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18 *for Lead Plaintiff Raju Shah*

19 **UNITED STATES DISTRICT COURT**
20 **NORTHERN DISTRICT OF CALIFORNIA**
21 **SAN JOSE DIVISION**

22 MARTIN JOSEPH ABADILLA, et al.,

23 Plaintiff,

24 v.

25 PRECIGEN, INC., et al.,

26 Defendants.

Case No.: 5:20-cv-06936-BLF

Dept.: Courtroom 3, 5th Floor

Judge: Honorable Beth Labson Freeman

Date: October 19, 2023 at 9:00 AM

27 *This Document Relates to:*

28 *ALL CONSOLIDATED ACTIONS*

29 **DECLARATION OF WILLIAM C. FREDERICKS IN SUPPORT OF (A) LEAD**
30 **PLAINTIFF'S MOTION FOR FINAL APPROVAL OF SETTLEMENT AND PLAN OF**
31 **ALLOCATION AND (B) PLAINTIFF'S COUNSEL'S MOTION FOR**
32 **ATTORNEYS' FEES AND LITIGATION EXPENSES**

1 1. I, William C. Fredericks, am a partner in the firm of Scott+Scott Attorneys at Law
 2 LLP (“Scott+Scott” or “Lead Counsel”). Scott+Scott is counsel for the Court-appointed Lead
 3 Plaintiff and proposed class representative Raju Shah (“Plaintiff” or “Lead Plaintiff”). I have
 4 personal knowledge of the matters stated herein based on my participation in the Action and review
 5 of records maintained by my firm.

6 2. I respectfully submit this Declaration in support of (i) Lead Plaintiff’s motion for
 7 final approval of the proposed \$13 million settlement and plan of allocation, and (ii) Plaintiff’s
 8 Counsel’s motion for attorneys’ fees and litigation expenses.

9 3. Capitalized terms not otherwise defined herein have the same meaning as used in
 10 the Stipulation and Agreement of Settlement, dated March 1, 2023, ECF No. 128 (the
 11 “Stipulation”) at §§1.1-1.53.

12 4. For the reasons set forth set forth below and in the accompanying memoranda,¹ I
 13 respectfully submit that: (i) the terms of the proposed Settlement and Plan of Allocation are fair,
 14 reasonable, and adequate in all respects and should be finally approved by the Court; and (ii)
 15 Plaintiff’s Counsel’s Fee and Expense Application (including the request for a modest 15 U.S.C.
 16 §78u-4(a)(4) award of \$3,000 to the Lead Plaintiff) is fair and reasonable, and should also be
 17 approved in all respects.

18 5. The following exhibits are attached to this Declaration:

19 Exhibit A	Scott+Scott Time & Lodestar by Professional
20 Exhibit B	Scott+Scott Time & Lodestar by Category of Work
21 Exhibit C	Scott+Scott Litigation Expenses
22 Exhibit D	Scott+Scott Firm Resume

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 24
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 28 ¹ See Plaintiff’s Motion and Memorandum in Support of Final Approval of Proposed Class
 Action Settlement and Plan of Allocation (the “Settlement Mem.”); and (ii) Plaintiff’s Counsel’s
 Motion and Memorandum in Support of Fee and Expense Application (the “Fee Mem.”).

1 **I. PRELIMINARY STATEMENT**

2 6. The proposed Settlement, if approved by the Court, will resolve all claims asserted
3 in this Action against Precigen, Inc. (formerly known as Intrexon Corporation), and its current and
4 former officers and other Related Persons, in exchange for a cash payment of \$13,000,000 for the
5 benefit of the Settlement Class. All of the \$13 million Settlement Amount has been received and
6 deposited into an escrow account that is currently earning interest for the benefit of the Class.

7 7. It is respectfully submitted that the proposed Settlement represents a decidedly
8 favorable result for the Class in the face of very significant litigation risk on both liability and
9 damages issues. The Settlement was only reached after two years of vigorously contested
10 litigation, including full briefing and oral argument on Defendants' motion to dismiss Plaintiff's
11 Second Amended Complaint (the "SAC") and Plaintiff's filing of a further expanded Third
12 Amended Complaint (the "TAC"). Moreover, the proposed Settlement was only reached after an
13 extended arm's-length mediation process conducted under the auspices of a highly experienced
14 mediator, the Hon. Layn Phillips (U.S.D.J., ret.) of Phillips ADR ("Judge Phillips" or the
15 "Mediator"), which involved the exchange of comprehensive mediation submissions, the
16 production of certain internal Precigen documents, and a full day face-to-face mediation session
17 with Judge Phillips. Significantly, the Settlement is based on and fully consistent with Judge
18 Phillips's independent "mediator's proposal," and the Stipulation of Settlement itself was not
19 signed until after further months of negotiation and after Lead Counsel's review of over 83,000
20 pages of additional internal documents that Precigen produced as part of the mediation process.

21 8. As set forth in the accompanying Declaration of Adam D. Walter of the Court-
22 appointed Claims Administrator, A.B. Data (the "Walter Decl."), pursuant to the Court's July 7,
23 2023 Preliminary Approval Order (ECF No. 135), A.B. Data mailed 72,491 copies of the Notice
24 and Claim Form (together, the "Notice Packet") to potential Settlement Class Members and
25 Nominees. Walter Decl. at ¶8. In addition, A.B. Data posted the Notice and Claim Form, along
26 with other relevant documents on a dedicated website (the "Settlement Website") at [http://](http://www.PrecigenSecuritiesLitigation.com)
27 www.PrecigenSecuritiesLitigation.com, and caused the Summary Notice to be published in
28 *Investors' Business Daily* and transmitted over the internet via the *PR Newswire*. *Id.* at ¶¶9, 14.

1 A.B. Data has also established and maintained a call center that is staffed by live operators during
2 business hours, and Class members may call with questions about the Settlement or the claims
3 process. *Id.* at ¶¶10-13. Although the deadline for submitting requests for exclusion from the
4 Settlement are not due until September 26, 2023 and objections to the Settlement (or any aspect
5 thereof) are also not due until then, to date *no* objections have been submitted only *one* opt out
6 request has been received, *id.* at ¶¶15-16, and Lead Counsel is not aware of any others.²

7 9. The Court, after a hearing, entered its Preliminary Approval Order, having found
8 that (subject to further review at the Fairness Hearing) the proposed Settlement appeared to meet
9 all relevant criteria for approval as “fair, reasonable and adequate” in light of the risks and
10 challenges faced by Plaintiff and the Class in proving, and collecting on, the Released Claims.
11 Due notice having been issued, the Court should now grant final approval.

12 10. Lead Plaintiff also requests the Court’s final approval of the proposed Plan of
13 Allocation (“POA”). The POA provides for a *pro rata* distribution of the Settlement Fund, based
14 on “Recognized Loss Amounts” that take into account the different per share losses that Class
15 members suffered depending on when they bought and (if applicable) sold their Precigen common
16 shares. It is respectfully submitted that this kind of *pro rata* distribution plan, which was prepared
17 by Lead Counsel and an experienced expert in such matters, is entirely customary in cases of this
18 type, and should also be approved as fair, reasonable, and adequate.

19 11. I also respectfully submit that Plaintiff’s Counsel’s request for attorneys’ fees equal
20 to 25% of the \$13,000,000 Settlement Fund and reimbursement of \$88,688.02 in litigation
21 expenses (plus interest at the same rate as earned by the Settlement Fund) for their work in
22 connection with the settled claims is fair and reasonable. As detailed in the accompany Fee
23 Memorandum, the requested fee is equal to the Ninth Circuit’s “benchmark” fee of 25% of the
24 recovery in securities and other complex class cases where (as here) the representation was
25 undertaken by Plaintiff’s Counsel on an entirely contingent basis. Moreover, as detailed below at
26 §VI, the requested fee for all time spent by all Plaintiff’s Counsel (including Scott+Scott and the

27 _____
28 ² Plaintiff’s Counsel will address any objections or exclusions that may yet be received in
their Reply papers, which are due on October 5, 2023.

1 Schall Law Firm), in litigating and settling this matter equates to a “multiplier” of roughly 1.62 on
2 counsel’s “lodestar” (*i.e.*, counsel’s hourly rates multiplied by the hours spent on litigating and
3 settling those claims), even after Lead Counsel eliminated or reduced certain time entries as a
4 matter of billing discretion. *See* ¶¶51, 73 below. Given that “positive” multipliers of 2x to 4x are
5 commonly awarded – and given the superior results achieved here in the face of substantial
6 litigation risk – it is respectfully submitted that the unexceptional 1.62 multiplier here strongly
7 confirms the reasonableness of the requested 25% “benchmark” fee. *See also* §VI below and
8 Exhibits A and B filed herewith, as well as the accompanying separate Declaration by Brian Schall,
9 Esq. (“Schall Decl.”).

10 12. Finally, Lead Counsel supports Lead Plaintiff Shah’s request for an award of
11 \$3,000 pursuant to 15 U.S.C 15 U.S.C §78u-4(a)(4) as fair and reasonable, based on the time Mr.
12 Shah spent on this matter.

13 **II. BACKGROUND**

14 **A. History of the Action**

15 13. This litigation commenced on October 5, 2020, with the filing of *Abadilla v.*
16 *Precigen, Inc., et al.*, No. 5:20-cv-06936-BLF (N.D. Cal.), which alleged securities fraud claims
17 on behalf of a putative class against Precigen, former Chief Executive Officer Randal J. Kirk
18 (“Kirk”), and then-defendant Rick L. Sterling (“Sterling”) (the Company’s former Chief Financial
19 Officer). ECF No. 1.

20 14. Following the filing of various related actions and competing motions to
21 consolidate and to appoint lead plaintiffs and lead counsel, on April 8, 2021, the Court (a)
22 consolidated all related actions, and (b) appointed Mr. Shah as Lead Plaintiff and Scott+Scott as
23 Lead Counsel in the resulting consolidated action. ECF No. 57.

24 15. On May 18, 2021, Lead Plaintiff filed his Consolidated Amended Class Action
25 Complaint (the “Consolidated Complaint”) which, *inter alia*, added as additional defendants
26 former Precigen’s Senior Vice President of Energy & Fine Chemical Platforms (Robert F. Walsh
27 III (“Walsh”)) and Precigen’s former Chief Operating Officer (Andrew J. Last (“Last”)). ECF No.
28 71.

1 16. On August 2, 2021, Defendants, together with former defendants Sterling and Last,
2 either moved to dismiss the Consolidated Complaint (ECF No. 83) or, in the case of defendant
3 Walsh, separately joined in that motion (*id.*).

4 17. Thereafter, pursuant to a Stipulation and Order entered on September 22, 2021
5 (ECF No. 87), on September 27, 2021 (i) Lead Plaintiff filed his Second Amended Class Action
6 Complaint (ECF No. 88) (the “SAC”) as to the same defendants who had been named in the
7 Amended Complaint, and (ii) the Court terminated the then-pending motion to dismiss as moot
8 (ECF No. 89). On November 3, 2021, Precigen, Kirk, Sterling, and Last filed their opening brief
9 and other supporting materials in support of their Corrected Notice of Motion and Motion to
10 Dismiss the Second Amended Class Action Complaint (ECF No. 96) (the “Renewed Motion to
11 Dismiss”), which was separately joined in by Defendant Walsh (*id.*).

12 18. Lead Plaintiff thereafter submitted full briefing and supporting papers in opposition
13 to Defendants’ Renewed Motion to Dismiss on December 17, 2021 (ECF No. 98), and the moving
14 Defendants submitted their reply brief (as well as certain additional supporting materials) in further
15 support of their Renewed Motion to Dismiss on January 28, 2022 (ECF Nos. 102-103).

