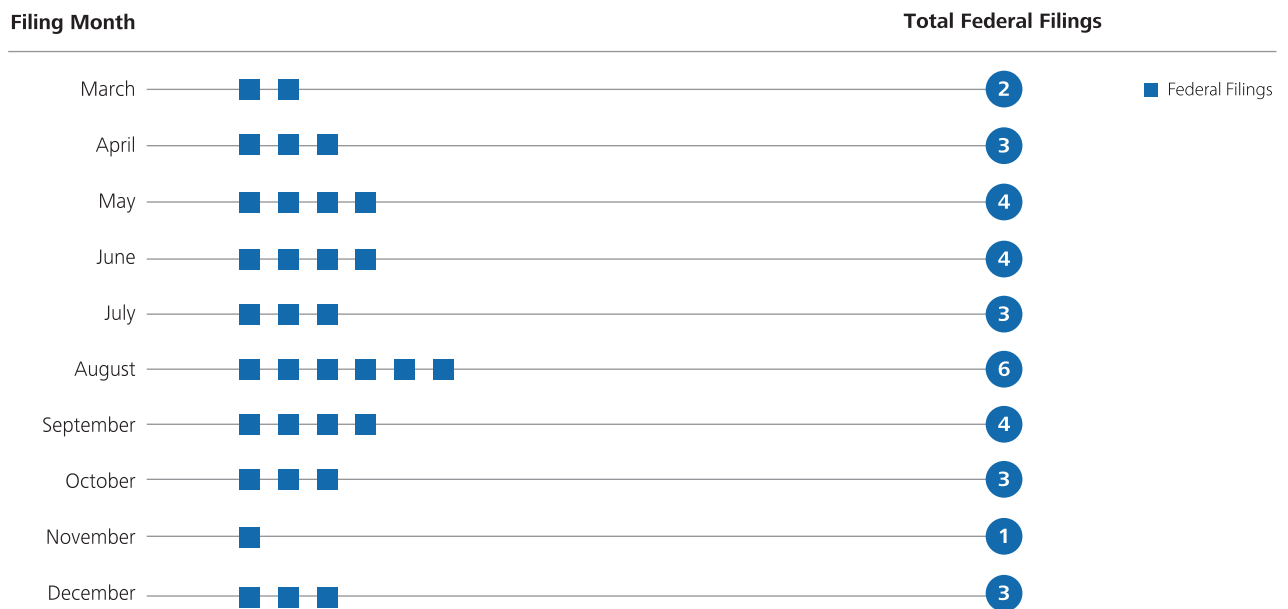


Recent Developments in Federal Filings⁶

COVID-19

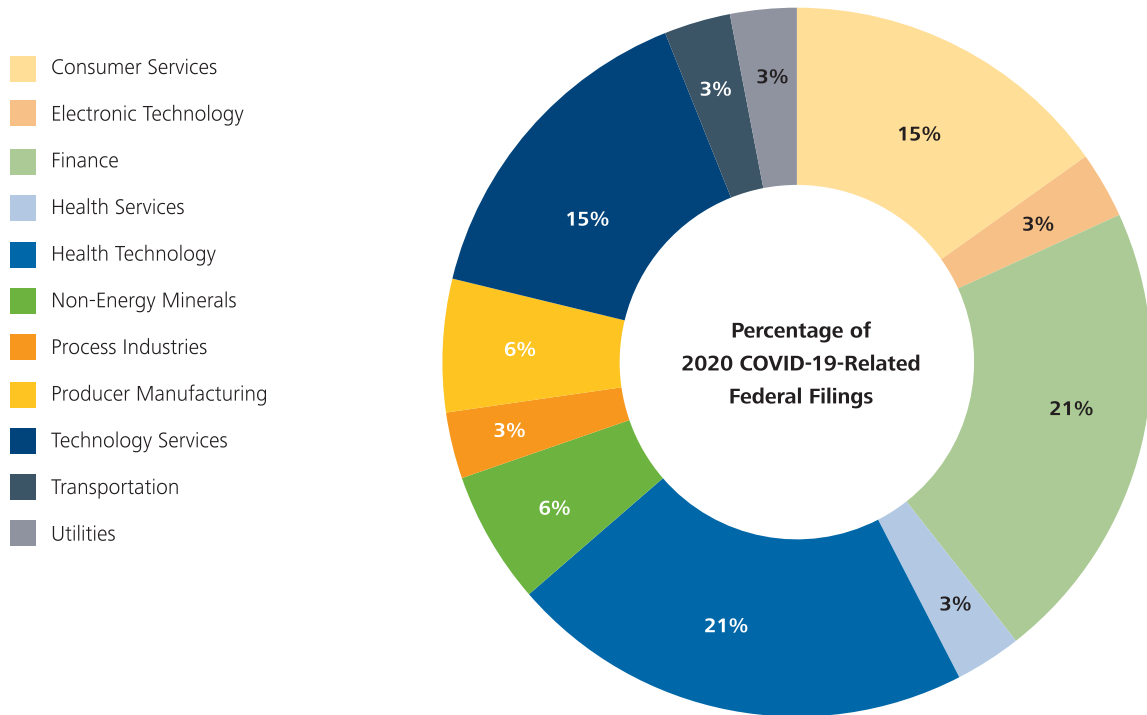
In March of 2020, the COVID-19 pandemic changed the way individuals work, the way they live, and how companies operate. The pandemic's impact on filings has not yet been fully determined and it will likely take time to evaluate if it was the underlying driver of the lower level of cases filed in 2020. On the other hand, the pandemic brought about a new category of event-driven cases, with the first such case filed in March. Since then, there have been 33 cases filed with claims related to COVID-19 included in the complaint. See Figure 6.

Figure 6. **Number of 2020 COVID-19-Related Federal Filings by Month**
March 2020–December 2020



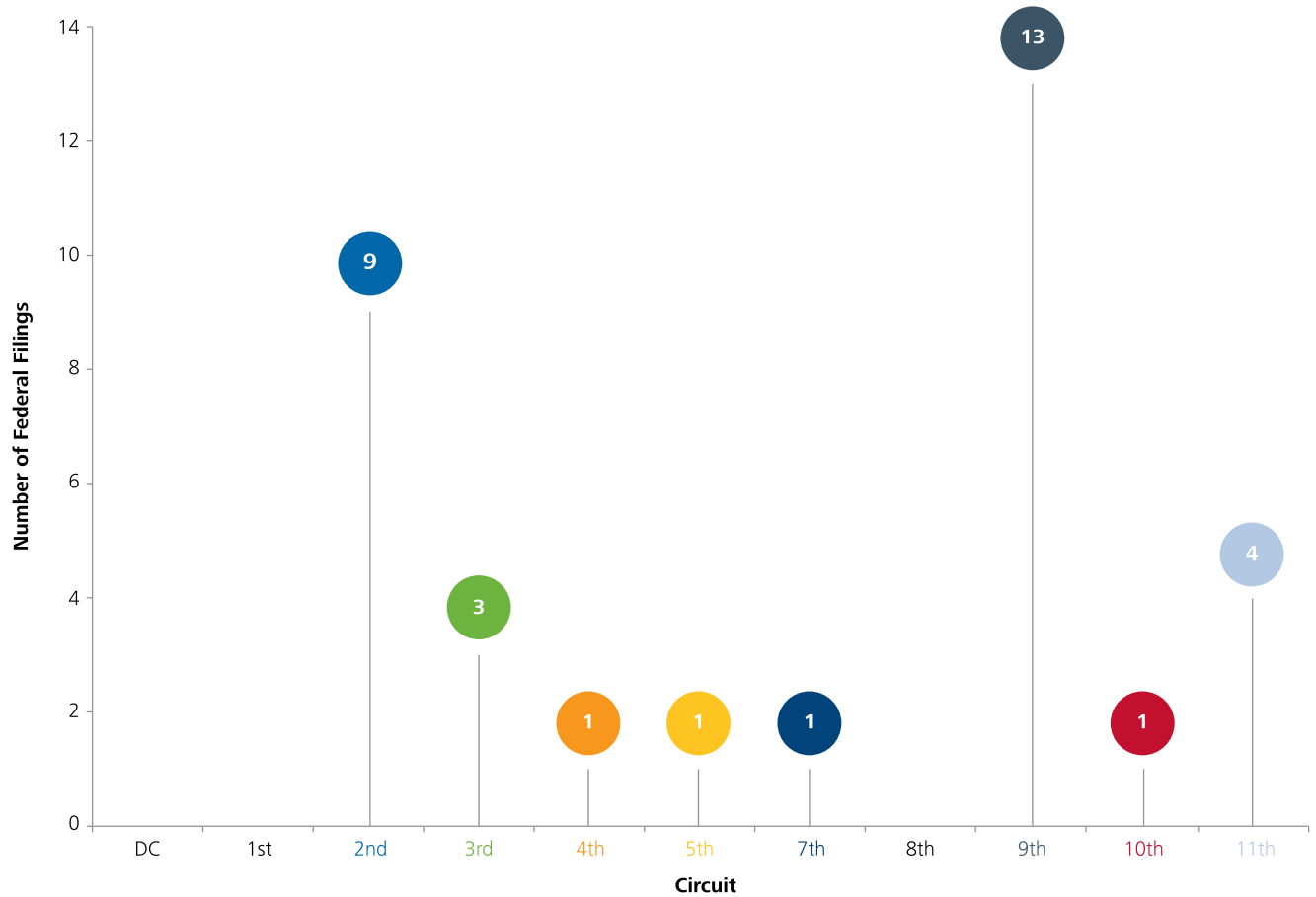
The distribution of these COVID-19-related cases across sectors reveals a pattern similar to the distribution across total cases filed in 2020. The proportion of filings against defendants in the combined health technology and health services sectors was 24%. Approximately 21% of the COVID-19 cases were filed against defendants in the finance sector and the consumer services and technology services sectors each accounted for approximately 15% of cases. See Figure 7.

Figure 7. **Percentage of 2020 COVID-19-Related Federal Filings by Sector**
March 2020–December 2020



Unlike for the universe of total filings, the top three circuits for most COVID-19 filings were the Ninth, Second, and Eleventh Circuits. Over one-third of the COVID-19-related cases filed were presented in the Ninth Circuit, followed closely by the Second Circuit. See Figure 8.

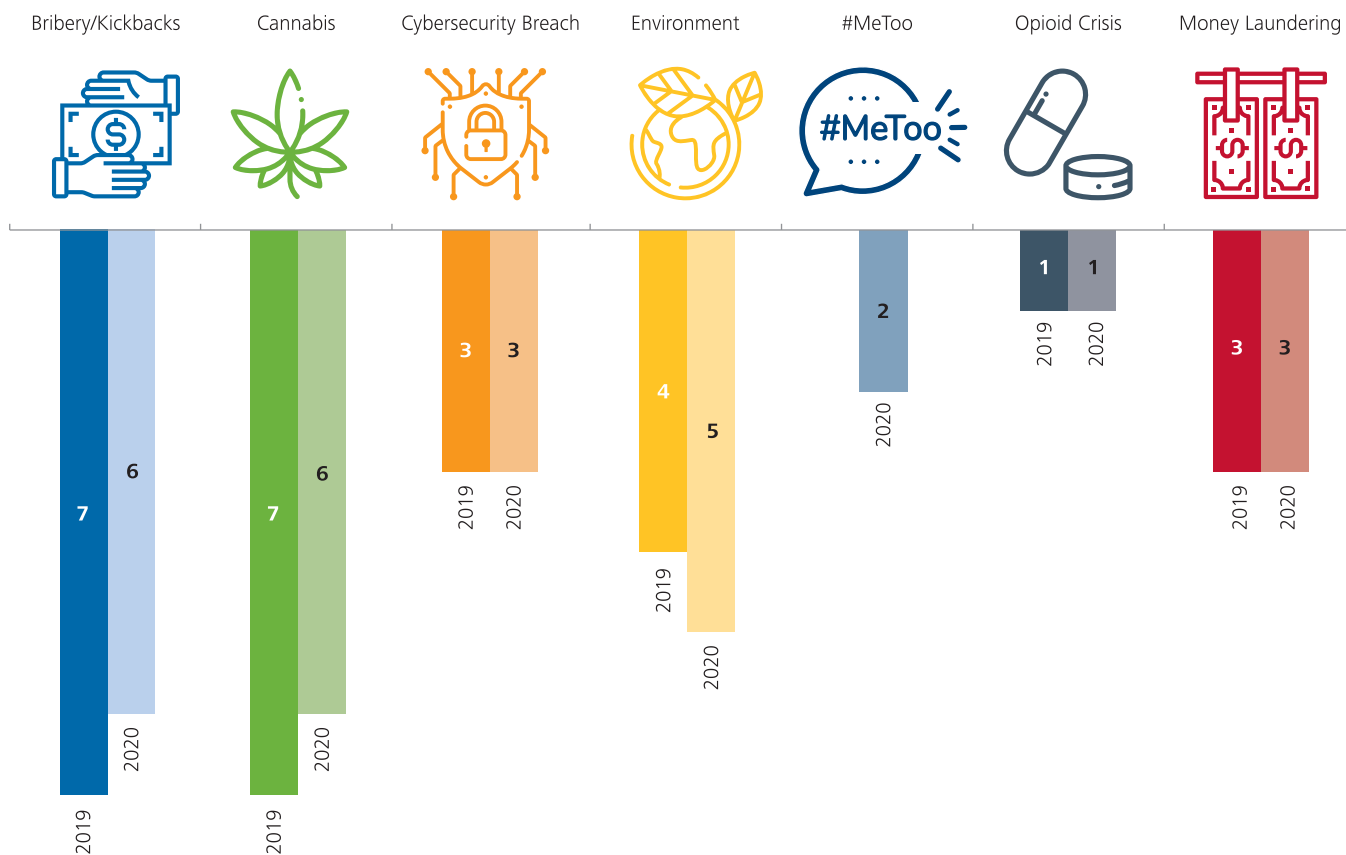
Figure 8. **Number of 2020 COVID-19-Related Federal Filings by Circuit**



The claims alleged in the complaints for these COVID-19-related filings varied. For example, within the NERA database, we identified three cases filed against defendants in the cruise line industry—namely, Norwegian Cruise Line Holdings, Carnival Corporation, and Royal Caribbean Cruises. The complaint filed against Norwegian Cruise Line Holdings alleges the company made false and/or misleading statements and/or failed to disclose that it was providing customers with false statements about COVID-19 to entice them to purchase cruises. The Carnival Corporation lawsuit alleged that the company’s misstatements concealed the increasing presence of COVID-19 on the company’s ships. In the complaint against Royal Caribbean Cruises, plaintiffs allege there was a failure to disclose material facts related to the company’s decrease in bookings outside of China.

