\UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE CARLOTZ, INC. SECURITIES LITIGATION	Lead Case No. 1:21-cv-05906-AS

DECLARATION OF KIM E. MILLER IN SUPPORT OF FINAL APPROVAL OF CLASS ACTION SETTLEMENT, PLAN OF ALLOCATION OF SETTLEMENT PROCEEDS, AND APPLICATION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF LITIGATION EXPENSES, AND SERVICE AWARD TO PLAINTIFFS

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I, KIM E. MILLER, hereby declare as follows:

1. I am a partner at Kahn Swick & Foti, LLC ("KSF"), Lead Counsel for Lead Plaintiff David Berger ("Plaintiff"), Additional Plaintiff Craig Bailey ("Additional Plaintiff"), and the Settlement Class.[1] I am an attorney admitted to practice in this Court. Unless otherwise indicated, the statements made in this Declaration are based upon my personal knowledge.

2. As Lead Counsel, I led the prosecution of this Action since David Berger moved for appointment as Lead Plaintiff in September 2021. I also led, on behalf of Lead Plaintiff and the Settlement Class, the negotiations that resulted in the Settlement discussed herein.

3. I respectfully submit this Declaration in support of Lead Plaintiff's concurrently filed motion for approval of: (1) the $13,000,000 all-cash Settlement between Lead Plaintiff, on behalf of himself and the Settlement Class, Defendants Michael W. Bor, Thomas W. Stoltz, and Luis Ignacio Solorzano ("Individual Defendants"), and Arch & Beam Global, LLC, as Trustee for Shift Technologies Liquidating Trust, successor to Shift Technologies, Inc. and certain of its affiliates, including Defendant CarLotz, Inc.;[2] the proposed plan for allocating the Settlement proceeds to eligible members of the Settlement Class (the "Plan of Allocation"); (2) Lead Counsel's application for an award of attorneys' fees of $33^{1/3}$% of the Settlement Fund ($4,333,333.33) and reimbursement of reasonable litigation expenses of $155,185.13, plus accrued interest; and (3) service awards of $10,000 to Lead Plaintiff David Berger and $5,000 to Additional Plaintiff Craig Bailey, pursuant to 15 U.S.C. § 78u-4(a)(4).

[1] All capitalized terms not defined herein have the meanings ascribed to them in the Stipulation and Agreement of Settlement between Lead Plaintiff and Individual Defendants effective January 24, 2025 (ECF No. 177) (the "Stipulation"). At various points herein, Lead Plaintiff and Additional Plaintiff are referred to collectively as "Plaintiffs."

[2] Pursuant to the terms of the Stipulation, Individual Defendants' insurers shall pay or cause to be paid the entire $13,000,000 Settlement Amount.

4. The purpose of this Declaration is to set forth the nature of the investigation, litigation, and negotiations that led to the Settlement, demonstrating why the Settlement is fair, reasonable, and adequate and should be approved by this Court, as well as why Lead Counsel's fee request and expense request (collectively, the "Fee and Expense Application") and request for service awards for Plaintiffs are reasonable and should be approved by the Court. A Memorandum of Law in Support of Motion for Final Approval of Class Action Settlement (the "Settlement Memorandum") and a Memorandum of Law in Support of Lead Counsel's Motion for an Award of Attorneys' Fees and Expenses and Service Awards to Plaintiffs (the "Fee Memorandum") are being filed contemporaneously herewith.

I. PRELIMINARY STATEMENT

5. The proposed Settlement—which will resolve all claims against Defendants for $13,000,000 in cash—is fair, reasonable, and in the best interests of the Settlement Class. Prosecuting this litigation through the remainder of discovery, class certification, summary judgment, and trial would both delay any recovery for years and raise the strong likelihood of the Settlement Class recovering substantially less, or nothing at all, in the future. These risks are exacerbated by CarLotz's bankruptcy and the rapidly dwindling insurance proceeds available to pay a future settlement or judgment.

6. The Settlement was achieved only after Plaintiffs, through Lead Counsel, extensively investigated, researched, and drafted three amended complaints, including consultation with an economics expert and retention of a private investigator; briefed oppositions to three motions to dismiss (Individual Defendants' supplemental motion to dismiss the scheme liability claims); presented oral argument on two of Defendants' motions to dismiss before two different federal judges; prepared a draft motion for class certification supported by an expert report on market efficiency and damages (but did not file the motion as the Settlement was reached

shortly before the deadline); propounded various written discovery requests and reviewed the responses thereto; served seventeen third-party document subpoenas and met and conferred with many of these third-parties regarding the production of documents; reviewed and analyzed a number of documents produced by Defendants and third-parties; began responding to Individual Defendants' discovery requests; participated in a mediation session, including the submission of a detailed mediation brief; and engaged in additional settlement negotiations following the mediation session while continuing to move forward with the litigation on a separate track. The Settlement resulted from good-faith, arm's length negotiations between capable and experienced counsel taking place under the supervision of an experienced, respected mediator.

7. As discussed in the Fee Memorandum, Lead Counsel's request for attorneys' fees in the amount of $33^{1/3}$% of the Settlement Fund ($4,333,333, plus interest) is well justified given the nature, extent, and quality of legal services provided by Lead Counsel, the risks undertaken by Lead Counsel on a fully contingent basis, the magnitude and complexity of this case, and the substantial benefits conferred upon the Settlement Class. The reasonableness of the requested fee award is further supported by the fact that the fee equates to a very modest multiplier of just 1.33 on Lead Counsel's lodestar of $3,260,642.50. *See infra* at ¶ 125. Moreover, in my discretion and judgment, I cut dozens of additional attorney hours from Lead Counsel's lodestar in the interests of maximizing efficiency. *See infra* at ¶ 127.

8. Lead Counsel also requests reimbursement of reasonable and necessary expenses incurred in connection with its prosecution and resolution of the Action in the amount of $155,185.13, well below the noticed expense cap.

9. Lead Plaintiff also respectfully seeks a service award of $10,000 to Lead Plaintiff David Berger and $5,000 to Additional Plaintiff Craig Bailey to compensate them for the time and

effort they spent representing the Class.

10. I respectfully submit that the Settlement, for the reasons discussed herein and in the Fee Memorandum and Settlement Memorandum, is fair, reasonable, and adequate in all respects, that the Plan of Allocation is fair, reasonable, and has a rational basis, and that the Fee and Expense Application and service award requests are fair and reasonable and should be approved.

II. FACTUAL SUMMARY OF PLAINTIFFS' ALLEGATIONS

11. In the Third Consolidated Amended Complaint (ECF No. 90, the "TAC" or the "Complaint"), filed on May 1, 2023, Plaintiffs alleged that CarLotz; Michael W. Bor ("Bor"), Chief Executive Officer; Thomas W. Stoltz ("Stoltz"), Chief Financial Officer; and Luis Ignacio Solorzano ("Solorzano"), Chief Executive Officer of Acamar and Director of CarLotz; and Rebecca Polak ("Polak"), Chief Commercial Officer, conducted a fraudulent scheme and made materially false and misleading statements and omissions regarding key aspects of CarLotz's business model, operations, and financial results, in violation of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act Claims"). *See* TAC at ¶¶ 112-207; 239-56. These statements included those relating to CarLotz's corporate sourcing partners, reconditioning costs, business model, and unit economics. *Id*. The TAC also alleged violations of Sections 11, 12, and 15 of the 1933 Securities Act, 15 U.S.C. §§ 77k, l, and o (the "Securities Act Claims") against Bor, Solorzano, and four directors of Acamar who signed the October 29, 2020 Form S-4 Registration Statement in connection with the de-SPAC merger between CarLotz and Acamar. *See* TAC at ¶¶ 285-94.

12. The Complaint pleaded that the truth was partially revealed on March 15, 2021, when CarLotz filed its first annual financial report on Form 10-K as a public company, for the full year and fourth quarter of 2020. TAC at ¶ 209. In a press release announcing the financial results, CarLotz revealed that, contrary to representations that it had a "deep pool" of corporate sourcing

partners, just one of its corporate vehicle sourcing partners accounted for over 60% of the vehicles it sourced. TAC at ¶¶ 210-11. On this news, New CarLotz's stock price fell $0.79, or 8.5%, to close at $8.45 per share on March 16, 2021. TAC at ¶ 219. Then, on May 10, 2021, CarLotz released its quarterly report for the first quarter of 2021, revealing poorer than expected financials and that CarLotz continued to source 60% of its vehicles from only one partner. TAC at ¶ 228. On this news, CarLotz's stock price fell by $0.94, or about 14%, to close at $5.57 per share on May 11, 2021. TAC at ¶ 234. Finally, on May 26, 2021, CarLotz disclosed that its 60% sourcing partner had "paused consignments to the Company." TAC at ¶ 236. On that news, CarLotz's stock price fell by $0.70, or 13.4%, to close at $4.51 per share on unusually heavy trading volume. TAC at ¶ 238.

13. Plaintiffs alleged that, as a result of Defendants' statements and omissions, the price of CarLotz's securities were artificially inflated, and that Plaintiffs and members of the Settlement Class purchased CarLotz securities while the prices were artificially inflated and suffered economic losses when the truth was revealed and the artificial inflation was removed. TAC at ¶¶ 257-63.

III. PROCEDURAL HISTORY

A. The Complaints and Motions to Dismiss

14. The first complaint in this Action was filed on July 8, 2021. ECF No. 1. Several related actions were subsequently filed and, on August 31, 2021, the Court consolidated them into this Action. ECF No. 16.

15. On October 15, 2021, the Honorable Judge Ronnie Abrams appointed David Berger as Lead Plaintiff and approved his selection of KSF as Lead Counsel for the putative class. ECF No. 40.

16. Plaintiffs began investigating the claims alleged in the Amended Complaint by

thoroughly reviewing Acamar's pre-merger SEC filings, CarLotz's post-merger annual and quarterly reports, the December 30, 2020 registration statement/prospectus, Acamar and CarLotz press releases, pre- and post-merger presentations to analysts and at industry conferences, news articles, media and podcast interviews with Mr. Bor, CarLotz's website (before its merger with Shift), and analysis reports; researching CarLotz's competitors and the automotive industry generally, particularly regarding the microchip shortage caused by the COVID-19 epidemic; consulting with an expert economist regarding potential damages; hiring a private investigator; and conducting interviews with a number of former CarLotz employees.

17. Plaintiffs then filed an Amended Complaint on December 14, 2021 (ECF No. 47, "AC") asserting claims against CarLotz, Michael W. Bor, Thomas W. Stoltz, Rebecca Polak, Acamar, Acamar Partners Sponsor I LLC, Acamar Partners Sub, Inc., Luis Ignacio Solorzano Aizpuru, Juan Carlos Torres Carretero, James E. Skinner, Domenico De Sole, and Teck H. Wong for violations of Sections10(b), 14(a) and 20(a) of the Securities Exchange Act of 1934 and Sections 11, 12(a)(2), and 15 of the Securities Act of 1933. After consulting with counsel for Defendants, Plaintiffs filed a Second Amended Complaint on March 4, 2022 (ECF No. 54, the "SAC"). The SAC dropped the Section 14(a) claim.

18. On June 21, 2022, Defendants moved to dismiss the SAC, arguing that Plaintiffs had failed to adequately plead materially false statements or omissions and failed to allege facts sufficient to give rise to a strong inference of scienter. ECF No. 67. Plaintiffs filed an opposition to Defendants' motion to dismiss on August 22, 2022. ECF No. 70. Defendants filed a reply on October 20, 2022. ECF No. 74.

19. On November 4, 2022, Plaintiffs filed a letter motion requesting leave to file a sur-reply in order to address arguments raised in the first instance in the reply. ECF No. 77.

Defendants' reply chiefly relied on the Second Circuit's September 30, 2022, decision in *Menora Mivtachim Ins. Ltd. v. Frutarom Indus.*, No. 21-1076, 2022 U.S. App. LEXIS 27412 (2d Cir. Sept. 30, 2022) ("*Frutarom I*"). Defendants filed a response requesting the Court deny Plaintiffs' request for a sur-reply on November 7, 2022. ECF No. 78. That same day, the Court entered an order granting Plaintiffs' request for a sur-reply. ECF No. 79.

20. On December 9, 2022, while the motion to dismiss was pending, CarLotz announced it had merged with Shift Technologies, Inc. ("Shift") with CarLotz continuing as a wholly owned subsidiary of Shift.

21. On January 18, 2023, while the motion to dismiss was fully briefed and pending, Defendants filed a notice of supplemental authority informing the Court that the Second Circuit had amended its prior holding in *Frutarom I* and, on November 30, 2022, issued *Menora Mivtachim Ins. Ltd. v. Frutarom Indus.*, 54 F.4th 82 (2d Cir. 2022) ("*Frutarom II*"). ECF No. 82.

22. On March 28, 2023, Judge Abrams held an oral argument on Defendants' motion to dismiss the SAC.

23. On March 31, 2023, Judge Abrams issued an opinion and order granting Defendants' motion to dismiss the SAC without prejudice and granting Plaintiffs leave to amend. ECF No. 87. Relying on *Frutarom II*, the Court held that neither Lead Plaintiff nor Additional Plaintiff had standing to pursue Section 10(b) claims for pre-merger statements. *See id.* at 9. The Court also dismissed Plaintiffs' Section 11 and 12 claims for lack of standing. *Id.* at 11-16.

24. After conducting additional research and investigation, Plaintiffs filed the TAC on May 1, 2023. ECF No. 90. The TAC bolstered Plaintiffs' claims, including those allegations supporting a fraudulent scheme in violation of Rules 10b-5(a) and (c).

25. Defendants moved to dismiss and strike certain allegations contained in the TAC

on July 18, 2023. ECF No. 95, 98.

26. On August 25, 2023, the case was reassigned to the Honorable Judge Arun Subramanian.

27. Plaintiffs filed an omnibus opposition to Defendants' motions to dismiss and strike on September 25, 2023. ECF No. 101. At the time (other than Judge Abrams' previous order, which did not have the benefit of thorough briefing on the subject), the application of *Frutarom II* to SPACs and de-SPAC transactions was an issue of first impression in this District, requiring Plaintiffs to extensively research and carefully craft his arguments.

28. On October 9, 2023, CarLotz filed for bankruptcy and Defendants filed a letter motion to stay determination of the pending motions pending the Supreme Court's ruling in *Macquarie Infrastructure Corp. v. Moab Partners, L.P.*, No. 22-1165. ECF No. 103. Plaintiffs filed an opposition to Defendants' letter motion to stay on October 10, 2023. ECF No. 105.

29. On October 11, 2023, Defendants filed a notice of bankruptcy and suggestion of automatic stay. ECF No. 106. That same day, the Court entered an order automatically staying the case pursuant to 11 U.S.C. § 362. ECF No. 107.

30. On October 20, 2023, Plaintiffs filed a motion for an order partially lifting the bankruptcy stay solely as to the non-bankrupt Individual Defendants. ECF No. 108.

31. On October 27, 2023, Defendants filed a letter motion requesting that the Court hold Plaintiffs' motion "in abeyance" for roughly six weeks, thereby extending their deadline to respond indefinitely. ECF No. 114. Plaintiffs filed a response opposing Defendants' request on October 30, 2023. ECF No. 115. On October 31, 2023, the Court denied Defendants' request. ECF No. 116.

32. Defendants filed their opposition to Plaintiffs' motion to partially lift the

bankruptcy stay on November 10, 2023. ECF No. 119. Plaintiffs filed a reply in further support of the motion on November 16, 2023. ECF No. 121. On December 14, 2023, the Court entered an order granting Plaintiffs' motion and lifting the stay as to the non-bankrupt Individual Defendants. ECF No. 125.

33. On January 3, 2024, Individual Defendants filed replies in further support of the motions to dismiss and strike allegations contained within the TAC. ECF No. 126, 128.

34. The Court held oral argument on the motions on March 7, 2024.

35. Following the argument, on March 8, 2024, the Court entered an order directing Plaintiffs to submit a supplemental letter regarding certain issues relating to standing and the pending Securities Act Claims. ECF No. 140. On March 11, 2024, Plaintiffs filed said letter. ECF No. 141. On March 14, 2024, Individual Defendants filed a letter in response to Plaintiffs' submission regarding standing and the Securities Act Claims. ECF No. 142.

36. On March 29, 2024, the Court issued an Opinion and Order denying the motion to strike in full and granting in part and denying in part the motion to dismiss. ECF No. 145. The Court dismissed Plaintiffs' Securities Act Claims and Exchange Act Claims based on pre-merger statements for substantially the same reasons as Judge Abrams' previous opinion, as well as all claims against Defendant Polak. *See* ECF No. 145 at 5, 24. However, the Court sustained Plaintiffs' Section 10(b) claims for the majority of the post-merger statements, including alleged misstatements regarding CarLotz's corporate sourcing partners, reconditioning costs, business model, and unit economics for the period January 21, 2021, through May 26, 2021, against Defendants Bor, Stoltz, and Solorzano, and sustained a Section 20(a) control person claim against Bor. The Court also sustained Plaintiffs' allegations premised on violations of Items 101 and 303 of Regulation S-K. *Id.* at 15-16. The Court also held that Plaintiffs adequately alleged scienter with

respect to Solorzano, Bor, and Stolz. *Id.* at 18-22. Finally, the Court rejected Defendants' loss causation arguments as to each of the three alleged corrective disclosures. *Id.* at 22. As for Plaintiffs' scheme-liability claim (Count II), the Court denied Defendants' motion to dismiss but permitted Individual Defendants to file additional briefing to address that claim. *Id.* at 23.

37. On April 10, 2024, Individual Defendants filed a brief in further support of the motion to dismiss the scheme liability claim in the TAC. ECF No. 148. Plaintiffs filed an opposition on April 24, 2024. ECF No. 150. On May 1, 2024, Defendants filed a reply in further support of the motion to dismiss the scheme-liability claims in the TAC. ECF No. 151. Notably, the issue of whether *Frutarom II* applied to scheme liability claims was also an issue of first impression in this District. On August 23, 2024, the Court issued an Opinion and Order granting Defendants' motion to dismiss the scheme-liability claims. ECF No. 155.

38. Individual Defendants answered the TAC on September 27, 2024. ECF No. 165.

B. Discovery

39. On August 26, 2024, just three days after entering the Opinion and Order on Defendants' motion to dismiss the scheme-liability claims, the Court entered a notice setting the initial pretrial conference for September 4, 2024. ECF No. 156.

40. On August 28, 2024, the Parties submitted a Proposed Case Management Plan. ECF No. 157.

41. The following day, on August 29, 2024, the Court entered a Case Management Plan and Scheduling Order, cancelling the pretrial conference, and ordering the Parties to meet and confer regarding a proposed briefing schedule for Lead Plaintiff's motion for class certification by September 4, 2024. ECF No. 160. The Court also set various discovery deadlines, including that requests for production were to be served by September 20, 2024, expert disclosures were to be served by March 31, 2025, and all discovery was to be completed by May 30, 2025. *Id.*

42. On September 4, 2024, the Parties submitted a proposed briefing schedule for Lead Plaintiff's motion for class certification and, on September 5, 2024, the Court granted the Parties' proposed briefing schedule, setting the deadline for filing the class certification motion as November 29, 2024. ECF Nos. 163, 164. Thereafter, the Parties immediately commenced discovery.

43. Lead Plaintiff and Individual Defendants exchanged their initial disclosures on September 20, 2024.

44. Lead Plaintiff and Individual Defendants also served their First Set of Requests for Production to each other on September 20, 2024.

45. On September 23, 2024, Lead Plaintiff served subpoenas for documents to seventeen third-parties. Lead Counsel met and conferred with counsel for ten of the subpoenaed third-parties (some multiple times) regarding anticipated productions.

46. On October 1, 2024, Lead Plaintiff served a subpoena for documents to the Trustee for Shift Technologies Liquidating Trust, successor to Shift.

47. On October 14, 2024, the first of the subpoenaed third-parties produced documents to Lead Plaintiff.

C. Mediation

48. In an effort to resolve this matter expeditiously, the Parties agreed to mediation.

49. On October 15, 2024, Lead Plaintiff, Individual Defendants, and Individual Defendants' insurance carriers engaged in a full-day mediation with Jed Melnick of JAMS, a preeminent alternative dispute resolution firm. The Parties, through counsel, Defendants' insurers, and Mr. Melnick's assistant, Reginald Green, attended the mediation in person in New York City.

50. In connection therewith, Lead Plaintiff and Individual Defendants submitted to the mediator, and exchanged with each other, detailed mediation statements.

51. No settlement was reached at the mediation and the litigation continued. Nevertheless, the counsel for the Parties continued to negotiate intermittently, and at times intensively, both with and without Mr. Melnick's assistance.

D. Continued Discovery and Settlement Negotiations; Motion for Class Certification

52. The Parties continued to discuss a possible resolution while working assiduously to comply with the Court's discovery deadlines.

53. From October 24 to October 30, 2024, three other subpoenaed third-parties produced documents to Lead Plaintiff.

54. On October 25, 2024, the Parties submitted a Proposed Protective Order regarding procedures for the handling of confidential information, which the Court entered on October 28, 2024. ECF Nos. 168, 169.

55. On October 28, 2024, Lead Plaintiff served his responses and objections to Individual Defendants' first set of requests for production of documents.

56. On October 30, 2024, Lead Plaintiff served Individual Defendants with his First Set of Interrogatories.

57. While Lead Plaintiff and Individual Defendants were continuing to negotiate the Settlement, Lead Plaintiff's deadline for filing the motion for class certification was fast approaching. On November 22, 2204, the Parties submitted a joint letter motion requesting the Court extend the November 29, 2024 class certification deadline to December 13, 2024, which the Court granted on November 25, 2024. ECF Nos. 170, 171.

58. Lead Plaintiff researched and drafted a motion for class certification, which would be supported by an expert report on market efficiency and the methodology for per share damages on a class-wide basis, but did not file either as the Parties were able to execute a Term Sheet before

the motion was due.

E. The Settlement and Preliminary Approval

59. The Parties finally reached an agreement in principle to settle this Action and memorialized the material deal points in a Term Sheet on December 6, 2024.

60. On December 9, 2024, the Parties informed the Court of the Term Sheet and requested a stay of all proceedings unrelated to the Settlement. ECF No. 173. On December 10, 2024, the Court granted the stay and set Lead Plaintiff's deadline for submission of a motion for preliminary approval of the Settlement as January 24, 2025. ECF No. 174.

61. On January 24, 2025, Lead Plaintiff filed an unopposed motion for preliminary approval of the Settlement, Plan of Allocation, and proposed form and manner of Notice, for certification of the proposed Settlement Class for settlement purposes, and to schedule a Settlement Hearing. ECF No. 175.

62. On January 27, 2025, the Court granted Lead Plaintiff's motion for preliminary approval and entered the Preliminary Approval Order. ECF No. 178.