16 19. On April 8, 2022, the Court heard oral argument on the Renewed Motion to
17 Dismiss. At oral argument, the Court stated that, *inter alia*, it was not persuaded that falsity had
18 been adequately alleged as to more than a limited number of Defendants’ alleged misstatements,
19 and that *scienter* had not been adequately alleged as to any Defendant. Accordingly, the Court
20 stated that it intended to grant the Renewed Motion to Dismiss, while also granting Lead Plaintiff
21 leave to file a further amended complaint. *See* ECF Nos. 106, 110.

22 20. On May 31, 2022, the Court issued its 19-page Order Granting Defendants’
23 Renewed Motion to Dismiss with Leave to Amend (the “MTD Order”, ECF No. 111). In the MTD
24 Order, as to falsity issues, the Court found, *inter alia*, that Plaintiff had adequately alleged falsity
25 as to Defendants’ statements from 2017 and from May and August of 2018 regarding reported
26 “yields,” but rejected the bulk of Plaintiff’s claims based on other post-2017 statements (including
27 those which alleged that Precigen had failed to meet internal timelines or misled investors as to
28 having reached stated levels of commercial viability). The Court also further rejected Plaintiff’s

1 theory that Precigen’s disclosures about the progress of the Company’s MBP program were based
2 on “cherry-picked” data in light of the Ninth Circuit’s recent decision in *In re Nektar Therapeutics*
3 *Sec. Litig.*, 34 F.4th 828, 2022 WL 1573821 (9th Cir. May 19, 2022), and further found that
4 “many” of the misstatements alleged in the SAC were inactionable puffery or statements of
5 opinion. MTD Order at 8-11. As to *scienter*, the Court also found that the SAC’s allegations,
6 including those based on accounts from confidential witnesses that Lead Counsel had identified,
7 located, and interviewed, were all insufficiently strong to meet the demanding “strong inference”
8 standard established by the Private Securities Litigation Reform Act of 1995 for pleading *scienter*,
9 and that Plaintiff’s motive allegations were not compelling. MTD Order at 11-14. The Court did,
10 however, grant Plaintiff 60 days to file a further amended complaint.

11 21. In response, Lead Counsel redoubled their investigative efforts, worked to identify
12 and interview additional potential confidential witnesses, and timely filed Plaintiff’s TAC on
13 August 1, 2022. ECF No. 116. That complaint, *inter alia*, dropped Last and Sterling as defendants
14 and claims based on certain misstatements that the Court had found to be inactionable as a matter
15 of law, and added certain additional factual allegations (including new information obtained from
16 additional confidential witnesses).

17 22. While Lead Counsel continued to pursue litigation through renewed investigative
18 efforts and the preparation of an even more detailed complaint, as discussed below the Parties also
19 began preliminary discussions regarding the time, place, and manner of a possible mediation.

20 **B. The Settlement Negotiations, the “Mediator’s Proposal,” and the Stipulation**
21 **of Settlement**

22 23. Beginning in June 2022, shortly after the Court issued its MTD Order, Defendants
23 and Lead Plaintiff, by their counsel, began preliminary discussions regarding the possibility of
24 trying to resolve the claims at issue through mediation, and the Parties ultimately agreed to retain
25 a highly experienced mediator of securities class actions, Judge Layn Phillips, for that purpose.

26 24. On August 2, 2022, Lead Plaintiff and the remaining defendants (Precigen, Walsh,
27 and Kirk) jointly advised the Court that they had agreed to try to pursue a settlement through
28 mediation. That same day the Court entered an Order approving the Parties’ proposed stipulation

1 to vacate existing deadlines for briefing Defendants’ motion to dismiss the operative complaint,
2 so that the Parties could focus on seeing if they could reach a mediated settlement (ECF Nos. 118-
3 119).

4 25. Pursuant to the Mediator’s instructions, Lead Plaintiff and Defendants prepared and
5 exchanged comprehensive opening mediation briefs and supporting materials on September 30,
6 2022, and submitted additional reply mediation papers and supporting materials on November 3,
7 2022. In addition, as part of the mediation process, Precigen produced to Lead Plaintiff certain
8 relevant Precigen documents that Lead Plaintiff had requested in advance of the mediation.

9 26. On November 17, 2022, representatives of the Parties attended a full-day in-person
10 mediation session in New York City under the auspices of the Mediator.

11 27. At the end of this full-day mediation session, Judge Phillips made a “mediator’s
12 proposal” for a global settlement of all claims asserted in the Action (including those asserted
13 against Walsh), under which, *inter alia*, Lead Plaintiff (on behalf of himself and the putative class)
14 would settle, compromise, and release all claims against Precigen and its current and former
15 officers, directors, employees, agents, and representatives (in their capacities as such) in exchange
16 for Defendants’ payment of \$13 million in cash.

17 28. Lead Plaintiff, Precigen, and Kirk accepted the “mediator’s proposal” in principle,
18 subject to the Parties’ resolution of certain non-monetary terms regarding the nature, scope, and
19 completion of confirmatory discovery to be provided to Lead Plaintiff by Precigen prior to
20 executing any final stipulation of settlement. The Parties thereafter promptly (and jointly) notified
21 the Court of these developments.

22 29. Lead Plaintiff and Precigen reached an agreement in early December 2022,
23 whereby Precigen agreed to produce to Lead Counsel confirmatory discovery materials consisting
24 of roughly 83,000 pages of additional internal Precigen documents. On January 20, 2023, Lead
25 Counsel advised Precigen that their review had confirmed their earlier assessment that the
26 proposed \$13 million Settlement was fair, reasonable, and adequate, and that Lead Plaintiff would
27 elect to proceed with the Settlement.

28

1 30. In January 2023, Defendant Walsh also agreed to become a party to the Settlement,
2 on terms consistent with the “mediator’s proposal,” and as reflected in the Stipulation.

3 31. On March 1, 2023, Plaintiff’s and Defendants’ Counsel completed the process of
4 finalizing and executing the Stipulation and the exhibits thereto. On the same day, the Parties also
5 entered into a confidential Supplemental Agreement, which gives Precigen the right to terminate
6 the Settlement if valid requests for exclusion are received from persons or entities entitled to be
7 members of the Settlement Class in an amount that exceeds an amount agreed to by the Parties.

8 **C. The Court’s Preliminary Approval of the Settlement**

9 32. On March 2, 2023, Lead Plaintiff filed his motion for preliminary approval of the
10 Settlement, together with the Stipulation and exhibits thereto, and a supporting memorandum of
11 law and declaration. ECF No. 128.

12 33. After a hearing on July 6, 2023, on July 7, 2023, the Court entered its Preliminary
13 Approval Order (ECF No. 135) which, *inter alia*, preliminarily approved the Settlement and the
14 Parties’ agreed Notice Plan, as amended. The Order also preliminarily certified the following class
15 – which is substantively the same as that alleged in the TAC – for settlement purposes:

16 [A]ll Persons or entities who purchased or otherwise acquired publicly traded
17 shares of the common stock of Precigen, Inc. f/k/a Intrexon Corporation
18 (“Precigen”) (ticker PGEN, formerly XON) between May 10, 2017 and September
25, 2020, inclusive (the “Class Period”), and were damaged thereby.³

19 **III. COUNSEL’S COMPLIANCE WITH THE COURT’S NOTICE REQUIREMENTS**

20 34. In accord with the Preliminary Approval Order, Lead Counsel, through the Claims
21 Administrator, has implemented a comprehensive combined notice-by-mail and notice-by-
22 publication program. “Notice Packets” – which contain all required information regarding the
23 Settlement and how Class Members can (i) exclude themselves from the Settlement Class; (ii)

24
25 ³ Excluded from the proposed Settlement Class are (i) Defendants; (ii) the past and current
26 officers, directors, partners and managing partners of Precigen (and any of Precigen’s subsidiaries
27 or affiliates, including but not limited to MBP Titan LLC); (iii) the immediate family members,
28 legal representatives, heirs, parents, subsidiaries, successors, successors and assigns of any
excluded Person; and (iv) any entity in which any excluded Person(s) have or had a majority
ownership interest, or that is or was controlled by any excluded Person(s). Also excluded from the
Settlement Class will be those Persons who file valid and timely requests for exclusion. *See*
Preliminary Approval Order, ECF No 135, at 1.

1 object to the Settlement, the Plan of Allocation, or the Fee and Expense Application; (iii) file a
2 Proof of Claim; and/or (iv) attend the Fairness Hearing – have been mailed to 72,491 potential
3 Class Members or their nominees. Notice Packet materials have also been, and continue to be,
4 posted at <http://www.precigensecuritieslitigation.com>, along with other case-related documents.
5 In addition, the Summary Notice – which directs class members to the dedicated Settlement
6 Website at www.precigensecuritieslitigation.com – was published on *PR Business Wire* (internet)
7 and in *Investor’s Business Daily* (print). *See generally* Walter Decl., at ¶¶2-9.

8 35. To date, Lead Counsel have received no objections, and are aware of only the one
9 opt-out request received by Claims Administrator. *See* Walter Decl. ¶¶15-16. Should any
10 objections be filed or received prior to the Fairness Hearing, Lead Plaintiff will address them in
11 reply papers.

12 **IV. THE SIGNIFICANT BENEFITS OF THE PROPOSED SETTLEMENT VS. THE** 13 **MATERIAL LIKELY RISKS OF CONTINUED LITIGATION**

14 **A. Litigation Risks**

15 36. The risks of litigation here were plainly substantial, and some of the challenges that
16 Plaintiff faced in prevailing on liability on the claims that he proposes to settle were made clear
17 early on. For example, at oral argument on Defendants’ motion to dismiss on April 8, 2022, as
18 noted above the Court raised doubts about various aspects of Plaintiff’s main claims under §10(b)
19 and SEC Rule 10b-5(b), and of their secondary “control person” liability claims under §20(a). In
20 particular, although the Court ultimately found in its MTD Order that Lead Plaintiff had adequately
21 alleged that certain statements from the first part of the Class Period were misleading because they
22 purported to describe test results based on use of natural gas (when Plaintiff alleged that they had
23 instead been obtained using pure methane), the MTD Order *also* found that numerous other
24 statements were *not* actionable. ECF No. 111 at 7-11. The dismissed statements were largely
25 from the latter half of the Class Period and included all of Defendants’ various statements that
26 Precigen’s Methane Bioconversion Platform (“MBP”) had reached “in the money” status with
27 respect to being able to produce certain chemicals. Lead Counsel believed that the Court’s findings
28 that these and certain other key false and misleading statements at issue were not actionable was

1 incorrect – and hoped to so persuade the Court on repleading – but there could be no assurance
2 that the Court would reverse course after reviewing the TAC’s efforts to replead those claims.

3 37. Moreover, although Lead Counsel believe that they would have been able to show
4 that Defendants acted with *scienter*, such proof is never certain in a §10(b) case. First, although
5 defendant Walsh (the executive who headed the MBP Program) was the defendant most at risk of
6 being found to have acted with *scienter* (based primarily on his closeness to the program), he
7 retired from Precigen well before the end of the Class Period, and he personally made only a few
8 of the allegedly false or misleading statements at issue. Moreover, Walsh did not engage in any
9 suspicious stock sales during the Class Period – a factor that makes it significantly harder to plead
10 (let alone prove) that he acted with *scienter*. And the Court had already rejected Plaintiff’s reliance
11 on certain confidential witnesses (“CWs”) to support the requisite “strong inference” of Walsh’s
12 *scienter*, so once again there could be no assurance that Plaintiff’s reliance on many of the same
13 CWs in the TAC would cause the Court to reach a different view as to Walsh’s *scienter*. Second,
14 with respect to defendant Kirk, Precigen’s former chief executive officer and the only other
15 individual defendant, the challenges of pleading and proving his *scienter* were even greater, as (i)
16 he was much more removed from the MBP Program than Walsh, (ii) the CW allegations against
17 Kirk were significantly weaker than they were as to Walsh, and (iii) Kirk (like Walsh) also did not
18 sell a suspiciously large percentage of his Precigen shares during the Class Period.