In addition to tracking COVID-19-related filings, we have also monitored federal securities class action filings in a number of recent development areas. See Figure 9 for a summary of filings in these areas for 2019 and 2020.

Figure 9. **Event-Driven and Other Special Cases by Filing Year**
January 2019–December 2020



Bribery/Kickbacks

Securities class action suits related to claims of bribery have remained fairly stable over the 2019–2020 period, with six such cases filed in 2019 and five filed in 2020. Of the 11 cases filed in the last two years, all remain pending as of December 2020. These cases span a range of sectors, with the electronic technology and technology services sector accounting for the highest proportion. In addition, cases filed with claims related to kickbacks are still being brought to the courts, with one case filed in both 2019 and 2020. Both of these cases include claims related to regulatory issues.

Cannabis

In last year’s report, we identified filings against companies in the cannabis industry as a development area. In 2020, filings within this industry have continued with six new cases. The allegations included in these recent complaints were related to accounting issues, misled future performance, and missed earnings guidance. The majority of cases continue to be presented in the Second Circuit and all defendants but one are in the process industries sector.

Cybersecurity Breach Cases

In 2020, like 2019, there were three new filings related to a cybersecurity breach. The Ninth Circuit continues to be a common venue for these cases. Among the six cases filed between 2019 and 2020, four have included allegations related to missed earnings guidance or misleading future performance, with only one case alleging regulatory issues.

Environment-Related

Similar to bribery-related cases, filings pertaining to environment-related claims have continued to be presented at a steady pace, with five cases filed in 2020 and four cases filed in 2019. Four of the nine cases recently filed include allegations related to regulatory issues and five were filed in the Second and Ninth Circuits.

#MeToo

Following the surge of #MeToo cases filed in 2018, only two such cases have been filed in the last year. Both cases were filed in the second half of 2020.

Opioid Crisis

Only two cases related to the opioid crisis have been filed since 2018, both of which were filed in the Third Circuit and include allegations related to accounting and regulatory issues.

Money Laundering

Cases with claims of money laundering also continue to be filed, with three such cases filed in both 2019 and 2020. All six of these cases included an allegation related to regulatory issues.

Trend in Resolutions

Number of Cases Settled or Dismissed

Following a decline in the total number of cases resolved in 2019, resolutions rose in 2020, returning to a level relatively in line with 2017 and 2018. In 2020, 247 cases were resolved in favor of the defendant and 73 cases were settled, for a total of 320 resolutions for the year. This represents an increase of approximately 4% in resolved suits over the 309 cases resolved in 2019.

Despite the aggregate increase in resolutions, the trend observed in dismissals and settlements differed. While there was a decline of 25% in the number of settled cases, there was an increase in the number of dismissed cases.⁷ The number of cases settled in 2020 is the lowest recorded number of settled cases in the most recent 10-year period and is more than 40% lower than the average number of settled cases (122) observed between 2016 and 2018. At this time, there is insufficient evidence to determine whether this lower number of settlements is connected to COVID-19-related factors. The increase in the number of dismissed cases was sufficient to not only offset the decrease in settlements but also to increase the overall number of resolved cases. The number of cases dismissed in 2020 also set a new 10-year record with approximately 6% more cases dismissed than in 2018, the second highest year in the period.

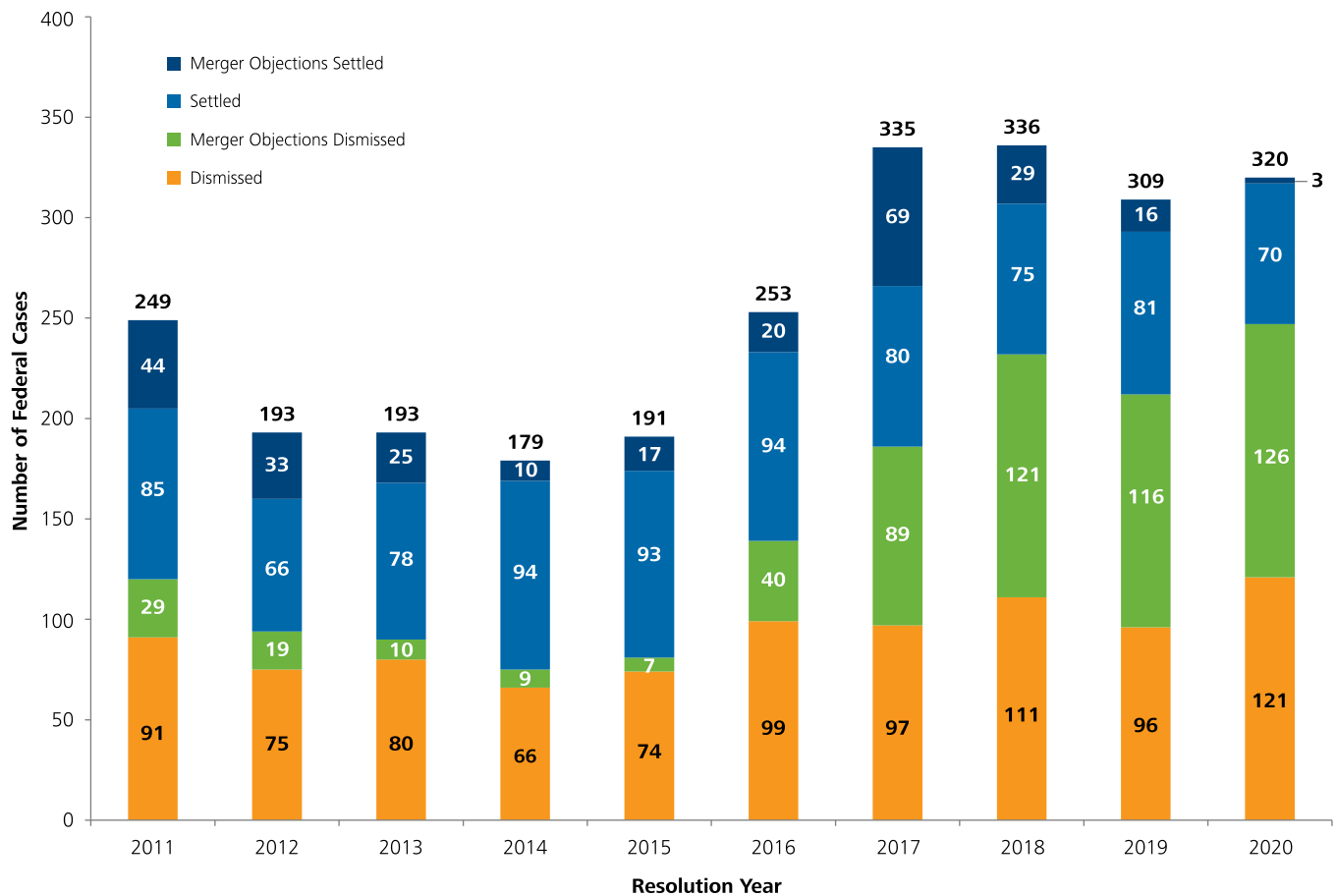
Starting in 2015, there has been a gradual decline in the proportion of cases that were closed due to settling. Of the cases resolved in 2014, 58% were settled. In each subsequent year, this proportion has declined, falling to 44% for cases resolved in 2017. For cases resolved in 2020, the

proportion of resolved cases that were settled is the lowest in recent history, with less than 25% of the cases settling. It is not surprising the proportion declined to a new low given the decrease in the number of cases settled combined with the increase in dismissals that occurred in 2020. See Figure 10.

Although 2020 was a record-setting low year for total settled cases, the magnitude of the decrease in settled cases differed for standard cases and merger-objection cases. Settled non-merger-objection cases decreased by less than 15%, falling to 70 cases, though still within the historical 10-year range. On the other hand, settled merger-objection cases declined by more than 80% to merely three cases, which is substantially lower than the number of such cases settled in any single year in the last 10 years.

There was a 26% increase in dismissals of standard cases and a 9% increase in dismissals of merger-objection cases. For non-merger-objection and for merger-objection cases, the increase in dismissals was enough to establish 2020 as the year with the highest number of dismissals within each category in recent years.

Figure 10. **Number of Resolved Cases: Dismissed or Settled**
January 2011–December 2020

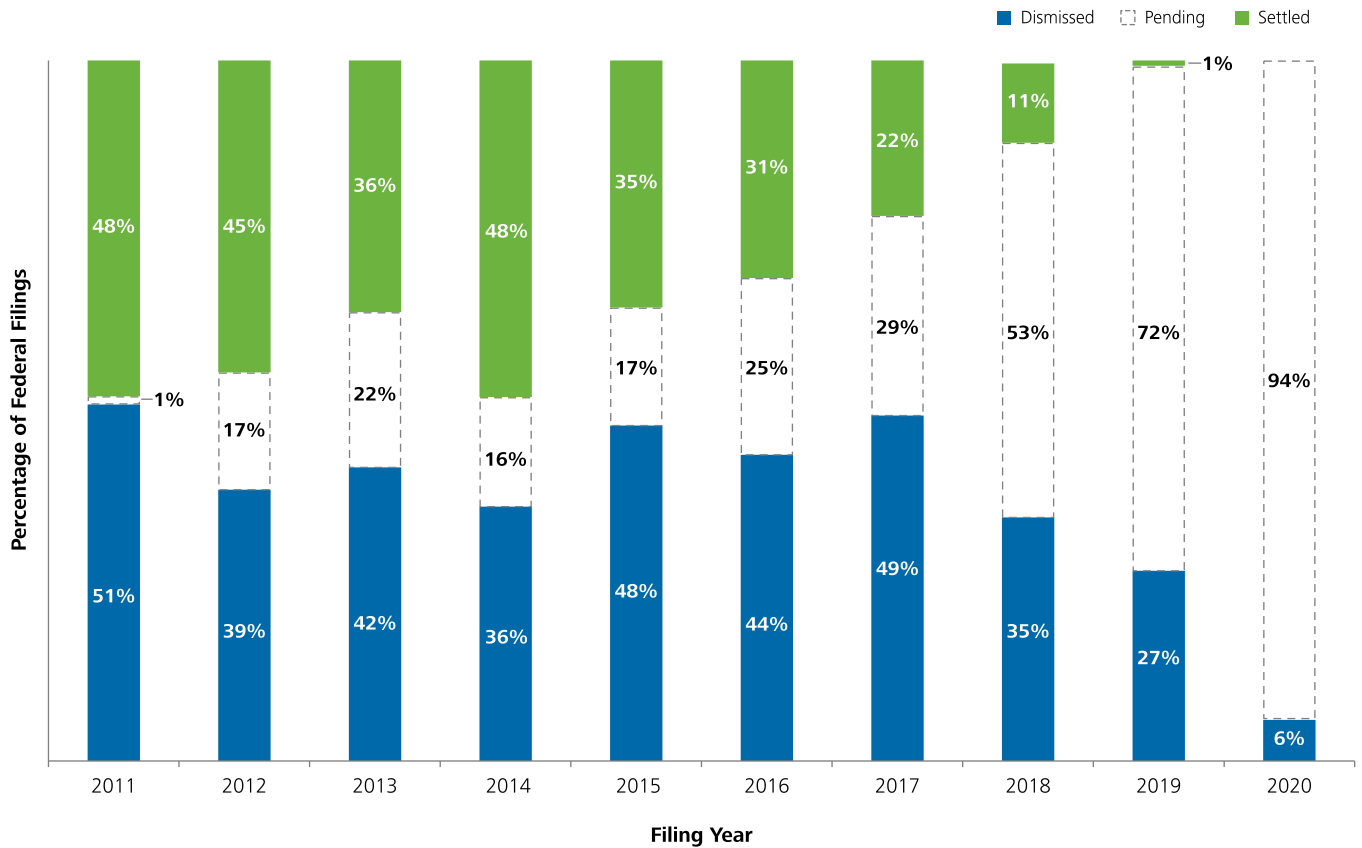


Case Status by Filing Year

A review of the current status of securities class action suits filed after 2014 reveals that within each filing year a greater proportion of cases have been dismissed than have been settled. For cases filed between 2015 and 2017, dismissal rates range from 44% to 49% each year while settlement rates range from 22% to 35%. The difference in current case outcome is even more stark for cases filed in 2018 and 2019. Of the cases filed in 2018, as of December 2020, 35% were resolved in favor of the defendant, 11% were settled, and 53% remained pending. For cases filed in 2019, only 1% were resolved for positive payment, while 27% were dismissed, and 72% were still unresolved. However, the current resolution distribution of cases may not necessarily be an indication of the final outcome for all resolved cases as historical evidence indicates that a larger proportion of the pending cases will result in a positive settlement because settlements typically occur in the latter phases of litigation, whereas motions for summary judgment or dismissal typically occur in the earlier stages. See Figure 11.