63. Pursuant to the Settlement, upon preliminary approval, Individual Defendants' insurers paid $13,000,000 in cash into an interest-bearing escrow account. ECF No. 177 at ¶ 8. In return, upon final approval, Settlement Class Members will dismiss, with prejudice, all claims that were, or could have been brought, against Defendants' Releasees. ECF No. 177 at ¶ 5.

64. Upon final approval of the Settlement by the Court and entry of a judgment that becomes a final judgment, and upon satisfaction of the other conditions to the Settlement, the Settlement Fund will pay for certain administrative expenses, including: (a) Notice and Administration expenses; (b) taxes assessed against the income earned on the Settlement Fund and related tax expenses; and (c) Lead Counsel's fees and litigation expenses, to the extent awarded by the Court. ECF No. 177 at ¶ 9. The balance of the Settlement Fund (the "Net Settlement Fund")

will be distributed to Settlement Class Members who submit valid Proofs of Claim and Release forms which demonstrate a recognized loss under the Plan of Allocation. *Id.* Each Authorized Claimant will receive a *pro rata* share of the Net Settlement Fund, based on their "Recognized Claim," which depends on the number of shares acquired and the dates of their purchase and sale as compared to the alleged corrective disclosure date. ECF No. 177-2 at 12.

65. Court-appointed Claims Administrator Epiq Class Action & Claims Solutions ("Epiq"), under the supervision of Lead Counsel, has taken considerable measures to limit the costs of providing Notice. First, Epiq is engaging in an extensive campaign with brokers and nominees to provide Notice to beneficial owners via e-mail. To that end, brokers and nominees will be reimbursed the same amount for providing e-mail addresses as they will for sending beneficial owners Postcard Notices ($0.03). *See* ECF No. 178 at ¶ 8. Second, the Claims Administrator is mailing Postcard Notices to those Settlement Class Members for whom it was unable to obtain valid e-mail addresses, instead of printing and mailing traditional "notice packets" with copies of a long-form Notice and Proof of Claim form, which itself results in significant savings. The Claims Administrator will submit a report outlining the implementation of Notice and the Claims Administration process with Lead Counsel's reply papers on June 3, 2025.

IV. THE RISKS OF CONTINUING LITIGATION

66. Based on their experience and knowledge of the facts and applicable law, Lead Counsel KSF, a law firm that specializes in the prosecution of complex securities litigation, believes that the Settlement is in the best interest of the Settlement Class. Lead Plaintiff and Additional Plaintiff also approved the Settlement.

67. Securities class actions are notoriously complex. *See*, *e.g.*, *In re Signet Jewelers Ltd. Sec. Litig.*, No. 16-cv-6728, 2020 U.S. Dist. LEXIS 128998, at *11 (S.D.N.Y. July 21, 2020) ("[F]ederal courts, including this Court, have long recognized that such litigation is notably

difficult and notoriously uncertain.") (citation omitted); *Maley v. Del Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 372 (S.D.N.Y. 2002) ("A securities case such as this one, 'by its very nature, is a complex animal . . . .'") (citation omitted). In order to prevail on his claims, Lead Plaintiff would have to prove that Individual Defendants made materially false statements or omissions, Individual Defendants acted with scienter (for the Exchange Act Claims), there was artificial inflation of CarLotz securities, and that declines in the prices of CarLotz securities were attributable to disclosures of information revealing the fraud. *See Maley*, 186 F. Supp. 2d at 372 (discussing "factual and legal hurdles" in establishing securities fraud case).

68. The complexities confronting Lead Plaintiff were heightened by CarLotz filing for bankruptcy in the middle of briefing on Defendants' motion to dismiss the TAC.

69. Although Lead Plaintiff was able to survive the dismissal stage, in part, and believes this Action is meritorious, if the Action were to proceed, Lead Plaintiff would face substantial risks with respect to establishing liability and damages at each future stage of the litigation—as set forth below. If Individual Defendants were able to prevail on any of their numerous arguments, Lead Plaintiff's recoverable damages could have been substantially reduced or eliminated altogether. Moreover, Lead Plaintiff could have sought to appeal the Court's dismissal of the claims based on pre-merger statements, which would have added further uncertainty, delay, and expense. Further, even if Lead Plaintiff was successful at each future stage of the litigation, proceeding through trial, post-trial motions, the post-verdict claims process, and the inevitable appellate process would likely take many years, significantly delaying any recovery for the Settlement Class.

70. Proceeding with the Action would have quickly exhausted all remaining insurance proceeds, so that even if Lead Plaintiff eventually triumphed at trial and through appeals, the actual amount recovered would likely be zero. In this regard, it is important to note that after

investigation, it is Lead Plaintiff's understanding that Individual Defendants could not contribute meaningfully to any judgment.

71. Given these significant risks, the $13,000,000 Settlement is strong result as it provides immediate, substantial, and tangible benefits to the Settlement Class.

72. This is particularly the case in light of Lead Plaintiff's estimated maximum recoverable damages. In order to estimate class-wide damages, Lead Counsel consulted a damages expert who, using a well-accepted 80/20 two-trader model that simulated trading during the Class Period, determined that if every single issue went Lead Plaintiff's way and every absent Class member submitted a claim, maximum estimated damages would be $126 million. Thus, the $13,000,000 settlement represents more than 10% of the total amount that could be recovered had Lead Plaintiff prevailed in full at every future stage of the litigation. According to data compiled by National Economic Research Associates, Inc. ("NERA"), this is three times the median ratio of total losses to settlement amount (3%) in cases where total estimated damages ranged from $100 million to $199 million from 2015 to 2024. *See* Edward Flores and Svetlana Starykh, "Recent Trends in Securities Class Action Litigation 2024 Full-Year Review," NERA (Jan. 22, 2025) at 26. Pertinent excerpts of the NERA report are attached hereto as Exhibit A.

A. Continuing Discovery

73. While Lead Plaintiff and Lead Counsel believe continued discovery would support Lead Plaintiff's position, the discovery process was just getting underway. Individual Defendants had produced (and Lead Plaintiff had reviewed and analyzed) a preliminary small production of documents, but many more relevant, responsive documents had yet to be produced. Additionally, the bankruptcy of Carlotz and the existing stay of litigation against it would further complicate discovery in this matter by, for example, impeding Lead Plaintiff's ability to obtain documents from CarLotz. Indeed, Individual Defendants objected to producing documents in response to Lead

Plaintiff's First Set of Requests for Production that were supposedly in the possession, custody, or control of Shift only. Lead Plaintiff also received documents from four of the seventeen subpoenaed third-parties. Although Lead Counsel believes the documents to be produced would support Lead Plaintiff's claims, there is no guarantee this would be the case, or that sufficient documents would be obtained to prove every allegation in the TAC. Additionally, Lead Counsel would have had to devote extensive time and resources to ensure meaningful review of these documents was accomplished in a thorough and timely manner.

74. Similarly, no depositions had been taken at the time of the Settlement. Depositions in this Action, where persons with knowledge live in cities across the United States, would likely have required Lead Counsel and Defense Counsel to travel extensively, and to successfully serve subpoenas for testimony from third-parties and certain former employees.

75. In this matter, both sides likely would have retained multiple experts to support their respective positions, each of whom would have written at least one report, and some or all of whom may have been deposed. In complex securities matters, success at class certification, summary judgment, and trial can often hinge on this expensive "battle of the experts."

76. Further, discovery in complex class action cases often involves extensive motion practice to resolve disputes. Rarely is either party victorious on every discovery dispute. Even if Lead Plaintiff's discovery motions were largely granted, it can take many months to resolve all discovery disputes and complete production of relevant, responsive documents.

77. Completing document production, depositions, expert discovery, and discovery motions in this case would have consumed a significant amount, if not all, of Individual Defendants' remaining insurance coverage and significantly reduced or likely eliminated the recovery available to the Settlement Class.

B. Class Certification

78. Lead Plaintiff believes that securities fraud actions such as this are uniquely suited to class action treatment, that the Class satisfies the requirements of Fed. R. Civ. P. 23, and that he would prevail in establishing numerosity, commonality, typicality, and predominance. Further, Lead Plaintiff believes that he has, and would continue to, adequately and fairly protect the interests of the Class, and thus would be named as Class Representative. Lead Plaintiff is also aware that Individual Defendants would have almost certainly opposed the certification of a litigation class, and likely would have submitted an expert report challenging price impact and market efficiency. If the Court found Individual Defendants' arguments persuasive, it could deny certification or shorten the Class Period, effectively preventing recovery for most, if not all, absent Class members.

79. Further, even if a class is certified, Fed. R. Civ. P. 23(c) allows a court to decertify a class at any time. Thus, this factor supports approval of the Settlement. *See, e.g.*, *In re Adv. Battery Techs. Sec. Litig.*, 298 F.R.D. 171, 178 (S.D.N.Y. 2014); *Bellifemine v. Sanofi-Aventis U.S. LLC*, No. 07-cv-2207, 2010 U.S. Dist. LEXIS 79679, at *12 (S.D.N.Y. Aug. 6, 2010).

80. Even if Lead Plaintiff prevailed on his motion for class certification, Individual Defendants could then petition the Second Circuit for leave to appeal that decision immediately pursuant to Rule 23(f), which could result in further delays, hours billed, and expenses incurred. The case of *Arkansas Teachers Retirement System v. Goldman Sachs Grp. Inc.,* 77 F. 4th 74 (2d Cir. 2023), is instructive on this point. There, the district court originally granted plaintiff's motion for class certification on September 24, 2015. *See id.* at *87. Thereafter, defendant appealed the district court's order to the Second Circuit, which vacated and remanded. *See id.* On remand, the district court received supplemental briefing, held an evidentiary hearing, and certified the class again. *See id.* That decision was appealed again to the Second Circuit and affirmed. *See id.* at *88.

Defendant filed a writ of certiorari to the Supreme Court, which vacated and remanded to the Second Circuit, which then vacated the district court's order and remanded. *See id.* at *.89 The district court then certified a class for the third time, which determination was appealed again to the Second Circuit, which reversed the class certification order and remanded with instructions to decertify the class – nearly eight years after the motion for class certification was first granted. *See id.* at *89-90, 105; *see also In re Vivendi Universal, S.A. Sec. Litig.*, No. 11-908 (2d Cir. July 20, 2011) (denying second Rule 23(f) petition over four years after district court originally granted class certification). Thus, the danger of a protracted delay over class certification is real.

C. Summary Judgment

81. If the Court granted Lead Plaintiff's anticipated motion for class certification, after the completion of fact and expert discovery, Individual Defendants would have then presented additional arguments at summary judgment in order to defeat Lead Plaintiff's claims. Most notably, Individual Defendants would likely challenge the evidence regarding falsity, scienter, damages, and loss causation, the outcome of which is difficult to predict.

82. Even if Individual Defendants' motion for summary judgment was not granted in whole, the Court could grant it in part, potentially limiting available damages or the issues Lead Plaintiff would be able to present to a jury.

D. Pre-Trial

83. Leading up to trial, the Parties likely would have raised challenges to each other's expert witnesses pursuant to *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993). The Parties also likely would have each filed numerous motions *in limine*. The success or failure of these motions may have significantly diminished Lead Plaintiff's ability to prove his case at trial.

E. Trial

84. Even if the Action made it past the class certification and summary judgment

stages, at trial, there could be no assurance that the jury would have found in Lead Plaintiff's favor. Securities fraud cases require plaintiffs to demonstrate falsity, materiality, scienter, and loss causation. These elements can be difficult to explain, much less prove to the average juror, and Individual Defendants in this case likely would have raised challenges to each element. While Lead Plaintiff believes he would have ultimately prevailed, success is far from certain.

85. First, Lead Plaintiff would have been required to prove that Individual Defendants' statements were false or misleading. Discovery in this Action was only just beginning. While Lead Plaintiff believes that documents produced would strongly support his allegations of falsity, there is no guarantee that this would be the case. Additionally, no depositions had yet been conducted. Even with strong documentary evidence, if Lead Counsel failed to elicit favorable deposition testimony regarding the falsity of Individual Defendants' statements, it could have been fatal to Lead Plaintiff's case.

86. Even if falsity had been established, Lead Plaintiff would have had to prove that Individual Defendants' statements and/or conduct were material to a reasonable investor. Materiality is a subjective inquiry and is ordinarily determined by the jury. *See In re Nortel Networks Corp. Sec. Litig.,* 238 F. Supp. 2d 613, 627 (S.D.N.Y. 2003) ("The determination of materiality is a mixed question of law and fact that generally should be presented to a jury."). Even if Lead Plaintiff believed strongly in the materiality of the statements at issue, a jury may have found in favor of Individual Defendants.

87. Further, Section 10(b) cases require plaintiffs to prove scienter; in other words, that defendants, at minimum, recklessly disregarded the truth about the alleged false or misleading statements. This is a notoriously difficult element to prove, as the evidence is often largely circumstantial, and may be undercut by testimony from individual defendants denying they

possessed the requisite state of mind. *See Christine Asia Co. v. Jack Yun Ma*, No. 15-md-02631, 2019 U.S. Dist. LEXIS 179836, at *46 (S.D.N.Y. Oct. 16, 2019) ("Proving scienter is hard to do."). If this Action had continued, Lead Plaintiff faced the very real risk that the Court or the jury could have found that Individual Defendants did not act with scienter. While the Court held Lead Plaintiff adequately pled scienter at the motion to dismiss stage, there is no guarantee that a jury, upon assessing the totality of the evidence and the credibility of witnesses, would find Individual Defendants to have acted with scienter.

88. Another major risk is Lead Plaintiff's ability to prove loss causation and damages. To establish these elements, Lead Plaintiff would have to prove that the revelation of the alleged fraud proximately caused the declines in CarLotz's securities prices during the Class Period and that those fraud-related causes could be parsed out from any potential non-fraud related publicly released information. Lead Plaintiff believes that he would have brought forth sufficient evidence to support both the finding of loss causation and damages at summary judgment and trial. However, the questions of loss causation and damages often come down to a "battle of the experts." If Individual Defendants' expert won the day, the Court or the jury may have found that Lead Plaintiff was entitled to significantly lower damages than anticipated—or none at all.

89. Moreover, prevailing at trial would not necessarily result in a larger recovery. The jury could award a smaller per-share amount of damages, overall damages could be reduced during the post-verdict claims process, and/or the verdict could be appealed.

90. More importantly, even if Lead Plaintiff prevailed at trial and on appeal, Individual Defendants' insurance likely would have been exhausted by the continued litigation, and Lead Plaintiff would likely be unable to collect the judgment.

91. Given these significant risks, the $13,000,000 Settlement is a strong result for the

Settlement Class.

V. THE SETTLEMENT IS IN THE BEST INTERESTS OF THE SETTLEMENT CLASS AND WARRANTS FINAL APPROVAL

92. Having considered the foregoing risks and having evaluated Individual Defendants' defenses, it is the informed judgment of Lead Counsel, based upon all proceedings to date and its extensive experience in litigating class actions under the federal securities laws, that the proposed Settlement before this Court is fair, reasonable, and adequate, and in the best interests of the Settlement Class.

93. Lead Plaintiff Berger and Additional Plaintiff Bailey, having been informed by Lead Counsel of the foregoing risks, as well as the strengths and weaknesses of the case, agree that settlement at this time is in its best interest and the best interests of the Settlement Class. *See* Declaration of David Berger ("Berger Decl."), attached hereto as Exhibit B, at ¶ 4; Declaration of Craig Bailey ("Bailey Decl."), attached hereto as Exhibit C, at ¶ 4.

VI. LEAD COUNSEL'S COMPLIANCE WITH THE COURT'S PRELIMINARY APPROVAL ORDER REQUIRING ISSUANCE OF THE NOTICE

94. Pursuant to its Preliminary Approval Order, the Court set a Final Approval Hearing to be held on June 10, 2025 at 1:00 p.m. ECF No. 178. The Preliminary Approval Order also approved the timeline set forth in the Stipulation of Settlement and its attachments: (1) February 17, 2025, as the deadline for Lead Counsel to provide notice to the Settlement Class Members who could be identified with reasonable effort; (2) February 24, 2025, as the deadline for Lead Counsel to cause the Summary Notice to be published twice in nationally distributed, business focused newswires; (3) May 9, 2025, as the deadline to file papers in support of the Final Settlement, Plan of Allocation, and the application by Lead Counsel for attorneys' fees or reimbursement of expenses (collectively, the "Applications"); (4) May 2, 2025, as the deadline for Settlement Class Members to file proof of claim forms; (5) May 20, 2025 as the deadline for Settlement Class

Members to submit requests to be excluded from the Settlement Class or file any objections to the Settlement or any of the Applications; and (6) June 3, 2025, as the deadline to reply to any opposition to the Applications or any response to any objection(s) filed.

95. As set forth in the Declaration of Susanna Webb of Epiq, filed with the Court on March 3, 2025, in accordance with the Preliminary Approval Order, Epiq began the process of disseminating the Postcard Notices and Notice Packets. ECF No. 179.

96. The Postcard Notice contains, among other things, a description of the Settlement and information regarding the lawsuit and the right of Settlement Class Members to: (a) participate in the Settlement; (b) object to any aspect of the Settlement, the Plan of Allocation, and/or the Fee and Expense Application; or (c) exclude themselves from the Settlement Class. The Postcard Notice also directs recipients to the Settlement Website, www.CarLotzSecuritiesLitigation.com, for more complete details regarding the proposed Settlement.

97. As of May 9, 2025, through direct mailings or emails to brokers and nominees, Epiq has emailed or mailed 42,618 copies of the Postcard Notice to potential Settlement Class Members.

98. In accordance with the Preliminary Approval Order, Epiq also caused the Summary Notice to be published in *PR Newswire* and *Business Wire*, on February 17, 2025, and February 24, 2025, respectively. ECF No. 179 at ¶ 8.

99. Lead Counsel also directed Epiq to establish a Settlement Website, www.CarLotzSecuritiesLitigation.com, with information concerning the Settlement and access to downloadable copies of the TAC, Claim Form, Notices, Stipulation, Preliminary Approval Order, and other key filings in this Action. The Settlement Website also allows for Settlement Class Members to complete claims electronically. Additionally, Epiq maintains a toll-free telephone number (1-888-891-7677), to respond to inquiries from Settlement Class Members regarding the

Settlement. ECF No. 179 at ¶¶ 9-10.

100. The deadline for Settlement Class Members to request exclusion from the Settlement Class or to file an opposition to the Settlement, Plan of Allocation, and/or Fee and Expense Application is May 20, 2025. ECF No. 178.

101. As of the date of this filing, no exclusion requests have been received.

102. In addition, no objections have been received, further corroborating the reasonableness of the Settlement and Lead Counsel's fee and expense applications. Lead Counsel will address any such objections, should they arise, in its reply brief.

VII. ALLOCATION OF THE NET PROCEEDS OF THE SETTLEMENT

103. Pursuant to the Court's Preliminary Approval Order and as set forth in the Notice, Settlement Class Members who wish to participate in the Settlement and be potentially eligible to receive a distribution from the Settlement Fund must have provided a valid Proof of Claim to Epiq postmarked or submitted on or before May 2, 2025. ECF No. 178 at ¶ 10.

104. Epiq, supervised by Lead Counsel, will make all reasonable efforts to resolve any curable defects in Proof of Claim Forms to ensure that all Settlement Class Members with otherwise valid Claims are not rejected and obtain their rightful compensation from the Settlement Fund. Lead Counsel has been, and will continue to be, very involved in the claims administration process, regularly communicating with Epiq and Settlement Class Members and answering their questions, and ensuring the process runs smoothly and efficiently.

105. Lead Plaintiff has proposed a plan for allocating the proceeds of the Settlement among members of the Settlement Class who submit timely and valid Proofs of Claim in connection with the Settlement. The objective of the proposed Plan of Allocation is to equitably distribute the net proceeds of the Settlement to Authorized Claimants based on their respective alleged economic losses as a result of the alleged violations of federal securities laws asserted in

the Action, as opposed to losses caused by market-wide or industry-wide factors, or company-specific factors unrelated to the alleged fraud. Calculations under the Plan of Allocation are generally based upon the measure of damages set forth in Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder by the SEC.

106. The Plan of Allocation was prepared in consultation with Lead Plaintiff's expert economics consultant. Although the Plan of Allocation is not a formal damages analysis, it reflects the informed views of Lead Plaintiff's economics consultant, including his review of publicly available information regarding CarLotz and Acamar and a statistical analysis of the price movements of CarLotz and Acamar securities during the Settlement Class Period. The Plan of Allocation is also consistent with the traditional loss calculations used in Exchange Act claims and the Private Securities Litigation Reform Act of 1995 (the "PSLRA"). Lead Counsel believes that the Plan of Allocation is reasonable, has a rational basis, and should be approved.

107. The Plan of Allocation sets forth the estimated alleged artificial inflation in the price of CarLotz and Acamar common stock during the Settlement Class Period. The computation of the estimated alleged artificial inflation in the price of CarLotz and Acamar common stock during the Settlement Class Period is based on certain misrepresentations alleged by Lead Plaintiff in the TAC and the price change of CarLotz and Acamar common stock based thereon, net of market-wide and industry-wide factors, in reaction to the public announcements that allegedly corrected Individual Defendants' material misrepresentations and omissions.

108. Under the Plan of Allocation, a "Recognized Loss Amount" will be calculated for each share of CarLotz or Acamar common stock purchased or otherwise acquired during the Settlement Class Period from October 22, 2020, through May 26, 2021, inclusive, pursuant to ¶¶110-111 below. If the calculation of a Recognized Loss Amount for any particular share

purchased or acquired during the Settlement Class Period results in a negative number, that number shall be set to zero. ECF No. 177-2 at 10-13.

109. The calculation of Claimants' Recognized Loss Amounts will depend upon several facts, including when the shares of CarLotz and Acamar common stock were purchased or otherwise acquired during the Settlement Class Period, and in what amounts, and whether those shares were sold, and if sold, when they were sold, and for what amounts.