19 38. In addition, Defendants also had significant loss causation defenses. This case, for
20 example, did not involve a single large drop in Precigen’s share price in response to a “clean”
21 disclosure that one or more of Defendants’ prior statements about the MBP Program had been
22 false. Instead, this case involved a series of roughly ten “partial corrective disclosure dates,” with
23 Plaintiff alleging that the truth about Defendants’ alleged misstatements and omissions only
24 emerged gradually over a multi-year period. On the facts alleged, proving loss causation was
25 particularly challenging because on certain alleged “partial corrective disclosure dates” the
26 negative stock price reaction was not statistically significant, and even on dates when there was a
27 statistically significant reaction there were other negative (and hence potentially “confounding”)
28 disclosures relating to non-MBP-related aspects of Precigen’s business. As a result, proving that

1 the observed price declines on such dates were related to fraud-related disclosures (as opposed to
2 unrelated matters) would likely be difficult. After considering these and other loss causation
3 issues, as noted above, Lead Plaintiff’s damages expert estimated that the range of reasonably
4 recoverable damages in this case was roughly \$135 million to \$270 million – but unsurprisingly
5 Defendants contended that maximum recoverable damages were a mere fraction of such amounts.

6 39. Moreover, even if Plaintiff had prevailed on all his claims against Defendants, the
7 Class’s ability to actually collect on a judgment significantly greater than \$13 million (let alone
8 one anywhere near the Class’s maximum reasonably recoverable damages) is doubtful at best. For
9 example, Precigen’s business has been in sharp decline in recent years and on November 9, 2022
10 – just a week before the Parties’ face-to-face mediation session with Judge Phillips – Precigen
11 reported in its Form 10-Q for the third quarter of 2022 that there was “substantial doubt about the
12 Company’s ability to continue as a going concern.” In addition, Defendants have only limited
13 available insurance coverage, which could well have been fully exhausted had Lead Plaintiff
14 elected to litigate the Class’s claims through discovery, summary judgment, trial, and likely
15 appeals. And although defendant Kirk is a wealthy individual, as noted above at ¶37, the claims
16 against him were far weaker than those against Walsh.

17 40. Here, there was a prior governmental investigation into certain aspects of the claims
18 alleged, which resulted in imposition of a financial penalty of \$2.5 million against Precigen under
19 §13 of the Exchange Act. However, the findings of that SEC investigation did not result in any
20 allegations of fraud (as §13 has no *scienter* element), and (as Defendants have repeatedly pointed
21 out) were limited to settled allegations involving only three alleged misstatements which were all
22 from 2017, and which involved no admissions of even innocent misstatement by any Defendant.
23 Accordingly, Lead Plaintiff still bore the full brunt of trying to establish that the numerous alleged
24 misstatements from the last three years of the Class Period (up through September 25, 2020) were
25 actionable – and, as to all fraud claims in *this* Action, Lead Plaintiff would still have to plead and
26 prove *scienter*, loss causation, and damages. In sum, while the SEC’s investigative work provided
27 an assist, this is decidedly not a case were Plaintiff could have had a “free ride” to any settlement
28

1 – let alone a better settlement than the \$13 million recovery obtained by Plaintiff’s work here – or
2 where Plaintiff failed to pick up (with a vengeance) where the SEC had stopped.

3 **B. Benefits of Settlement**

4 41. Most settlements provide the benefit of at least some recovery, as well as the
5 avoidance of further delays and the uncertainties of further litigation. Here, however, there would
6 be an especially long and costly road ahead to any litigated recovery, with many months (and more
7 likely years) of hard-fought fact and expert discovery involving highly complex (and indeed novel)
8 methane conversion technologies – even assuming that the TAC survived Defendants’ planned
9 motion to dismiss the TAC (which Defendants provided to Plaintiff as part of the mediation
10 process). As noted below, however, Lead Counsel believe that published data further confirm
11 their own view that the recovery obtained here was not just “some recovery,” but represents a
12 decidedly superior recovery in the face of above-average litigation risk.

13 42. Lead Plaintiff’s consulting damages expert advised that reasonably recoverable
14 damages were in the range of \$135 million to \$270 million here. Thus, the \$13 million Settlement
15 represents approximately 5% of the high end of this range, which assumes that Lead Plaintiff
16 would not only survive dismissal, but also ultimately run the table on all reasonably disputable
17 liability and loss causation issues at summary judgment and trial (while avoiding any reversals on
18 appeal). By comparison, NERA Economic Consulting recently reported that, between 2011 and
19 2021, the median securities class action settlement equated to roughly 2.8% of maximum damages
20 in cases involving estimated investor losses between \$100 million and \$199 million, and 2.3% for
21 estimated investor losses between \$200 million and \$399 million. *See* J. McIntosh & S. Starykh,
22 *Recent Trends In Securities Class Action Litig.: 2021 Full-Year Review*, NERA ECON.
23 CONSULTING (Jan. 25, 2022), available at [www.nera.com/publications/archive/2022/recent-trends-](http://www.nera.com/publications/archive/2022/recent-trends-in-securities-class-action-litigation-2021-full-y.html)
24 [in-securities-class-action-litigation-2021-full-y.html](http://www.nera.com/publications/archive/2022/recent-trends-in-securities-class-action-litigation-2021-full-y.html) (“NERA Report”). In addition, based on
25 other published analysis, the Settlement is almost double the size of the median securities class
26 action settlement (\$6.9 million) in the Ninth Circuit between 2012 and 2021. *See* L. Bulan & L.
27 Simmons, *Securities Class Action Settlements: 2021 Review and Analysis*, CORNERSTONE
28

1 RESEARCH, (2021), available at [https://www.cornerstone.com/wp-](https://www.cornerstone.com/wp-content/uploads/2022/03/Securities-Class-Action-Settlements-2021-Review-and-Analysis.pdf)
2 content/uploads/2022/03/Securities-Class-Action-Settlements-2021-Review-and-Analysis.pdf.

3 **C. Lead Counsel’s Conclusion**

4 43. Here, absent the proposed Settlement, continued litigation would have required (i)
5 further extensive motion to dismiss briefing directed at the TAC, to be followed by (assuming that
6 dismissal was denied); (ii) the undertaking of comprehensive document discovery that, to a
7 significant degree, would have involved highly technical materials regarding Precigen’s novel
8 methane bioconversion technologies and testing programs; (iii) the taking of depositions of
9 numerous Precigen officers and employees on the details of those same highly technical programs;
10 (iv) an expert discovery process that was expected to include, at a minimum, both sides retaining
11 experts on measuring achievement of bio-technological development milestones and other
12 technical issues, as well as on loss causation and damages issues; (v) full briefing of a contested
13 class certification motion, and related expert discovery; (vi) the all but inevitable motions by
14 Defendants for summary judgment; and then (assuming that Plaintiff successfully opposed such
15 motions) (vii) extensive pre-trial motions *in limine* and *Daubert* motions; (viii) trial; and (ix) likely
16 post-trial motions, and thereafter appeals, by the losing side. Such further litigation and appeals
17 would not only have been enormously costly but would also almost certainly take several more
18 years to play out.

19 44. In sum, by accepting Judge Phillips’ mediator’s proposal and finalizing the
20 proposed Settlement, Lead Plaintiff seeks to secure a \$13 million “bird in the hand” to settle claims
21 that, from a collectability standpoint, might well have ultimately proven to be worth materially
22 less than that amount *even if*, after years of litigation, Plaintiff prevailed on liability and secured
23 the full amount of the maximum reasonably recoverable damages. Lead Counsel, for all of the
24 reasons set forth herein and in their accompanying Memorandum in Support of Final Approval,
25 also strongly support the Settlement as representing a superior result for the Class, and as readily
26 meeting the “fair, reasonable, and adequate” standards required for final approval by this Court.

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

28

1 45. The proposed Plan of Allocation (the “POA”) is set forth at pp. 11-14 of the Notice.
2 Lead Counsel developed the POA in consultation with Plaintiff’s consulting damages expert – a
3 Ph.D.-holding financial economist and chartered financial analyst (C.F.A.) with over 25 years of
4 experience in advising both private litigants and the Securities Exchange Commission on (among
5 other things) damages, loss causation and plan of allocation issues in federal securities cases.

6 46. The objective of the POA is to equitably distribute the Net Settlement Fund among
7 Authorized Claimants. In short, the POA proposes that the Net Settlement Fund be allocated to
8 Authorized Claimants (*i.e.*, those who submit a completed Claim Form to the Claims
9 Administrator that is ultimately approved for a payment) on a *pro rata* basis based on the relative
10 size of their Recognized Claims, where their Recognized Claims are, in turn, based on that portion
11 of the losses on their Class Period purchases of Precigen shares that can be fairly attributed to the
12 Defendants’ misconduct as alleged in the TAC. In other words, the POA is based on the declines
13 in value of Precigen common stock that occurred following partial disclosure events, which
14 gradually disclosed the truth concerning the true state of Precigen’s MBP program (which, in turn,
15 reduced the amount of artificial inflation in the stock price allegedly caused by the alleged
16 misstatements and omissions at issue). In Lead Counsel’s experience, this type of *pro rata* POA
17 (which, in the interest of reducing administrative costs, also provides that an otherwise Recognized
18 Claim Amount must be at least \$10 to qualify for a payment) is customary in securities class
19 actions.

20 47. Moreover, although the POA was set forth in full in the Notice, to date no objections
21 to the POA have been received. Accordingly, it is respectfully submitted that the POA is fair,
22 reasonable, and adequate, and that it also merits final approval.

23 **VI. PLAINTIFF’S COUNSEL’S FEE AND EXPENSE APPLICATION SHOULD BE**
24 **APPROVED AS FAIR AND REASONABLE**

25 **A. The Work Performed and Time Expended**

26 48. As set forth in the accompanying Fee Memorandum, federal courts have long
27 recognized that that attorneys who successfully represent a class are entitled to compensation for
28

1 their services, and that attorneys who obtain a recovery for a class in the form of a common fund
2 should be awarded fees and expenses from that fund.

3 49. Here, Plaintiff's Counsel seek attorneys' fees equal to 25% of the \$13 million
4 Settlement Fund – or \$3.25 million (excluding interest) for the time they have spent, and have yet
5 to spend, on this matter. As detailed below, Plaintiff's Counsel (even after making various
6 reductions based on billing discretion) have collectively spent 2,328.70 hours, with a lodestar value
7 of \$2,000,279.00, on investigating, litigating, and settling the claims at issue. Lead Counsel
8 respectfully submit that it is well within this Court's discretion to award the requested fee, both
9 because it is precisely equal to the Ninth Circuit's "benchmark" 25% fee, and because the resulting
10 "lodestar multiplier" is an unexceptional 1.62 compared to fee awards approved by other courts in
11 this Circuit and across the country in securities class actions. *See* Fee Memorandum; *see also*
12 ¶¶72-74 below. Similarly, it is respectfully submitted that the superior recovery obtained here in
13 the face of significant risk, as well as all other factors applied by Ninth Circuit courts, also supports
14 the full award of the requested "benchmark" 25% fee.