Figure 11. **Status of Cases as Percentage of Federal Filings by Filing Year**

Excludes Merger Objections and Verdicts
January 2011–December 2020

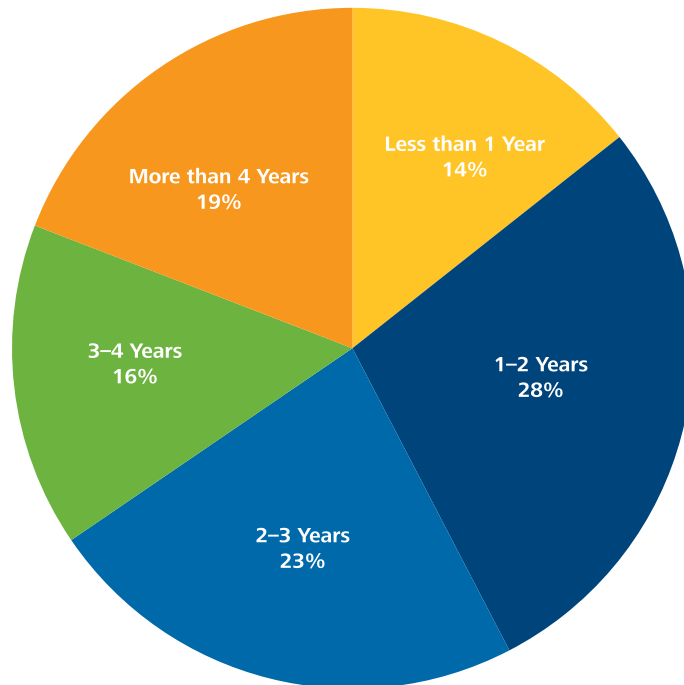


Note: Dismissals may include dismissals without prejudice and dismissals under appeal.

Time From First Complaint Filing to Resolution

A review of the cases filed between 1 January 2002 and 31 December 2016 reveals that a significant proportion of cases are resolved in under four years.⁸ Looking at the time from the filing of the first complaint through the resolution of the case, whether a dismissal or a settlement, shows that more than 80% of suits are resolved within four years, and 65% within the first three years. The most common resolution periods in the data are between one and two years (28% of cases) and between two and three years (23% of cases). Within the first year of filing, 14% of cases are resolved. See Figure 12.

Figure 12. **Time from First Complaint Filing to Resolution**
Cases Filed January 2002–December 2020 and Resolved January 2002–December 2020



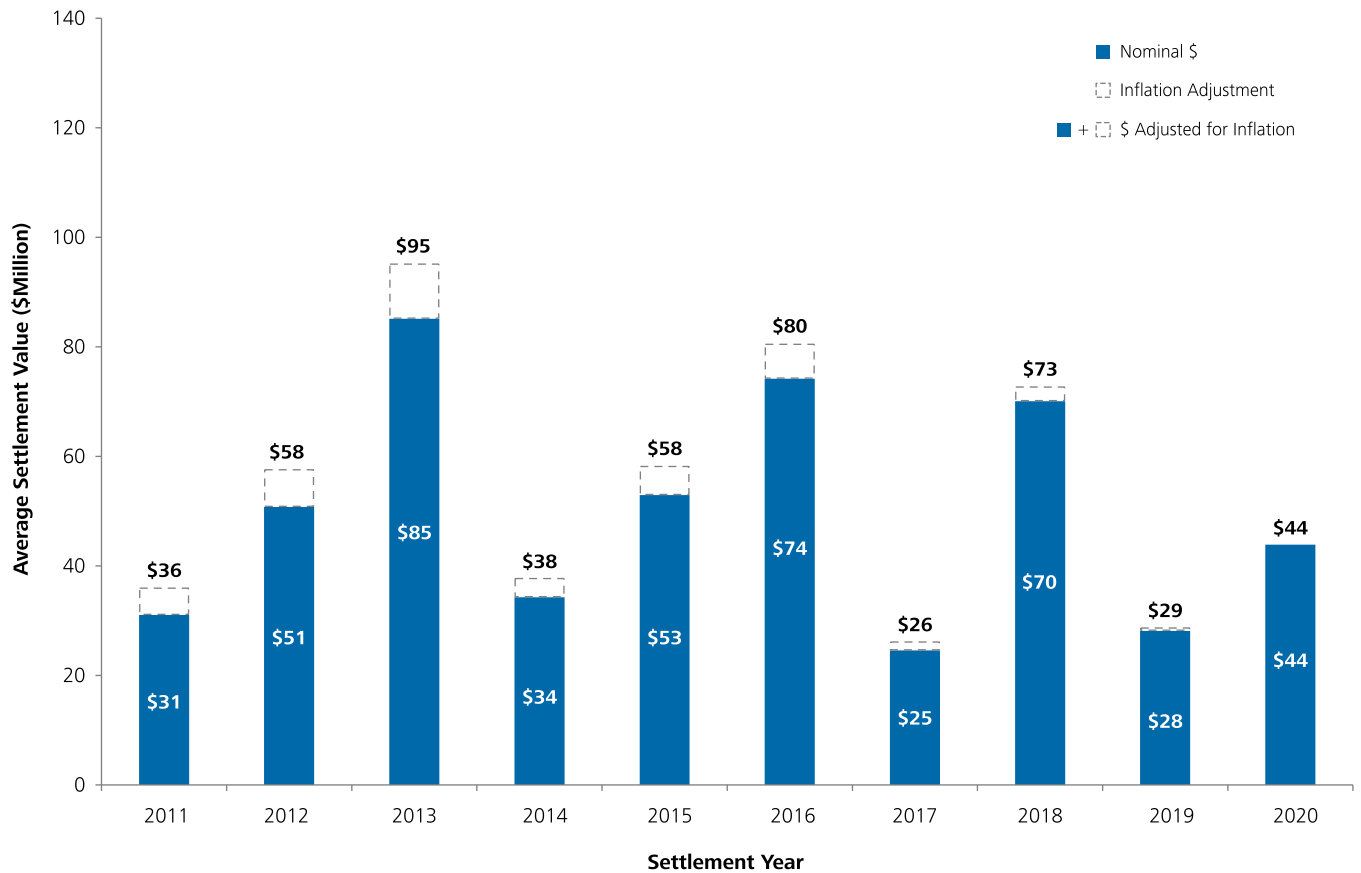
Trend in Settlement Values

Average and Median Settlement Value

To analyze recent trends in settlement values, we calculate and evaluate settlements using multiple alternative measures.⁹ First, we evaluate trends by reviewing the annual average settlement value for non-merger-objection cases with positive settlement values. Given that these average settlement values may be impacted by a few high “outlier” settlements, we also review the median settlement value and average settlement for cases under \$1 billion, again on an annual basis.

The average settlement value in 2020 was \$44 million for non-merger objection cases with settlements of more than \$0 to the class. This is a more than 50% increase over the 2019 inflation-adjusted average of \$29 million but still below the 2018 inflation-adjusted average of \$73 million. Historically, the average settlement value has shown year-to-year variation partly due to the presence or absence of one or two “outlier” settlements. Between 2011 and 2020, the annual inflation-adjusted average settlement value has ranged from a low of \$26 million in 2017 to a high of \$95 million in 2013. As such, the 2020 average is well within the range observed within the last 10 years. See Figure 13.

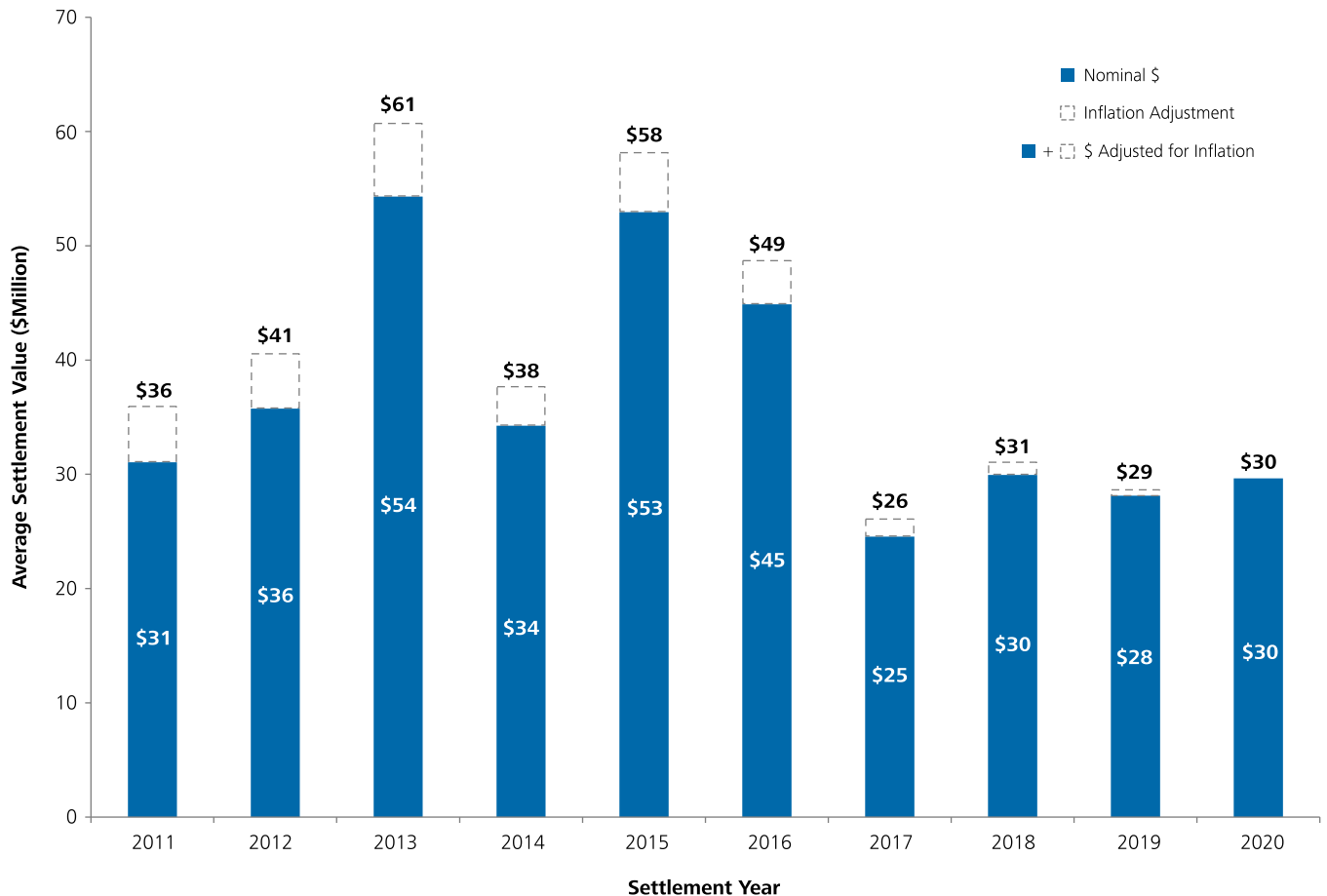
Figure 13. **Average Settlement Value**
Excludes Merger Objections and Settlements for \$0 to the Class
January 2011–December 2020



The second measure of trends in settlement values evaluated is the annual average settlement excluding merger objections, settlements for \$0 to the class, and individual cases with settlements of \$1 billion or greater. Given the infrequency of cases with settlements of \$1 billion or greater and the impact these “outlier” settlements can have on the annual averages, this second measure seeks to evaluate the general trend in settlements absent these cases. For example, for 2020 settlements, this measure evaluates the settlement values excluding the American Realty Capital Properties