110. For each share of Acamar common stock purchased or otherwise acquired during the Settlement Class Period, and:

i. sold before March 16, 2021, the Recognized Loss Amount for each share shall be zero;

ii. sold from March 16, 2021, up to and including May 25, 2021, the Recognized Loss Amount for each share is ***the least of***: (i) the amount of artificial inflation per share on the date of purchase/acquisition as stated in Table 1 of the Plan of Allocation; or (ii) the purchase/acquisition price **minus** the sale price;

iii. sold from May 26, 2021, through and including the close of market trading on August 23, 2021, the Recognized Loss Amount for each share is ***the least of***: (i) the amount of artificial inflation per share on the date of purchase/acquisition as stated in Table 1 of the Plan of Allocation; (ii) the purchase/acquisition price **minus** the average closing price between May 26, 2021, and the date of sale as stated in Table 2 of the Plan of Allocation;[3] or (iii) the purchase/acquisition price **minus** the sale price;

iv. held as of the close of market trading on August 23, 2021, the Recognized Loss Amount for each share is ***the least of***: (i) the amount of artificial inflation per share on the date of purchase/acquisition as stated in Table 1 of the Plan of Allocation;

[3] Pursuant to Section 21D(e)(1) of the Exchange Act, "in any private action arising under this title in which the plaintiff seeks to establish damages by reference to the market price of a security, the award of damages to the plaintiff shall not exceed the difference between the purchase or sale price paid or received, as appropriate, by the plaintiff for the subject security and the mean trading price of that security during the 90-day period beginning on the date on which the information correcting the misstatement or omission that is the basis for the action is disseminated to the market." Consistent with the requirements of the Exchange Act, Recognized Loss Amounts are reduced to an appropriate extent by taking into account the closing prices of CarLotz (formerly Acamar) common stock during the "90-day look-back period," May 26, 2021, through and including August 23, 2021. The mean (average) closing price for CarLotz common stock during this 90-day look-back period was $4.92.

or (ii) the purchase/acquisition price **minus** $4.92, the average closing price of CarLotz common stock between May 26, 2021, and August 23, 2021, as shown on the last line of Table 2 of the Plan of Allocation.

Id. at 11.[4]

111. For each share of CarLotz common stock purchased or otherwise acquired during the Settlement Class Period, and:

i. sold before March 16, 2021, the Recognized Loss Amount for each share shall be zero;

ii. sold from March 16, 2021, up to and including May 25, 2021, the Recognized Loss Amount for each share is ***the least of***: (i) the amount of artificial inflation per share on the date of purchase/acquisition as stated in Table 1 of the Plan of Allocation **minus** the amount of artificial inflation per share on the date of sale as stated in Table 1 of the Plan of Allocation; or (ii) the purchase/acquisition price **minus** the sale price;

iii. sold from May 26, 2021, through and including the close of market trading on August 23, 2021, the Recognized Loss Amount for each share is ***the least of***: (i) the amount of artificial inflation per share on the date of purchase/acquisition as stated in Table 1 of the Plan of Allocation; (ii) the purchase/acquisition price **minus** the average closing price between May 26, 2021, and the date of sale as stated in Table 2 of the Plan of Allocation; or (iii) the purchase/acquisition price **minus** the sale price;

iv. held as of the close of market trading on August 23, 2021, the Recognized Loss Amount for each share is ***the least of***: (i) the amount of artificial inflation per share on the date of purchase/acquisition as stated in Table 1 of the Plan of Allocation; or (ii) the purchase/acquisition price **minus** $4.92, the average closing price of CarLotz common stock between May 26, 2021 and August 23, 2021, as shown on the last line of Table 2 of the Plan of Allocation.

Id. at 11-12.

112. Under the Plan of Allocation, Recognized Loss Amounts also take into account the PSLRA's statutory limitation on recoverable damages, whereby losses on eligible shares of

[4] Shares of Acamar common stock are eligible for recovery, notwithstanding the Court's March 29, 2024, Order dismissing claims predicated on the purchase or acquisition of Acamar stock prior to its de-SPAC merger with CarLotz on January 22, 2021. *See* ECF No. 177-2 at 3, 10-13. Because Settlement Class Members who made purchases before January 22, 2021 (unless they exclude themselves) will be bound by the releases of the Settlement, a nominal inflation of $0.05 has been assigned to that period.

CarLotz and/or Acamar common stock cannot exceed the difference between the purchase price paid for the stock and the average price of the stock during the 90-day period subsequent to the Class Period ending on August 23, 2021 (*i.e.*, the end of the 90-day period), and losses on eligible shares of CarLotz and/or Acamar common stock purchased or otherwise acquired during the Settlement Class Period and sold during the 90-day period subsequent to the Settlement Class Period cannot exceed the difference between the purchase price paid for the stock and the average price of the stock during the portion of the 90-day period elapsed as of the date of sale. A table showing the average 90-day look-back price for each day of the period is attached as Table 2 to the Plan of Allocation.

113. As further explained in the Plan of Allocation, a Claimant's "Recognized Claim" will be determined by totaling the Claimant's Recognized Loss Amounts. If a Settlement Class Member has more than one purchase/acquisition or sale of CarLotz and/or Acamar common stock during the Settlement Class Period, all purchases/acquisitions and sales shall be matched on a First In, First Out ("FIFO") basis. Settlement Class Period sales will be matched first against any holdings at the beginning of the Settlement Class Period, and then against purchases/acquisitions in chronological order, beginning with the earliest purchase/acquisition made during the Settlement Class Period. The Net Settlement Fund will be allocated on a *pro rata* basis to Authorized Claimants based on each Authorized Claimant's Recognized Claim in comparison to the total Recognized Claims of all Authorized Claimants. Under the Plan of Allocation, if a Claimant's *pro rata* payment calculates to less than $20.00, no distribution will be made to that Claimant. ECF No. 177-2 at 13.

114. Pursuant to the Plan of Allocation, any remaining funds in the Net Settlement Fund after six (6) months from the date of distribution of such Net Settlement Fund, after satisfying any

remaining obligations to the Claims Administrator, shall be reallocated among and distributed to Authorized Claimants who have cashed their initial distributions and who would receive at least $20 from such re-distribution. Additional re-distributions to Authorized Claimants who have cashed their prior checks and who would receive at least $10 on such additional re-distributions may occur thereafter if Lead Counsel, in consultation with the Claims Administrator, determine that additional re-distributions, after the deduction of any additional fees and expenses incurred in administering the Settlement, including for such re-distributions, would be cost-effective. Thereafter, any remaining balance shall be donated to non-sectarian 501(c)(3) non-profit organization(s) to be recommended by Lead Counsel and approved by the Court. *Id.*

115. The structure of the Plan of Allocation is designed to achieve an equitable and rational distribution of the Net Settlement Fund among Authorized Claimants. Lead Counsel submits that the Plan of Allocation is fair and reasonable and should be approved together with the Settlement.

116. In addition, in response to the dissemination of 42,618 copies of the Postcard Notice to potential Settlement Class Members and nominees, there have been no objections to date to the proposed Plan of Allocation.

VIII. LEAD COUNSEL'S APPLICATION FOR ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES IS REASONABLE AND SHOULD BE GRANTED

117. In addition to seeking final approval of the Settlement and Plan of Allocation, Lead Counsel respectfully applies for a fee award of $33^{1/3}$% of the Settlement Amount (*i.e.*, $4,333,333.33, plus interest) and reimbursement of reasonable litigation expenses from the Settlement Fund in the amount of $155,185.13, plus interest. The legal authorities supporting these requests are set forth in the accompanying Fee Memorandum. The primary factual bases for the requested fee award and reimbursement of litigation expenses are summarized below.

A. The Fee Application

118. Lead Counsel is applying for a $33^{1/3}$% fee award using the percentage-of-the-common-fund fee as compensation for the services it rendered on behalf of the Settlement Class.

119. As set forth in the accompanying Fee Memorandum, given the language of the PSLRA, the Supreme Court's strong support for the percentage method, the Second Circuit's explicit approval of this method in *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000), and the established practice among the courts within this Circuit, Lead Counsel submits that its fees should be awarded based on the percentage approach, with a lodestar cross-check.

120. The factors considered by courts in this Circuit when determining the reasonableness of fee applications are: (i) time and labor expended by counsel; (ii) risks of the litigation; (iii) magnitude and complexity of the litigation; (iv) requested fee in relation to the settlement; (v) quality of representation; and (vi) public policy considerations. *See Goldberger*, 209 F.3d at 50.

121. Based on these factors, Lead Counsel respectfully submits that the requested fee award of $33^{1/3}$% of the Settlement Amount is fair and reasonable and should be approved.

122. Further, as set forth below, a lodestar cross-check confirms that this fee request is reasonable, as it results in a modest lodestar multiplier of just 1.33.

1. The Favorable Outcome Achieved is the Result of the Significant Time and Labor that Lead Counsel Devoted to the Action

123. Lead Counsel undertook time-consuming and challenging work over the course of nearly 3.5 years to prosecute the claims against Individual Defendants and to achieve this Settlement.

124. As detailed above, Lead Counsel:

- Conducted a lengthy investigation by reviewing and analyzing publicly available information regarding the allegations in the initial complaint,

including, but not limited to, SEC filings, proxy documents filed in advance of the merger between CarLotz and Acamar, academic and market research on SPACs, media articles, information on CarLotz's website (pre-merger with Shift), video and podcast interviews with Individual Defendants, researching the state of CarLotz's competitors and the automotive industry in general during the COVID-19 pandemic, analyst reports, press releases, stock price movements, earnings conference call transcripts, quarterly presentations, and transcripts and presentations from industry conferences;

- consulted with a damages expert to evaluate recoverable losses;
- consulted with a private investigator, who conducted an independent investigation of the allegations in the initial complaint(s);
- drafted the FAC, adding claims, parties, and detailed facts to the initial complaint;
- after meeting with counsel for Defendants, drafted and filed the SAC;
- researched and drafted an opposition to Defendants' motions to dismiss the SAC;
- presented oral argument on Defendants' motion to dismiss the SAC;
- researched, drafted, and moved to file a sur-reply addressing newly-brought arguments in Defendants' reply motion to dismiss the SAC;
- conducted additional research and drafted the TAC;
- researched and drafted a successful opposition to Defendants' motion to dismiss the TAC;
- researched and successfully drafted a motion to partially lift the bankruptcy stay against Individual Defendants (without which this case would likely still be stayed);
- presented oral argument on Individual Defendants' motion to dismiss the TAC;
- researched and drafted an additional opposition to Individual Defendants' motion to dismiss the scheme liability claims;
- consulted with experts on loss causation and market efficiency, marketing, and accounting and financial economics;
- exchanged initial disclosures with Individual Defendants;
- issued requests for production of documents and interrogatories, and reviewed the responses thereto;
- responded to Individual Defendants' requests for production;

- issued seventeen document subpoenas to third-parties;
- met and conferred, sometimes multiple times, with counsel for ten third-parties regarding the production of documents;
- reviewed and analyzed documents produced by Individual Defendants and third- parties;
- researched and drafted (but did not file) a motion for class certification;
- drafted a detailed brief for the mediator in advance of the mediation and reviewed Individual Defendants' like submission;
- participated in a day-long mediation session, as well as follow-up sessions via telephone and email;
- further negotiated with Individual Defendants over the course of several weeks, both with and without the mediator's assistance;
- negotiated with Individual Defendants to document the Settlement;
- worked with damages consultants to prepare the Plan of Allocation;
- drafted the preliminary approval motion for the Settlement; and
- worked with the Claims Administrator to oversee the distribution of the Notice to the Settlement Class Members.

125. Since the inception of the Action, Lead Counsel has dedicated nearly 4,000 hours to the investigation, prosecution, and resolution of the claims against Defendants, resulting in a total lodestar of $3,260,642.50. The requested fee of $33^{1/3}$% of the Settlement Fund, or $4,333,333.33, yields a lodestar multiplier of approximately just 1.33 based on Lead Counsel's lodestar—which is eminently reasonable in light of the risks undertaken by Lead Counsel and is well within and, in fact, below, the range of lodestar multipliers approved by federal courts in similar complex litigation.

126. Below is a schedule that indicates the amount of time spent by each attorney at KSF who worked on this Action and the lodestar calculations based on their current billing rates. This schedule was prepared from contemporaneous daily time records regularly prepared and

maintained by KSF. As the partner responsible for supervising my firm's work on this case, I reviewed these time and expense records to prepare this Declaration. The purpose of this review was to confirm both the accuracy of the time entries and expenses and the necessity for, and reasonableness of, the time and expenses committed to the litigation.

127. I reduced my firm's time, as appropriate, for efforts I deemed to be less than maximally efficient. Specifically, I cut substantial time spent researching, drafting, and editing the FAC, SAC, and TAC, preparing for and engaging in lengthy and extensive informal negotiations, and time spent after preliminary approval was granted by the Court. In total, I cut dozens and dozens of hours of partner and associate time. Additionally, no time spent on the application for attorneys' fees and expenses is included in Lead Counsel's lodestar.

128. Following my review and the adjustments made, I believe that the time reflected in the firm's lodestar calculation and the expenses for which payment is sought as stated in this Declaration are reasonable in amount and were necessary for the effective and efficient prosecution and resolution of the litigation. In addition, based on my experience in similar litigation, the expenses are all of a type that would normally be billed to a fee-paying client in the private legal marketplace.

129. My firm's rates are set based on periodic analysis of rates used by firms performing comparable work and have been approved by federal courts. Different timekeepers within the same employment category (*e.g.*, partners, associates, paralegals, etc.) may have different rates based on a variety of factors, including years of practice, years at the firm, year in the current position (*e.g.*, years as a partner), relevant experience, relative expertise, and the rates of similarly experienced peers at our firm or other firms.

130. As detailed in the Fee Memorandum, the hourly rates for the attorneys included in

the schedule below are commensurate with the hourly rates charged by lawyers of reasonably comparable skill, experience, and reputation and have been accepted in other securities or shareholder litigation.

131. One of the KSF partners who worked on this matter – Matthew Woodard – became a partner while the Action was pending. His hours are reported at their current hourly rates.

132. KSF's lodestar is set forth in the following chart:

Staff	Duration	Hourly Rate*	Lodestar
Craig Geraci (P)	280.3	975	273,292.50
Lewis Kahn (P)	36.7	1250	45,875.00
J. Lopatka (P)	769.4	975	750,165.00
Kim Miller (P)	642.1	1150	738,415.00
Matthew Woodard (P)	638.6	725	462,985.00
Melissa Harris (O)	350.6	875	306,775.00
James Fetter (A)	32.7	550	17,985.00
Jyoti Kehl (A)	995.0	550	547,250.00
Marie Luis (A)	201.0	500	100,500.00
Alexandra Pratt (A)	34.8	500	17,400.00
Total Duration	**3981.2**	**Total Lodestar**	**$3,260,642.50**

(P) Partner
(O) Of Counsel
(A) Associate

133. Furthermore, Lead Counsel's work will not end upon the filing of the motion for final approval. Lead Counsel's lodestar excludes this future work, including time spent preparing for the final approval hearing, as well as time spent after final approval relating to administration of the Settlement.

2. The Magnitude and Complexity of the Litigation

134. As detailed in the Fee Memorandum and discussed above, securities class action cases are known for their notorious complexity. This case is no exception, as it presented several sharply contested issues of both fact and law, and Lead Plaintiff faced formidable defenses to liability, loss causation, and damages. Additionally, at the motion to dismiss phase, the application

of *Frutarom II* to SPACs, de-SPAC transactions, and scheme liability claims were novel issues in this District. Issues of first impression are rare in securities cases, and added an additional layer of complexity to this case.

3. The Risks of Litigation Supports the Requested Fee Award

135. The financial burden on contingent counsel is far greater than on a firm that is paid on an ongoing basis. This litigation was undertaken by Lead Counsel on a wholly contingent basis. In doing so, Lead Counsel faced the possibility that they would invest an enormous amount of time and money into the prosecution of this complex litigation only to secure no recovery. There have been many hard-fought lawsuits where excellent professional efforts by members of the plaintiffs' bar produced no fee to counsel, even after years of litigation—sometimes even after obtaining a successful verdict at trial.

136. The risks of contingent litigation are also highlighted by the fact that a dramatic, unexpected change in the law, while litigation is ongoing, can result in the dismissal of a claim or a reduction in the value of a claim after a great deal of time and funds were expended on the case. For example, certain of Lead Plaintiff's claims may have survived the motion to dismiss phase if not for the decision in *Frutarom I* and *II*, which came down as the motion to dismiss the SAC was pending and already fully briefed.

137. Lead Counsel bore the risk that no recovery would be achieved. As discussed in the Fee Memorandum and above, this litigation presented many risks and uncertainties that could have prevented any recovery whatsoever. Despite these risks, Lead Counsel continued to litigate this Action for the benefit of the Settlement Class and would have continued to litigate the case had the Parties been unable to reach the Settlement.

138. The fact that Individual Defendants and their counsel know that leading members of the plaintiffs' bar are able and willing to go to trial, even in high-risk cases, gives rise to

meaningful settlements in actions such as this.

4. The Requested Fee in Relation to the Settlement

139. The fee requested ($33^{1/3}$% of the settlement fund) in relation to the Settlement Amount is fair and reasonable. As detailed in the Fee Memorandum and the chart below, federal courts routinely award similar fees in securities class action settlements at similar stages of the litigation with similarly sized settlement funds and at similar or even less advanced stages of litigation.

Case	Stage of Litigation	Settlement Fund	Attorneys' Fees %	Lodestar Multiplier
***In re Reconnaissance Energy Afr. Ltd. Sec. Litig.*, No. 21-cv-06176, 2024 U.S. Dist. LEXIS 235463 (E.D.N.Y. Dec. 30, 2024)**	Mid-Discovery	$7,009,759.48	$33^{1/3}$	2.01
***McIntosh v. Katapult Holdings, Inc.*, No. 21-cv-7251, 2024 U.S Dist. LEXIS 226619 (S.D.N.Y. Dec. 13, 2024)**	Early Discovery	$2,500,000	$33^{1/3}$	1.02
***In re Y-Mabs Therapeutics, Inc. Sec. Litig.*, No. 23-cv-431, 2024 U.S. Dist. LEXIS 226526 (S.D.N.Y. Oct. 29, 2024) (Subramanian, J.)**	Early Discovery	$19,650,000	$33^{1/3}$	3.8
***In re XL Fleet Corp. Sec. Litig.*, No. 21-cv-02002, 2024 U.S. Dist. LEXIS 80758 (S.D.N.Y. Apr. 30, 2024)**	Class certification partially briefed	$19,500,000	$33^{1/3}$	1.4
***In re Tenaris S.A. Sec. Litig.*, No. 18-cv-7059, 2024 U.S. Dist. LEXIS 72980 (E.D.N.Y. Apr. 22, 2024)**	Mid-Discovery	$9,500,000	$33^{1/3}$	1.36
***Martínek v. Amtrust Fin. Servs., Inc.*, No. 19-cv-8030, 2022 U.S. Dist. LEXIS 209097 (S.D.N.Y. Nov. 16, 2022)**	Class certified, expert discovery began	$13,000,000	$33^{1/3}$	1.64
***Stein v. Eagle Bancorp*, No. 19-cv-06873, 2022 U.S. Dist.**	Motion to dismiss	$7,500,000	$33^{1/3}$	1.47

LEXIS 26597 (S.D.N.Y. Feb. 10, 2022)	briefed but not decided			
***In re PPDAI Grp. Inc. Sec. Litig.*, No. 18-cv-6716, 2022 U.S. Dist. LEXIS 11427 (E.D.N.Y. Jan. 21, 2022)**	Motion to dismiss partially briefed	$9,000,000	$33^{1/3}$	0.75
***In re Qudian Sec. Litig.*, No. 17-cv-09741, 2021 U.S. Dist. LEXIS 109258 (S.D.N.Y. June 8, 2021)**	Pre-Discovery, Motion to dismiss partially granted	$8,500,000	$33^{1/3}$	0.8
***Lea v. Tal Educ. Grp.*, No. 18-cv-5480, 2021 U.S. Dist. LEXIS 229314 (S.D.N.Y. Nov. 30, 2021)**	Motion to dismiss denied	$7,500,000	$33^{1/3}$	1.3
***Guevoura Fund Ltd. v. Sillerman*, No. 15-cv-7192, 2019 U.S. Dist. LEXIS 218116 (S.D.N.Y. Dec. 18, 2019)**	Pre-Discovery	$7,500,000	$33^{1/3}$	0.99
***Wilson v. LSB Indus.*, No. 15-cv-07614, 2019 U.S. Dist. LEXIS 133895 (S.D.N.Y. June 28, 2019)**	Mid-Discovery	$18,450,000	$33^{1/3}$	0.62
***In re Facebook, Inc. IPO Sec. & Derivative Litig.*, No. 12-md-2389, 2015 U.S. Dist. LEXIS 152668 (S.D.N.Y. Nov. 9, 2015)**	Early discovery	$26,500,000	33	1.02
***In re China Media Express Holdings, Inc.*, No. 11-cv-0804, 2015 U.S. Dist. LEXIS 181933 (S.D.N.Y. Sep. 18, 2015)**	Class certification briefed but not decided	$12,000,000	$33^{1/3}$	1.57
***City of Providence v. Aéropostale, Inc.*, No. 11-cv-7132, 2014 U.S. Dist. LEXIS 64517 (S.D.N.Y. May 9, 2014)**	Mid-Discovery	$15,000,000	33	0.7
***In re Hi-Crush Partners L.P. Sec. Litig.*, No. 12-cv-8557, 2014 U.S. Dist. LEXIS 177175 (S.D.N.Y. Dec. 19, 2014)**	Class certification briefed but not decided	$3,800,000	$33^{1/3}$	1.41

5. The Parties Were Represented by Experienced, High-Caliber Counsel

140. The expertise and experience of counsel is an important factor in setting a fair fee. The attorneys at KSF are experienced and skilled securities class action litigators and have successful track records in securities cases throughout the country. *See* Exhibit D (KSF Firm Resumé).

141. The quality of work performed by Lead Counsel in attaining the Settlement should also be evaluated in light of the quality of the opposition. Individual Defendants were represented by very experienced and highly qualified attorneys from Freshfields US LLP, a preeminent law firm that has defended numerous securities cases resulting in favorable decisions for defendants and also has substantial experience in the unique field of SPAC law. In the face of this formidable opposition, and considering the circumstances, Lead Plaintiff and Lead Counsel developed, litigated, and successfully negotiated an excellent recovery in this Action for the Settlement Class.

142. Moreover, Mr. Melnick, an experienced securities mediator who conducted a full-day mediation between the Parties in this Action, has provided his professional opinion that the Settlement was a product of extensive, informed, and vigorous negotiations conducted at arm's length and in good faith by the Parties. *See* Declaration of Jed D. Melnick, Esq., attached hereto as Exhibit E.

6. The Interests of Public Policy, Including the Need to Ensure the Availability of Experienced Counsel in High-Risk Contingent Securities Cases

143. Courts have repeatedly held that it is in the public interest to have experienced and able counsel to enforce the securities laws and regulations. *See*, *e.g.*, *City of Providence v. Aéropostale, Inc.,* No. 11-cv-7132, 2014 U.S. Dist. LEXIS 64517, at *50 (S.D.N.Y. May 9, 2014).

144. The SEC, a vital but understaffed government agency, does not have the budget or the resources to ensure complete enforcement of the securities laws. If this important policy is to

be carried out, the courts should award fees that will adequately compensate plaintiff's counsel, taking into account the enormous risks undertaken with a clear view of the economics of the situation.