15 50. As a threshold matter, it is appropriate to begin Lead Counsel's justification of the
16 requested 25% fee by summarizing the substantial work that my firm performed in this matter.
17 Filed herewith as Exhibit A is a schedule summarizing the amount of time spent by attorneys and
18 professional support staff employees of Scott+Scott on this matter from inception through July 7,
19 2023 (the date of the Preliminary Approval Order), together with a summary lodestar calculation
20 for those individuals. The information set forth therein (and in Exhibit B filed herewith) regarding
21 the amount and nature of time spent on the Action by attorneys and professional staff at my firm
22 is based on daily time records regularly prepared and maintained by my firm, which are available
23 at the Court's request. I am the lead partner who primarily oversaw and conducted the day-to-day
24 activities in this matter, and I and others at my firm reviewed these daily time records in preparing
25 this Declaration to confirm their accuracy, as well as the reasonableness of the time billed to the
26 litigation. All time expended in preparing this application for fees and expenses was excluded.

27 51. In the course of preparing both Exhibit A and the more detailed summary at Exhibit
28 B, various adjustments were made in the exercise of billing discretion to *reduce* the amount of

1 time reported therein. In particular, the following time has been removed and excluded: (i) all
2 time expended and incurred after the entry of the Preliminary Approval Motion on July 7, 2023;
3 (ii) all time incurred by any timekeepers who spent fewer than 10 hours working on this Action;
4 and (iii) various time entries recorded on various matters that were reduced or removed as a matter
5 of billing discretion. In addition, although experience suggests that my firm will continue to
6 expend material amounts of time working on claims administration matters in the coming months
7 (*e.g.*, responding to class member inquiries, advising on disputed claims, and ultimately working
8 with the Claims Administrator to prepare “final distribution” motion papers for submission to the
9 Court), my firm’s attached lodestar summaries make no adjustment to account for any time yet to
10 be incurred (although the requested 25% fee will also cover all such future time).

11 52. Accordingly, Lead Counsel believe that the time reflected in my firm’s lodestar
12 calculations is reasonable in amount and was reasonably necessary for the effective prosecution
13 and resolution of this Action. Moreover, the billing rates reflected for the partners, attorneys, and
14 other professional support staff are the firm’s standard billing rates for contingent cases, and are
15 the same (or comparable to, after adjusting for periodic rate increases) as those accepted by courts,
16 including those in this Circuit, in other contingent-fee securities class action, and similarly
17 complex commercial class and/or derivative litigation. The firm’s rates are set based on an annual
18 analysis of rates that are charged by firms performing comparable work and that have been
19 approved by courts. Different timekeepers within the same employment category (*e.g.*, partners,
20 associates, paralegals, etc.) may have different rates based on a variety of factors, including years
21 of practice, years at the firm, year in the current position (*e.g.*, years as a partner), relevant
22 experience, relative expertise, and the rates of similarly experienced peers at our firm or other
23 firms. For personnel who are no longer employed by Scott+Scott, the billing rate used for all
24 lodestar calculations is based upon the rate for that person in his or her final year of employment
25 with the firm.

26 53. Filed herewith as Exhibit B is a chart, in a form consisted with this Court’s Standing
27 Order on Civil Cases, that reflects the hours spent by each timekeeper during the course of the
28 Action, broken down using the following task categories:

1 54. **Factual Investigation:** This category includes time spent on my firm’s thorough
2 investigation into the claims asserted in the Action, which primarily included (i) collecting and
3 reviewing Precigen’s SEC filings, press releases, conference call transcripts from the roughly five
4 year period from approximately a year before through roughly a year after the start of the lengthy
5 Class Period at issue; (ii) collecting and reviewing published articles (as well internet reports, blogs
6 and message boards) on Precigen specifically, and/or methane bioconversion technologies
7 generally; (iii) collecting and reviewing the voluminous Wall Street and other analyst reports on
8 Precigen covering the same roughly five year period; and (iv) identifying, locating, and
9 interviewing – and in several instances repeatedly *reinterviewing* – numerous former Precigen
10 employees to better understand the considerable scientific and business complexities of Precigen’s
11 methane bioconversion development program (the “MBP”) and to try to build Plaintiff’s case on
12 falsity and scienter. Time allocated to this category also includes time spent analyzing potential
13 clients’ losses and relevant inquiries to ensure that the Lead Plaintiff that was ultimately appointed
14 by the Court to represent the proposed Class and was fully qualified to do so.

15 55. **Pleadings:** This category consists primarily of the time incurred by my firm in
16 drafting the Lead Plaintiff’s successively more detailed complaints, including (i) the initial
17 Consolidated Amended Complaint; (ii) the Second Amended Complaint, and (iii) the Third
18 Amended Complaint, including associated legal research.

19 56. **Discovery:** This category reflects the time incurred by my firm in reviewing and
20 analyzing documents that Lead Plaintiff requested and obtained from Precigen in the summer of
21 2022, as part of its agreement with it to proceed with a mediation process, as well as the time spent
22 reviewing the significantly larger volume of material produced by Defendants in early winter 2022,
23 as part of confirmatory discovery, which included roughly 83,000 pages of documents.

24 57. **Case Management/Client Communication:** This category includes time spent (i)
25 communicating with Lead Plaintiff and his counsel regarding lead plaintiff matters and the case
26 developments and status, and (ii) general case management matters.

27 58. **Motions and Legal Research:** This category includes time incurred by my firm in
28 researching and preparing various motion papers over the course of this litigation, including

1 comprehensive briefs and accompanying declarations and exhibits (i) in support of Mr. Shah's
2 motion to be appointed, along with Scott+Scott, as lead plaintiff and lead counsel respectively; (ii)
3 in opposition to Defendants' multi-faceted motion to dismiss; and (iii) in support of Lead Plaintiff's
4 Motion for Preliminary Approval. As previously noted, however, my firm's submitted time and
5 lodestar *excludes* all time on Lead Plaintiff's pending Motion for Final Approval of the Settlement
6 and on Plaintiff's Counsel's motion to approve the Fee and Expense Application.

7 59. **Court Appearances/Preparation:** This consists primarily of the time incurred by
8 my firm in preparing for (i) the hearing on Defendants' Motion to Dismiss and (ii) Lead Plaintiff's
9 motion for preliminary approval.

10 60. **Expert Work and Consultations:** This category reflects the time my firm spent
11 working with its consulting expert to thoroughly analyze and understand damages and loss
12 causation matters.

13 61. **Mediation & Settlement:** This category includes all time incurred by my firm in
14 (i) engaging in preliminary discussions with Defendants about the possibility of mediating; (ii)
15 working out details regarding the time and manner of the eventual mediation, including the
16 selection and retention of the Hon. Layn Phillips as mediator; (iii) preparing extensive mediation
17 briefs and related submissions materials as directed by Judge Phillips, which also included
18 preparing responses to both Defendants' mediation brief and the additional arguments raised in
19 Defendants' draft papers in support of their planned motion to dismiss the TAC (and which
20 Defendants stated that they would promptly file in the event that mediation efforts broke down);
21 (iv) attending the full day, face-to-face mediation session conducted in November 2022, under the
22 auspices of Judge Phillips; (v) negotiating and preparing the initial term sheet reflecting the terms
23 of the proposed Settlement; (vi) negotiating the nature and scope of the confirmatory discovery to
24 be produced by Defendants as a pre-condition of any final settlement; and (vii) the drafting and
25 negotiation of the Stipulation of Settlement, and the exhibits and ancillary documents thereto.

26 62. **Litigation Strategy/Analysis:** This category includes time incurred by my firm on
27 overall case strategy and analysis that is not otherwise reflected in the preceding categories.

28

1 **B. The Requested Percentage-Based 25% Fee Is Fair and Reasonable Under the**
 2 **Factors Considered by Courts in This Circuit**

3 63. As discussed in the accompanying Fee Memorandum, the Ninth Circuit has evinced
 4 a strong preference for awarding fees based on “percentage-of-the-recovery” method, rather than
 5 on the traditional (but far more laborious) “lodestar” method. Addressed in the subsections below
 6 are the various factors – in addition to simply hours spent – that courts in this District and Circuit
 7 routinely consider in determining whether a requested percentage-based fee is fair and reasonable,
 8 namely (i) the recovery achieved; (ii) the risks of continued litigation; (iii) the skill required and
 9 quality of the work performed; (iv) the contingent nature of the representation, (v) awards in
 10 similar cases (including a “lodestar crosscheck”); and (vi) the reaction of the class. *See., e.g.,*
 11 *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-50 (9th Cir. 2002). As further detailed in the
 12 Fee Memorandum, Lead Counsel respectfully submits that each of these factors supports a finding
 13 that the requested 25% benchmark fee award is fair and reasonable, and should be approved.

14 **1. The Result Achieved**

15 64. For the reasons summarized above at ¶¶41-42 above and further discussed in both
 16 the Final Approval and the Fee Brief, Lead Counsel respectfully submit that the recovery achieved
 17 is not merely adequate, but in fact represents, based on objective published data, a superior result
 18 when compared to the average or median securities class action settlement. Accordingly, Lead
 19 Counsel respectfully submit that this important factor weighs strongly in favor of awarding the
 20 requested “benchmark” 25% fee.

21 **2. Litigation Risk**

22 65. As summarized at ¶¶36-40 above and further discussed in both the Final Approval
 23 and the Fee Brief, Lead Counsel respectfully submit that, for multiple reasons, this was a decidedly
 24 high-risk case.

25 66. Moreover, my firm’s prosecution of these claims was undertaken on a fully
 26 contingent-fee basis, leaving Lead Counsel fully exposed to the risk that they would recover little
 27 or nothing if they were unable to bring this Action to a successful result for the Class.
 28

1 67. In sum, from the outset, Lead Counsel understood that it was embarking on
2 complex and expensive litigation that would be hard-fought litigation, all with no guarantee of
3 ever being compensated for the substantial investment of time and the outlay of money that
4 prosecuting the case would require. In undertaking that responsibility, Lead Counsel was obligated
5 to ensure that sufficient resources (in terms of attorney and support staff time) were dedicated to
6 the litigation, and that Lead Counsel would further advance all the costs necessary to pursue the
7 case vigorously on a fully contingent basis, including funds to compensate vendors and expert
8 consultants and the kinds of additional and significant out-of-pocket costs that a case such as this
9 typically demands. Because complex shareholder litigation often proceeds for several years before
10 reaching any resolution, the financial burden on contingent-fee counsel is far greater than on a firm
11 that is paid on an ongoing basis. Indeed, Lead Counsel has received no compensation during the
12 course of this Action, nor has it received any reimbursement for the \$88,688.02 in expenses they
13 have incurred to date in prosecuting this matters for the benefit of the Class.

14 68. Having achieved a commendable result in the face of the kind of multiple and very
15 significant risks that were present here, Lead Counsel respectfully submit that the litigation risk
16 factor also weighs strongly in favor of the requested fee.

17 **3. The Skill Required and Quality of Work Performed**

18 69. Securities fraud class actions are notoriously complex and difficult to litigate and
19 require a high level of professional skill and experience. A copy of Scott+Scott's firm resume,
20 which includes information about the standing of my firm and brief biographical summaries for
21 the principal attorneys who worked on this case is attached in Exhibit D filed herewith. Lead
22 Counsel also hopes that the Court will agree based on its own role in overseeing this litigation that
23 Scott+Scott has demonstrated its experience and a high level of skill in this matter.