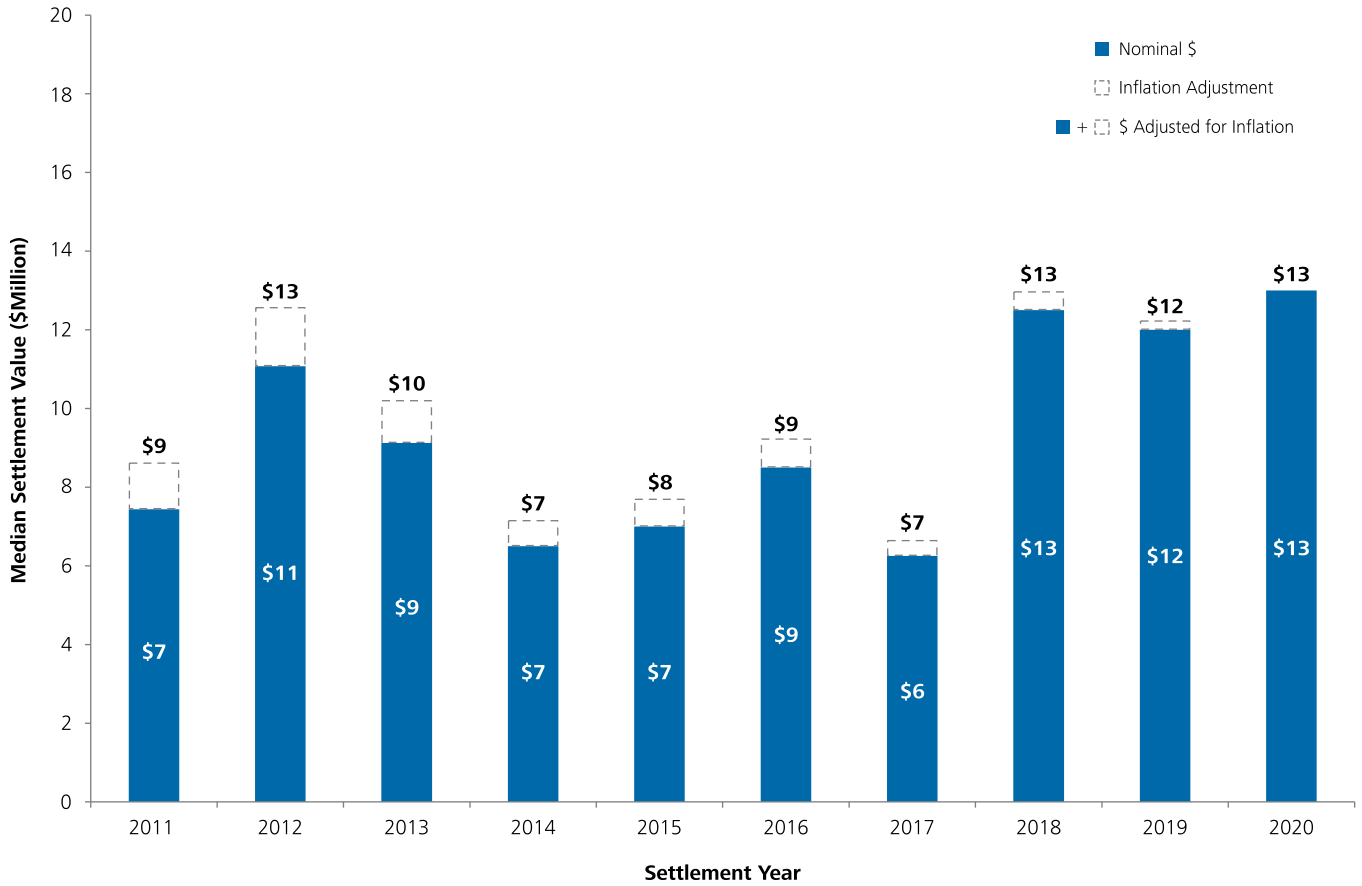
settlement of \$1.025 billion. Figure 14 illustrates that once these cases are removed, the annual average settlement values have been stable in recent years, ranging from \$26 million to \$31 million within the last four years. Though the 2020 average settlement value of \$30 million is 3% higher than the 2019 average, it is still substantially lower than the average values for cases settled for under \$1 billion in 2015 and 2016, which are \$58 million and \$49 million respectively.

Figure 14. **Average Settlement Value**
Excludes Settlements over \$1 Billion, Merger Objections, and Settlements for \$0 to the Class
January 2011–December 2020



The median annual settlement value for 2020 was \$13 million, the highest recorded median value in the last 10 years (the median settlement value for cases settled in 2018 was also \$13 million). Though the median settlement value for 2020 is less than 10% higher than the inflation-adjusted median in 2019, the 2020 value is nearly twice the inflation-adjusted median settlement value for cases settled in 2017. The general increasing trend in annual median settlement values indicates an upward shift in individual settlement values. In other words, a higher proportion of cases has settled for higher values in the last three years when compared to settlements that occurred in 2017 or before. See Figure 15.

Figure 15. **Median Settlement Value**
 Excludes Settlements over \$1 Billion, Merger Objections, and Settlements for \$0 to the Class
 January 2011–December 2020



An evaluation of the change in the distribution of settlement values over the past five years further supports this notion. There has been a downward trend in the proportion of cases with individual settlements less than \$10 million and a corresponding increase in the proportion of cases found in the higher settlement ranges. More specifically, in 2017, 61% of cases resolving for positive payment had settlement values of less than \$10 million compared to 44% of 2020 cases settled within this category. Similarly, 24% of 2017 settled cases had settlement values between \$10 million and \$50 million while 40% of the 2020 settled cases had individual settlements within this range. This pattern of a greater proportion of settled cases within the \$10–\$50 million range in the last three years aligns with the higher annual median settlement values observed in these years.

Top Settlements for 2020

Table 1 summarizes the 10 largest securities class action settlements in 2020. Between 1 January 2020 and 31 December 2020, there was one “mega” settlement—an individual case with a settlement for \$1 billion or greater—for a suit against American Realty Capital Properties. This case involved allegations related to accounting issues, including claims that the defendants made materially false and misleading statements. All 10 of the top settlements were reached between January and July of 2020 and accounted for 75% of the total settlements reached in 2020.

The economic sectors of defendants associated with the top 10 settlements varied, with the commercial services and utilities sectors having the highest frequency, with two cases in each category. Eight of the top 10 settlements were cases filed in the Second, Ninth, and Eleventh Circuits. The average and most frequent length of time between first complaint filing and settlement for the top 10 settlements in 2020 was five years and three years, respectively.

Table 1. **Top 10 2020 Securities Class Action Settlements**

Rank	Defendant	Filing Date	Settlement Date	Total Settlement Value (\$Million)	Plaintiffs’ Attorneys’ Fees and Expenses (\$Million)	Circuit	Economic Sector
1	American Realty Capital Properties Inc.*	30 Oct 14	22 Jan 20	\$1,025.0	\$105.2	2nd	Finance
2	First Solar, Inc.	15 Mar 12	30 Jun 20	\$350.0	\$72.5	9th	Electronic Technology
3	Signet Jewelers Limited	25 Aug 16	21 Jul 20	\$240.0	\$63.1	2nd	Retail Trade
4	SCANA Corporation	27 Sep 17	17 Jun 20	\$192.5	\$28.2	4th	Utilities
5	Equifax Inc.	8 Sep 17	26 Jun 20	\$149.0	\$30.8	11th	Consumer Services
6	SunEdison, Inc.	4 Apr 16	25 Feb 20	\$139.6	\$29.7	2nd	Utilities
7	SeaWorld Entertainment, Inc.	9 Sep 14	22 Jul 20	\$65.0	\$16.4	9th	Consumer Services
8	Community Health Systems, Inc.	9 May 11	19 Jun 20	\$53.0	\$6.3	6th	Health Services
9	HD Supply Holdings, Inc.	10 Jul 17	21 Jul 20	\$50.0	\$15.3	11th	Distribution Services
10	FleetCor Technologies, Inc.	14 Jun 17	14 Apr 20	\$50.0	\$13.0	11th	Commercial Services
Total				\$2,314.1	\$380.4		

*Note: Now called VEREIT, Inc.

Despite the presence of one “mega” settlement for \$1.025 billion in 2020, the top 10 settlements since the passage of PLSRA remains unchanged. This list last changed in 2018 due to the Petrobras settlement of \$3 billion and includes settlements ranging from \$1.1 billion to \$7.2 billion. See Table 2.

Unlike the 2020 top 10 settlements, the all-time top 10 settlements are more concentrated in specific circuits, with six of the 10 cases in the Second Circuit. The most common economic sector of defendants associated with the top settlements was finance. While there are a few common economic sectors in the top 2020 and all-time lists, some of the economic sectors represented in the 2020 top 10 list are not included in the all-time list, such as utilities and commercial services.

Table 2. **Top 10 Federal Securities Class Action Settlements**

As of 31 December 2020

Rank	Defendant	Filing Date	Settlement Year(s)	Codefendant Settlements				Circuit	Economic Sector
				Total Settlement Value (\$Million)	Financial Institutions Value (\$Million)	Accounting Firm Value (\$Million)	Plaintiffs' Attorneys' Fees and Expenses (\$Million)		
1	ENRON Corp.	22 Oct 01	2003–2010	\$7,242	\$6,903	\$73	\$798	5th	Industrial Services
2	WorldCom, Inc.	30 Apr 02	2004–2005	\$6,196	\$6,004	\$103	\$530	2nd	Communications
3	Cendant Corp.	16 Apr 98	2000	\$3,692	\$342	\$467	\$324	3rd	Finance
4	Tyco International, Ltd.	23 Aug 02	2007	\$3,200	No codefendant	\$225	\$493	1st	Producer Mfg.
5	Petroleo Brasileiro S.A. - Petrobras	8 Dec 14	2018	\$3,000	\$0	\$50	\$205	2nd	Energy Minerals
6	AOL Time Warner Inc.	18 Jul 02	2006	\$2,650	No codefendant	\$100	\$151	2nd	Consumer Services
7	Bank of America Corp.	21 Jan 09	2013	\$2,425	No codefendant	No codefendant	\$177	2nd	Finance
8	Household International, Inc.	19 Aug 02	2006–2016	\$1,577	Dismissed	Dismissed	\$427	7th	Finance
9	Nortel Networks	2 Mar 01	2006	\$1,143	No codefendant	\$0	\$94	2nd	Electronic Technology
10	Royal Ahold, NV	25 Feb 03	2006	\$1,100	\$0	\$0	\$170	2nd	Retail Trade
Total				\$32,224	\$13,249	\$1,017	\$3,368		

NERA-Defined Investor Losses

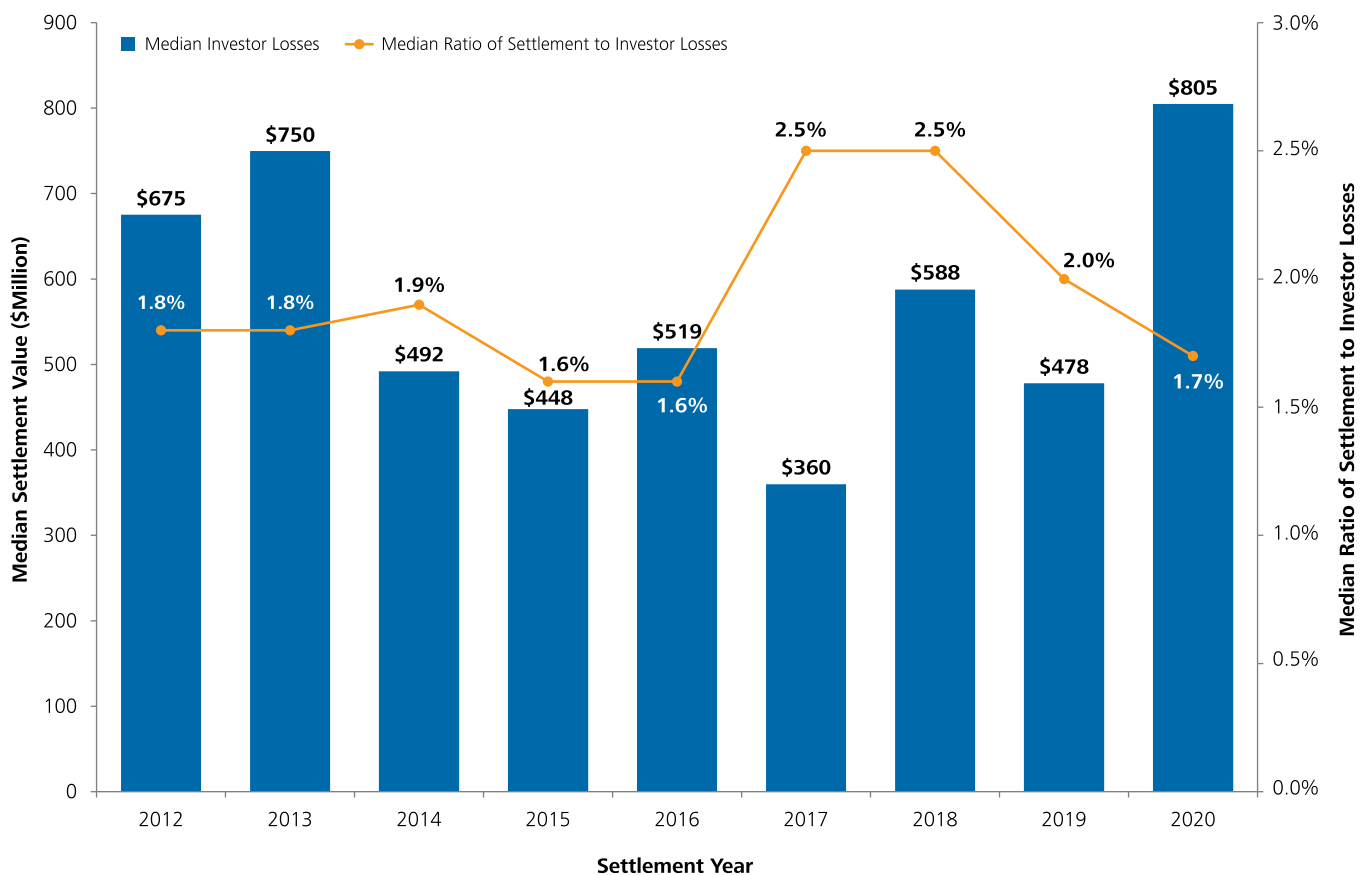
As a proxy to measure the aggregate loss to investors from the purchase of a defendant's stock during the alleged class period, NERA relies on its own proprietary variable, NERA-Defined Investor Losses.¹⁰ This measure of the aggregate amount lost by investors is estimated using publicly available data and is calculated assuming an investor had alternatively purchased stocks that performed similarly to the S&P 500 index during the class period. NERA has reviewed and examined more than 1,000 settlements and found that this proprietary variable is the most powerful predictor of settlement amount. Although losses are highly correlated with settlement values, we have found that settlements do not increase one for one with losses but rather at a slower rate.