7. The Support of Plaintiffs and Reaction of the Class Support the Fee Request

145. Plaintiffs were consulted about, and approved, Lead Counsel's Fee and Expense Application. Under the retainer agreements by and among Lead Counsel and Plaintiffs, Lead Counsel agreed to litigate the Action on an entirely contingent basis, meaning that Lead Counsel would not be compensated at all, or reimbursed for any expenses it incurred on behalf of the Settlement Class, unless it obtained a recovery for the Settlement Class. Plaintiffs' support of the $33^{1/3}$% fee request adds further support to the reasonableness of Lead Counsel's fee request.

146. Plaintiffs actively monitored the litigation and consulted with Lead Counsel over the course of this Action, as well as throughout the settlement negotiations. Lead Counsel acted under the supervision of, and negotiated within the settlement authority granted by, Lead Plaintiff. Plaintiffs' support of the requested attorneys' fee award should be given considerable weight. In the post-PSLRA era, the support of court-appointed class representatives is a significant consideration in determining a fair fee. *See In re Veeco Instruments Sec. Litig.*, No. 05-md-1695, 2007 U.S. Dist. LEXIS 85554, at *25-26 (S.D.N.Y. Nov. 7, 2007) ("[A] fee request which has been approved and endorsed by a properly-appointed lead plaintiff is presumptively reasonable….") (internal quotation marks omitted).

147. To date, following the dissemination of 42,618 copies of the Postcard Notice, each of which informed potential Settlement Class Members of Lead Counsel's intent to seek a fee of up to $33^{1/3}$% of the Settlement Fund, there have been no objections to the amount of attorneys' fees and expenses set forth in the Notice.

8. A Lodestar Cross-Check Confirms the Reasonableness of the Requested Fee Award

148. Lead Counsel has expended nearly 4,000 hours in the investigation, prosecution, and resolution of the claims against Defendants, for a lodestar of $3,260,642.50, resulting in a multiplier of just 1.33.

149. As set forth in the Fee Memorandum, a lodestar multiplier this low is a strong indication of the reasonableness of Lead Counsel's requested $33^{1/3}$% fee. Indeed, federal courts regularly award fees of one-third in cases with similar lodestar multipliers. *See*, *e.g.*, *Tenaris*, 2024 U.S. Dist. LEXIS 72980, *30 (awarding attorneys' fees of $33^{1/3}$%, a multiplier of 1.36, calling the multiplier "relatively low"); *XL Fleet*, 2024 U.S. Dist. LEXIS 80758, *5 (awarding attorneys' fees of 33 1/3%, a multiplier of 1.4); *Kendall v. Odonate Therapeutics, Inc*., No. 20-cv-01828, 2022 U.S. Dist. LEXIS 101021, *23 (S.D. Cal. June 6, 2022) (awarding attorneys' fees of $33^{1/3}$%, a multiplier of 2.36); *In re Hi-Crush Partners L.P. Sec. Litig.*, No. 12-cv-8557, 2014 U.S. Dist. LEXIS 177175, *35 (S.D.N.Y. Dec. 19, 2014) (awarding attorneys' fees of $33^{1/3}$%, a 1.41 multiplier).

B. Lead Counsel's Application for Reimbursement of Expenses

150. Lead Counsel seeks reimbursement from the Settlement Fund of $155,185.13 for expenses reasonably and actually incurred by Lead Counsel in connection with their commencement, prosecution, and resolution of the claims asserted in the Action. These expenses are detailed in ¶ 154 below, and are below the noticed cap of $190,000.

151. Lead Counsel's expenses were reasonable and necessary to the prosecution and resolution of this Action and are the type of expenses that counsel typically incur in complex litigation, and for which counsel are typically reimbursed when the litigation gives rise to a common fund.

152. From the beginning of the case, Lead Counsel was aware that it might not recover

any of its expenses, or at least that it would not recover anything until the Action was successfully resolved. It also understood that, even assuming the case was ultimately successful, reimbursement would not compensate for the lost use of the funds advanced to prosecute this Action. Thus, Lead Counsel was motivated to, and did, take significant steps to avoid unnecessary expenditures and to minimize expenses wherever practicable without jeopardizing the vigorous and efficient prosecution of the Action.

153. Lead Counsel's expenses are reflected on the books and records maintained by KSF, which are prepared from expense vouchers, check records, and other source materials, and are an accurate reflection of the expenses incurred in this Action. These expense items are billed separately by Lead Counsel, and such charges are not duplicated in their billing rates.

154. The expense schedule below identifies the specific categories of expenses, *e.g.*, court fees, fees for experts and consultants, discovery hosting, on-line legal and factual research, travel costs, reproduction costs, messenger and courier costs, and overnight mail costs incurred by Lead Counsel.

Category:	Total:
Experts	$81,782.50
Investigators and Consultants	$10,188.00
Mediator	$19,299.56
Computerized Legal Research/Analyst Reports	$14,843.33
Copies ($0.25/page)	$2,629.48
Court Costs/Filing Fees/Service Costs/Transcripts	$6,551.94
Messengers/Couriers/Overnight Delivery	$1,362.95
Travel/Meals/Lodging	$18,527.37
Total KSF Expenses:	**$155,185.13**

155. The largest category of expenses is for the work of Lead Plaintiff's damages and loss causation consultants and experts, with whom Lead Counsel worked closely throughout the case. First, Lead Counsel worked with an economics consultant when pleading loss causation and damages. Then, in connection with Lead Plaintiff's anticipated motion for class certification, Lead

Counsel worked with a testifying expert economist to prepare a draft report on market efficiency and damages, containing numerous exhibits and appendices, that was near-final when the Settlement was reached. In addition, Lead Counsel consulted their economics consultant regarding the reasonableness of the Settlement and development of the Plan of Allocation.

156. Another large expense was for the private investigation firm to conduct an independent investigation into the allegations set forth in the initial complaint.

157. The expenses detailed above and the other expenses for which Lead Counsel seeks reimbursement are the types of expenses that are necessarily incurred in litigation and routinely charged to clients billed by the hour. Moreover, all of the expenses incurred by Lead Counsel were necessary to the successful prosecution and resolution of the claims against Defendants.

158. The expenses of Lead Counsel are also reasonable compared to expenses reimbursed in similar cases, as discussed in the Fee Memorandum.

159. The expenses requested by Lead Counsel have been approved by Lead Plaintiff and Additional Plaintiff.

160. No objections to the expense provision of the Notice have been received to date.

161. In view of the complex nature of the Action, the expenses incurred by Lead Counsel were reasonable and necessary to pursue the interests of the Settlement Class. Accordingly, Lead Counsel respectfully submit that the costs and expenses it incurred should be reimbursed from the Settlement Fund.

C. Service Awards Requested for Plaintiffs

162. Lead Plaintiff respectfully seeks service awards of $10,000 for Lead Plaintiff David Berger and $5,000 for Additional Plaintiff Craig Bailey, who have devoted substantial time and effort to the prosecution of this Action. This award is within the noticed cap for service awards up to $15,000.

163. Over the past three and a half years, Mr. Berger: (i) monitored the Action and received regular updates on case developments; (ii) reviewed case-related documents and correspondence with Lead Counsel; (iii) reviewed and edited the amended complaints; (iv) reviewed and commented on Defendants' motions to dismiss and Plaintiffs' oppositions thereto; (v) closely communicated with Lead Counsel during settlement negotiations; and (vi) approved the Settlement. *See generally* Berger Decl. (Ex. B).

164. Mr. Bailey has been involved in the case for the past three and a half years, since he joined as an Additional Plaintiff. During that time, Mr. Bailey: (i) researched news related to CarLotz and its securities; (ii) monitored the progress of the Action and received regular updates from Lead Counsel regarding the case; (iii) reviewed and commented on Defendants' motions to dismiss and Plaintiffs' oppositions thereto; (iv) closely communicated with Lead Counsel during settlement negotiations; and (v) approved the Settlement. *See generally* Bailey Decl. (Ex. C).

165. Given Lead Plaintiff Berger and Additional Plaintiff Bailey's contributions and the time and effort expended by them, the requested awards of $10,000 and $5,000, respectively, are warranted and should be approved.

IX. CONCLUSION

166. For the reasons set forth above and in the accompanying motions, Settlement Memorandum, and Fee Memorandum, I respectfully submit that: (a) the Settlement is fair, reasonable, and adequate and should be granted final approval; (b) the Plan of Allocation represents a fair and equitable method for allocating and distributing the Net Settlement Fund among eligible Settlement Class Members and should be approved; (c) the Fee and Expense Application should be granted; and (d) the requested service awards to Lead Plaintiff and Additional Plaintiff and should be granted.

I declare under penalty of perjury of the laws of the United States of America and the State

of Connecticut that the foregoing is true and correct.

Executed this 9th day of May, 2025 at Greenwich, Connecticut.

/s/Kim Miller
Kim E. Miller

EXHIBIT A

NERA

RECENT TRENDS IN SECURITIES CLASS ACTION LITIGATION: 2024 FULL-YEAR REVIEW

Edward Flores and Svetlana Starykh[1]

Filings Flat Relative to 2023, Standard Filings Increase for Second Straight Year

Resolutions Rise, Led by Increase in Dismissals

22 January 2025

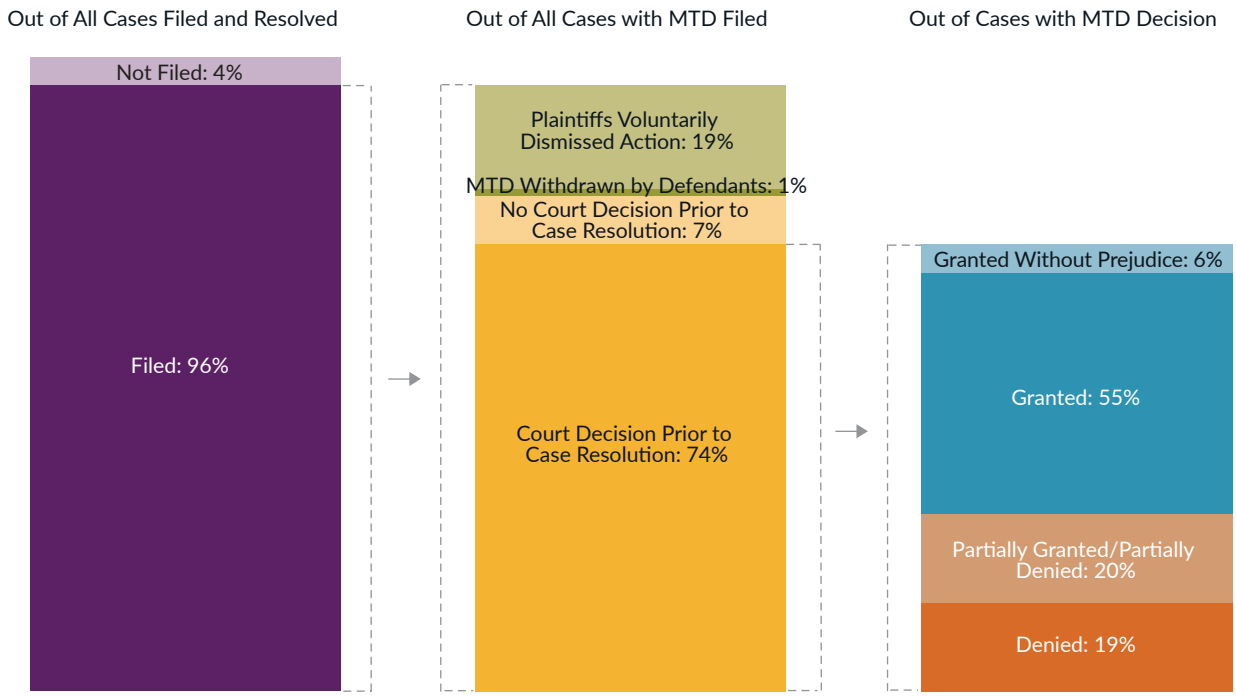
ANALYSIS OF MOTIONS

NERA's federal securities class action database tracks filing and resolution activity as well as decisions on motions to dismiss, motions for class certification, and the status of any motion as of the resolution date. For this analysis, we include securities class actions that were filed and resolved over the past 10 years in which purchasers of common stock are part of the class and in which a violation of Rule 10b-5, Section 11, and/or Section 12 is alleged.

Motion to Dismiss

A motion to dismiss was filed in 96% of the securities class action suits filed and resolved. Of these, a decision was reached in 74% of these cases, while 19% were voluntarily dismissed by plaintiffs, 7% settled before a court decision was reached, and 1% were withdrawn by defendants. Among the cases in which a decision was reached, 61% of motions were granted (with or without prejudice) while 39% were denied either in part or in full. See Figure 15.

Figure 15. **Filing and Resolutions of Motions to Dismiss**
Cases Filed and Resolved January 2015–December 2024

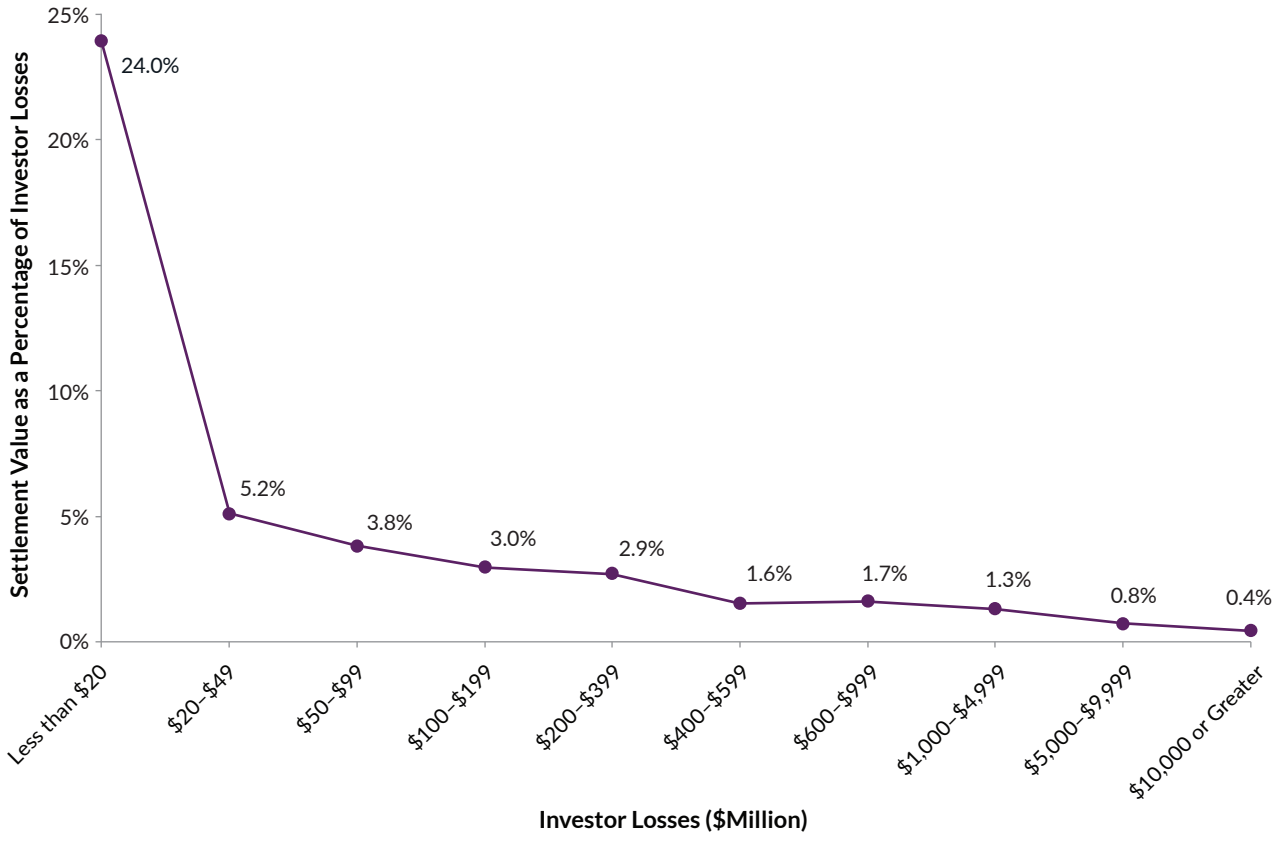


NERA-DEFINED INVESTOR LOSSES

To estimate the potential aggregate loss to investors as a result of investing in the defendant's stock during the alleged class period, NERA has developed a proprietary variable, NERA-Defined Investor Losses, using publicly available data. The NERA-Defined Investor Loss measure is constructed assuming investors had invested in stocks during the class period whose performance was comparable to that of the S&P 500 Index. Over the years, NERA has reviewed and examined more than 2,000 settlements and found, of the variables analyzed, this proprietary variable to be the most powerful predictor of settlement amount.[20]

A statistical review reveals that although settlement values and NERA-Defined Investor Losses are highly correlated, the relationship is not linear. The ratio is higher for cases with lower NERA-Defined Investor Losses than for cases with higher Investor Losses. For instance, in cases with less than $20 million in Investor Losses, the median settlement value comprises 24% of Investor Losses, while for cases with $100 million or more in Investor Losses, the median settlement value is at or under 3.0% of Investor Losses. See Figure 23.

Figure 23. **Median Settlement Value as a Percentage of NERA-Defined Investor Losses**
By Level of Investor Losses
Cases Settled January 2015–December 2024



Since 2015, annual median Investor Losses have ranged from a low of $358 million to a high of $1.76 billion. For cases settled in 2024, the median Investor Losses were $1.76 billion, the highest recorded value over the past 10 years. The median ratio of settlement amount to Investor Losses was 1.2% in 2024, a notable decline from the 1.8% median ratio seen over 2021–2023. See Figure 24.

Figure 24. **Median NERA-Defined Investor Losses and Median Ratio of Settlement to Investor Losses by Settlement Year**
January 2015–December 2024

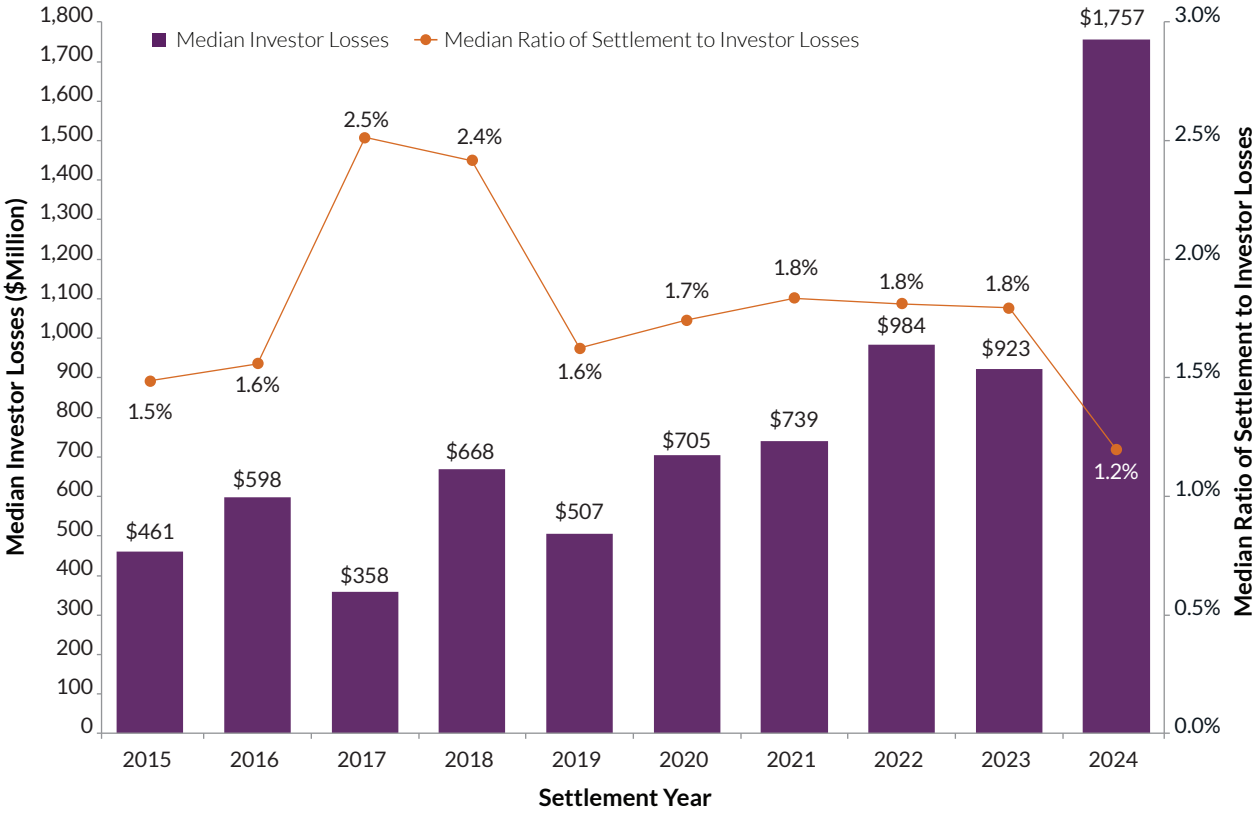


EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE CARLOTZ, INC. SECURITIES LITIGATION	Lead Case No. 1:21-cv-05906-AS

DECLARATION OF DAVID BERGER IN SUPPORT OF FINAL APPROVAL OF CLASS ACTION SETTLEMENT, PLAN OF ALLOCATION OF SETTLEMENT PROCEEDS, AND APPLICATION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF LITIGATION EXPENSES, AND SERVICE AWARD TO PLAINTIFF

I, DAVID BERGER, hereby declare as follows:

1. I am the Court-appointed Lead Plaintiff in this Action, and respectfully submit this Declaration in support of Plaintiff's motion for final approval of class action settlement, plan of allocation of settlement proceeds, and application for an award of attorney's fees, reimbursement of litigation expenses, and service award to Plaintiff. I am over the age of 18 and have personal knowledge of the matters set forth in this Declaration, and, if called to, I am competent to testify to these matters.

2. I am aware of and understand the requirements and responsibilities of a representative plaintiff in a securities class action, including those set forth by the PSLRA, and I have been directly involved in monitoring and overseeing the prosecution of this Action, as well as the negotiations leading to the Settlement.

3. I was appointed Lead Plaintiff on October 15, 2021, and on January 27, 2025, the Court preliminarily certified the Class and found I "will fairly and adequately protect the interests of the Settlement Class." ECF Nos. 40, 178. Throughout the litigation, I received periodic status reports from Lead Counsel on case developments and participated in regular discussions concerning the prosecution of the Action.

4. I strongly endorse approval of the Settlement by the Court. Based on my involvement throughout the prosecution and resolution of the claims asserted in the Action, I believe that the Settlement provides an excellent recovery for the Class, particularly in light of the strengths of the claims and the risks of continued litigation. Thus, I believe that the proposed Settlement is fair, reasonable, and adequate to the Class.