24 70. Given that some courts also consider the caliber of defendants' counsel under this
25 factor, it should be noted that Defendants were represented in the Action by a team of extremely
26 able counsel from Wilson Sonsini Goodrich & Rosati and Norton Rose Fulbright – two firms with
27 a well-known (and well deserved) reputation for skill and for vigorously defending securities class
28 actions. In other words, given that Lead Counsel was able to develop a sufficiently strong case to

1 persuade Defendants to agree to the \$13 million Settlement – notwithstanding the caliber of
2 Defendants’ counsel – further supports the requested fee award.

3 **4. The Fully Contingent of the Representation**

4 71. From inception, Lead Counsel has undertaken to represent Plaintiff and the Class
5 on a *fully* contingent basis and to advance all litigation costs, such that my firm would recover
6 neither any attorneys’ fees nor any expense reimbursements absent a recovery for the Class. As
7 also noted at ¶67 above, this factor also strongly supports the requested fee.

8 **5. Awards in Similar Cases and Lodestar Cross-Check**

9 72. The accompanying Fee Memorandum more fully discusses relevant case law and
10 data concerning awards of attorneys’ fees in similar cases. Lead Counsel note, however, that in
11 addition to the case law in that brief, published research also confirms that, in securities class
12 actions involving (as here) a recovery in the range of \$10-\$25 million, the median court-approved
13 attorneys fee award for such cases has remained in a fairly consistent range of 28% to 30% over
14 the last 25 years, dating back to the start of the post-PSLRA era in 1996. *See* NERA Report, *supra*
15 at ¶42, at p. 27.

16 73. Moreover, a “lodestar cross-check” analysis further confirms that the requested
17 25% here is fully consistent with awards in similar cases. In performing a lodestar “cross-check,”
18 courts consider the total value of the legal services provided, based on (i) the number of hours
19 billed by each professional or paraprofessional timekeeper, multiplied by (ii) that timekeeper’s
20 reasonable hourly rate. Here, after combining my firm’s hours and lodestar with those of the only
21 other Plaintiff’s Counsel firm (*see* the accompany Declaration of Brian Schall on behalf of the
22 Schall Law Firm), in total the two Plaintiff’s Counsel here (i) devoted 2,328.70 hours to the
23 investigation, litigation and ultimate resolution of this Action over the course of roughly three
24 years, resulting in (ii) a combined total lodestar of \$2,000,279.00.

LAW FIRM	HOURS BILLED	LODESTAR
Scott+Scott	2,279.70	\$1,967,554.00
Schall Law Firm	49.00	\$32,725.00

TOTAL	2,328.70	\$2,000,279.00
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74. Significantly, the resulting “lodestar cross-check” results in only an unexceptional 1.62 multiplier here. In other words, the requested 25% fee equates to roughly \$3.25 million, and the resulting ratio between the requested 25% fee (\$3.25 million) and Plaintiff Counsel’s total lodestar (\$2,000,279.00) is 1.62. Given that multipliers between 2 and 4 are commonly awarded in complex securities class actions with substantial contingency risk (*see* accompanying brief), Lead Counsel respectfully submit that the unexceptional multiplier requested here further confirms the reasonableness of the requested fee.

6. Reaction of the Class

75. Finally, although 72,491 Notice Packets have been sent to potential Class Members and Nominees advising them that Plaintiff’s Counsel would apply for attorneys’ fees equal to 25% of the Settlement Fund (*see* Walter Decl. ¶8). To date, no objections to the requested fee request for attorneys’ fees have been filed or received, either by A.B. Data (Walter Decl. at ¶16) or, to Lead Counsel’s knowledge, by any of Plaintiff’s or Defendant’s attorneys. Should any objections be filed or received before the Fairness Hearing, Lead Counsel will address them in reply papers.

76. In sum, for the reasons set forth above and in the accompanying Fee Memorandum, it is respectfully submitted that the requested 25% fee should be approved as fair and reasonable.

C. The Expense Application

77. Scott+Scott also respectfully seeks reimbursement of litigation expenses from the Settlement Fund in the amount of \$88,688.02, for expenses that were reasonably incurred in connection with the prosecution of this Action. From the outset, my firm has understood that it might not recover any of the expenses it incurred and that, even assuming that the case were ultimately successful, reimbursement of expenses would not necessarily compensate them for the lost use of the funds they had advanced to prosecute the Action. Consequently, my firm was motivated to, and did, take steps to avoid incurring unnecessary expenses when, without jeopardizing the vigorous and efficient prosecution of the case, it was practicable to do so.

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William C. Fredericks

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CERTIFICATE OF SERVICE

I hereby certify that on September 14, 2023, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the email addresses denoted on the Electronic Mail Notice List.

s/ William C. Fredericks
William C. Fredericks

EXHIBIT A

Case Name: *Abadilla, et al. v. Precigen, Inc., et al.*, Case No. 5:20-cv-06936-BLF
Firm Name: Scott+Scott Attorneys at Law LLP
Relevant Period: Inception of action through and including July 7, 2023 (date of Order granting Preliminary Approval)

PROFESSIONAL	STATUS¹	HOURLY RATE	TOTAL HOURS	TOTAL LODESTAR AT HOURLY RATES
David Scott	P	\$1,595	34.50	\$ 55,027.50
John Jasnoch	P	\$1,095	35.40	\$ 38,763.00
Michael Burnett	P	\$1,195	31.30	\$ 37,403.50
Thomas Laughlin	P	\$1,095	103.10	\$ 112,894.50
William Fredericks	P	\$1,395	565.10	\$ 788,314.50
Kristen Anderson	OC	\$1,050	50.90	\$ 53,445.00
Emilie Kokmanian	A	\$695	51.50	\$ 35,792.50
Jeffrey Jacobson	A	\$625	463.00	\$ 289,375.00
Rhiana Swartz	A	\$795	63.80	\$ 50,721.00
Ana DelCastillo	SA	\$675	134.90	\$ 91,057.50
J. Alex Vargas	I	\$675	325.70	\$ 219,847.50
Sinai Megibow	I	\$550	166.60	\$ 91,630.00
Michelle Petrick	I	\$415	24.00	\$ 9,960.00
Allen West	PL	\$415	66.70	\$ 27,680.50
Devin Colonna	PL	\$395	54.40	\$ 21,488.00
Ellen Dewan	PL	\$395	13.70	\$ 5,411.50
Michael Himes	PL	\$415	16.60	\$ 6,889.00
Sumner Caesar	PL	\$415	42.30	\$ 17,554.50
Toby Saviano	PL	\$395	36.20	\$ 14,299.00
TOTAL			2,279.70	\$ 1,967,554.00

¹ P = Partner; OC = Of Counsel; A = Associate; SA = Staff Attorney; I = Investigator; and P = Paralegal.

EXHIBIT B

Case Name: *Abadilla, et al. v. Precigen, Inc., et al.*, Case No. 5:20-cv-06936-BLF
Firm Name: Scott+Scott Attorneys at Law LLP
Relevant Period: Inception of action through and including July 7, 2023 (date of Order granting Preliminary Approval)

Categories:

- | | | | |
|---------------------------|--|-----------------------------------|----------------------------------|
| (1) Factual Investigation | (4) Case Management/Client Communication | (6) Court Appearances/Preparation | (9) Litigation Strategy/Analysis |
| (2) Pleadings | (5) Motions and Legal Research | (7) Experts/Consultants | (10) Trial/Preparation |
| (3) Discovery | | (8) Settlement/Mediation | |

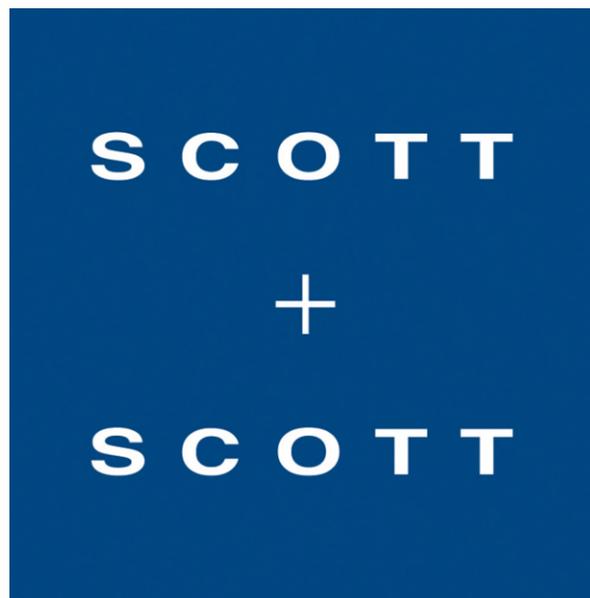
Name		(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	Total Hours	Rate (\$)	Total Lodestar (\$)
David Scott	P	-	2.00	-	-	-	-	-	32.50	-	-	34.50	1,595.00	55,027.50
John Jasnoch	P	14.10	4.10	-	-	13.30	3.90	-	-	-	-	35.40	1,095.00	38,763.00
Mike Burnett	P	31.30	-	-	-	-	-	-	-	-	-	31.30	1,195.00	37,403.50
Thomas Laughlin	P	26.00	47.90	-	-	25.00	-	-	4.20	-	-	103.10	1,095.00	112,894.50
William Fredericks	P	19.10	94.10	5.90	4.90	67.50	22.50	65.50	285.00	0.60	-	565.10	1,395.00	788,314.50
Kristen Anderson	OC	-	-	-	-	-	3.60	-	47.30	-	-	50.90	1,050.00	53,445.00
Emilie Kokmanian	A	-	-	41.70	-	-	-	1.60	0.60	7.60	-	51.50	695.00	35,792.50
Jeffrey Jacobson	A	63.10	161.60	24.90	0.10	93.10	13.70	6.10	95.80	4.60	-	463.00	625.00	289,375.00
Rhiana Swartz	A	3.30	0.20	-	4.00	50.20	1.20	-	-	4.90	-	63.80	795.00	50,721.00
Ana DelCastillo	SA	-	-	134.90	-	-	-	-	-	-	-	134.90	675.00	91,057.50
Alex Vargas	I	317.10	0.80	-	-	-	-	-	-	7.80	-	325.70	675.00	219,847.50
Sinai Megibow	I	166.60	-	-	-	-	-	-	-	-	-	166.60	550.00	91,630.00
Michelle Petrick	I	24.00	-	-	-	-	-	-	-	-	-	24.00	415.00	9,960.00
Allen West	PL	44.30	20.80	-	-	1.20	-	-	0.40	-	-	66.70	415.00	27,680.50
Devin Colonna	PL	13.00	12.70	-	0.20	28.50	-	-	-	-	-	54.40	395.00	21,488.00
Ellen DeWan	PL	-	10.00	-	-	3.20	0.50	-	-	-	-	13.70	395.00	5,411.50
Michael Himes	PL	-	-	-	1.70	12.10	-	-	2.80	-	-	16.60	415.00	6,889.00
Sumner Caesar	PL	-	14.50	-	-	-	-	-	27.80	-	-	42.30	415.00	17,554.50
Toby Saviano	PL	35.80	-	-	-	0.40	-	-	-	-	-	36.20	395.00	14,299.00
Totals	-	757.70	368.70	207.40	10.90	294.50	45.40	73.20	496.40	25.50	-	2,279.70	-	1,967,554.00

EXHIBIT C

Case Name: *Abadilla, et al. v. Precigen, Inc., et al.*, Case No. 5:20-cv-06936-BLF
Firm Name: Scott+Scott Attorneys at Law LLP
Relevant Period: Inception of action through the present

EXPENSE	AMOUNT
Courier	\$ 83.79
Court Reporters/Transcripts	\$ 213.65
Document Production/Storage	\$ 7,262.81
Expert	\$ 28,948.87
Filing, Witness & Other Fees	\$ 2,956.85
Mediation	\$ 32,500.00
On-Line Research	\$ 12,657.93
Photocopies	\$ 3,144.52
Press Releases	\$ 250.00
Telephone, Facsimile	\$ 447.03
Travel (Meals, Hotels & Transportation)	\$ 222.57
TOTAL	\$ 88,688.02

EXHIBIT D



FIRM RESUME



Scott+Scott specializes in the investigation and prosecution of complex actions across the globe – recovering billions for its clients. The Firm has extensive experience litigating securities fraud, antitrust, consumer and other complex cases and is a pioneer in structured finance monitoring for client portfolios. We represent individual, institutional, and multinational clients in the United States, United Kingdom, and European courts, offering a one-stop shop for international recoupment.