For cases settled between 2012 and 2020, the ratio of settlement to Investor Losses is higher for cases with lower settlement values than for cases with higher settlement values. In other words, smaller cases (measured based on the computed Investor Losses) commonly settle for a larger fraction of the estimated Investor Losses than larger cases, though the decline is not linear. In fact, the most dramatic decline occurs between cases with Investor Losses of less than \$20 million and cases with Investor Losses of between \$20 million and \$50 million. More specifically, the median ratio of settlement value to NERA-defined Investor Losses was 24.5% for cases with Investor Losses below \$20 million and 5.2% for cases with Investor Losses between \$20 million and \$50 million. For cases with Investor Losses between \$1 billion and \$5 billion, the median ratio was 1.2%, and falls below 1% for cases with Investor Losses of \$5 billion and higher.

Median Investor Losses and Median Ratio of Actual Settlements to Investor Losses

Following a spike in the median Investor Losses in 2013, the median Investor Losses showed only minor year-to-year fluctuations through 2019. In 2020, the median Investor Losses rose dramatically, reaching a record-setting high of \$805 million. This median is nearly 70% higher than the median value for 2019 of \$478 million and 7% higher than the 2013 median value of \$750 million. For all years between 2017 and 2019, the median ratio of settlement to Investor Losses was above 2%, a higher ratio than was observed in any of the prior five years. Despite the increase in settlement values in 2020, the increase in Investor Losses led to a decline in the median ratio of settlement to Investor Losses. For 2020, the median ratio of settlement to Investor Losses was 1.7%, one of the lowest ratios observed in the last nine years. See Figure 16.

Figure 16. **Median NERA-Defined Investor Losses and Median Ratio of Settlement to Investor Losses by Settlement Year**
January 2012–December 2020



Predicted Settlement Model

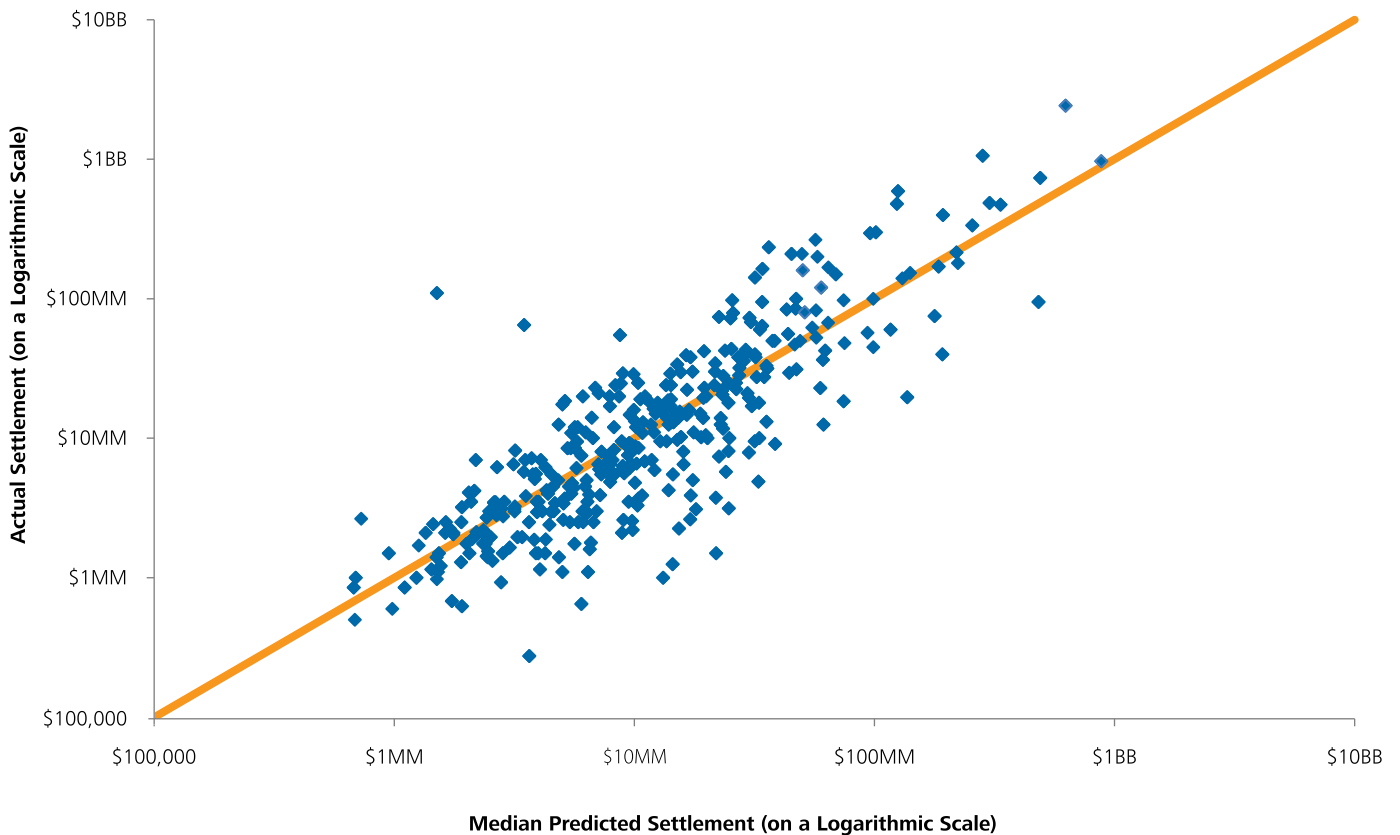
In addition to Investor Losses, NERA identified several other key factors that drive settlement amounts. These factors, when combined with Investor Losses, account for a substantial fraction of the variation observed in actual settlements in our database.

Using the measure of Investor Losses as discussed above in the predicted model, some of the factors that influence settlement values are:

- NERA-Defined Investor Losses (a proxy for the size of the case);
- The market capitalization of the issuer immediately after the end of the class period;
- The types of securities, in addition to common stock, alleged to have been affected by the fraud;
- Variables that serve as a proxy for the merit of plaintiffs' allegations (such as whether the company has already been sanctioned by a governmental or regulatory agency or paid a fine in connection with the allegations);
- The stage of the litigation at the time of settlement; and
- Whether an institution or public pension fund is lead or named plaintiff.

These factors account for a substantial amount of the variation in settlement amounts for the sample of cases in our model with a settlement date between December 2011 and June 2020. In addition, as evidenced in Figure 17, there is significant correlation between the median predicted settlement and actual settlement values for the more than 375 cases in our current model.

Figure 17. **Predicted vs. Actual Settlements**
Investor Losses Using S&P 500 Index



Trends in Plaintiffs' Attorneys' Fees and Expenses

In addition to tracking settlements to plaintiffs, NERA's SCA database also tracks the compensation to plaintiffs' attorneys working on these suits.¹¹ Plaintiffs' attorneys are commonly compensated for their work related to a lawsuit, specifically in fees, as part of a settlement, if one is reached. This compensation is often determined as a fixed percentage of the settlement amount. Additionally, plaintiffs' attorneys also typically receive reimbursement out of the settlement for any out-of-pocket costs incurred in relation to work performed in connection with the case.

Over the 10-year period ending 31 December 2020, the annual aggregate amount of plaintiffs' attorneys' fees and expenses has varied significantly, ranging from a low of \$467 million in 2017 to a high of \$1,552 million in 2016. In 2020, the aggregate plaintiffs' attorneys' fees and expenses was \$613 million, an approximate 6% increase over the 2019 amount but still below the 2018 amount of \$1,202 million. This increase in 2020 was driven by the presence of the American Realty Capital Properties settlement, which accounted for \$105 million of the aggregate fees and expenses for the year. Given that plaintiffs' attorneys' compensation is a function of settlement amount, the presence of "mega" settlements—settlements of \$1 billion or higher—will result in higher aggregate fees and expenses than settlements for lower values. Although there was an increase in 2020 in the aggregate fees and expenses associated with settlements of \$1 billion or higher, there was a decrease in the aggregate fees and expenses related to settlements under \$500 million. The increase in the higher settlement range was sufficient to more than offset the decrease in the lower settlement ranges, resulting in an overall increase in aggregate fees and expenses for settlements in 2020. See Figure 18.

Figure 18. **Aggregate Plaintiffs' Attorneys' Fees and Expenses by Settlement Size**
January 2011–December 2020

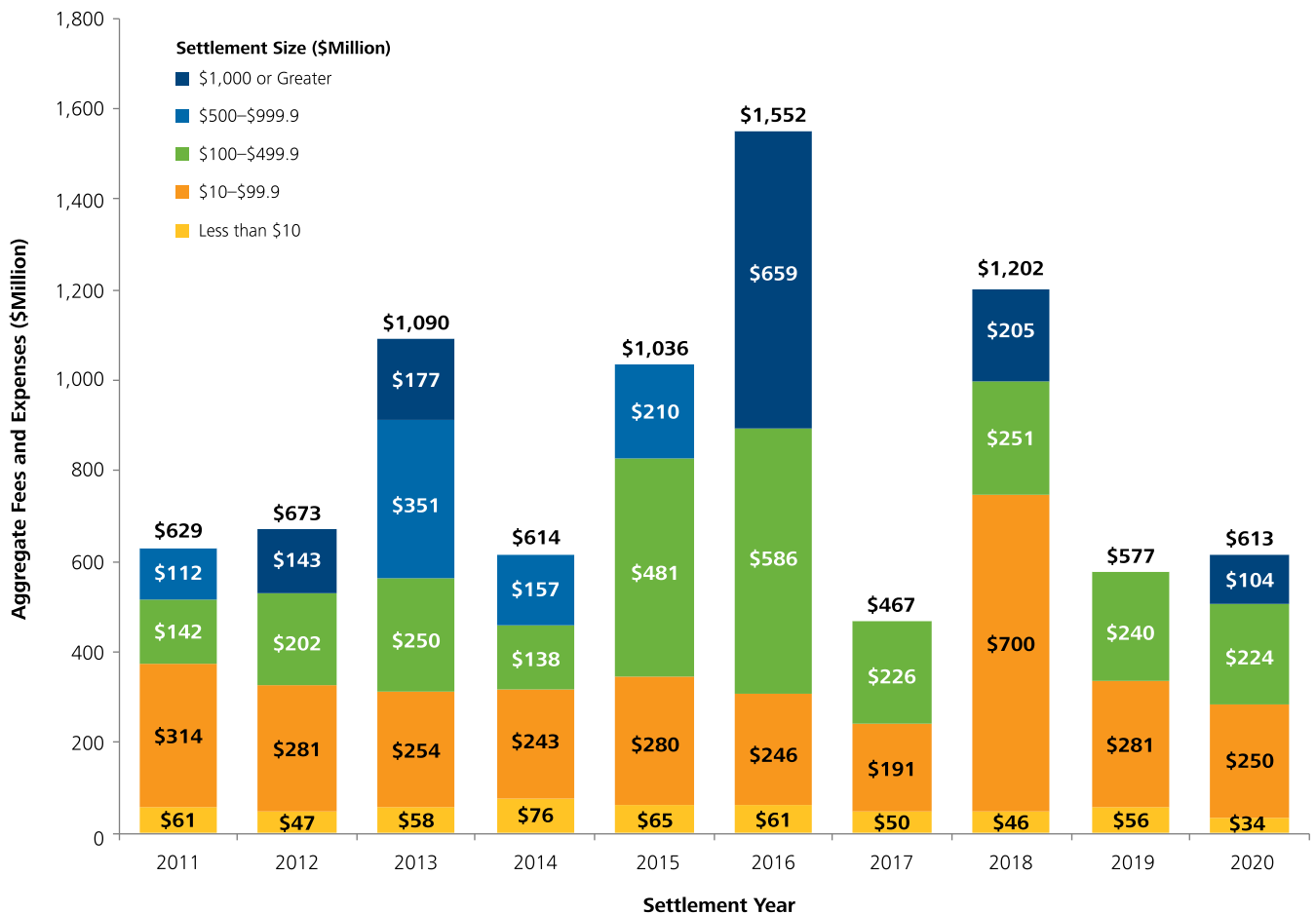
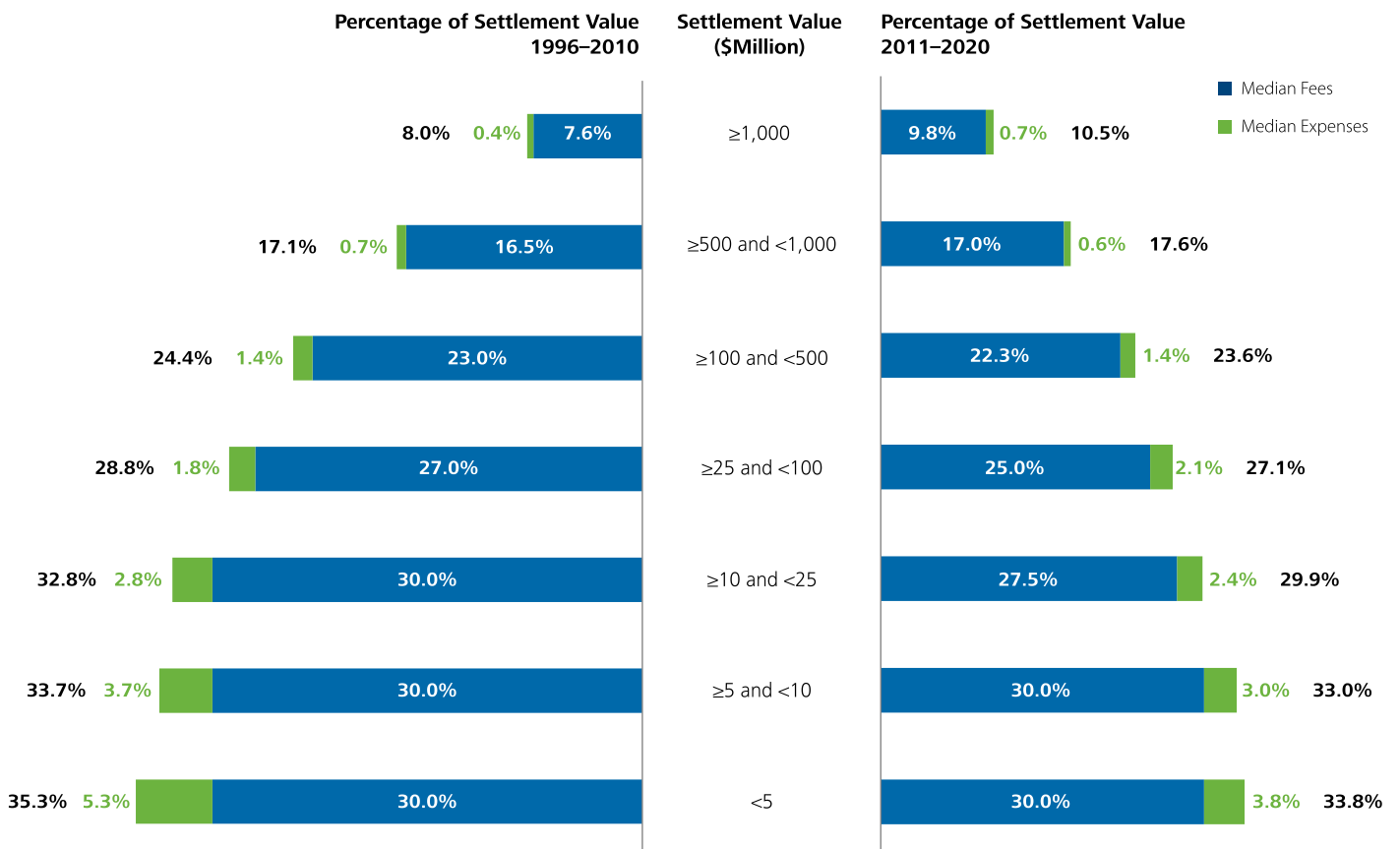