5. I also endorse Lead Counsel's application for attorneys' fees of 33 1/3% of the Settlement Fund. I believe that such an award represents a fair and reasonable payment to Lead

Counsel for their efforts, for the excellent result achieved, and for the risks undertaken in this Action. I also believe that the litigation expenses being requested for reimbursement were necessary for the prosecution and successful resolution of this Action.

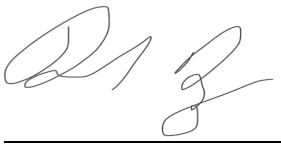
6. I understand that the PSLRA expressly provides for a service award—including the reimbursement of a class representative's reasonable costs and expenses—to a party serving on behalf of a Class, 15 U.S.C. § 78u-4(a)(4).

7. Over the past three and a half years, in my role as Lead Plaintiff, I: (a) researched news related to Carlotz and its securities; (b) monitored the Action and received regular updates from my attorneys regarding the posture and progress of the case; (c) reviewed and suggested edits to the amended complaints; (d) reviewed and commented on Defendants' three motions to dismiss and Plaintiff's oppositions thereto; (e) reviewed Defendants' requests for production, communicated Lead Counsel about them, and gathered potentially responsive documents; (f) closely communicated with Counsel during settlement negotiations; and (g) approved the Settlement.

8. Accordingly, I respectfully request that the Court award me $10,000 as reimbursement for the substantial time and effort I devoted to the prosecution of this Action.

I declare under penalty of perjury of the laws of the United States of America and the State of New York that the foregoing is true and correct.

Executed this 2nd day of May, 2025.



David Berger

EXHIBIT C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE CARLOTZ, INC. SECURITIES LITIGATION	Lead Case No. 1:21-cv-05906-AS

DECLARATION OF CRAIG BAILEY IN SUPPORT OF FINAL APPROVAL OF CLASS ACTION SETTLEMENT, PLAN OF ALLOCATION OF SETTLEMENT PROCEEDS, AND APPLICATION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF LITIGATION EXPENSES, AND SERVICE AWARD TO PLAINTIFFS

I, CRAIG BAILEY, hereby declare as follows:

1. I am an Additional Plaintiff in this Action, and respectfully submit this Declaration in support of Plaintiffs' motion for final approval of class action settlement, plan of allocation of settlement proceeds, and application for an award of attorney's fees, reimbursement of litigation expenses, and service awards to Plaintiffs. I am over the age of 18 and have personal knowledge of the matters set forth in this Declaration, and, if called to, I am competent to testify to these matters.

2. I am aware of and understand the requirements and responsibilities of a representative plaintiff in a securities class action, including those set forth by the PSLRA, and I have been directly involved in monitoring and overseeing the prosecution of the Action, as well as the negotiations leading to the Settlement.

3. I was named as an Additional Plaintiff in the Amended Complaint, filed December 14, 2021, and as such have been involved in this litigation for about three and a half years. Throughout the litigation, I received periodic status reports from Lead Counsel on case developments and participated in regular discussions concerning the prosecution of the Action.

4. I strongly endorse approval of the Settlement by the Court. Based on my involvement throughout the prosecution and resolution of the claims asserted in the Action, I believe that the Settlement provides an excellent recovery for the Class, particularly in light of the strengths of the claims and the risks of continued litigation. Thus, I believe that the proposed Settlement is fair, reasonable, and adequate to the Class.

5. I also endorse Lead Counsel's application for attorneys' fees of 33 1/3% of the Settlement Fund. I believe that such an award represents a fair and reasonable payment to Lead Counsel for their efforts, for the excellent result achieved, and for the risks undertaken in this

Action. I also believe that the litigation expenses being requested for reimbursement were necessary for the prosecution and successful resolution of this Action.

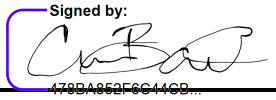
6. I understand that the PSLRA expressly provides for an incentive award—including the reimbursement of a class representative's reasonable costs and expenses—to a party serving on behalf of a Class, 15 U.S.C. § 78u-4(a)(4).

7. Over the past three and a half years, in my role as an Additional Plaintiff, I: (a) researched news related to Carlotz and its securities; (b) monitored the Action and received regular updates from my attorneys regarding the posture and progress of the case; (c) reviewed and suggested edits to the amended complaints; (d) reviewed and commented on Defendants' motions to dismiss and Plaintiff's oppositions thereto; (e) closely communicated with Counsel during settlement negotiations; and (f) approved the Settlement.

8. Accordingly, I respectfully request that the Court award me $5,000 as reimbursement for the substantial time and effort I devoted to the prosecution of this Action.

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

Executed on 5/1/2025.

Signed by:

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Craig Bailey

EXHIBIT D

KSF

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* *For representative purposes only.*

Table of Contents

The Firm

Kahn Swick & Foti, LLC ("KSF") (www.ksfcounsel.com) is a boutique law firm with offices in New York City, Delaware, San Francisco, Chicago, New Orleans, New Jersey, and a representative office in Luxembourg[1]. KSF focuses predominantly on class actions, in the areas of securities and mergers & acquisitions, and on shareholder derivative and other complex litigation. Since its inception in 2000, KSF has recovered hundreds of millions of dollars for its clients.

"[Kahn Swick & Foti] earned my unyielding admiration and respect in this case for the efficient and exceptionally reasonable way in which they found a prompt, fair, and equitable solution to the complex problems their clients faced…"

Hon. Mark W. Bennett,
United States District Judge
In Re: Elgaouni v. Meta Financial Group, Inc.

KSF's Lawyers have extensive experience litigating complex cases in the following practice areas: (i) securities litigation; (ii) corporate governance and derivative litigation; (iii) consumer protection litigation; (iv) shareholder merger and acquisition class action litigation; and (v) antitrust litigation. A sampling of the firm's current cases and recent recoveries is set forth below.

Securities Litigation

SETTLED CASES

In re Petrobras Securities Litigation, No. 1:14-cv-9662 (S.D.N.Y.). *Member of Plaintiffs' Steering Committee* for the Individual Actions ("PSC"), federal securities class action against Brazil's state-controlled petrochemical company arising from "Operação Lava Jato," the largest corruption scandal in the history of Latin America, whereby Plaintiffs alleged Defendants deliberately overpaid on various construction contracts in return for kickbacks. The Class action settled in 2018 for **$3 billion** and, as a member of the PSC, KSF was found by the Court to have "made a substantial contribution to the class," June 22, 2018 Opinion and Order at 39 (D.E. 834).

[1] *For representative purposes only.*

Dicker v. TuSimple Holdings, Inc. et al., NO. 22-CV-1300 (S.D. Cal.). *Co-Class Counsel*. On December 18, 2024, the Hon. Roger T. Benitez entered a Final Judgment approving a **$189 million** settlement of the Class's claims. KSF obtained this extraordinary result – the largest ever settlement of a securities class action in the Southern District of California – after filing a detailed and thorough consolidated complaint, opposing seven separate motions to dismiss, negotiating an agreement with TuSimple to prevent the dissipation of its U.S. assets, and moving for a temporary restraining order to ensure that TuSimple's cash remained in the U.S.

Pearlstein v. Blackberry Ltd., et al., No. 1:13-CV-07060-CM (S.D.N.Y.). *Lead Counsel*. The Hon. Colleen McMahon, United States District Judge for the Southern District of New York, entered a Final Judgment in this federal securities class action, approving a **$165 million** settlement between Lead Plaintiffs, represented by Lead Counsel KSF, and BlackBerry, Limited. The settlement, one of the largest securities litigation recoveries of 2022 and achieved on the eve of trial, resolved Plaintiffs' claims that BlackBerry made materially false and misleading statements and omissions regarding the sales of, and accounting relating to, its BB10 smartphones.

Erica P. John Fund, Inc. v. Halliburton Co., et al., No. 3:02-cv-1152 (N.D. Tex.). *Co-Class Counsel*, federal securities class action against oilfield services company and a high-level officer, in which Class Counsel obtained a unanimous decision by the U.S. Supreme Court in *Erica P. John Fund, Inc. v. Halliburton Co., et al.*, 563 U.S. 804 (2011) vacating and remanding a decision of the Fifth Circuit, and then successfully defeated Defendants' attack on the *Basic v. Levinson* presumption of reliance in *Halliburton Co. v. Erica P. John Fund, Inc.*, 134 S. Ct. 2398 (2014). These two Supreme Court decisions led to certification of the class, and ultimately resulted in a cash settlement of **$100 million** for investors.

In re Chicago Bridge & Iron Secs. Litig., Case No. 1:17-cv-1580-LGS (S.D.N.Y.). On August 2, 2022, the Hon. Lorna G. Schofield, United States District Judge for the Southern District of New York, entered a Final Judgment in this federal securities class action, approving a **$44 million** settlement obtained by Plaintiffs and KSF, as Lead Counsel, against a large engineering, procurement, and construction company, and certain officers and directors. The lawsuit alleged that Defendants made materially false and misleading statements and omissions regarding the performance of, and accounting relating to, CBI's nuclear business.

Farrar v. Workhorse Group, Inc., et al., No. 2:21-cv-02072-CJC-PVC (C.D. Cal.). On July 28, 2023, after more than two years of hard-fought litigation, the Hon. Cormac J. Carney entered a Final Judgment approving a **$35 million** settlement of the Class' claims. Lead Counsel KSF achieved this excellent result after defeating Defendants' motion to dismiss and engaging in substantial fact discovery.

Moradpour v. Velodyne Lidar, Inc., et al., No. 3:21-cv-01486-SI (N.D. Cal.), Lead Counsel, federal securities class action against a company that develops and markets lidar solutions for autonomous vehicles, driver assistance, delivery, robotics, navigation, mapping, and other uses, resulting in an all-cash settlement of **$27.5 million** for investors.

Dr. Joseph F. Kasper, et. al. v. AAC Holdings, Inc., et. al., 3:15-cv-00923 (Consolidated) (M.D. Tenn.). *Co-Lead Counsel*, federal securities class action against a for-profit substance abuse treatment provider, and certain officers and directors, arising from Defendants' misleading statements regarding a criminal investigation into the death of a patient, resulting in a settlement of **$25 million** for investors.

In re Virgin Mobile USA IPO Litigation, 2:07-cv-05619-SDW-MCA (D.N.J.), *Co-Lead Counsel*, federal securities IPO-related class action against a company providing wireless communication services, certain officers and directors, certain controlling shareholder entities, and Virgin's underwriters, resulting in a cash settlement of **$19.5 million** for investors.

Dougherty v. Esperion Therapeutics, Inc., et al., No. 2:16-cv-10089 (E.D. Mich.). Co-Lead Counsel, federal securities action against a pharmaceutical company and its chief executive officer, arising from misleading statements assuring the market that its sole drug candidate would not require a completed (and costly) cardiovascular outcomes trial prior to approval, resulting in a settlement of **$18.25 million** for investors.

In Re Eletrobras Securities Litigation, Case No. 1:15-cv-05754 (Consolidated) (S.D.N.Y.). Co-Lead Counsel, federal securities class action against Centrais Eletricas Brasileiras S.A. and several of its former directors and officers, by U.S. investors after the company reported large losses related to a sprawling corruption scandal in Brazil. Nearly three years of protracted litigation resulted in a settlement of **$14.75 million** for investors.

Abramson v. NewLink Genetics Corp., et al., 1:16-cv-03545-AJN (S.D.N.Y.). Lead Counsel, federal securities action against a pharmaceutical company and certain officers arising from Defendants' misleading statements regarding the about the scientific literature and the design of their clinical trial for a pancreatic cancer treatment candidate, resulting in a settlement of **$13.5 million** for investors.

In re Tesco PLC Securities Litigation, 14 Civ. 8495 (RMB) (S.D.N.Y.), *Lead Counsel*, federal securities class action against one of the world's largest grocery and general merchandise retailers based in the U.K., resulting in an all-cash settlement of **$12 million** for investors in ADRs and F shares in the United States.

Corporate Governance and Derivative Litigation

SETTLED CASES

Orrego v. Lefkofsky (Groupon, Inc. Derivative Litigation), No. 12 CH 12420 (Ill. Cir. Ct, Cook Cnty., Ch. Div.). KSF acted as Co-Lead Counsel in the consolidated shareholder derivative action filed in the Chancery Division of the Cook County Circuit Court in Illinois, which was brought derivatively on behalf of Groupon, Inc. against certain of its current and former directors and officers for allegedly breaching their fiduciary duties by, among other things, causing Groupon to issue or make materially false and misleading statements and failing to implement necessary controls over Groupon's accounting function. KSF facilitated a settlement comprising of comprehensive corporate governance reforms with an estimated value of **$159 million**, including changes to the Compensation Committee Charter, implementation of director education requirements, enhanced Independent Director meeting obligations, augmentations to the Audit Committee and Disclosure Committee rules and procedures, creation of a new Director of Compliance position, and the retention of an independent auditing firm to conduct an assessment of the company's internal audit department.

In re Bank of America Corp. Securities, Derivative, & Employment Retirement Income Security Act (ERISA) Litigation, 09 Civ.580 (DC) (S.D.N.Y.). KSF served as court appointed Co-Lead Counsel in the Southern District of New York, and sued current and former executive officers and directors of the company, on behalf of shareholders. The substance of this action focused on Bank of America's January 1, 2009, acquisition of Merrill Lynch & Co., Inc. in a stock-for-stock transaction. This action alleged, among other things, that certain material information was omitted from the proxy statement filed with the Securities and Exchange Commission and mailed to stockholders on November 3, 2008. This proxy was critical in allowing defendants to obtain shareholder consent for the issuance of shares necessary to consummate the Merger. KSF was successful in resolving this action after defeating motions to dismiss by multiple defendants. In addition to major corporate governance reforms, KSF was also able to recover over **$62.5 million** for the company.

Bassett Family Trust v. Costolo, et al. (Twitter, Inc. Derivative Litigation), C.A. No. 2019-0806 (Del. Ch.). As counsel for the plaintiff in this demand wrongfully-refused shareholder derivative action, KSF brought breach of fiduciary claims derivatively on behalf of Twitter, Inc. ("Twitter") against certain of its current and former directors and officers for breaches of duties involving false and misleading statements about Twitter's user engagement and growth and for insider trading. Plaintiffs were able to secure a settlement providing that Twitter's board of directors will pay **$38 million** in cash to Twitter.

Twitter's board will also adopt a series of corporate governance reforms, which include (among other things): (i) enhanced board independence and oversight reforms, including amendments to the charters for the Disclosure Committee and the Audit Committee; (ii) enhancements to oversight of corporate strategy and risk, internal controls, and disclosures, including the creation of the Independent Chief Compliance Officer; and (iii) enhancements to corporate policies regarding compliance training, compensation, insider trading, and recapture of cash-based incentive compensation.

In re Barnes & Noble Stockholder Derivative Litigation, C.A. No. 4813 (Del. Ch.). As Co-Lead Counsel in this shareholder derivative action filed in the Court of Chancery of the State of Delaware on behalf of Barnes & Noble, Inc. against certain of its officers and directors, including Chairman Leonard Riggio, related to the company's 2009 acquisition of Mr. Riggio's private company Barnes & Noble College Booksellers, Inc., alleging that the purchase price, and the process by which it was agreed to, was not entirely fair to Barnes & Noble, Inc. and harmed shareholders, KSF helped obtain a settlement resulting in the recovery of **$29 million** for Barnes & Noble, Inc. in the form of reductions to the principal and interest payable to Mr. Riggio.

Weil v. Baker (ArthroCare Corporation Derivative Litigation), No. 08-CA-00787 (W.D. Tex.). As Co-Lead Counsel in the consolidated federal derivative action on behalf of ArthroCare Corporation against certain of its officers and directors arising from alleged improprieties in the company's marketing of spine wands, KSF helped obtain a cash settlement of **$8 million**, along with important corporate governance changes.

In re Fitbit, Inc. Stockholder Derivative Litigation, Consolidated C.A. No. 2017-0402 (Del. Ch.). As Co-Lead Counsel in this shareholder derivative action filed in the Court of Chancery of the State of Delaware on behalf of Fitbit, Inc. ("Fitbit") against certain of its officers and directors, KSF alleged that certain insiders made stock sales in the company's initial public offering and—after agreeing to release the insiders from lock-up agreements that barred them from trading for 180 days after the initial public offering—an early secondary offering, taking take advantage of an artificially positive market response to Fitbit's flagship PurePulse heartrate monitoring technology. KSF was successful in resolving this action after defeating the defendants' motion to dismiss, recovering **$5 million** for Fitbit.

In re Conduent Incorporated Shareholder Derivative Litigation, Lead Case No. 650903/2021 (N.Y. Sup. Ct., N.Y. Cnty., Ch. Div.). KSF acted as Co-Lead Counsel in the consolidated shareholder derivative action filed in the New York Supreme Court, New York County, which was brought derivatively on behalf of Conduent Incorporated against certain of its current and former directors and officers for allegedly breaching their fiduciary duties by (i) failing to oversee its electronic tolling line of business, resulting in

fines, government complaints, and revenue withholding and (ii) causing the Company to make materially false and misleading statements in press releases and SEC filings about the known issues with it legacy information technology infrastructure that was impacting the Company's financial guidance and growth. KSF facilitated a settlement comprising of robust and fulsome corporate governance reforms, including Board refreshment, formation of the Corporate Social Responsibility and Public Policy Committee, separation of the Chief Executive Officer and Chairperson positions, enhancements to the duties and responsibilities of the Audit Committee regarding financial reporting and internal controls, creation of a Board-level Risk Oversight Committee, addition of the Chief Risk Officer to the management-level Disclosure Committee, adoption of an enhanced Amended Compensation Recoupment Policy.

In re FAB Universal Corporation Shareholder Derivative Litigation, Lead Case No. 14-cv-687 (S.D.N.Y.). As sole Lead Counsel in this consolidated action, KSF brought breach of fiduciary claims derivatively on behalf of FAB Universal Corporation against certain of its current and former directors and officers. Claims brought included breaches of duties of loyalty, due care, good faith, independence, candor and full disclosure to shareholders; misappropriation of material, non-public information of the Company by certain individual defendants; and violations of Section 14(a) of the Securities Exchange Act of 1934 and Rule 14a-9 promulgated thereunder. The action focused on defendants' publication of false and misleading statements concerning the Company's kiosk business in China, and the failure to disclose the issuance of $16.4 million worth of bonds to Chinese investors in April 2013. KSF obtained a settlement involving numerous corporate governance reforms, including the creation a new Disclosure Committee to put effective procedures and protocols in place and designed to ensure that all of the Company's public statements are vetted for accuracy, integrity and completeness. KSF was also able to cause the Company to modify the Charter of the Audit Committee to provide that at least one non-executive member of the Audit Committee has general expertise in accounting or financial management. Modifications were also caused to be made to the Company's Corporate Governance Committee and to the Company's Code of Conduct.

In re Fifth Street Finance Corp. Stockholder Litigation, Consolidated C.A. No. 12157 (Del. Ch.). As Co-Lead Counsel in this shareholder derivative action filed in the Delaware Court of Chancery on behalf of Fifth Street Finance Corporation ("FSC") against certain current and former directors of FSC, its investment advisor, Fifth Street Asset Management Inc. ("FSAM"), and current and former directors and officers of FSAM, KSF alleged that certain FSC and FSAM officers and directors caused FSC to pursue reckless asset growth strategies, to employ aggressive accounting and financial reporting practices, and to pay excessive fees under FSC's investment advisory agreement with FSAM, in order to inflate the perceived value of FSAM in the lead up to FSAM's initial public filing. KSF was instrumental in obtaining a

settlement consisting of certain changes to FSC's investment advisory agreement and governance enhancements. The changes to the investment advisory agreement include a waiver by FSAM of fees equal to $10 million and an acknowledgment that plaintiffs were a substantial and remedial factor in the reduction of base management fees from 2% to 1.75%. The governance enhancements include additional Board governance provisions, enhanced policies, practices and procedures regarding FSC's valuation of its investments, increased disclosure of relevant issues, and increased consultation with outside advisors and independent third parties.

Lowry v. Basile (Violin Memory, Inc. Derivative Litigation), No. 4:13-cv-05768 (N.D. Cal.). As counsel for the plaintiff in this shareholder derivative action, KSF brought breach of fiduciary claims derivatively on behalf of Violin Memory, Inc. against certain of its current and former directors and officers for breaches of duties and waste of corporate assets. The action focused on defendants' publication of false and misleading statements concerning the Company's operating results and financial condition and alleged waste of corporate assets by granting outsized compensation to the CEO that was not in line with the performance of the Company. KSF obtained a settlement involving numerous corporate governance reforms, including the formalization of a Disclosure Committee to put effective procedures and protocols in place and designed to ensure that all of the Company's public statements are vetted for accuracy, integrity and completeness. KSF was also able to cause the Company to modify the Charter of the Compensation Committee to provide that the committee will create annual and long-term performance goals for the CEO, whose compensation will be based on whether those performance goals are achieved. Modifications were also caused to be made to the Company's Audit Committee and to the Company's Corporate Governance Guidelines.

In re Moody's Corporation Shareholder Derivative Litigation, No. 1:08-CV-9323 (S.D.N.Y.). As Lead Counsel for the demand-excused shareholder derivative actions filed on behalf of Moody's Corporation against current and former executive officers and directors of the company, asserting various claims, including for breach of fiduciary duty, in connection with, inter alai, Moody's credit ratings on various mortgage-backed securities, KSF helped obtain a settlement in which the settling defendants agreed that Moody's had implemented or will adopt, enhance and/or maintain certain governance, internal control, risk management and compliance provisions, designed to identify, monitor and address legal, regulatory and internal compliance issues throughout the business and operations of Moody's Investors Service, Inc., the credit rating agency operating subsidiary of the company.

In re Morgan Stanley & Co., Inc. Auction Rate Securities Derivative Litigation, No. 1:08-CV-07587 (S.D.N.Y.). As Lead Counsel for shareholders in this federal derivative action against a prominent broker-dealer to redress harms to the company from its sales and marketing of auction rate securities, KSF

obtained substantial corporate governance reforms that promised to avoid a recurrence of similar harms in the future.

In re Star Scientific, Inc. Virginia Circuit Court Derivative Litigation, Lead Case No. CL13-2997-6 (Va. Cir. Ct., City of Richmond). KSF acted as court appointed Lead Counsel in the consolidated state court shareholder derivative action filed on behalf of Star Scientific, Inc. against certain current and former directors and officers. This action focused on defendants' false statements and misrepresentations concerning the Company's product Anatabloc. Specifically, the action stated that defendants had caused or allowed the Company concealed: (i) private placements and related-party transactions; (ii) government investigations of the Company; and (iii) a December 2013 warning letter from the U.S. Food and Drug Administration. In resolving this matter, KSF obtained sweeping corporate governance changes, including but not limited to, the creation of a new board-level committee to review and oversee the Company's legal, regulatory, compliance, and government affairs functions. KSF also caused the Company to modify the charter of the Audit Committee to strengthen disclosure oversight and risk management. Modifications were also caused to be made to the Company's Compensation Committee. The Company was caused to adopt a set of Corporate Governance Guidelines. A new Governance and Nominating Committee was created and the position of Compliance Officer tasked with oversight and administration of the Company's corporate governance policies was added. Changes were also made to the Company's Corporate Code of Business Conduct and Ethics.