THE FIRM

Scott+Scott was founded in 1975 and began its securities litigation practice in 1997. The Firm has since grown into one of the most respected U.S.-based law firms specializing in the investigation and prosecution of complex securities, antitrust and other commercial actions in both the United States and Europe. Today, the Firm is comprised of more than 135 team members, including more than 100 attorneys supported by a seasoned staff of paralegals, IT and document management professionals, financial analysts, and in-house investigators.

Scott+Scott's largest offices are in New York, N.Y. and San Diego, C.A., with additional U.S. offices located in Connecticut, Virginia, Ohio, and Arizona. The Firm's European offices are currently located in London, Amsterdam, and Berlin.

Scott+Scott has extensive experience litigating cases on behalf of our institutional and individual clients throughout the United States, having served as court-appointed lead or co-lead counsel in numerous securities, antitrust, and consumer class actions, as well derivative and other complex proceedings, in both state and federal courts. The Firm also represents large investors and numerous corporations in commercial and other litigation in courts within the European Union (EU) and the United Kingdom.

Scott+Scott's attorneys are recognized experts and leaders in complex litigation and corporate governance. They have been regular speakers on CLE panels as well as at institutional investor educational conferences around the world and before boards of directors and trustees responsible for managing institutional investments. Scott+Scott attorneys educate institutional investors and governmental entities on the importance of fulfilling fiduciary obligations through the adoption of appropriate asset recovery services, as well as through the development and enforcement of corporate governance initiatives. The Firm's vast experience in structured debt financial litigation has also enabled us to provide clients with in-depth monitoring of their structured finance products, which often come with substantial undisclosed risks due to investors' limited ability to assess what they are acquiring. The Firm also has experience evaluating and monitoring for our clients' debt and debentures originating from private placements and non-public companies, including municipal bonds and derivatives.



SECURITIES AND CORPORATE GOVERNANCE

Scott+Scott has extensive experience litigating claims for violations of the federal securities laws on behalf of our municipal, institutional, and individual investor clients, serving as lead counsel in numerous securities class actions brought under the Securities Act of 1933, the Securities Exchange Act of 1934, and other statutes.

Scott+Scott recognizes that, particularly since the passage of the Private Securities Litigation Reform Act of 1995, bringing successful claims for violations of the federal securities laws requires not only significant litigation experience, but also the ability to bear the skills of its in-house investigators and financial analysts (and often outside consultants) to build a case that can survive both early-stage motions to dismiss and later stage motions for summary judgment. Our philosophy is also based on our view that efforts to negotiate a successful settlement are typically built on the quality of pre-filing investigation diligence, and our willingness to litigate deep into discovery and, if necessary, through summary judgment and trial.

Our securities litigators have experience practicing in state and federal courts across the country. The Firm's attorneys have regularly retained and worked with leading accounting experts, damages experts, and relevant industry experts to build their clients' cases against defendants involved in virtually every type of industry, from pharmaceuticals to dot.coms, from retailers to manufacturers, and from investment banks to accounting firms. The Firm has also submitted *amicus curiae* briefs to the United States Supreme Court on behalf of its clients on important securities laws issues, including in support of the plaintiffs in *California Public Emps.' Ret. Sys. ANZ Securities, Inc.*, 137 S. Ct. 2042 (2017) and *Cyan Inc. v. Beaver County Emp. Ret. Fund*, 138 S. Ct. 1061 (2018).

When appropriate, Scott+Scott prosecutes actions on a class or individual basis. Through our commitment to the best interests of those the Firm represents, Scott+Scott has successfully obtained exceptional monetary results and precedent-setting corporate governance reforms on behalf of investors.

SECURITIES CASE EXAMPLES

Securities class actions where Scott+Scott currently serves as lead or co-lead counsel include:

- *In re Lyft, Inc., Secs. Litig.*, No. CGC-19-575293 (Cal. Super. Ct. San Francisco Cnty.)
- *Okla. Firefighters Pens. vs. Newell Brands Inc.*, No. L-003492-18 (N.J. Sup. Ct. Hudson Cnty.)
- *Erie Cnty. Empl. Ret. Sys. v. NN, Inc.*, No. 656462/2019 (N.Y. Supr. Ct. N.Y. Cnty.)
- *In re DouYu Int'l Hold'gs Ltd. Sec. Litig.*, No. 651703/2020 (N.Y. Supr. Ct. N.Y. Cnty.)
- *In re Cloudera, Inc. Secs. Litig.*, No. 19CV348674 (Cal. Super. Ct. Santa Clara Cnty.)
- *In re Infinity Q Divers. Alpha Fund Sec. Lit.*, No. 651295/2021 (N.Y. Supr. Ct. N.Y. Cnty.)
- *Okla. Police Pension Fund & Ret. Sys. v. Jagged Peak Energy, Inc.*, No. 2017 CV 31757 (Colo. Dist. Ct., Denver Cnty.)
- *In re Micro Focus Int'l PLC Secs. Litig.*, No. 18CIV01549 (Cal. Super. San Mateo Cnty.)
- *In re Slack Techs., Inc. S'holder Litig.*, No. 19CIV05370 (Cal. Super. San Mateo Cnty.)
- *Mancour v. SmileDirectClub, Inc.*, No.: 19-1169-IV (Tenn. Chancery Ct, Davidson Cnty.)
- *Huang v. PPDAl Grp, Inc.*, No. 654482/2018 (N.Y. Supr. Ct. N.Y. Cnty.)
- *Boston Ret. Sys. v. Uber Tech., Inc.*, No. 3:20-cv-08610 (N.D. Cal.)
- *Robert Charles Class A, L.P. v. JPMorganChase & Co.*, No. 1:18-cv-11115 (S.D.N.Y.)
- *Garnett v. Wang [In re RLX Tech., Inc.]*, No. 21-cv-5125 (S.D.N.Y.)
- *Marechal v. Acadia Pharm. Inc.*, No. 3:21-cv-762 (S.D. Cal.)
- *Gupta v. Athenex, Inc.*, No. 21-cv-337 (W.D.N.Y.)
- *Abadilla v. Precigen, Inc.*, No. 5:20-cv-06936 (N.D. Cal.)
- *Kanugonda v. Funko, Inc.*, No. 2:18-cv-00812 (W.D. Wash.)
- *Corwin v. ViewRay, Inc.*, No. 1:19-cv-2115 (N.D. Ohio)
- *Mo-Kan Iron Workers Pension Fund v. Teligent, Inc.*, No. 1:19-cv-03354 (S.D.N.Y.)
- *Silverberg v. DryShips Inc.*, No. 2:17-cv-04547 (E.D.N.Y.)



- *Robinson v. Diana Containerships Inc.*, No. 2:17-cv-06160 (E.D.N.Y.).

Securities class actions which have been resolved where Scott+Scott served as lead or co-lead counsel include:

- *Alaska Elec. Pension Fund v. Pharmacia Corp.*, No. 03-cv-01519 (D.N.J.) (\$164 million settlement);
- *In re LendingClub Corp. S'holder Litig.*, No. CIV 537300 (Cal. Super. Ct, San Mateo Cnty.) (part of \$125 global settlement)
- *In re Priceline.com, Inc. Sec. Litig.*, No. 00-cv-01884 (D. Conn.) (\$80 million settlement);
- *Irvine v. ImClone Sys., Inc.*, No. 02-cv-00109 (S.D.N.Y.) (\$75 million settlement);
- *Cornwell v. Credit Suisse Grp.*, No. 08-cv-03758 (S.D.N.Y.) (\$70 million settlement);
- *Policemen's Annuity & Benefit Fund of Chi. v. Bank of Am., N.A.*, No. 12-cv-02865 (S.D.N.Y.) (\$69 million settlement);
- *In re SanDisk LLC Sec. Litig.*, No. 15-cv-01455 (N.D. Cal.) (\$50 million settlement);
- *Weston v. RCS Cap. Corp.*, No. 14-cv-10136 (S.D.N.Y.) (\$31 million settlement);
- *In re Greensky Sec. Litig.*, No. 1:18 Civ. 11071 (S.D.N.Y.) (\$27.5M settlement)
- *In re Wash. Mut. Mortg.-Backed Sec. Lit.*, No. 2:09-cv-00037 (W.D. Wash.) (\$26 million recovery)
- *ATRS v Insulet Corp.*, No. 15-12345 (D. Mass.) (\$19.5 million settlement);
- *In re King Digit. Ent. PLC S'holder Litig.*, No. CGC-15-544770 (Cal. Sup. Ct. San Francisco Cnty.) (\$18.5 million settlement)
- *In re Evoqua Water Corp. Sec. Litig.*, No. 1:18-cv-10320 (S.D.N.Y.) (\$16.65 million settlement);
- *In re Conn's, Inc. Secs. Litig.*, No. 4:14-cv-00548 (S.D. Tex.) (\$22.5 million settlement)
- *Collins v. Oilsands Quest Inc.*, No. 11 Civ. 1288 (S.D.N.Y.) (\$10.235 million settlement)
- *Kaplan v. S.A.C. Cap. Advisors, L.P.*, No. 1:12cv-9350 (S.D.N.Y.) (\$10 million settlement)
- *Rosenberg v. Cliffs Natural Res. Inc.*, No. CV 14 828140 (Ct. Common Pleas Cuyahoga Cnty. Ohio) (\$10 million settlement)
- *In re Endochoice Holdings, Inc., Sec. Litig.*, No. 2016 CV 277772 (Ga. Sup. Ct. Fulton Cnty.) (\$8.5 million settlement)



- *In re Netshoes Secs. Litig.*, No. 157435/2018 (N.Y. Sup. Ct. N.Y. Cnty.) (\$8 million settlement)
- *City of Omaha Police & Fire Ret. Sys. v. LHC Grp, Inc.*, No. 6:12-CV-01609 (W.D. La.) (\$7.85 million settlement)
- *In re Pac. Coast Oil Trust Secs. Litig.*, No. BC550418 (Cal. Sup. Ct. Los Angeles Cnty.) (\$7.6 million settlement)
- *In re Pacific Biosci. of C.A., Inc. Sec. Litig.* (Cal. Sup. Ct. San Mateo Cnty.) (\$7.6 million recovery)
- *Plymouth Cnty. Contributory Ret. Sys. v. Adamas Pharms., Inc.*, No. RG19018715 (Cal. Sup. Ct. Alameda Cnty.) (\$7.5M settlement)
- *St. Lucie Cnty. Fire Dist. Firefighters' Pens. Trust v. Southwestern Energy Co.*, No. 2016-70651 (Tex. Dist. Ct. Harris Cnty.) (\$7 million settlement)



SHAREHOLDER DERIVATIVE CASE EXAMPLES

Shareholder derivative actions where Scott+Scott currently serves in a sole or leadership role include:

- *In re Facebook Derivative Litig.*, Consol. No. 2018-0307 (Del. Ch.)
- *Evergreen Capital Mgmt. LLC v. Pacific Coast Energy Co. LP*, No. 20STCV26290 (Cal. Sup. Ct.)
- *In re Alphabet, Inc., S'holder Deriv. Litig.*, No. 3:21-cv-09388-RS (N.D. Cal.)
- *Lindsey v. Immelt*, Index No. 202019718 (N.Y. Sup. Ct.)
- *Bottoni v. Hernandez*, No. 20-cv-01442 (S.D.Tex.)
- *Savage v. Kotick*, No. 22STCV17478 (Cal. Sup. Ct.)
- *In re Exelon Corp. Deriv. Litig.*, No. 1:21-cv-03611 (N.D. Ill.)
- *Asbestos Workers Philadelphia Pension Fund v. Scharf*, No. 3:23-cv-01168-TLT (N.D. Cal.)
- *Presura v. Casey*, (Del. Ch.)
- *Trimm v. Schultz*, (Wash. Sup. Ct., Kings County)

Representative shareholder derivative actions litigated by Scott+Scott which have been successfully resolved include:

- *Irving Firemen's Relief & Ret. Fund v. Page*, C.A. No. 2019-0355-Sg (Del. Ch. 2020) (\$310 million in funding for corporate governance reform programs over 10 years);
- *In re DaVita Healthcare Partners Deriv. Litig.*, No. 13-cv-01308 (D. Colo.) (corporate governance reforms valued at \$100 million);
- *Buffalo Grove Police Pension Fund v. Diefenderfer*, No. 19-cv-00062 (E.D. Pa.) (claims vs. Navient Corp. officers & directors settled for corporate governance reforms valued at \$139 million);
- *Tharp v. Acacia Commc'ns, Inc.*, No 1:17-cv-11504 (D. Mass.) (claims vs. company and corporate officers & directors settled for corporate governance reforms valued at \$57-\$71 million);

- *N. Miami Beach Gen. Emps. Ret. Fund v. Parkinson*, No. 10-cv-06514 (N.D. Ill.)(corporate governance reforms valued between \$50 and \$60 million);
- *In re Marvell Tech. Grp. Ltd. Deriv. Litig.*, No. 06-cv-03894 (N.D. Cal.) (\$54.9 million settlement and corporate governance reforms);
- *Rudi v. Wexner*, No. 2:20-cv-3068 (S.D. Ohio) (\$90 million in funding for corporate governance reform programs over at least 5 years);
- *In re Universal Health Servs., Inc. Derivative Litig.*, No. 2:17-cv-02187 (E.D. Pa.) (Settled for corporate governance reforms conservatively valued at \$110 million);
- *In re Altria Group, Inc. Deriv. Litig.*, Consol. No. 3:20-cv-00772 (E.D. Va.) (successfully resolved for corporate governance reforms with multi-year funding commitment of \$117 million); and
- *In re Symantec Corp. S'holder Deriv. Litig.*, Consol. C.A. No. 2019-0224-JTL (Del. Ch.) (successfully resolved for \$12 million cash payment to company and corporate governance reforms).

ACCOLADES

U.S. News & World Report “Best Law Firms”

The Firm is currently ranked by U.S. News & World Report as a “Best Law Firm” in commercial litigation in the New York region.

American Antitrust Institute

The 2018 Antitrust Annual Report recognized *In re Foreign Currency Benchmark Rates Antitrust Litigation* as the #1 settlement of 2018, as well as ranking the Firm #1 nationally for aggregate settlements: 2013-2018.

Global Competition Review

At the 6th Annual Global Competition Review (“GCR”) Awards, Scott+Scott won for Litigation of the Year – Cartel Prosecution, which recognized the Firm’s efforts in the foreign exchange settlements in the United States, a landmark case in which major banks conspired to manipulate prices paid in the \$5.3 trillion-per-day foreign exchange market and have thus far settled for more than \$2 billion.

Law 360 Glass Ceiling Report

Scott+Scott is recognized as one of the top law firms in the nation for female attorneys by the legal publication Law360. The Glass Ceiling Report honors firms that “are demonstrating that the industry’s gender diversity goals can turn into a measurable result, and boost the number of women at all levels of a law firm.”^{1,2} This selection highlights the importance Scott+Scott places on diversity and inclusion within the Firm.

Center for Constitutional Rights

Scott+Scott was the recipient of the 2010 Center for Constitutional Rights’ Pro Bono Social Change Award for its representation of the Vulcan Society, an association of African-American firefighters, in challenging the racially discriminatory hiring practices of the New York City Fire Department.

¹ <https://www.law360.com/articles/1310926>

² <https://www.law360.com/articles/1162859/the-best-law-firms-for-female-attorneys>.



WORLD-CLASS ATTORNEYS

We pride ourselves on the caliber of legal talent on our team. In addition to some of the best and brightest rising stars, we have attorneys who have served with distinction in the U.S. Department of Justice, been admitted to the U.S. Supreme Court, served in OAGs at the state level, argued before the UK's CAT and High Courts, and received virtually every accolade offered in our profession.



ADMISSIONS

U.S. Admissions: United States Supreme Court; United States Courts of Appeal for the First, Second, Third, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, and Eleventh Circuits; United States District Courts for the Districts of California (Northern, Southern, Eastern, and Central), Colorado, Connecticut, Florida (Northern), Illinois (Northern), Massachusetts, Michigan (Eastern), Missouri (Eastern), New Jersey, New York (Southern, Eastern, and Western), Ohio (Northern and Southern), Pennsylvania (Eastern and Western), Texas (Northern, Western, and Southern), Wisconsin (Eastern and Western), and the District of Columbia; and the courts of the States of Arizona, California, Connecticut, Delaware, Florida, Maryland, Pennsylvania, Massachusetts, Nebraska, New Jersey, New York, Ohio, West Virginia, Wisconsin, Texas, and the District of Columbia.



ATTORNEY BIOGRAPHIES

DAVID R. SCOTT

PRACTICE EMPHASIS

Managing Partner David R. Scott represents multinational corporations, hedge funds, and institutional investors in high-stakes, complex litigation, including antitrust, commercial, and securities actions.

ADMISSIONS

States of New York, Pennsylvania, and Connecticut; United States Tax Court; United States Courts of Appeal: Second, Third, and Fifth Circuits; United States District Courts: Southern District of New York, Connecticut, Eastern District of Pennsylvania, Northern and Southern Districts of Texas, and Colorado

EDUCATION

New York University School of Law (LL.M. in taxation); Temple University School of Law (J.D., Moot Court Board, 1989); St. Lawrence University (B.A., cum laude, 1986)

HIGHLIGHTS

Mr. Scott is the Managing Partner of Scott+Scott with offices in New York, Amsterdam, London, Berlin, California, Connecticut, Virginia, Arizona, and Ohio.

In addition to managing the firm's lawyers worldwide, Mr. Scott advises some of the world's largest multinational corporations in cartel damages and other complex matters. He has been retained to design corporate policies for the global recoupment of losses, and transatlantic private enforcement programs.

He currently represents multinational companies and hedge funds in cases involving, among other things, price-fixing in the trucks, foreign exchange, high voltage power cables, cardboard, and payment card sectors.

Mr. Scott's antitrust cases in the United States have resulted in significant recoveries for victims of price-fixing cartels. Among other cases, Mr. Scott served as co-lead counsel in *Dahl v Bain Cap. Partners*, No. 1:07-cv-12388 (D. Mass.), an action alleging that the largest private equity firms in the United States colluded to suppress prices that shareholders received in leveraged buyouts and that the defendants recently agreed to settle for \$590.5 million. He was lead counsel in *Red Lion Med. Safety v. Ohmeda*, No. 06-cv-1010 (E.D. Cal.), a lawsuit alleging that Ohmeda, one of the leading manufacturers of medical anesthesia equipment in the United States, excluded



independent service organizations from the market for servicing its equipment. The case was successfully resolved in settlement negotiations before trial.

Mr. Scott has received widespread recognition for his antitrust and competition law work. He has been elected to Who's Who Legal: Competition 2015- 2020, which lists the world's top antitrust and competition law lawyers, selected based on comprehensive, independent survey work with both general counsel and lawyers in private practice around the world. He has also received a highly recommended ranking by Benchmark Litigation for each of the years 2013-2015. In addition, Mr. Scott is continually recognized in the U.S. by Best Lawyers and Super Lawyers.

In addition to his extensive competition law work, Mr. Scott has also taken the lead in bringing claims on behalf of institutional investors, such as sovereign wealth funds, corporate pension schemes, and public employee retirement funds. For example, he has been retained to pursue losses against mortgaged-backed securities trustees for failing to protect investors. He also represented a consortium of regional banks in litigation relating to toxic auction rate securities ("ARS") and obtained a sizable recovery for the banks in a confidential settlement. This case represents one of the few ARS cases in the country to be successfully resolved in favor of the plaintiffs.

Mr. Scott is frequently quoted in the press, including in publications such as The Financial Times, The Economist, The Guardian, The Daily Telegraph, The Wall Street Journal, and Law360. He is regularly invited to speak at conferences around the world and before Boards of Directors and trustees responsible for managing institutional investments.



THOMAS LAUGHLIN

PRACTICE EMPHASIS

Thomas Laughlin's practice focuses on securities class action, shareholder derivative, ERISA, and other complex commercial litigation.

ADMISSIONS

State of New York; United States Courts of Appeal: Second, Third, Ninth, and Eleventh Circuits; United States District Courts: Southern and Eastern Districts of New York, Northern District of Florida, District of Columbia, and Eastern District of Michigan

EDUCATION

New York University School of Law (J.D., *cum laude*, 2005); Yale University (B.A. History, *cum laude*, 2001)

HIGHLIGHTS

Mr. Laughlin is a partner in the New York office and focuses on securities class action, shareholder derivative, ERISA, and other complex commercial litigation. After graduating from law school, Mr. Laughlin clerked for the Honorable Irma E. Gonzalez, United States District Court Judge for the Southern District of California.

While at Scott+Scott, Mr. Laughlin has worked on several cases that have achieved notable victories, including *Cornwell v. Credit Suisse*, No. 08-3758 (S.D.N.Y.) (securities settlement of \$70 million), *In re SanDisk LLC Securities Litigation*, No. 3:15-CV-01455-VC (N.D. Cal.) (securities settlement of \$50 million); *Weston v. RCS Capital Corp.*, No. 1:14-cv-10136-GBD (S.D.N.Y.) (securities settlement of \$31 million); *In re King Digital Entertainment plc Shareholder Litigation*, No. CGC-15-544770 (Cal. Super. Ct. San Francisco Cnty.) (securities settlement of \$18.5 million); and *Rubenstein v. Oilsands Quest Inc.*, No. 11-1288 (S.D.N.Y.) (securities settlement of \$10.235 million).

Mr. Laughlin also has significant appellate experience, having represented clients in connection with several appellate victories, including *Cottrell v. Duke*, 737 F.3d 1238 (8th Cir. 2013); *Westmoreland County Employee Ret. Sys. v. Parkinson*, 727 F.3d 719 (7th Cir. 2013); *Pfeil v. State Street Bank and Trust Co.*, 671 F.3d 585 (6th Cir. 2012); and *King v. VeriFone Holdings, Inc.*, 12 A.3d 1140 (Del. Sup. 2011).

In 2014, Mr. Laughlin was co-chair of a 13-day bench trial in *Bankers' Bank Northeast v. Berry, Dunn, McNeil & Parker, LLC*, No. 12-cv-00127 (D. Me.). He represented a consortium of 10 community banks asserting negligence and professional malpractice claims against the former officers and



directors of a bank and its auditor in connection with an \$18 million loan made to that bank in September 2008. Among other things, Mr. Laughlin conducted the cross-examination of all three witnesses from the defendant's auditing firm and the direct examination of plaintiff's auditing expert. The parties to the action succeeded in resolving the action after trial.