Figure 19 examines the median of plaintiffs’ attorneys’ fees and expenses as a percentage of settlement value for cases settled between 1996 and 2010 and between 2011 and 2020. As indicated in the chart, plaintiffs’ attorneys’ fees and expenses represent a declining percentage of settlement value as settlement size increases. This pattern is consistent in settlements reached in the last 10 years and settlements reached between 1996 and 2010. More specifically, for settlements of \$5 million and less, attorneys’ fees and expenses represent 35% and 34% of the settlement amount for the 1996–2010 and 2011–2020 periods, respectively. In both periods, median plaintiffs’ attorneys’ fees and expenses as a percentage of settlement size is approximately 24% for settlements between \$100 million and \$500 million. As settlement size increases to \$1 billion or greater, the percentage associated with attorneys’ fees and expenses falls to 11% for settlements in the 2011–2020 period and 8% for settlements reached during the 1996–2010 period.

Figure 19. **Median of Plaintiffs’ Attorneys’ Fees and Expenses by Size of Settlement**
Excludes Merger Objections and Settlements for \$0 to the Class



Conclusion

In 2020, there was a decline in total federal filings, resulting from a decrease within each of the five types of case categories we examine. Of these newly filed cases, the percentage that were Rule 10b-5, Section 11, and/or Section 12 increased to 64%, one of the highest proportions in recent years. The electronic technology and technology services sector represented the largest proportion of 2020 new securities class action filings and misled future performance was the most common allegation included in complaints. The Second, Third, and Ninth Circuits continue to account for a substantial proportion of new cases filed, representing more than 75% of the 2020 filings.

Since our 2019 report, the COVID-19 pandemic developed, impacting business operations, performance, revenue, and outlook. In March, the first securities class action lawsuit related to COVID-19 was filed, and another 32 COVID-19-related suits were filed through 31 December 2020. At this time, the pandemic's impact on securities class action litigation has not yet been fully determined and it will likely take months before it is fully revealed.

Between 1 January 2020 and 31 December 2020, 320 cases were resolved, a slight increase from the total number of cases resolved in 2019. Although this number of resolutions is well within the historical range for 2011–2019, the number of settled cases hit a record low while the number of dismissed cases reached a record high for the 10-year period.

For the non-merger-objection cases settled for positive values in 2020, the average settlement value was \$44 million. This average value was more than 50% higher than the 2019 average of \$28 million. Excluding settlements of \$1 billion and higher, the 2020 average settlement value was \$30 million, which is within \$1 million of the average values in 2018 and 2019. The median annual settlement value for 2020 was \$13 million, tying with 2018 for the highest recorded median value in the last 10 years.

Notes

- 1 This edition of NERA's report on Recent Trends in Securities Class Action Litigation expands on previous work by our colleagues Lucy P. Allen, Dr. Vinita Juneja, Dr. Denise Neumann Martin, Dr. Jordan Milev, Robert Patton, Dr. Stephanie Plancich, and others. The authors thank Dr. David Tabak for helpful comments on this edition. We thank Zhenyu Wang and other researchers in NERA's Securities and Finance Practice for their valuable assistance. These individuals receive credit for improving this report; any errors and omissions are those of the authors. NERA'S proprietary securities class action database and all analyses reflected in this report are limited to federal case filings and resolutions.
- 2 Data for this report were collected from multiple sources, including Institutional Shareholder Services, complaints, case dockets, Dow Jones Factiva, Bloomberg Finance, FactSet Research Systems, Nasdaq, Intercontinental Exchange, US Securities and Exchange Commission (SEC) filings, and public press reports.
- 3 NERA tracks class actions involving securities that have been filed in federal courts. Most of these cases allege violations of federal securities laws; others allege violations of common law, including breach of fiduciary duty, as with some merger-objection cases; still others are filed in federal court under foreign or state law. If multiple actions are filed against the same defendant, are related to the same allegations, and are in the same circuit, we treat them as a single filing. However, the first two actions filed in different circuits are treated as separate filings. If cases filed in different circuits are consolidated, we revise our count to reflect the consolidation. Therefore, case counts for a particular year may change over time. Different assumptions for consolidating filings would probably lead to counts that are directionally similar but may, in certain circumstances, lead observers to draw a different conclusion about short-term trends in filings.
- 4 Due to a recent revision to the methodology used to gather data on the number of listed companies on the NYSE and Nasdaq, the historical counts may differ from the counts presented in prior reports.
- 5 Most securities class actions complaints include multiple allegations. For this analysis, all allegations from the complaint are included, and as such, the total number of allegations exceeds the total number of filings.
- 6 It is important to note that due to the small number of cases in some of these categories, the findings summarized here may be driven by one or two cases.
- 7 Here the word "dismissed" is used as shorthand for all cases resolved without settlement; it includes cases where a motion to dismiss was granted (and not appealed or appealed unsuccessfully), voluntary dismissals, cases terminated by a successful motion for summary judgment, or an unsuccessful motion for class certification.
- 8 Analyses in this section exclude IPO laddering cases and merger-objection cases.
- 9 Unless otherwise noted, tentative settlements (those yet to receive court approval) and partial settlements (those covering some but not all non-dismissed defendants) are not included in our settlement statistics. We define "settlement year" as the year of the first court hearing related to the fairness of the entire settlement or the last partial settlement. Analyses in this section exclude merger-objection cases and cases that settle with no cash payment to the class. All charts and statistics reporting inflation-adjusted values are estimated as of November 2020.
- 10 NERA-Defined Investor Losses is only calculable for cases involving allegations of damages to common stock over a defined class period. As such, we have not calculated this metric for cases such as merger objections.
- 11 Analyses in this section exclude merger-objection cases and cases that settle with no cash payment to the class.

About NERA

NERA Economic Consulting (www.nera.com) is a global firm of experts dedicated to applying economic, finance, and quantitative principles to complex business and legal challenges. For over half a century, NERA's economists have been creating strategies, studies, reports, expert testimony, and policy recommendations for government authorities and the world's leading law firms and corporations. We bring academic rigor, objectivity, and real-world industry experience to bear on issues arising from competition, regulation, public policy, strategy, finance, and litigation.

NERA's clients value our ability to apply and communicate state-of-the-art approaches clearly and convincingly, our commitment to deliver unbiased findings, and our reputation for quality and independence. Our clients rely on the integrity and skills of our unparalleled team of economists and other experts backed by the resources and reliability of one of the world's largest economic consultancies. With its main office in New York City, NERA serves clients from more than 25 offices across North America, Europe, and Asia Pacific.

Contacts

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The opinions expressed herein do not necessarily represent the views of NERA Economic Consulting or any other NERA consultant.



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Visit www.nera.com to learn more about our practice areas and global offices.

Exhibit 3

MONTEVERDE & ASSOCIATES PC
ATTORNEYS AT LAW

Firm Résumé

NEW YORK OFFICE
The Empire State Building
350 Fifth Avenue, Suite 4405
New York, NY 10118
Tel: (212) 971-1341
Fax: (212) 202-7880

CALIFORNIA OFFICE
600 Corporate Pointe
600 W. Corporate Pointe, Suite 1170
Culver City, CA 90230
Tel: (213) 446-6652
Fax: (212) 202-7880

MONTEVERDE & ASSOCIATES PC

ATTORNEYS AT LAW

Monteverde & Associates PC was founded in 2016 and is a national class action law firm committed to protecting shareholders from corporate wrongdoing. The firm has significant experience litigating Mergers & Acquisitions and Securities Class Actions, protecting investors and recovering damages in the process. The legal team at the firm is passionate about all its cases and works tirelessly to obtain the best possible outcome for our clients. The firm is recognized as a preeminent securities firm listed in the Top 50 in the 2018, 2019 and 2020 ISS Securities Class Action Services Report.

The attorneys at Monteverde & Associates have been involved in a number of cases recovering substantial amounts of money for shareholders or investors through their litigation efforts, including in the selected list of cases below:

TARGET COMPANY ACQUIRED	INCREASED CONSIDERATION OR SETTLEMENT FUND
American Capital (2018)	\$17.5 million
Apollo Education (2017)	\$54 million
ClubCorp (2019)	\$5 million
Comverge (2017)	\$5.9 million
EnergySolutions (2014)	\$36 million
Envision Healthcare (2021)	\$17.4 million
Force Protection (2012)	\$11 million
Hansen Medical (2019)	\$7.5 million
Jaguar Animal (pending)	\$2.6 million
Jefferies Group (2015)	\$70 million
Mavenir Systems (2016)	\$3 million
MRV Communications (2021)	\$1.9 million
Orchard Enterprises (2014)	\$10.725 million
Syntroleum (2016)	\$2.8 million
Transgenomic (2020)	\$1.95 million
West Marine (2020)	\$2.5 million
US Geothermal (2020)	\$6.5 million

Monteverde & Associates has also changed the law in the 9th Circuit, by lowering the standard of liability under Section 14(e) of the Exchange Act from scienter to negligence to better protect shareholders. *Varjabedian v. Emulex Corp.*, 888 F.3d 399 (9th Cir. 2018).

Juan E. Monteverde

Mr. Monteverde is the founder and managing partner for the firm. Mr. Monteverde has over a decade of experience advocating shareholder rights. Mr. Monteverde regularly handles high profile M&A cases seeking to maximize shareholder value and has obtained monetary relief for shareholders.

Mr. Monteverde has also broken new ground when it comes to challenging proxies related to compensation issues post Dodd-Frank Act. *Knee v. Brocade Comm'ns Sys., Inc.*, No. 1-12-CV-220249, slip op. at 2 (Cal. Super. Ct. Santa Clara Cnty. Apr. 10, 2012) (Kleinberg, J.) (enjoining the 2012 shareholder vote related to executive compensation proxy disclosures). Mr. Monteverde also argued successfully before the 9th Circuit to change the law and lowered the standard of liability under Section 14(e) of the Exchange Act from scienter to negligence to better protect shareholders. *Varjabedian v. Emulex Corp.*, 888 F.3d 399 (9th Cir. 2018).