Consumer Protection Litigation

SETTLED CASES

In re: General Motors Corp. Speedometer Products Liability Litigation, MDL No. 1896, *Co-Lead Counsel*. Appointed co-lead counsel for national class of 4.2 million purchasers of certain GM trucks with defective speedometers. The case was resolved successfully by GM agreeing to fix defective speedometers for free and to reimburse class members for all past repair costs.

Rose Goudeau, et. al. v. The Administrators of the Tulane Educational Fund, et. al., No. 2004-04758, Sec. 13, Div. J (Civil District Court for the Parish of Orleans), *Class Co-Counsel*. Nationwide class action certified on behalf of near relatives of individuals who donated their bodies to the Tulane Willed Body Program. The complaint alleged that the Tulane Willed Body Program sold the donated bodies and/or body parts to third parties. A settlement of **$8,300,000** was obtained for the class members.

Barbara Thomas, et. al. v. ClearCredit, et. al., No. 03-2580 (E.D. La.). Co-Lead Counsel in national class action involving violations of the Fair Credit Reporting Act. Settled for approximately **$6 million** in benefits to the consumer class along with injunctive relief.

Sterling Savings Bank v. Poleline Self-Storage LLC, No. CV-09-10872 (Idaho Dist. Ct.), *Class Counsel*. In this putative class action, a borrower alleged that the Bank improperly used the 365/360 method of interest calculation on several commercial loans. A settlement of **$3.5 million** was recovered for bank customers.

Shareholder M&A Class Action Litigation

SETTLED CASES

Helen Moore v. Macquarie Infrastructure and Real Assets, et al. (Cleco Corporation Merger), No. 251,417 c/w Nos. 251,456; 251,515; 252,446; 252,458; and 252,459, (9th JDC, Louisiana). Co-Lead Counsel. Class action for breach of fiduciary duties to shareholders relating to a proposed merger of utility company. Settlement consisted of **$37 million** common fund, just one month from trial. Counsel also secured a landmark Louisiana appellate decision finding that merger-related challenges are direct, and not derivative, in nature.

In re Saba Software, Inc. Stockholder Litigation, Consol. Case No. 10697 (Delaware Court of Chancery 2015). *Member of Executive Committee.* Class action for breach of fiduciary duties to shareholders relating to a proposed merger of software company. Settlement consisted of **$19.5 million** common fund.

In re American Capital, Ltd. Shareholder Litigation, Case No. 422598-V (Circuit Court for Montgomery County, Maryland 2016). *Co-Lead Counsel.* Class action for breach of fiduciary duties to shareholders against both the target board and senior management and an activist investor fund (as a controller) relating to a proposed merger of a publicly traded private equity company. Settlement consisted of **$17.5 million** common fund from the target's board and the activist investor.

Kurt Ziegler, et al. v. GW Pharm., PLC, et al., No. 3:21-cv-01019-BAS-MSB (S.D. Cal). *Co-Lead Counsel*. Class action for breach of federal securities laws relating to a proposed merger of pharmaceutical company. Settlement consisted of **$7.75 million** common fund.

Kenneth Riche, et al v. James C. Pappas, et al., C.A. No. 2018-0177 (Del. Ch). Co-Lead Counsel. Class action for breach of fiduciary duties to shareholders against the target board and activist investors relating to a proposed merger of a publicly traded geothermal company. Settlement consisted of **$6.5 million** common fund, which represented a significant 7.7% premium to the $84 million adjusted enterprise value of the merger to the non-defendants shareholders/class members.

Rice v. Genworth Financial Incorporated, et al., Consol. Case No. 3:17-cv-00059 (Eastern District of Virginia 2017). *Co-Lead Counsel.* Class action for violation of Section 14(a) relating to a proposed merger of insurance company. Settlement consisted of additional material disclosures to proxy statements.

Wojno v. FirstMerit Corp., et al., Case No. 5:16-cv-00461 (Northern District of Ohio 2016). *Co-Lead Counsel.* Class action for violation of Section 14(a) relating to a proposed merger of bank holding company. Settlement consisted of additional material disclosures to proxy statements.

In re BTU International, Inc. Stockholders Litigation, Consol. C.A. No. 10310-CB (Delaware Court of Chancery 2014). *Co-Lead Counsel*. Class action for breach of fiduciary duties to shareholders relating to a proposed merger of electronics and solar goods companies. Settlement consisted of additional material disclosures to proxy statements. First known settlement to pass the exacting Trulia standards articulated by the Court of Chancery.

In re EnergySolutions, Inc. Shareholder Litigation, C.A. 8203 (Delaware Court of Chancery 2014). *Plaintiff's Co-Lead Counsel*. Class action for breach of fiduciary duties to shareholders relating to a proposed merger of nuclear energy related companies worth $1.1 billion ($375 million in proposed shareholder consideration). Settlement consisted of $0.40 price bump which increased the consideration to shareholders by more than 10% or approximately $38 million. Settlement also included over 20 pages of additional disclosures to proxy statement relating to process and pricing claims.

Hill v. Cohen, et al. (Summit Financial Services Group, Inc.), 2013 CA 017640 (15th Judicial Circuit Court, Florida). *Co-lead Counsel*. Class action for breach of fiduciary duties to shareholders relating to a proposed merger of a financial services company. Contingent and delayed aspects of the proposed merger consideration, worth several million dollars, were accelerated and paid to shareholders ahead of schedule and settlement involved several pages of additional disclosures were made to the proxy statement.

In re InSite Vision Inc. Consolidated Shareholder Litigation, Lead Case No. RG-15774540 (c/w Case No. RG-15777471). *Counsel for Plaintiffs*. Class action for breach of fiduciary duties to shareholders relating

to a proposed merger of medical companies. Litigation was followed by a public bidding war that resulted in a $30 million increase in merger compensation.

In re Medtox Scientific, Inc. Shareholders Litigation, Court File No. 62-CV-12-5118 (Minnesota District Court 2013). *Plaintiffs' Lead Counsel*. Class action for breach of fiduciary duties to shareholders relating to a proposed merger of medical technology companies. Settlement consisted of additional material disclosures to proxy statement.

Heron v. International Rectifier Corporation, et al., Case No. BC556078 (Superior Court of the State of California, County of Los Angeles). *Co-Lead Counsel*. Class action for breach of fiduciary duties to shareholders relating to a proposed merger of electronics companies. Settlement consisted of additional material disclosures to proxy statements.

Sachs Investment Group v Sun Healthcare Group, Inc., et al. 30-2012-580354-CU-SL (Superior Court of the State of California 2013). *Plaintiffs' Counsel*. Class action for breach of fiduciary duties to shareholders relating to a proposed merger of healthcare companies. Settlement consisted of additional material disclosures to proxy statement.

In re Susser Holdings Corp. Stockholders Litigation, C.A. 9613 (Delaware Court of Chancery 2014). *Co-Lead Counsel*. Class action for breach of fiduciary duties to shareholders relating to a proposed merger of convenience store and gas station companies. Settlement consisted of additional material disclosures to proxy statements regarding hidden value of individual distribution rights in limited partnership.

Antitrust Litigation

RECENT VICTORIES

Oliver, et al. v. American Express Company, et al., No. 1:19-cv-00566-NGG-SMG (E.D.N.Y). On April 30, 2020, the Hon. Nicholas G. Garaufis, United States District Court Judge for the Eastern District of New York, entered an Order denying, in part, defendants' motion to dismiss. This matter, in which Kahn Swick & Foti, LLC is a member of Plaintiffs' Executive Committee, seeks damages, restitution, and injunctive relief against the American Express Company and American Express Travel Related Services Company, Inc. (collectively, "Amex"), on behalf of persons that used an electronic form of payment other than an Amex charge or credit card to purchase goods and services sold by merchants across the country at prices allegedly inflated by Amex's non-discrimination provisions. Judge Garaufis ruled that plaintiffs

adequately pled violations of 22 state antitrust and/or consumer protection laws and allowed plaintiffs' case to proceed against Amex for these violations.

Attorneys

PARTNERS

Lewis S. Kahn

Lewis Kahn is a founding partner of KSF and serves as the firm's managing partner. Mr. Kahn's practice is devoted to representing institutional and retail investors in connection with damages suffered as a result of securities fraud, breaches of fiduciary duties by corporate boards, and other egregious corporate conduct.

Mr. Kahn oversees the firm's securities practice, which has been responsible for settlements including the long-running securities class action against Halliburton where KSF was Co-Class Counsel with David Boies, a case in which the firm twice beat back Halliburton's attempt in the United States Supreme Court to eviscerate shareholder rights, and obtained a **$100 million** settlement for the Class after prior and subsequently replaced national securities counsel attempted to settle the case for $6 million. Most recently, Mr. Kahn negotiated settlement of *Pearlstein v. Blackberry Ltd., et al.*, No. 1:13-CV-07060-CM (S.D.N.Y.), for **$165 million**, one of the largest securities litigation recoveries of 2022 and achieved on the eve of trial, resolving Plaintiffs' claims that BlackBerry made materially false and misleading statements and omissions regarding the sales of, and accounting relating to, its BB10 smartphones. Other matters have included *In re Virgin Mobile USA IPO Litigation*, 2:07-cv-05619-SDW-MCA (**$19.5 million settlement**), *In re Tesco PLC Securities Litigation*, 14 Civ. 8495 (**$12 million settlement**), *In re BigBand Networks, Inc Securities Litigation*, 3:07-CV-05101-SBA (**$11 million settlement**), *In re U.S. Auto Parts Networks, Inc. Securities Litigation*, 2:07-cv-02030-GW-JC (**$10 million settlement**), *In re Bank of America Corp. Securities, Derivative, and Employment Retirement Income Security Act (ERISA) Litigation*, 09 Civ.580 (DC) (S.D.N.Y.) (**$62.5 million** cash payment to Bank of America o/b/o Board), *In re Barnes & Noble Stockholder Derivative Litigation*, C.A. No. 4813-VCS (Del. Ch. Ct.) (recovery of **$29 million** for Barnes & Noble, Inc. in the form of reductions to the principal and interest payable to CEO), and *In re EnergySolutions, Inc. Shareholder Litigation*, C.A. 8203-VCG (Del. Ch. 2014) ($0.40 price bump which increased the consideration to shareholders by more than 10% or approximately **$38 million**).

In addition to securities lawsuits, Mr. Kahn has significant experience with consumer fraud and mass tort class actions. Mr. Kahn has been appointed to various leadership positions in federal class action litigation over the years.

Mr. Kahn holds a Bachelor's degree from New York University in 1990 and received a Juris Doctor from Tulane Law School in 1994. Mr. Kahn is a member of the Louisiana Bar and is licensed to practice in all Louisiana state courts, as well as the United States Supreme Court, the United States Courts of Appeal for the Second, Fifth and Ninth Circuits, and the United States District Courts for the Eastern, Middle and Western Districts of Louisiana.

Michael A. Swick

Michael A. Swick is a co-founding partner of KSF and heads the firm's case starting department, overseeing case evaluation and initiation in the firm's securities, shareholder derivative and mergers & acquisitions practice groups. Prior to founding KSF, Mr. Swick had a distinguished career working at several of the nation's premiere class action litigation firms.

Relying on analytical skills honed at Tulane Law School and Columbia University's Graduate program of Arts & Sciences, throughout his career, Mr. Swick has played an important role in investigating large securities frauds and in developing and initiating litigations against the nation's largest corporations. Over his career, Mr. Swick has also participated in the litigation of cases that have resulted in hundreds of millions of dollars in recoveries for aggrieved shareholders and institutional investors.

Mr. Swick also works closely with the firm's institutional investor clients and participates in the management and development of KSF's portfolio monitoring systems.

In addition to his unique educational background, following law school, Mr. Swick also worked on the New York Mercantile Exchange, where he was involved first-hand, in the open-outcry trading of crude oil and natural gas futures and options contracts.

Mr. Swick received a Juris Doctor from Tulane Law School in 1994, and a Master of Political Philosophy from Columbia University Graduate School of Arts & Sciences in 1989 as well as a joint B.A. in Philosophy and Political Science from State University of New York at Albany in 1988. Mr. Swick was admitted to the State Bar of New York in 1997 and is admitted to practice before the United States District Court for the Southern District of New York, and the United States Supreme Court.

Charles C. Foti, Jr.

Charles C. Foti, Jr. served as the Attorney General for the state of Louisiana from 2004-2008, after serving for 30 years as one of the most innovative law enforcement officials in the United States as Orleans Parish Criminal Sheriff. Throughout his career, General Foti has remained committed to public service.

As Attorney General for the state of Louisiana, General Foti's achievements include:

- Recovering over **$24 million** for Louisiana consumers in consumer fraud matters, **$8 million** in anti-trust litigation, **$9.1 million** for state employees through Office of Group Benefits, over **$2 million** for auto complaints, over **$33 million** in Medicaid Fraud.
- Investigating and apprehending numerous contractor fraud criminals in the wake of one of the worst natural disasters in United States history, Hurricane Katrina.
- Doubling the number of arrests for crime against children through the Louisiana Internet Crimes Against Children Task Force.

Prior to serving as Louisiana Attorney General, over the course of a distinguished career spanning decades, General Foti took countless cases to trial. General Foti served as the head of the criminal division of the city of New Orleans Attorney's Office. He served as the police attorney for the city of New Orleans and prosecuted federal cases including prisoner overcrowding cases. He also served as an assistant District Attorney for Orleans Parish. Even early in his career, he tried cases as in house counsel for the nationally-known insurance carrier, Allstate.

In his tenure as Orleans Parish Criminal Sheriff, General Foti oversaw the enormous expansion of the parish jail, growing from 800 prisoners in 1973 to more than 7,000 currently. As the prison expanded, so did the need for education and rehabilitation skills for prisoners. As Sheriff, General Foti started the first reading and GED programs, work release programs, drug treatment programs and the nation's first boot camp at the local level, all to prepare prisoners for a future without crime. Administratively, General Foti managed a multi-million dollar budget and a complex organization of more than 1,400 employees.

General Foti has for many years been an advocate for the elderly. As Sheriff, he and a small army of volunteers provided Thanksgiving meals for senior citizens in the New Orleans area. He started a back-to-work program for senior citizens that helps people over the age of 55 get back into the workforce.

General Foti received his Juris Doctor degree from Loyola University Law School in 1965, after serving his country in the United States Army from 1955 through 1958.

Kim E. Miller

Kim E. Miller is a KSF partner who specializes in securities and other complex class action litigation. Ms. Miller supervises KSF's New York City office. Prior to joining KSF in 2006, Ms. Miller was a partner at one of the nation's leading plaintiff class action firms. Ms. Miller also spent time early in her career as a securities litigator in the defense bar.

"One of the best lawyers to appear in front of me in a long time..."

Hon. Charles R. Breyer,
United States District Judge
In Re:ShoreTel, Inc. Sec. Litig.

Recently, Ms. Miller was the lead plaintiff's lawyer for *Pearlstein v. BlackBerry Limited*, et al., No. 13-cv-7060 (S.D.N.Y.), and *In re Chicago Bridge & Iron N.V. Securities Litigation*, No. 1:17-cv-1580 (S.D.N.Y.), which resulted in settlement agreements on the eve of trial for $165 million and $44 million, respectively. She was also the lead plaintiff's lawyer in *Farrar v. Workhorse Group, Inc.*, et al., No. 2:21-cv-02072-CJC-PVC (C.D. Cal.). On July 28, 2023, after more than two years of hard-fought litigation, the Hon. Cormac J. Carney entered a Final Judgment approving a **$35 million** settlement of the Class' claims. She was also the firm's lead attorney in the *Halliburton* litigation (**$100M settlement**).

In a relatively recent Order and Final Judgment in an action where the Firm served as Lead Counsel, the Federal District Court noted:

> "Indeed, I find that this action has been a model of how complex class actions should be conducted. Counsel for the Lead Plaintiff, Kim Miller, and her firm, Kahn Swick & Foti, L.L.C., and [Defense Counsel] showed the utmost professionalism and civility, required very limited court intervention while diligently pursuing their objectives, and sought and obtained a fair and reasonable settlement before incurring substantial costs for discovery and trial preparation, all to the benefit of the Lead Plaintiff, Class Members, and the Defendants....I applaud their skill, expertise, zealousness, judgment, civility, and professionalism in putting the best interests of their respective clients first and not only foremost, but exclusively ahead of their law firms' financial interests. Ms. Miller and [Defense Counsel] and their respective law firms earned my unyielding admiration and respect in this case for the efficient and exceptionally reasonable way in which they found a prompt, fair, and equitable solution to the complex problems their clients faced in this litigation, and they accomplished all of this with virtually no judicial

> intervention. In sum, my only deeply held regret in this case is that bioscience has not sufficiently advanced to allow the cloning of Ms. Miller and [Defense Counsel] for lead counsel roles in all complex civil class action litigation in the Northern District of Iowa."
>
> *Elgaouni v. Meta Financial Group, Inc.*, 10-4108-MWB (N.D. Iowa) (June 29, 2012) (Bennett, J.)

At another settlement hearing where Ms. Miller served as Lead Counsel for KSF, *In re ShoreTel, Inc. Sec. Litig.*, 3:08-cv-00271-CRB (N.D. Cal.), the District Court (Breyer, J.) noted: "You're one of the best lawyers to appear in front of me in a long time...."

Ms. Miller's class action trial experience includes participating as a trial team member in a four-month jury trial involving fraud-based claims that resulted in a jury verdict in favor of the class.

Earlier in her career, Ms. Miller was involved in a variety of other cases in which large settlements were obtained, including:

- **Settlement value of $127.5 million.** *Spahn v. Edward D. Jones & Co.*, L.P., 04-cv-00086-HEA (E.D. Mo.)
- **$110 Million Recovery.** *In re StarLink Corn Prods. Liab. Litig.*, MDL No. 1403 (N.D. Ill.)
- **$100 Million Recovery.** *In re American Express Financial Advisors*, Inc. Sec. Litig., 1:04-cv-01773-DAB (S.D.N.Y.)

After graduating with honors from Stanford University in 1992 with a double major in English and Psychology, Ms. Miller earned her Juris Doctor degree from Cornell Law School, cum laude, in 1995. While at Cornell, Ms. Miller was the Co-Chair of the Women's Law Symposium, Bench Brief Editor of the Moot Court Board, and a member of the Board of Editors of the *Cornell Journal of Law & Public Policy*. She was also a judicial intern for The Honorable David V. Kenyon in the Central District of California. Her pro bono work includes representing families of 9/11 victims at *In re September 11 Victim Compensation Fund* hearings. Ms. Miller also has served as a fundraiser for the New York Legal Aid Society.

Melinda A. Nicholson

Melinda A. Nicholson, a partner in KSF's Louisiana office, focuses on shareholder derivative and class action litigation, representing institutional and individual shareholders in corporate governance litigation and securities fraud actions, antitrust, and ERISA matters. Ms. Nicholson also oversees KSF's shareholder derivative practice.

Ms. Nicholson has been involved in a number of significant derivative and class action cases throughout the country seeking recovery for harmed shareholders and individuals, obtaining seminal decisions in shareholders' favor, including:

- *Oliver, et al. v. American Express Company, et al.*, No. 1:19-cv-00566 (E.D.N.Y). On April 30, 2020, the Hon. Nicholas G. Garaufis, United States District Court Judge for the Eastern District of New York, entered an Order denying, in part, defendants' motion to dismiss. This matter, in which Kahn Swick & Foti, LLC is a member of Plaintiffs' Executive Committee, seeks damages, restitution, and injunctive relief against the American Express Company and American Express Travel Related Services Company, Inc. (collectively, "Amex"), on behalf of persons that used an electronic form of payment other than an Amex charge or credit card to purchase goods and services sold by merchants across the country at prices allegedly inflated by Amex's non-discrimination provisions. Judge Garaufis ruled that plaintiffs adequately pled violations of 22 state antitrust and/or consumer protection laws and allowed plaintiffs' case to proceed against Amex for these violations.

- *In re Fitbit, Inc. Stockholder Derivative Litigation*, Consolidated C.A. No. 2017-0402 (Del. Ch.). On December 14, 2018, Vice Chancellor Joseph R. Slights III of the Delaware Chancery Court rejected a motion to dismiss a stockholder derivative suit alleging insider trading and breach of fiduciary duty claims against executive officers and directors of Fitbit, Inc. ("Fitbit"). The lawsuit, in which Ms. Nicholson serves as co-lead counsel, alleges that certain insiders made $385 million in stock sales in the company's initial public offering and—after agreeing to release the insiders from lock-up agreements that barred them from trading for 180 days after the initial public offering—an early secondary offering, taking take advantage of an artificially positive market response to Fitbit's flagship PurePulse heartrate monitoring technology. Vice Chancellor Slights held that the plaintiffs' complaint—bolstered by internal company documents obtained by KSF and its co-counsel—reasonably alleges that, while Fitbit was actively promoting its PurePulse technology, the company internally was struggling to correct and contain news about serious problems with the accurate functioning of their devices containing PurePulse. In the opinion, Vice Chancellor Slights further

held that the complaint adequately pled that the directors and officers who sold stock traded on inside information, and "designed the secondary offering to accommodate sellers' interests."

- *Dougherty v. Esperion Therapeutics, Inc., et al.*, No. 16-10089 (E.D. Mich.). On September 27, 2018, the Sixth Circuit Court of Appeals reversed and remanded the lower court's dismissal of the securities class action filed on behalf of a putative class of Esperion Therapeutics, Inc. investors. In a decision written by Senior Circuit Judge Eugene Edward Siler, Jr., the Sixth Circuit held that the district court erred by concluding that lead plaintiffs had not adequately alleged scienter, stating that, "Esperion has offered no innocent inference stronger than Plaintiffs' inference that Esperion knowingly or recklessly made material misrepresentations or omissions in its [] communications with investors." The Court further held that defendants' "innocent inference" explanations were either implausible or actually supported lead plaintiffs' allegation of recklessness.