Mr. Monteverde has been selected by Super Lawyers as a New York Metro Rising Star in 2013, 2017 - 2019, and by Martindale-Hubbell as a Top Rated Lawyer 2017 – 2020.

Mr. Monteverde speaks regularly at ABA, PLI, ACI and other conferences regarding merger litigation or executive compensation issues. Below is a list of published articles by Mr. Monteverde:

- Fair To Whom? Examining Delaware's Fair Summary Standard
- A Review of Trados and Its Impact
- Emerging Trends in Say-on-Pay Disclosure
- Battling for Say on Pay Transparency

Mr. Monteverde graduated from California State University of Northridge (B.S. Finance) and St. Thomas University School of Law (J.D., *cum laude*), where he served as a Law Review Staff Editor.

Mr. Monteverde is admitted to practice law in the State of New York, 2007.

David E. Bower

Mr. Bower is of counsel with the firm since 2016 and has extensive experience in securities and consumer class actions as well as corporate litigation and complex commercial litigation matters.

Mr. Bower has been in the private practice of law since 1981. Prior to forming his own law firm, Law Offices of David E. Bower, in 1996, Mr. Bower practiced for two years with the law firm Hornberger & Criswell where he supervised and coordinated complex business litigation. From 1989 to 1994, he was a partner with the law firm Rivers & Bower where he handled business, construction, real estate, insurance, and personal injury litigation and business and real estate transactions. From 1984 to 1989, he practiced in the insurance bad faith defense and complex litigation department of the Los Angeles, California based law firm of Gilbert, Kelley, Crowley & Jennett. From 1981 to 1984, he practiced law in New York as a partner with the law firm Boysen, Scheffer & Bower. Mr. Bower has extensive trial experience and has tried over 100 cases.

Mr. Bower is a graduate of the Mediation Training Program at UCLA and has a certification in Advanced Mediation Techniques. He has presided in over 200 mediations since becoming certified and is currently on the Los Angeles Superior Court Pay Panel of mediators and arbitrators. He was previously the President of the Board of A New Way of Life Reentry Project, a non-profit serving ex-convicts seeking reentry into society as productive citizens.

Mr. Bower is admitted to practice law in the State of New York, 1982, and California, 1985.

Beth Keller

Ms. Keller is of counsel with the firm since 2018 and has extensive experience in securities class actions as well as corporate governance reform.

For the last 16 years, she has focused her legal practice on shareholder rights litigation. Prior to working with Monteverde & Associates, Ms. Keller was a Partner at Faruqi & Faruqi, LLP, a nationally recognized securities firm based in New York City, where she litigated shareholder class and derivative actions, and served as head of the firm's Shareholder Derivative Litigation Department. She later became a founding Member of the boutique securities firm, Hynes Keller & Hernandez, LLC, where she was involved in all aspects of the firm's shareholder advocacy practice.

Ms. Keller has extensive litigation experience and has served as lead or co-lead counsel in numerous complex cases in which she has achieved substantial corporate governance measures and/or financial recoveries for the corporation and its stockholders.

Ms. Keller is admitted to practice law in the State of New York, 2003 and New Jersey, 2002.

Miles D. Schreiner

Mr. Schreiner is a senior associate with the firm from its inception in 2016 and has experience in securities and consumer class action litigation.

Prior to joining the firm, Mr. Schreiner was an associate at a national class action firm where he represented clients in securities and consumer class action litigation. Mr. Schreiner also previously gained experience in complex litigation as an associate at a New York City firm that represents plaintiffs in civil RICO actions. Mr. Schreiner is a *cum laude* graduate of Brooklyn Law School, where he was a Dean's Merit Scholar and served as a Law Review Editor. While in law school, Mr. Schreiner developed practical skills through internships with the Kings County Supreme Court Law Department, the Office of General Counsel at a major New York hospital, and a boutique law firm that specializes in international fraud cases.

Below is a list of published articles by Mr. Schreiner:

- Fair To Whom? Examining Delaware's Fair Summary Standard
- The Delaware Courts' Increasingly Laissez Faire Approach To Directorial Oversight
- Money-Back Guarantees Unlikely to Satisfy 'Superiority'
- A Deadly Combination: The Legal Response to America's Prescription Drug Epidemic

Mr. Schreiner graduated from Tulane University (B.A. in Political Science, *cum laude*) and Brooklyn Law School (J.D., *cum laude*).

Mr. Schreiner has been selected by Super Lawyers as a 2018 and 2019 New York Metro Rising Star.

Mr. Schreiner is admitted to practice law in the State of New York (2013) and New Jersey (2012).

John W. Baylet

John W. Baylet is an associate with the firm since 2017 and has experience in financial services and securities class action litigation.

Prior to joining the firm, Mr. Baylet gained experience at an internship with the U.S. Securities and Exchange Commission in the New York Regional Office. Before that, Mr. Baylet also attained knowledge in the securities industry at an internship with the New York State Department of Financial Services and an international brokerage firm and FCM.

Mr. Baylet graduated from University of Georgia (B.B.A. in Finance) and New York Law School (J.D.). During law school, Mr. Baylet was a Global Law Fellow Scholar, associate for the Center for Business and Financial Law, competitor and coach for the Moot Court Association, Public Service Certificate recipient, and winner of the Ruben S. Fogel Commencement Award.

Mr. Baylet is admitted to practice law in the State of New York, 2017.

Rossella Scarpa

Rossella Scarpa started in the firm in 2019 as a law clerk and became an associate in 2021. She has experience in financial services and securities class action litigation.

Ms. Scarpa graduated from Binghamton University (B.A. Economics and Political Science) in 2017 and from St. John's University School of Law (J.D.) in 2020. During law school, she was the Articles & Notes Editor for the St. John's American Bankruptcy Institute Law Review. Additionally, Ms. Scarpa was co-chair for the 2019 FINRA Triathlon Competition hosted by St. John's. Ms. Scarpa was also a legal intern for the St. John's Securities Arbitration Clinic.

Ms. Scarpa externed for Magistrate Judge Katharine Parker of the United States District Court for the Southern District of New York.

Ms. Scarpa is admitted to practice law in the State of New York, 2021.

Jonathan Lerner

Mr. Lerner is an attorney experienced in commercial litigation.

Before joining the firm, Mr. Lerner worked for a real estate litigation firm handling foreclosure litigation and federal consumer protection litigation, and has a successful track record in New York appellate courts. He also has further experience counseling individuals involved in consumer protection disputes and landlord and tenant negotiations. During law school, Mr. Lerner was a legal intern with the school's consumer protection litigation clinic, where he investigated fraudulent business practices directed at elderly New York City residents.

Mr. Lerner is admitted to practice law in the State of New York, 2019.

Ahmed Khattab

Mr. Khattab is an attorney experienced in complex litigation with prior class action litigation experience. He earned his Bachelor's degree from Rutgers University and his Juris Doctorate from the Syracuse University College of Law, where he served as an Associate Member of the Moot Court Honor Society, National Trial Team and Corporate Law Society.

Prior to joining the firm, Mr. Khattab was an associate at a general liability/complex litigation firm in NY and gained experience at the Litigation Bureau of the New York State Office of the Attorney General. Mr. Khattab also served as a judicial law clerk and mediator for the New Jersey Superior Court.

Mr. Khattab is admitted to practice law in the State of New York, 2021.



**ATTORNEYS AT LAW
MILWAUKEE | MADISON**

FIRM BIOGRAPHY

Ademi LLP litigates securities, antitrust, and consumer class actions. We also practice federal bankruptcy law and federal appellate law.

The Firm's Attorneys

Guri Ademi graduated from the University of Wisconsin–Milwaukee *magna cum laude* in 1990 and the University of Wisconsin Law School in 1993, serving as a Notes and Comments Editor for the *Wisconsin Law Review*. After interning with Judge Thomas Curran of the Eastern District of Wisconsin, he was an associate with Quarles & Brady LLP in its corporate finance and antitrust groups from 1993 to 2000 and an associate with Whyte Hirschboeck Dudek S.C. in its securities and antitrust groups from 2000 to 2001. He joined Ademi LLP in 2001 and heads its securities litigation practice group. Guri is recognized as a *Wisconsin Super Lawyer in Wisconsin Super Lawyers* every year since 2011.

Shpetim Ademi, the firm's founder, graduated *cum laude* from the University of Wisconsin–Milwaukee in 1992, with honors in philosophy and history and an honors thesis in philosophy. He graduated from the University of Wisconsin Law School in 1996. After interning with Judge Charles B. Schudson of the Wisconsin Court of Appeals, 1st District, he founded the Southside Law Office in 1996 and serves as managing partner of Ademi LLP and heads its antitrust and consumer litigation groups. Shpetim is recognized as a *Wisconsin Super Lawyer in Wisconsin Super Lawyers* every year since 2009. Shpetim was included on *Super Lawyers' Top 50 Wisconsin* list for 2016, 2018, 2019, 2020 and 2021. Finally, Shpetim was also included on *Super Lawyers' Top 25 Milwaukee* list for 2016, 2019, 2020 and 2021.

John D. Blythin graduated *cum laude* from the University of Wisconsin-Madison in 1999, with a degree in political science and from University of Wisconsin Law School in 2003. He is of counsel, practicing in securities, antitrust, and consumer litigation. John is also admitted to practice in the State of Illinois.

Mark A. Eldridge graduated from Marquette University in 2006, with a double major in Journalism and Psychology and from Marquette University Law School in 2014. He is an associate, practicing in securities, antitrust, and consumer litigation. Mark is listed as a *Rising Star* in *Wisconsin Super Lawyers 2021*.

Jesse Fruchter graduated *cum laude* from State University of New York College of Environmental Science and Forestry in 2005, with a B.S. in Environmental Biology. Jesse also obtained his M.S. in Plant Biology from Southern Illinois University in 2012. Jesse graduated *cum laude* from the University of Wisconsin Law School in 2017. He is an associate, practicing in securities, antitrust, and consumer litigation. Jesse is listed as a *Rising Star* in *Wisconsin Super Lawyers 2021*.

Ben J. Slatky graduated with distinction from the University of Wisconsin in 2007 with a B.A. in Philosophy and English Literature. Ben also obtained his M.A. in English Literature from University of York in 2011. Ben graduated from the University of Wisconsin Law School in 2017. He is an associate, practicing in securities, antitrust, and consumer litigation. Ben is listed as a *Rising Star* in *Wisconsin Super Lawyers 2021*.

FIRM HIGHLIGHTS

SECURITIES CLASS ACTIONS

IN RE: SPIEGEL, INC. SECURITIES LITIGATION (N. D. IL 2002)

Represented the class as Co-Lead counsel. Settlement of \$17.5 million.

IN RE: EFUNDS CORPORATION SECURITIES LITIGATION (D. AZ 2002)

Represented the class as Co-Lead counsel. Settlement of \$2.5 million.

IN RE: SYNTROLEUM CORP. SHAREHOLDER LITIGATION (TULSA COUNTY OK 2013)

Represented the class as Co-Class counsel. Additional consideration of \$2.8 Million.

IN RE: METAVANTE TECHNOLOGIES, INC. SECURITIES LITIGATION (MILWAUKEE COUNTY, WI 2009)

Represented the class as Co-Lead counsel. Settlement of additional disclosures to shareholders.

IN RE: JOURNAL MEDIA GROUP, INC. SHAREHOLDER LITIGATION (MILWAUKEE COUNTY, WI 2015)

Represented the class as Co-Lead counsel. Settlement of additional disclosures to shareholders.

IN RE: QUOVADX INC. SECURITIES LITIGATION (D. CO 2003)

Represented the lead plaintiff and class as counsel. Settlement of \$9 million.

IN RE: DHB INC. SECURITIES LITIGATION (E.D.N.Y. 2005)

Represented one of the lead plaintiffs and the class as counsel. Settlement estimate of \$64 million.

IN RE: NORTHWESTERN CORP. SECURITIES LITIGATION (D.S.D. 2003)

Represented secondary offering shareholders and certain bondholders. Settlement of \$40 million.

IN RE: RAYOVAC, INC.. SECURITIES LITIGATION (W.D. WI 2003)

Represented the class as *Liaison* counsel. Settlement of \$4 million.

IN RE: MERGE TECHNOLOGIES (MILWAUKEE COUNTY, WI 2006)

Represented the class as *Liaison* counsel. Settlement of corporate governance reforms.

KANDEL V. GEHL COMPANY, ET AL. (WASHINGTON COUNTY, WI 2008)

Represented the class as *Liaison* counsel. Settlement of additional disclosures to shareholders.

IN RE: TOMOTHERAPY, INC. SECURITIES LITIGATION (W.D. WI 2008)

Represented the class as *Liaison* counsel. Settlement of \$5 million.

IN RE: PUSKALA V. KOSS CORPORATION (E.D. WI 2010)

Represented the class as *Liaison* counsel. Settlement of \$1 million.

IN RE ENERGY SOLUTIONS, INC. SHAREHOLDER LITIGATION (DEL. CH. 2013)

Represented the class as Co-Counsel. Increased merger consideration by approximately \$36 million.

AMO V. INTEGRYS ENERGY GROUP, INC. (MILWAUKEE COUNTY, WI 2014)

Represented the class as *Liaison* counsel. Settlement of additional disclosures to shareholders.

IN RE WAUSAU PAPER CORP. SHAREHOLDER LITIGATION (MILWAUKEE COUNTY, WI 2015)

Represented the class as *Liaison* counsel. Settlement of additional disclosures to shareholders.

REPRESENTATIVE RECENTLY FILED SECURITIES CLASS ACTIONS:

AURORA CANNABIS INC. (D.N.J)	GRUBHUB INC. (N.D. ILL.)
AGRIA CORP. (S.D.N.Y.)	IMPAX LABORATORIES, INC. (S.D. CA)
CARBONITE, INC (D. MASS.)	IMPERIAL CHEMICALS (S.D.N.Y.)
CORN PRODUCTS INTERNATIONAL, INC. (N.D. IL)	MEREDITH CORPORATION (S.D. IA)
CORUS BANKSHARES, INC. (N.D. IL)	NUSKIN ENTERPRISES, INC. (D. UT)
DIRECT GENERAL CORPORATION (M.D. TN)	OCA, INC. (E.D. LA)
ESCALA, INC. (S.D.N.Y.)	PARAMETRIC CORPORATION (D. MA)
FIFTHTHIRD CORPORATION (N.D. OH)	PETCO ANIMAL SUPPLIES, INC. (S.D. CA)
FIRST ENERGY CORP (S.D. OH)	TRIPATH TECHNOLOGIES (C.D. CA)

REPRESENTATIVE RECENTLY FILED DERIVATIVE, CORPORATE GOVERNANCE AND BUYOUT CLASS ACTIONS:

AMERICAN REALTY CAPITAL HEALTHCARE TRUST, INC. (MD)	INTERMAGNETICS GENERAL CORP. (NY)
ANWORTH MORTGAGE ASSET CORP. (CA)	JOY GLOBAL INC. (WI)
BEAR STATE FINANCIAL HOLDINGS LLC (AR)	KEANE, INC. (MA)
CRAFT BREW ALLIANCE INC. (OR)	NORTHSTAR ASSET MANAGEMENT GROUP (MD)
CONNECTICUT WATER SERVICE, INC. (CT)	PERSPECTA INC. (NV)
COMMUNITYONE BANCORP. (W.D. NC)	RIGGS NATIONAL CORP. (DE)
CRAFT BREW ALLIANCE, INC. (OR)	RITA MEDICAL SYSTEMS, INC. (CA)
EDUCATION REALTY TRUST, INC. (MD)	STEC, INC. (CA)
EMC INSURANCE GROUP INC. (IA)	STERLING BANCORP.(NY)
GOLDEN WEST FINANCIAL CORP. (CA)	VECTREN CORPORATION (S.D. IND)

ANTITRUST CLASS ACTIONS

EDWARDS ET AL V. NATIONAL MILK PRODUCERS FEDERATION ET AL. (N.D. CAL 2011)

Represent the class of indirect purchasers as co-class counsel. Settlements of \$52 million.

IN RE: POLYURETHANE FOAM ANTITRUST LITIGATION MDL DKT. NO. 2196 (N.D. OH 2010)

Represented the class of indirect purchasers as co-class counsel. Settlements of over \$151 million.

AL'S DISCOUNT PLUMBING LLC, ET AL. V. VIEGA LLC, (M.D. PA 2019)

Represented the class of indirect purchasers as co-class counsel. Settlement valued at \$15 million.

IN RE: INTERIOR MOLDED DOORS INDIRECT PURCHASER ANTITRUST LITIGATION, (E.D. VA 2018)

Represent the class of indirect purchasers as co-class counsel. Settlement of \$19.5 million pending.

IN RE: AUTOMOTIVE WIRE HARNESS SYSTEMS ANTITRUST LITIGATION MDL No. 2311 (E. D. MI 2011)

Represent the indirect purchaser class as co-counsel. Settlements of over \$1.2 billion.

IN RE: PACKAGED SEAFOOD PRODUCTS ANTITRUST LITIGATION - MDL DKT. 2670 (S.D. CAL 2015)

Represent the indirect purchaser class of end users as co-counsel. Settlements of \$20 million pending.

IN RE: CATHODE RAY TUBE ANTITRUST LITIGATION - MDL DKT. NO. 1917 (N.D. CAL 2008)

Represent the class of indirect purchasers as co-class counsel. Settlements of over \$609 million pending.

IN RE: AUTOMOTIVE REFINISHING PAINT ANTITRUST LITIGATION - MDL DKT. NO. 1426 (E.D. PA 2001)

Acted as co-counsel for the class of direct purchasers in more than 20 lawsuits brought against the major car paint manufacturers, including Sherwin Williams, Akzo Nobel, DuPont, PPG Industries and BASF. Settlement of more than \$108 million.

IN RE: FRESH AND PROCESS POTATOES ANTITRUST LITIGATION. - MDL DKT. NO. 2186 (E.D. PA 2010)

Represented the class of indirect purchasers as co-class counsel. Settlement of over \$5 million.

IN RE: INTERNATIONAL AIR TRANSPORTATION SURCHARGE ANTITRUST Lit. - MDL DKT. NO. 1793 (N.D. CAL 2006)

Represented the class as co-counsel. Settlement of over \$200 million.

BLESSING ET AL V. SIRIUS XM RADIO INC. (S.D. NY 2009)

Represented the class as co-counsel. Settlement valued at over \$180 million.

FOND DU LAC BUMPER EXCHANGE INC V. JUI LI ENTERPRISE COMPANY LTD ET AL (E.D. WI 2010)

Represented the third-party payor indirect purchaser class as a *Liaison* Counsel. Settlements of \$8 million.

IN RE: TEXT MESSAGING ANTITRUST LITIGATION - MDL DKT. NO. 1997 (N.D. IL 2008)

Represented the proposed class on plaintiff's steering committee.

IN RE: POTASH ANTITRUST LITIGATION - MDL DKT. NO. 1996 (N.D. IL 2008)

Represented the indirect purchaser class as co-counsel. Settlement of \$21.5 million.

REPRESENTATIVE RECENTLY FILED ANTITRUST CLASS ACTIONS:

IN RE: HARD DISK DRIVE SUSPENSION ASSEMBLIES ANTITRUST LITIGATION - MDL DKT. 2918, (N.D. CAL 2019)

IN RE: QUALCOMM ANTITRUST LITIGATION - MDL DKT. 2773 (N.D. CAL 2017)

IN RE: DOMESTIC AIRLINE TRAVEL ANTITRUST LITIGATION - MDL DKT. No. 2656 (D.C. 2015)

IN RE: DISPOSABLE CONTACT LENS ANTITRUST LITIGATION - MDL DKT. No. 2626 (M.D. FL 2015)

IN RE: KEURIG GREEN MOUNTAIN SINGLE-SERVE COFFEE ANTITRUST LITIGATION - MDL Dkt. No. 2542 (S.D. NY 2014)

IN RE VEHICLE CARRIER SERVICES ANTITRUST LITIG., MDL No. 2471 (N.J. 2013)

IN RE: ELECTRONIC BOOKS ANTITRUST LITIGATION - MDL DKT. No. 2293 (S.D. NY 2011)

IN RE: PHOTOCROMIC LENS ANTITRUST LITIGATION - MDL DKT. No. 2173 (M.D. FL 2010)

IN RE: MUSICAL INSTRUMENTS AND EQUIPMENT ANTITRUST LITIGATION - MDL DKT. No. 2121 (S.D. CAL 2009)

IN RE: PROCESSED EGG PRODUCTS ANTITRUST LITIGATION - MDL DKT. No. 2002 (E.D. PA 2008)

IN RE: AFTER MARKET AUTO FILTERS ANTITRUST LITIGATION - MDL DKT. No. 1957 (N.D. IL 2008)

IN RE: PACKAGED ICE ANTITRUST LITIGATION - MDL DKT. No. 1952 (E.D. MI 2008)

IN RE: CHOCOLATE CONFECTIONARY - MDL DKT. No. 1917 (N.D. PA 2008)

LAFLAMME ET AL. V. SOCIETE AIR FRANCE ET AL., (E.D. NY 2008)

CONSUMER CLASS ACTIONS

MCKINNIE V. CHASE BANK (E.D. WI 2008)

Represented the class as Lead Counsel under the Electronic Funds Transfer Act. Settlement of \$2.1 million.

ORI V. FIFTH THIRD BANK AND FISERVE, INC. (E.D. WI 2008)

Represented the class on the Lead Class Counsel Committee under the Fair Credit Reporting Act. Settlement valued at over \$3 million.

IN RE: LIBERTY REFUND ANTICIPATION LOAN LITIGATION MDL DKT. NO. 2334 (N.D. IL 2012)

Represented the class on the Lead Counsel Executive Committee. Settlement of \$5.3 million.

LIPTAI V. SPECTRUM BRANDS HOLDINGS, INC. ET AL (DANE COUNTY. WI 2018)

Represented the class as Co-Lead Counsel. Settlement of \$2.25 with additional equitable relief.

IN RE: WELLS FARGO AUTO INSURANCE MARKETING AND SALES PRACTICES LITIGATION MDL DKT. 2797 (C. D. CAL 2017)

Represented the class as co-counsel. Settlement estimate pending of over \$432 million.

IN RE: DOLLAR GENERAL CORP. MOTOR OIL MARKETING AND SALES PRACTICES LITIGATION MDL No. 2709 (W. D. Mo 2016)

We represent the certified class of Wisconsin consumers as co-lead counsel and several other class states as co-counsel. Settlement of over \$28.5 million.

IN RE: PILOT FLYING J FUEL REBATE CONTRACT LITIGATION MDL No. 2358 (2013)

Represented the class as Settlement Class Counsel. Settlement valued at \$72 million of full refund plus interest to the class.

IN RE: BOA CREDIT PROTECTION MARKETING AND SALES PRACTICES LITIGATION MDL DKT. No. 2269 (N.D. CAL 2011)

Represented the proposed class as co-counsel. Settlement of \$20 million.

IN RE: CHASE BANK USA, N.A., "CHECK LOAN" CONTRACT LITIGATION - MDL DKT. No. 2032 (N.D. CAL 2009)

Represented the proposed class as co-counsel. Settlement of \$100 million.

KARDONICK ET AL., V. J.P. MORGAN & CO. CHASE (S.D. FL 2010)

Represented the class as co-counsel. Settlement of \$21.5 Million.

IN RE: SAMSUNG TOP-LOAD WASHING MACHINE MARKETING, SALES PRACTICES AND PRODUCTS LIABILITY- MDL DKT. 2792 (W. D. OK 2017)

Represented the class as co-counsel. Settlement estimate pending of over \$125 million available to class members.

IN RE: COUNTRYWIDE FINANCIAL CORP. CUSTOMER DATA SECURITY BREACH MDL DKT. No. 1998 (W.D. KY 2008)

Represented the class as co-counsel. Settlement value estimated at over \$200 million.

IN RE: HEARTLAND PAYMENT SYSTEMS, INC., CUSTOMER DATA SECURITY BREACH MDL DKT. No. 2046 (S.D. TX 2009)

Represented the class as a member of the Steering Committee. Settlement valued at over \$4.5 million.

NEWMAN ET AL V. COMPLYRIGHT, INC., (N.D. IL 2018)

Represented the class as co-counsel. Settlement of over \$3 million.

IN RE: HYUNDAI HORSEPOWER LITIGATION CA. SUP. CT. (2003)

Represented United States and Canadian class of purchasers of Hyundai motor vehicles as co-counsel. Settlement of more than \$100 million.

IN RE SONY PS3 "OTHER OS" LITIGATION, (N.D. CAL 2010)

Represented the class as co-counsel. Settlement of 3.75 million.

PERDUE ET AL V. HY-VEE, INC. (C.D. IL 2019)

Represented the class as co-counsel. Preliminary approval granted

IN RE WAWA, INC. DATA BREACH LITIGATION (E.D. PA 2019)

Represented the class as co-counsel. Settlement value up to \$44 million subject to court approval.

IN RE OCEAN BANK FINANCIAL CORP. PRE-SCREENING LITIGATION - MDL DKT. NO. 1998 (N.D. IL 2006)

Represented a Wisconsin class as Lead Counsel under the Fair Credit Reporting Act.

BERNAL V. AMERICAN MONEY CENTERS, INC. (E.D. WI 2005)

Represented a Wisconsin class as Lead Counsel under the Fair Credit Reporting Act.

REPRESENTATIVE RECENTLY FILED CONSUMER CLASS ACTIONS:

ANDERSON V. FOREFRONT DERMATOLOGY SC ET AL (E.D. WI 2021)

WOLLBRINCK V. BRIDGEMAN FOODS II INC ET AL (E.D. WI 2021)

IN RE: ERIE COVID-19 BUSINESS INTERRUPTION PROTECTION INS. LITIG. MDL No. (W.D. P.N. 2021)

IN RE: CAPITAL ONE CONSUMER DATA SECURITY BREACH LITIGATION MDL No. 2915 (E.D. VA 2019)

IN RE: AMERICAN MEDICAL COLLECTION AGENCY, INC., CUSTOMER DATA SECURITY BREACH LITIGATION MDL No. 2904 (D. N.J. 2019)

BLOCK V. WISCONSIN HOSPITALITY GROUP LLC (E.D. WI 2019)

IN RE: INTEL CORP. CPU MARKETING, SALES PRACTICES AND PRODUCTS LIABILITY LITIGATION MDL No. 2828 (2018)