Since joining KSF, Ms. Nicholson has also been involved in a number of cases which ultimately resulted in successful settlements, including:

- *Orrego v. Lefkofsky (Groupon, Inc. Derivative Litigation)*, No. 12 CH 12420 (Ill. Cir. Ct, Cook Cnty., Ch. Div.) (settlement consisting of broad corporate governance reforms with an estimated value of **$159 million**);
- *In re Bank of America Corporation Securities, Derivative, & Employee Retirement Income Security Act (ERISA) Litigation*, No. 09-MD-2058 (S.D.N.Y.) (Court-approved settlement including **$62.5 million cash recovery** and substantial corporate governance changes);
- *Bassett Family Trust v. Costolo, et al. (Twitter, Inc. Derivative Litigation)*, C.A. No. 2019-0806 (Del. Ch.) (settlement resulted **$38 million** payment and targeted corporate governance reforms);
- *In re Fifth Street Finance Corp. Stockholder Litigation*, Consolidated C.A. No. 12157 (Del. Ch.) (settlement resulted in governance enhancements and advisory fee reductions worth an estimated **$30 million**);
- *In re Barnes & Noble Stockholder Derivative Litigation*, C.A. No. 4813 (Del. Ch.) (settlement resulted in **$29 million recovery** for the company);
- *In re Fitbit, Inc. Stockholder Derivative Litigation* Consolidated C.A. No. 2017-0402 (Del. Ch.) (settlement resulted in **$5 million recovery** for the company);
- *In re FAB Universal Corporation Shareholder Derivative* Litigation, Lead Case No. 14-cv-687 (S.D.N.Y.) (settlement involving broad corporate governance reforms);

- *Lowry v. Basile (Violin Memory, Inc. Derivative Litigation)*, No. 4:13-cv-05768 (N.D. Cal.) (broad corporate governance reform settlement); and
- *In re Moody's Corporation Shareholder Derivative Litigation*, 1:08-CV-9323 (S.D.N.Y.) (settlement involving comprehensive corporate governance reforms).

Prior to joining the firm in 2010, Ms. Nicholson worked for defense firms in New York, handling complex commercial litigations and regulatory investigations involving a variety of legal issues, including fiduciary obligations, securities violations, contractual breaches, antitrust and insurance coverage. Ms. Nicholson received a B.A. in Political Science, with a concentration in American Politics and Policies and a minor in Economics, from Tulane in 2003 and a J.D. from Tulane in 2005. While at Tulane Law School, Ms. Nicholson served as a Notes and Comments Managing Editor for the Tulane Law Review, which published her comment, *The Constitutional Right to Self-Representation: Proceeding Pro Se and the Requisite Scope of Inquiry When Waiving Right to Counsel*, 79 TUL. L. REV. 755 (2005). She has received numerous awards, including the Dean's Medal for attaining the highest grade point average during the third year, the George Dewey Nelson Memorial Award for attaining the highest grade point average in common law subjects throughout the three years of law study, and Order of the Coif. She graduated from the law school *summa cum laude* and ranked second in her class.

Ms. Nicholson is regularly asked to give presentations and conduct CLEs addressing her practice areas.

Ms. Nicholson is admitted to practice in Louisiana, New York, and Texas, the United States Courts of Appeal for the Fifth Circuit, and before the United States District Courts for the Southern District of Texas, Northern District of Texas, Eastern District of Louisiana, Western District of Louisiana, Southern District of New York, Eastern District of New York, District of Colorado, and Eastern District of Michigan.

Michael J. Palestina

Mr. Palestina practices securities and other complex class action litigation. He focuses his practice on securities litigation involving mergers and acquisitions. In his capacity as a KSF partner, Mr. Palestina currently serves as lead, co-lead, or executive committee counsel in several ongoing M&A cases and has previously served in the same capacity in several successfully resolved M&A cases.

For example, Mr. Palestina took part in the successful resolution of *In re EnergySolutions, Inc. Shareholder Litigation*, Consol. C.A. 8203-YCG (Del. Ch. 2013), a securities class

action involving claims for breach of fiduciary duties to shareholders relating to a proposed merger of nuclear energy related companies worth $1.1 billion ($375 million in proposed shareholder consideration), where there was a $0.40 price increase, which increased the consideration to shareholders by more than 10%, or approximately $38 million, and over 20 pages of additional disclosures to the proxy statement relating to process and pricing claims. Mr. Palestina also served as one of three co-lead counsel in *In re American Capital, Ltd. Shareholder Litigation*, Case No. 422598-V (Circuit Court for Montgomery County, Maryland 2016), a securities class action involving claims for breach of fiduciary duty in connection with the sale of American Capital Ltd. against both American Capital's board and senior officers and Elliott Management Corporation, the activist investor fund that agitated for the sale. Therein, Mr. Palestina was instrumental in obtaining a **$17.5 million settlement** from American Capital's board members and officers and Elliott, in so doing defeating a motion to dismiss by Elliott and obtaining an unprecedented ruling that Elliott may be considered a controller and subject to entire fairness review at trial. More recently, in March 2020, after litigating the matter **to the eve of trial**, Mr. Palestina obtained a $6.5 million settlement recovery for former U.S. Geothermal Inc. shareholders in connection with its merger with Ormat Technologies, Inc; this recovery represented a 7.7% premium to the adjusted enterprise value of the buyout.

Several of Mr. Palestina's current cases also implicate evolving and novel areas of corporate merger law. For example, in *Helen Moore v. Macquarie Infrastructure and Real Assets, et al. (Cleco Corporation Merger)*, Case No. 251,417, c/q 251,456 and 251,515, Div. "C" (9th JDC, Louisiana, 2014), in which Mr. Palestina serves as one of two Interim Co-Lead Counsel, he was instrumental in securing a landmark Louisiana appellate decision finding that merger-related challenges are direct, and not derivative, in nature. Mr. Palestina is also currently litigating several similar cases that touch on the same direct-vs-derivative issue under Maryland law.

Prior to joining KSF, Mr. Palestina clerked for the honorable Catherine D. Kimball, former Chief Justice of the Louisiana Supreme Court, and practiced law at a well-respected New Orleans litigation firm. While there, Mr. Palestina gained valuable trial experience, focused on complex commercial litigation, and represented a number of judges and his fellow lawyers regarding ethical issues before the State's judicial and attorney disciplinary systems.

Mr. Palestina graduated from Tulane University in 2005 with a Bachelor of Arts in Political Science. He earned his J.D. in 2008 from Loyola University of New Orleans College of Law, where he graduated *magna cum laude*, was a William L. Crowe, Sr. Scholar, and was inducted into the Order of Barristers. While in law school, Mr. Palestina was a member of the Loyola Law Review and Loyola Moot Court, was the first place oralist in the Loyola Intramural Moot Court Competition, and represented

Loyola at the Stetson International Environmental Moot Court Competition (where he was the fourth place oralist overall) and on the National Team at the New York Bar Association's National Moot Court Competition (where his team advanced to the finals). Mr. Palestina also served as a research assistant to the Leon Sarpy Professor of Law Professor Kathryn Venturatos Lorio, whom he assisted in a revision of her Westlaw treatise on Louisiana Succession and Donations, and as a Judicial Intern to Magistrate Joseph C. Wilkinson, Jr. of the United States Federal District Court for the Eastern District of Louisiana. Mr. Palestina's Law Review article, Of Registry: Louisiana's Revised Public Records Doctrine, was published in the Loyola Law Review.

Mr. Palestina is licensed to practice in Louisiana state and federal courts.

J. Ryan Lopatka

J. Ryan Lopatka, a partner in KSF's Chicago office, focuses primarily on federal securities class action litigation.

Mr. Lopatka was a member of the team that litigated against Halliburton Company in one of the most closely followed securities cases of all time. The litigation, which spanned more than a decade, included two landmark decisions from the Supreme Court. The first, *Erica P. John Fund, Inc. v. Halliburton*, 1331 S.Ct. 2179 (2011), a 9-0 unanimous opinion, reversed the rulings of the district court and Fifth Circuit Court of Appeals denying the investors' motion for class certification on loss causation grounds. The second, *Halliburton Co. v. Erica P. John Fund, Inc.*, 134 S.Ct. 2389 (2014), preserved the fraud-on-the-market doctrine, and helped pave the way towards a **$100 million recovery** for the class.

More recent successes include *Pearlstein v. BlackBerry Limited, et al.*, No. 13-cv-7060 (S.D.N.Y.) and *In re Chicago Bridge & Iron N.V. Securities Litigation*, No. 1:17-cv-1580 (S.D.N.Y.), which resulted in settlement agreements on the eve of trial for **$165 million** and **$44 million**, respectively.

Mr. Lopatka successfully argued before the United States Court of Appeals for the Second Circuit to vacate an order from the Southern District of New York granting motion to dismiss in a securities class action against NewLink Genetics Corp. The 26-page ruling from the three-judge panel in *Abramson v. NewLink Genetics Corp.*, 2020 U.S. App. LEXIS 21545 (2d Cir. July 13, 2020) revitalized investors' claims against the bio-pharmaceutical company, and further developed the law of the Second Circuit with regard to loss causation and the actionability of opinion statements under the Supreme Court's 2015 decision in *Omnicare, Inc. v. Laborers Dist. Council Const. Industry Pension Fund*, 575 U.S. 175 (2015). After

remand, KSF secured a **$13.5 million** settlement for the class, an achievement the late Hon. William H. Pauley commended: "you turned a case that was a loser in the district court into a victory for plaintiffs...."

Before a three-judge panel of the Tenth Circuit in *Hogan v. Pilgrim's Pride Corp.*, 73 F. 4th 1150 (10th Cir. 2023), Mr. Lopatka successfully appealed the dismissal of a putative securities class action on repose grounds. The case, currently pending in the District of Colorado, involves allegations that Defendants misled investors regarding Pilgrim Pride's operations and finances amid a years-long collusive scheme to fix chicken prices, and is the only one of three securities class actions involving similar claims against poultry producers to still survive.

Mr. Lopatka also dedicates his time to promote best practices in complex litigation. For example, Mr. Lopatka served alongside attorneys representing both plaintiffs and defendants as a project member with the Electronic Discovery Reference Model (EDRM) to identify common problems and solutions (including potential amendments to the Federal Rules of Civil Procedure) related to the process of recording documents withheld from production on a claim that they contain attorney-client communication or work product.

Mr. Lopatka received his J.D. from Tulane University Law School in 2010. During the summer of 2009, he studied international capital markets and securities law at Cambridge University and Queen Mary School of Law in London, England. He received his B.A. with honors in history from Loyola University New Orleans in 2004.

Mr. Lopatka is admitted to practice in Louisiana and Illinois.

Craig J. Geraci

Craig J. Geraci, Jr. is a partner in KSF's Louisiana office and focuses on federal securities litigation and other complex class action litigation. He is actively involved in cases pending before federal courts across the United States.

Mr. Geraci has litigated numerous securities matters and helped recover more than **$325 million** for shareholders allegedly defrauded by publicly traded companies and their officers. For example, Mr. Geraci was a member of the litigation team in *Halliburton Co. v. Erica P. John Fund, Inc.*, 134 S.Ct. 2389 (2014), a landmark securities-fraud class action, where the U.S. Supreme Court ruled for KSF's client on the most important issue in the case, and in *Erica P. John Fund, Inc. v. Halliburton*, 131 S.Ct. 2179 (2011), where

the Court ruled unanimously for KSF's client. The *Halliburton* case ultimately resulted in a **settlement of $100 million**. More recently, Mr. Geraci was a member of the litigation teams in *In re Chicago Bridge & Iron Company N.V. Securities Litigation*, No. 1:17-cv-1580 (S.D.N.Y.) and *Pearlstein v. BlackBerry Limited, et al.*, No. 1:13-cv-7060 (S.D.N.Y.), both of which settled on the eve of a jury trial for **$44 million** and **$165 million**, respectively.

Mr. Geraci received his J.D. from Tulane University Law School in 2009 and received a B.S. with a major in finance from the University of New Orleans in 2005.

Prior to joining KSF, Mr. Geraci focused his practice on complex commercial and corporate litigation, primarily for clients in the energy industry. In that role, he litigated numerous matters in state and federal courts across the country, including a case where he helped obtain a unanimous verdict in a three-week jury trial, awarding more than $4 million in contract damages and $2.7 million in fraud and punitive damages. He also presented oral argument, as a second-year associate, before the U.S. Court of Appeals for the Federal Circuit.

Mr. Geraci is admitted to practice in Louisiana, Mississippi, Alabama, and Texas, and he is a member of those states' bar associations. Further, Mr. Geraci is admitted to practice before the United States Court of Appeals for the Second Circuit, Fifth Circuit, and Federal Circuit and the United States District Courts for the Eastern, Middle, and Western Districts of Louisiana, the Northern, Eastern, and Southern Districts of Texas, and the Northern and Southern Districts of Mississippi.

Chris Quinn

Chris Quinn is a partner in the Delaware office of Kahn Swick & Foti, LLC. Mr. Quinn focuses his practice on the prosecution of stockholder class and derivative actions for breach of fiduciary duty in the Delaware Court of Chancery and Delaware Supreme Court.

Mr. Quinn has significant experience in all stages of litigation in the Court of Chancery, from case generation through trial, particularly in stockholder class and derivative actions arising from mergers and acquisitions and other significant transactions. After starting his career at a large Delaware firm best known for its defense work, Chris worked prior to KSF at two plaintiff-side, boutique Delaware firms, where he was a key member of trial and litigation teams that recovered collectively more than **$1.0 billion** for stockholders and derivative plaintiffs.

While in law school, Chris was a summer associate at a prominent Delaware firm and served as a judicial intern for the Honorable J. Curtis Joyner of the United States District Court for the Eastern District of Pennsylvania.

Mr. Quinn earned his J.D. in 2012 from Villanova University School of Law, where he graduated *cum laude* and was an Associate Editor of *Villanova Law Review*, and earned bachelor's degrees in Finance and Economics from the University of Delaware in 2009.

Bruno Rosenbaum

Bruno Rosenbaum is a partner at KSF in New York and manages the Firm's European business development operations. He assists institutional investors on navigating complex cross-border disputes, shareholder litigation, and corporate governance matters, ensuring clients maximize their legal remedies in both domestic and global markets.

With deep expertise in securities litigation, arbitration, and passive claims filing, Mr. Rosenbaum works closely with asset managers, pension funds, and sovereign wealth funds. He assists clients in evaluating opportunities to recover investment losses through a range of legal avenues, including U.S. class actions, opt-out cases, and non-U.S. collective actions across North America, Europe, Asia, Australia, and Brazil.

Mr. Rosenbaum has played an integral role in a number of high-profile cases, guiding clients through litigation strategies tailored to their specific jurisdictions and regulatory environments. Before joining KSF, he practiced at leading international law firms in New York, Paris, Luxembourg, and Miami, focusing on securities litigation, international arbitration, and corporate transactions. His multilingual proficiency—he speaks seven languages—allows him to effectively bridge legal and cultural differences when advising a global client base.

Mr. Rosenbaum is a frequent speaker at investor conferences throughout Europe, where he provides insights on shareholder litigation, corporate governance, and investment loss recovery. He regularly engages with institutional investors, asset managers, and pension funds to discuss emerging trends, cross-border litigation strategies, and the evolving regulatory landscape affecting investor rights.

A graduate of Columbia Law School, where he served as an editor for the Columbia Journal of European Law, Mr. Rosenbaum also holds an MBA and a Master II from Panthéon-Assas Paris II and a Master I from Panthéon-Sorbonne Paris I.

Matthew P. Woodard

Matthew P. Woodard is a partner at KSF's New Orleans office, where his practice focuses on prosecuting complex securities fraud class actions.

Matthew played a key role in securing KSF's appointment as Lead and Co-Lead Counsel in actions against Credit Suisse Group AG, Workhorse Group, Inc., CarLotz, Inc., Pareteum Corporation, Honeywell International, Inc., IntelliPharmaceutics International, Inc., Pilgrim's Pride Corporation, and Chicago Bridge & Iron Company N.V.

He is as a member of a litigation team that has helped recover more than $386 million for shareholders. *Pearlstein et al. v. BlackBerry et al.* (**$165 million** settlement); *Erica P. John Fund, Inc. v. Halliburton* (**$100 million** settlement); *In re Chicago Bridge & Iron Co. N.V. Sec. Litig.* (**$44** million settlement); *Farrar et al. v. Workhorse Group, Inc. et al.* (**$35 million** settlement) *Abramson et al. v. NewLink Genetics Corp. et al.* (**$13.5 million** settlement); *In re Tesco PLC Sec. Litig.* (**$12 million** settlement); *Kanefsky et al. v. Honeywell Int'l Inc. et al.* (**$10 million** settlement); *In re Pareteum Sec. Litig.* (**$5.65 million** settlement); *Shanawaz et al. v. IntelliPharmaceutics Int'l Inc. et al.* (**$1.6 million** settlement).

Matthew received his Bachelor of Arts degree in English, cum laude with honors, from The University of the South: Sewanee and his Juris Doctor degree from Tulane University School of Law. During law school, Matthew served as the Senior Managing Editor for the Tulane Journal of Law & Sexuality: Volume 21.

Mr. Woodard is admitted to practice in Louisiana and is a member of the Louisiana State Bar Association.

SPECIAL COUNSEL

Vincent Giblin

Special Counsel to KSF - DeCotiis Fitzpatrick Cole & Giblin, LLP - Paramus, NJ

Vincent Giblin, as Special Counsel to KSF, is an experienced trial attorney and partner with DeCotiis Fitzpatrick Cole & Giblin LLP. Prior to his career in the private sector, Mr. Giblin served as an Assistant U.S. Attorney in the District of New Jersey. For his efforts at the U.S. Attorney's Office, Mr. Giblin received special recognition from the U.S. Secret Service, U.S. Postal Inspection Service and the Federal Bureau of Investigation. He was also bestowed with the 2002 Administrator's Award, one of the highest honors by the U.S. Drug Enforcement Administration, for his outstanding achievement in law enforcement. Trials that Mr. Giblin participated in include: *United States v. Robert Kosch and Ravidath Ragbir*, a wire fraud conspiracy involving fraudulent mortgage proceeds; *United States v. Luis Cruz*, a gang-related crack cocaine conspiracy; and *Walsh v. Walsh*, a minority shareholder action.

Mr. Giblin regularly appears as trial counsel in state and federal courts. Mr. Giblin handles complex federal litigation, white collar criminal defense, and compliance matters for private corporate and not-for-profit organizations. Mr. Giblin has substantial experience with class action litigation including securities litigation, trade secret litigation, First Amendment issues, international business torts, and minority shareholder actions and bankruptcy-related litigation. Mr. Giblin currently serves as the outside general counsel for the International Union of Operating Engineers representing over 450,000 members nationally.

Mr. Giblin received a B.A. from Rutgers College in 1992 where he was a member of the Rutgers Intercollegiate Lacrosse Team. Following receiving his J.D. from Seton Hall University School of Law in 1995, he served as a law clerk for the Hon. Clarkson S. Fisher, U.S.D.J. for the U.S. District Court of the District of New Jersey. Mr. Giblin is admitted to practice in New Jersey, and is admitted to practice before the United States Court of Appeals for the Third Circuit, and the United States District Courts for the District of New Jersey, Southern District of New York, and District of Columbia.

OF COUNSEL

Melissa Harris

Melissa Harris, Of Counsel in KSF's New Orleans office, practices securities and other complex commercial and class action litigation. Ms. Harris has successfully litigated numerous securities matters in which shareholders stand to recover more than **$100 million** for shareholders allegedly defrauded by publicly traded companies and their officers. For example, Ms. Harris was a member of the litigation team in *Pearlstein v. Blackberry*, No. 13-7060 (S.D.N.Y.) (**$165 million settlement**), and *In re Chicago Bridge & Iron Company N.V. Securities Litigation*, No. 17-1580 (SD.N.Y.) (**$44 million settlement**) has been granted. Ms. Harris is also litigating several pending securities fraud cases that have survived motions to dismiss and are now settlement stage, including *Farrar v. Workhorse*, No. 21-cv-2072, pending in the Central District of California, and *In re Pareteum Securities Litigation*, No. 19-9767, pending in the Southern District of New York. Ms. Harris also has substantial experience in shareholder derivative suits and securities litigation involving mergers and acquisitions.

Prior to joining KSF, Ms. Harris worked at a well-respected regional law firm in New Orleans, where she handled defense of complex commercial litigation, government contracts disputes, and government investigations in state and federal courts around the country, as well as before federal agencies, including the Consumer Financial Protection Bureau, Federal Trade Commission, and United States Department of Justice. Ms. Harris also represented financial institutions and other companies in lawsuits under the federal False Claims Act and related state and local false claims laws. Ms. Harris has extensive experience with ESI and e-discovery and has presented and published on this topic numerous times.

Before moving to New Orleans, Ms. Harris clerked in federal court for four years in Hattiesburg, Mississippi for the Honorable M. Keith Starrett and the Honorable Michael T. Parker. A native New Yorker, Ms. Harris began her career at a large, prestigious defense firm in New York City where she handled complex commercial litigation, including antitrust, securities, and white-collar criminal matters, and regulatory investigations.

Ms. Harris graduated from Fordham Law School *magna cum laude*, in the top 2% of her class. Ms. Harris was a member of the *Fordham Law Review*, was Order of the Coif, and received the Archibald R. Murray Public Service Award and the West Award for Outstanding Academic Achievement. Ms. Harris received

her undergraduate degree from Vassar College *cum laude*, with a major in Classics and a minor in Religion.

Ms. Harris is admitted to practice in Louisiana and New York state courts, as well as in the United States District Courts for the Eastern, Middle, and Western Districts of Louisiana and the Southern and Eastern Districts of New York, and the United States Court of Federal Claims. She is a member of the Federal Bar Association, American Bar Association, Louisiana State Bar Association, and New Orleans Bar Association.

Nicolas Kravitz

Nicolas Kravitz, Of Counsel in KSF's New Orleans office, prosecutes shareholder derivative and ERISA lawsuits to redress breaches of fiduciary duty and other wrongdoing by public companies' boards of directors and executive officers. To date, Mr. Kravitz has been involved in litigation that has benefited shareholders by successfully recovering more than **$50 million** and implementing robust corporate governance reforms worth millions more, including:

- **$46.75 million** recovery plus substantial corporate governance reforms obtained in settlement on behalf of Twitter, Inc. shareholders in the action *Bassett Family Trust v. Costolo, et al.*, No. 2019-0806-PAF (Del. Ch.);
- **$5 million** recovery obtained in settlement on behalf of Fitbit, Inc. shareholders in the action *In re Fitbit, Inc. Stockholder Derivative Litigation*, No. 2017-0402-JRS (Del. Ch.);
- Substantial corporate governance reforms obtained in settlement on behalf of Surgalign Holdings, Inc. shareholders in the action *In re RTI Surgical Derivative Litigation*, No. 1:20-cv-3347 (MFK) (N.D. Ill.); and
- Substantial corporate governance reforms obtained on behalf of GoPro, Inc. shareholders in the action *In re GoPro Stockholder Derivative Litigation*, No. 4:18-cv-00920-CW (N.D. Cal.).

Mr. Kravitz received his J.D., *cum laude*, from Georgetown University Law Center in 2014. Prior to joining KSF, he practiced corporate litigation in Wilmington, Delaware focusing on complex matters in the Delaware Court of Chancery, where he served as trial counsel in numerous matters and gained specialized experience in fiduciary duty litigation.

Mr. Kravitz is admitted to practice in Louisiana, Delaware, and the United States District Court for the District of Delaware.

Dennis White

Dennis White, Of Counsel in KSF's Chicago office, works withs the firm's Institutional Investors. In addition to over twenty plus years of legal experience in regulatory compliance, public policy, procurement, and legislative approval, Dennis brings significant public pension administration experience.

Prior to joining KSF, Dennis most recently served as the Executive Director of the Municipal Employees' Annuity and Benefit Fund of Chicago, a $3.5 Billion pension fund. He also has served as a Trustee and the Interim Executive Director of the Cook County Pension Fund (the "CCPF"), a $14.3 Billion pension fund that provides pension, disability and other benefits to employees of both Cook County and the Forest Preserve District of Cook County. He initially was elected to serve on the Board of Trustees as the Forest Preserve District's representative on the CCPF Board, while serving as the Chief Attorney of the Forest Preserve District of Cook County.

Prior to leading the Forest Preserve District's legal department as the Chief Attorney, Dennis began his legal career as a staff attorney in the legal division of the Board of Governors of the Federal Reserve System in Washington, D.C. Subsequently, he joined the Washington, D.C. office of Rudnick and Wolfe law firm (now known as DLA Piper); worked as a staff attorney and business executive for General Motors Corporation in Detroit, Michigan; and joined the Chicago office of Holland & Knight, LLP law firm as Senior Counsel.

Dennis earned his B.S. in Mechanical Engineering from the University of Illinois at Urbana-Champaign, his J.D. from Northwestern University Law School, and his M.B.A. from the University of Chicago Booth School of Business.

Daniel Kuznicki

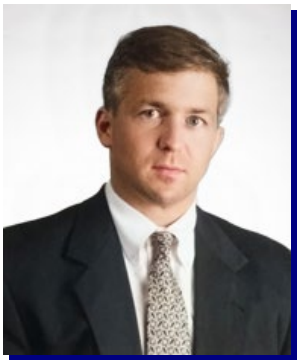
Daniel Kuznicki, Of Counsel in KSF's New York office, focuses on securities litigation, representing shareholders in class actions concerning allegations of securities fraud and breaches of fiduciary duties in connection with corporate governance and mergers and acquisitions.

Before turning his attention to class action litigation, Mr. Kuznicki's practice focused on litigation and corporate matters involving trademarks, licensing, contracts, securities and real estate.

Mr. Kuznicki earned his juris doctorate from New York University School of Law in 2008 and graduated summa cum laude in 2005 with a bachelor's degree in Talmudic Law from Yeshiva Bnei Torah Institute.

Mr. Kuznicki is admitted to practice law in the State of New York, and the United States District Court for the Southern District of New York, as well as the United States Court of Appeals for the Second Circuit.

C. Mark Whitehead III



Mark Whitehead, Of Counsel in KSF's New Orleans office, practices complex class action litigation.

Mr. Whitehead has been practicing in the field of mass torts and class actions since 2001. He has been involved in numerous environmental cases involving class claims for property damage and medical monitoring. Mark also represented the Boilermakers' Union Local 1814 in New Orleans, LA. He served on the plaintiff's committee for consolidated Vioxx mass tort litigation in New Jersey and has served on the science committee of the Plaintiff's Steering Committee in the PPA multi-district litigation, as well as serving similar roles in the Bextra/Celebrex, Vioxx, PPA, Fen-Phen, and Avandia MDLs. Mark is currently serving as a member of the science, bellwether trial, and expert witness committees in the Xarelto MDL. Mark has authored and co-authored publications in fields as diverse as aviation, neurosurgery, vascular surgery, and cardiology and was the recipient of the American Venous Forum Research Award. He has also served as acting coroner for Vermilion Parish and was on the Eunice, Louisiana Regional Airport Commission.

Mr. Whitehead received his J.D. from Tulane University Law School in 2000 after receiving his M.D. from Tulane University School of Medicine in 1995 and a B.S. from the University of Georgia in 1991.

Mr. Whitehead is admitted to practice in Louisiana and Florida state courts, as well as in the United States District Courts for the Eastern District of Louisiana, Middle District of Louisiana, Western District of Louisiana, United States District Courts for the Northern and Southern Districts of Florida, and the Fifth Circuit Court of Appeals. He is a member of the American Association for Justice, Louisiana Association for Justice, Florida Justice Association, Louisiana Bar Association, Florida Bar Association, District of Columbia Bar Association, Louisiana State Medical Society, and the Vermilion Parish Medical Society (past treasurer and vice president).

Andrew J. Gibson

Andrew Gibson, Of Counsel in KSF's New Orleans office, focuses his practice on merger and acquisition litigation, shareholder derivative actions, and other complex class action litigation.

Mr. Gibson is also responsible for the formation and management of the firm's Business Loss Claim division, wherein he represents hundreds of businesses and non-profit organizations in claims under the Deepwater Horizon Economic and Property Damage Settlement. He also has broad experience representing clients in commercial and casualty litigation in Louisiana state and federal courts and has obtained a consistently successful record for his clients.

Mr. Gibson received his J.D. from Loyola University New Orleans College of Law in 2004. While in school, he served as a Teaching Assistant and Staff member for the Moot Court program, was twice elected to the Executive Board of the Student Bar Association, and clerked at a nationally recognized law firm. During the summer of 2003, he studied Latin American civil law systems and international arbitration at the University of Costa Rica School of Law in San Jose, Costa Rica. He earned a Bachelor of Science degree in Business with a concentration in Pre-Law from the E.J. Ourso College of Business at Louisiana State University in 1997 and went on to work as a manager in the marketing department of a regional telecommunications company.

Mr. Gibson is a proud veteran of the United States Marine Corps where he served in the infantry as a Non-Commissioned Officer.

Mr. Gibson is very active in the local business community and has served on the Board of Directors and as Chairman of the Governmental Affairs Committee for the Saint Tammany West Chamber of Commerce, as a member of the St. Tammany Parish Home Rule Charter Committee (2014-15) and as a member of the St. Tammany Parish Inspector General Task Force (2013-2014).

ASSOCIATES

Alexander L. Burns

Alexander L. Burns is an associate in KSF's Louisiana office and focuses on federal securities class actions.

Mr. Burns graduated with honors from the University of Southern Mississippi in 2000 with a B.S.B.A. in accounting. In 2001, he earned his Master of Professional Accountancy and has been a licensed CPA since 2003. From 2001 to 2004 Mr. Burns was employed by Ernst & Young, L.L.P., auditing the financial statements of both privately held and publicly traded entities spanning a variety of industries including casino gaming, health care, insurance, and energy. Following the Enron scandal of the early 2000s, and anticipating the need for attorneys with a strong understanding of accounting issues, Mr. Burns left E&Y to attend law school in 2004.

Mr. Burns received his J.D. and B.C.L. from Louisiana State University's Paul M. Hebert Law Center in 2007. While at LSU, he was awarded the CALI Award for Academic Excellence in Contracts, served as Treasurer of the Trial Advocacy Board, and competed on various interschool mock trial teams. Mr. Burns has since practiced civil litigation, representing his clients' interests in contentious matters in both state and federal courts.

Mr. Burns is a licensed Certified Public Accountant in Louisiana. As an attorney, he is admitted to practice in Louisiana, the related Federal District Courts, the United States District Court for the Eastern District of Michigan, the United States Court of Appeals for the Fifth Circuit, and the United States Court of Appeals for the Ninth Circuit.

John A. Carriel

John A. Carriel is an associate attorney with KSF. His practice focuses on shareholder derivative and class action litigation, representing institutional and individual shareholders in corporate governance, ERISA, securities fraud, and antitrust litigation. Mr. Carriel has significant experience in all stages of litigation, including pre-suit investigation, case initiation, pre-trial motion practice and hearings, discovery, class certification, settlement approval, trial, and appellate proceedings.

Prior to joining KSF, Mr. Carriel practiced plaintiff's side litigation at two national firms, where he represented clients in complex financial matters, including antitrust, class action, cryptocurrency, derivative, and securities matters. He has represented clients in significant matters seeking recovery for harmed investors, market participants, and individuals, including:

- *In re LIBOR-Based Financial Instruments Antitrust Litig.*, No. 11-md-2262-NRB (S.D.N.Y.) (Represented Freddie Mac and the FDIC as Receiver for Closed Banks, alleging that the LIBOR Panel Banks unlawfully manipulated the U.S. Dollar LIBOR rate.).

- *Rensel v. Centra Tech, Inc.*, 2 F.4th 1359 (11th Cir. 2021) (Successfully argued before the Eleventh Circuit Court of Appeals, securing a significant victory when the Panel vacated the district court's order denying plaintiffs' motion for class certification upon finding that both of the court's alternative grounds for denying the motion were abuses of discretion. The Eleventh Circuit's opinion: (i) established the standard of review for trial courts considering the timeliness of a motion for class certification; (ii) reaffirmed that plaintiffs should typically be permitted discovery prior to moving for class certification; (iii) made clear that a district court's failure to enter a scheduling order violated both the Federal Rules of Civil Procedure and the Local Rules for the Southern District of Florida; and (iv) further rejected the heightened ascertainability requirement for obtaining class certification adopted by other Circuits, including the Third Circuit.).

- *Campbell v. Vilsack*, EEOC No. 570-2018-00277X (Represented, on a *pro bono* basis, a class of deaf and hard of hearing employees of the United States Department of Agriculture (USDA) working in the metropolitan Washington, D.C. area in a disability discrimination action challenging inconsistent, unreliable, and increasingly scrutinized access to sign language interpreting services, co-counseling with the civil rights association the National Association of the Deaf. Following eight years of litigation, the parties reached a settlement pursuant to which all USDA deaf and hard of hearing employees in the Washington, D.C. region are now able to access sign language interpreting services through a centralized system.).

Mr. Carriel received a J.D. from The George Washington University School of Law in 2017. During law school, he interned for the Enforcement and Investment Management Divisions of the Securities and Exchange Commission and the Legal Division of the Consumer Protection Financial Bureau. He is affiliated with the Hispanic Bar Association of the District of Columbia and has been named a Washington, DC "Rising Star" for 2021-2024 (Antitrust Litigation, Securities Litigation & Class Action & Mass Torts) by *Super Lawyers* magazine.

James Fetter

Mr. Fetter is an associate attorney at KSF and primarily focuses on securities litigation.

Prior to joining KSF, Mr. Fetter was an associate at a prominent civil rights law firm in Baltimore, Maryland. Mr. Fetter clerked on the U.S. Court of Appeals for the Fourth Circuit for the Honorable Albert Diaz. Mr. Fetter also worked as an associate at a AmLaw100 firm, where he focused on commercial litigation, products liability, and ADA compliance.

Mr. Fetter graduated *magna cum laude* and Order of the Coif from The Ohio State University Moritz College of Law, where he was an executive articles editor for the Ohio State Law Journal. During his time in law school, Mr. Fetter served as an extern at the U.S. District Court for the Southern District of Ohio and the Ohio Supreme Court. Mr. Fetter was also a legal intern at Disability Rights Ohio and a summer associate at an AmLaw100 firm. Mr. Fetter also served as a nonvoting board member for the ACLU of Ohio. Mr. Fetter received his undergraduate degree from Emory University and a Ph.D. in Political Science from the University of Notre Dame.

Mr. Fetter is admitted to practice in Maryland, Ohio, the U.S. Court of Appeals for the Fourth Circuit, the U.S. District Court for the District of Maryland, the U.S. District Court for the Southern District of West Virginia, and the U.S. District Court for the Eastern District of Michigan.

Samuel M. Gagnon

Sam Gagnon is an associate in KSF's New York office and focuses primarily on securities litigation. Prior to joining KSF, Mr. Gagnon worked at a consumer protection law firm representing individuals in federal class action lawsuits for claims of unfair, fraudulent, and deceptive acts and practices.

Mr. Gagnon received his J.D. from the University of Connecticut School of Law in 2023, where he graduated with honors. While in law school, he was a member of the Moot Court Board, served as Notes and Comments Editor for the Connecticut Law Review, and was a judicial intern in the District of Connecticut for the Honorable Magistrate Judge S. Dave Vatti. Mr. Gagnon also completed the New York Pro Bono Scholars Program by interning at the Hartford Public Defender's office representing indigent clients in bond arraignment hearings. Mr.

Gagnon received his B.S. in business administration at Eastern Connecticut State University where he graduated magna cum laude and was a member of the baseball team.

Mr. Gagnon is admitted to practice in New York, Connecticut, United States District Court for the Southern District of New York, United States District Court for the Eastern District of New York, and United States District Court for the District of Connecticut.

Jyoti Kehl

Jyoti Kehl is an associate in KSF's Louisiana office and focuses primarily on federal securities class action litigation.

Since joining the firm in 2018, Jyoti has materially contributed to the prosecution of a number of securities class actions, including *Pearlstein v. BlackBerry Ltd.* ($165 million settlement achieved on the eve of trial, pending final approval); *In re Chicago Bridge & Iron Company N.V. Sec. Litig.* ($44 million settlement, pending final approval); and *Kanefsky v. Honeywell International Inc.* ($10 million settlement). Recently, she collaborated on drafting an amended complaint in *Farrar v. Workhorse Group, Inc.*, which survived in substantial part Defendants' motion to dismiss.

Jyoti received her J.D. cum laude from Tulane University School of Law in 2018, where she was a member of the International Criminal Court appellate moot court team and a Rule XX Student Attorney with the Tulane Criminal Justice Clinic. She received her B.A. in political science with an emphasis in international political economy from the University of California, Santa Barbara.

Ms. Kehl is admitted to practice in Louisiana.

Brian C. Mears

Brian C. Mears is an Associate Attorney in KSF's New Orleans office and focuses on securities litigation involving mergers and acquisitions. Mr. Mears has helped KSF secure material proxy disclosures, and, when necessary, monetary relief when shareholders were deprived of the fair value of their investment as a result of M&A transactions. For example, in March 2020, KSF helped secure a **$6.5 million** common fund for U.S Geothermal Inc. shareholders after the company was acquired by Ormat Technologies, Inc.

Mr. Mears received his J.D. and M.B.A. from Tulane University Law School. Prior to joining KSF, Mr. Mears completed a judicial clerkship and worked at a boutique civil litigation firm in New Orleans where his practice focused on employment and maritime personal injury matters in federal and state courts. During his time in law school, Mr. Mears was a member of the Sports Lawyers Journal, and he interned with the general counsel's office at Octagon, Inc., one of the world's largest sports agencies, and with the San Antonio Spurs. Prior to attending law school, Mr. Mears was a member of the women's basketball coaching staff at Tulane University.

Mr. Mears is admitted to practice in all Louisiana state courts and the United States District Court for the Eastern District of Louisiana.

Mr. Mears is a member of the Federal Bar Association, the American Bar Association, the American Association for Justice, the New Orleans Bar Association, and the Academy of New Orleans Trial Lawyers.

Gina Palermo

Gina Palermo is an Associate Attorney in KSF's New Orleans office and focuses on securities litigation involving mergers and acquisitions.

Prior to joining KSF, Ms. Palermo worked at two boutique civil litigation firms in New Orleans, representing both individuals and businesses in complex commercial litigation, securities actions, construction disputes, and personal injury matters in federal and state courts. She also served as Assistant General Counsel to the Port of New Orleans and New Orleans Public Belt Railroad for three years, where she drafted and negotiated contracts and commercial leases and oversaw litigation for both entities.

Ms. Palermo received her J.D. from Louisiana State University Paul M. Hebert Law School in 2010, where she graduated cum laude. During her time in law school, Ms. Palermo was a Senior Editor of the Louisiana Law Review and interned with Chief Judge Burrell J. Carter at the First Circuit Court of Appeals. Her article, "Waking the Neighbors: Determining a Landowner's Liability for Rowdy Tenants Under Louisiana Law," was published in the Louisiana Law Review. Ms. Palermo received her B.A. in journalism from Louisiana State University in 2007, where she graduated summa cum laude and was awarded the University Medal for academic achievement.

Ms. Palermo is admitted to practice in all Louisiana state and federal courts.

Alexandra Pratt

Alexandra Pratt is an associate attorney for the firm and focuses primarily on securities litigation.

Prior to joining KSF, Ms. Pratt clerked in federal court in the Eastern District of Texas for the Honorable John D. Love and in the Supreme Court of Virginia for the Honorable Senior Justice Charles S. Russell. While at the Supreme Court of Virginia, Ms. Pratt also served as the law clerk for the Office of the Chief Staff Attorney.

Ms. Pratt received her J.D., *cum laude*, from William & Mary Law School, where she was a member of the Bill of Rights Journal. During her time in law school, Ms. Pratt served as the chief of staff of the Center for Legal and Court Technology and interned with the United States Attorney's Office in the Eastern District of Virginia and the general counsel's office of Huntington Ingalls, the largest military shipbuilding company in the United States. She received her undergraduate degrees from the University of Virginia.

Ms. Pratt is admitted to practice in Virginia.

Rhosean Scott

Rhosean Scott is a staff attorney for the firm and focuses primarily on federal securities class action litigation.

Prior to joining KSF, Ms. Scott worked at several New York litigation boutiques representing plaintiffs in complex securities class actions. She has extensive experience investigating and conducting discovery in securities fraud and antitrust matters on behalf of individual and institutional investors. As part of the KSF team, Ms. Scott is currently prosecuting *In re Parateum Securities Litigation*, *Sam Farrar v. Workhorse Group Inc. et al.*, and *Pearlstein v. Blackberry Ltd., et al.*

Ms. Scott is a graduate of Tulane University Law School and served as a judicial law clerk to the Hon. Charles R. Jones of the Louisiana Fourth Circuit Court of Appeal. She received a B.A. in Economics from Emory University.

Ms. Scott is admitted to practice in New York.

EXHIBIT E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE CARLOTZ, INC. SECURITIES LITIGATION	Lead Case No. 1:21-cv-05906-AS

DECLARATION OF JED D. MELNICK

Pursuant to 28 U.S.C. 1746, I, Jed D. Melnick, hereby declare as follows:

1. I submit this declaration in my capacity as the mediator of the proposed settlement of the above-captioned action ("Action"). I make this declaration based on personal knowledge and if called and sworn as a witness could and would testify competently thereto.

2. I have been asked to provide this declaration to give my views on the mediation process that culminated in the proposed settlement that will be presented to the Court for final approval.

3. All of the parties, entities, and individuals who were represented at the mediation session executed a confidentiality agreement stating that the mediation was considered settlement negotiations for the purpose of all rules protecting mediation disclosures from later discovery and/or use in evidence. The parties further agreed that the confidentiality agreement extends to all present and future civil, judicial, quasi-judicial, arbitral, administrative, or other proceedings. Nothing in my declaration divulges any privileged information, and the filing of this declaration does not constitute a waiver of any such confidentiality.

4. I have been a full-time mediator for 20 years. I am a panelist at JAMS and on the Board of Directors. Prior to my time as a neutral, I was an attorney in Pennsylvania for more than five years.

5. Since serving as a neutral, I have resolved over one thousand disputes, with an aggregate value in the billions of dollars. Specifically, I have extensive experience assisting the settlement of many different types of complex class actions, including such matters as bankruptcy and securities claims, often involving numerous parties and multiple, related lawsuits. My list of representative matters includes the resolutions of two securities class actions before this Court.

6. Among numerous recognitions, I was awarded the distinction of being an ADR Champion by The National Law Journal as well as being invited to speak about "Mediation Strategies for Judges" as the closing presenter at the annual Delaware Judiciary retreat.

7. Many cases in which I have served as a neutral have included numerous plaintiffs and plaintiffs' counsel, as well as many defendants, defense counsel, and insurers.

8. I provide my professional background as context for the statements in my declaration and to establish that my perspective on the settlement of this action is grounded in my significant experience in resolving complex litigation.

9. While the Court will make its own determination as to the proposed settlement's fairness under applicable legal standards, from my viewpoint as mediator I recommend the proposed settlement as reasonably reflective of the claims being settled and the defenses thereto. As described below, the current matter presented complex and substantial legal, factual, and practical issues. The parties were represented during the mediation process by well-prepared and competent counsel, who negotiated zealously and at arm's length for their clients. Thus, I believe that the proposed settlement represents a fair and pragmatic resolution of this Action.

10. Pursuant to my custom and practice, and without waiving mediation confidentiality, the mediation was preceded by an exchange of detailed mediation statements between the parties. These submissions contained extensive analyses of the factual and legal issues in the Action and

other issues material to the settlement. These submissions helped me understand the relative merits of each party's position and identify the issues that would drive and present obstacles to reaching a resolution of the Action. While the contents of the mediation statements and arguments are confidential, they presented complex and novel legal arguments and were highly adversarial.

11. On October 15, 2024, I mediated this case during a full-day mediation session where the parties and my assistant appeared in person in New York, New York, and I appeared on Zoom. I engaged in extensive discussions with both sides to establish common ground between the parties' respective positions.

12. In my presence, the parties carried out extensive, detailed, and hard-fought discussions regarding the case. I can readily attest that the negotiations between counsel for the parties were conducted at arm's length and were not collusive. In addition, my review of the papers presented to me and discussions with counsel have led me to conclude that all sides approached the mediation in this Action in a vigorous, professional, and thorough manner. It was also clear to me that both sides were well-prepared and fully capable of proceeding to a judicial resolution if a settlement could not be achieved.

13. Although the parties did not reach a resolution on October 15, 2024, they made progress towards that goal. Over the course of the next six weeks, the parties continued negotiating the terms of a potential settlement, both with and without my assistance. I am aware that litigation continued during this time, including the production of documents by third-parties.

14. The parties reached an agreement in principle in early December and signed a term sheet on December 6, 2024.

15. While ultimately for the Court to decide, based on my 20 years' experience as a mediator, my review of the parties' mediation briefs and other relevant documents, and my

involvement as the mediator in this case, it is my professional opinion that the Settlement was a product of extensive, informed, and vigorous negotiations conducted at arm's length and in good faith by the parties. All parties in this case were represented by capable, experienced counsel who displayed the highest level of professionalism.

16. I believe that the settlement of the Action represents a well-reasoned and sound resolution. Based on my experience and my role as the mediator, I therefore recommend the proposed settlement as reflective of the claims asserted and the defenses thereto. I believe that the settlement provides immediate, fair, and adequate compensation to the settlement class as well as the benefits of avoiding the time and expense entailed in further litigation. I respectfully recommend that the settlement be approved.

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

Executed this **9th** day of **May**, **2025** at New York, New York.

/s/Jed D. Melnick
Jed D. Melnick