Mr. Laughlin has also been named a Super Lawyer for 2021.



WILLIAM C. FREDERICKS

PRACTICE EMPHASIS

William Fredericks' practice focuses primarily on litigating securities and other complex commercial class actions.

ADMISSIONS

New York state; United States Supreme Court; United States District Courts for the Southern and Eastern Districts of New York, and the District of Colorado; United States Courts of Appeal for the First, Second, Third, Sixth, and Tenth Circuits

EDUCATION

Columbia University Law School, (J.D., 1988); University of Oxford (M. Litt. in International Relations, 1985); Swarthmore College (B.A. in Political Science, high honors, 1983)

HIGHLIGHTS

Mr. Fredericks is a partner in the firm's New York office. In addition to serving as lead counsel on behalf of investors in several pending securities fraud actions (including cases against Uber, Evoqua Water Technologies and EndoChoice Holdings). Mr. Fredericks also represents investors in the pending FX antitrust litigation brought against over a dozen leading banks based on their involvement in manipulating foreign exchange ("FX") rates and spreads, and in pending proceedings relating to data security breaches at FaceBook, Inc.

Mr. Fredericks has represented investors as a lead or co-lead counsel for plaintiffs in dozens of securities class actions, including *In re Wachovia Preferred Securities and Bond/Notes Litigation* (S.D.N.Y.) (total settlements of \$627 million, reflecting the largest recovery ever in a pure Securities Act case not involving any parallel government fraud claims); *In re Rite Aid Securities Litigation* (E.D. Pa.) (total settlements of \$323 million, including the then-second largest securities fraud settlement ever against a Big Four accounting firm); *In re Sears Roebuck & Co. Sec. Litigation* (N.D. Ill.) (\$215 million settlement, representing the then-largest §10(b) class action recovery in an action that did not involve either a financial restatement or parallel government fraud claims); *In re State Street Bank and Trust Co. ERISA Litigation* (S.D.N.Y.) (one of the largest ERISA class settlements to date); *In re King Digital Sec. Enter. PLC Shareholder Litigation* (Super. Ct. San Fran. Cty.) (\$18.5 million settlement, representing one of the largest state court §11 class action recoveries to date); *Irvine v. ImClone Systems, Inc.* (S.D.N.Y.) (\$75 million §10b settlement); *In re Insulet Sec. Litigation* (D. Mass) (\$19.75 million §10b settlement), and *In re LendingClub Sec. Litigation* (\$125 million §10b and §11 settlement). A consortium of plaintiffs' counsel also chose Mr. Fredericks to present the



(successful) oral argument in opposition to defendants' efforts to dismiss (on grounds of standing) over fifteen separate securities fraud cases before a three judge panel in *In re Mutual Fund Investing Litigation* (see 519 F. Supp. 2d 580 (D. Md. 2007)), which later settled for a combined total of several hundred million dollars. Mr. Fredericks also played a leading role on the team that obtained a rare 9-0 decision for securities fraud plaintiffs in the U.S. Supreme Court in *Merck & Co., Inc. v. Reynolds* (which later settled for \$1.052 billion), and he has also co-authored amicus briefs on behalf of clients in a number of other Supreme Court cases (including *Halliburton*, *Amgen*, *ANZ Securities* and *Cyan*) involving various significant securities law issues.

Mr. Fredericks has also represented clients in litigating claims in federal bankruptcy court proceedings, and obtained substantial recoveries from a bankrupt corporation's officers, law firm and outside auditors on behalf of a court-appointed Trustee of a creditor's trust. See *In re Friedman's, Inc.*, 394 B.R. 623 (S.D. Ga. 2008). He also currently represents a class of large commercial customers of a bankrupt utility in breach of contract proceedings in *In re FirstEnergy Corp.*, pending before the U.S. Bankruptcy Court for the Northern District of Ohio.

At Columbia Law School, Mr. Fredericks was a three-time Harlan Fiske Stone Scholar, a Columbia University International Fellow, Articles Editor of *The Columbia Journal of Transnational Law*, and winner of Columbia's Beck Prize (property law), Toppan Prize (advanced constitutional law) and Greenbaum Prize (written advocacy). A three-judge panel chaired by the late Justice Antonin Scalia also awarded Mr. Fredericks the Thomas E. Dewey Prize for best oral argument in the final round of Columbia's Stone Moot Court Honor Competition. After clerking for the Hon. Robert S. Gawthrop III (E.D. Pa.) in Philadelphia, Mr. Fredericks spent seven years practicing securities and complex commercial litigation at Simpson Thacher & Bartlett LLP and Willkie Farr & Gallagher LLP in New York before moving to the plaintiffs' side of the bar in 1996.

Mr. Fredericks has been recognized in the 2012-21 editions of "America's Best Lawyers" in the field of commercial litigation, in "Who's Who in American Law" (Marquis), and in the New York City "Super Lawyers" listings for securities litigation (2013-21). In 2020 (inaugural) and 2021 he was named to the LawDragon 500 Lead Plaintiff Attorney list. He has been a frequent panelist on various securities litigation programs sponsored by the Practising Law Institute (PLI) – including ten years as a panelist on civil liabilities under the federal Securities Act – and has lectured overseas on American class action litigation on behalf of the American Law Institute/American Bar Association (ALI/ABA). He is also the former chairman of the New York City Bar Association's Committee on Military Affairs and Justice, and a member of the Federal Bar Council.



KRISTEN ANDERSON

ADMISSIONS

States of California, New York, Illinois, District of Columbia; United States Courts of Appeal: Second Circuit and Ninth Circuit

EDUCATION

University of California, Hastings College of the Law (J.D., 2006); St. Louis University (B.A., Philosophy, 2003)

ASSOCIATIONS

- Member of the American Bar Association's Antitrust Section
- Past Vice Chair of the Antitrust Section's Trial Practice Committee
- Past Vice Chair of the Antitrust Section's Books & Treatises Committee

HIGHLIGHTS

Ms. Anderson has worked on class action cases recovering over \$9.3 billion. She recently served as interim co-lead counsel on behalf of advertiser plaintiffs in *Klein v. Facebook, Inc.*, No. 20-cv-8570 (N.D. Cal.). She is an active member of the American Bar Association's Antitrust Section. She was a contributing author to the Antitrust Section's *Proof of Conspiracy Under Federal Antitrust Laws* (3d ed.), *Antitrust Discovery Handbook* (2d ed.), *Joint Venture Handbook* (2d ed.), and the 2010 Annual Review of Antitrust Law Developments. In addition, Ms. Anderson served as an editor for *Model Jury Instructions in Civil Antitrust Cases* (2016 ed.) and numerous other publications. During law school, she served as an extern at the U.S. Department of Justice, Antitrust Division, in San Francisco and as an extern to Justice Kathryn Mickle Werdegar of the Supreme Court of California. She was also a research assistant to Professor James R. McCall in the areas of antitrust and comparative antitrust law.

Recognized as a Rising Star in the 2014-21 editions of *Super Lawyers*; and a Super Lawyer in the 2022-2023 edition

Frequent speaker on women in the law and antitrust topics through the American Bar Association and other organizations

Co-author of *The Misapplication of Associated General Contractors to Cartwright Act Claims*, 23 *COMPETITION: J. ANTI. & UNFAIR COMP. L. SEC. ST. B. CAL.* 120 (2014)

REPRESENTATIVE CASES



In re Foreign Exchange Benchmark Rates Antitrust Litig., No. 13-cv-7789 (S.D.N.Y.)
(\$2.3 billion settlement)

In re GSE Bonds Antitrust Litig., No. 19-cv-1704 (S.D.N.Y.) (\$386.5 million settlement)

Alaska Electrical Pension Fund v. Bank of America, N.A., No. 14-cv-7126 (S.D.N.Y.) (\$504.5 million
settlement)

Axiom Investment Advisors, LLC, by and through its Trustees, Gildor Management LLC v. Barclays Bank
PLC, No. 15-cv-9323 (S.D.N.Y.) (\$50 million settlement)

Dahl v. Bain Capital Partners, LLC, No. 07-cv-12388 (D. Mass.) (\$590.5 million settlement)

In re Payment Card Interchange Fee and Merchant Discount Antitrust Litig., MDL No. 1720 (E.D.N.Y.)
(\$5.54 billion settlement)



JEFFREY P. JACOBSON

PRACTICE EMPHASIS

Jeffrey P. Jacobson specializes in complex securities and commodities litigation.

ADMISSIONS

State of New York; United States Courts of Appeal: Second Circuit; United States District Courts: Southern, Eastern, and Western Districts of New York

EDUCATION

George Washington University Law School (J.D., High Honors, Order of the Coif, 2017); The George Washington University (B.A., Journalism & Political Science, *summa cum laude*, Distinguished Scholar, 2013)

HIGHLIGHTS

Jeff is a litigation associate in our New York office where he specializes in securities litigation in both federal and state court. Jeff represents pension funds and individuals in their civil suits prosecuting publicly traded companies and their principals for securities fraud and malfeasance. Jeff also represents institutional and individual investors in commodities fraud cases against corporate traders that manipulate the commodities markets.

Jeff was named a Super Lawyers Rising Star by Thompson Reuters in 2021, 2022, and 2023.

Several of Jeff's recent settlements include:

In re Micro Focus Int'l PLC Secs. Litig., No. 18CIV01549 (Cal. Super. San Mateo Cnty.) (\$107.5M settlement pending); *In re JPMorgan Precious Metals Spoofing Litig.*, No. 1:18-cv-10356 (S.D.N.Y.) (\$60M settlement); *In re Greensky Sec. Litig.*, No. 1:18 Civ. 11071 (S.D.N.Y.) (\$27.5M settlement); *Abadilla v. Precigen, Inc.*, No. 5:20-cv-06936 (N.D. Cal.) (\$13M settlement pending); *In re Vaxart, Inc. Sec. Litig.*, No. 3:20-cv-05949 (N.D. Cal.) (\$12.015M settlement); *Erie County Emps. Ret. Sys. v. NN, Inc.*, No. 656462/2019 (N.Y. Sup. Ct.) (\$9.5M settlement); *In re Netshoes Secs. Litig.*, No. 157435/2018 (N.Y. Sup. Ct. N.Y. Cnty.) (\$8 million settlement); *Plymouth Cnty. Contributory Ret. Sys. v. Adamas Pharms., Inc.*, No. RG19018715 (Cal. Sup. Ct. Alameda Cnty.) (\$7.5M settlement); and *Mo-Kan Iron Workers Pension Fund v. Teligent, Inc.*, No. 1:19-cv-03354 (S.D.N.Y.) (\$6M settlement).

Prior to joining Scott+Scott, Jeff was a litigation associate at a major international law firm where he represented clients in securities cases, bankruptcy proceedings, and antitrust matters, and advised clients on employment matters.



RHIANA SWARTZ

PRACTICE EMPHASIS

Rhiana Swartz's practice primarily focuses on case development including identifying, investigating, and initiating complex federal and state securities class actions on behalf of institutional and individual investors. She also litigates these matters, with a focus on leadership issues. Ms. Swartz is also involved in shareholder derivative actions and other complex commercial matters.

ADMISSIONS

State of New York; United States Courts of Appeal: Second Circuit; United States District Courts: Southern and Eastern Districts of New York, District of Colorado

EDUCATION

Brooklyn Law School (J.D., *magna cum laude*); Swarthmore College (B.A.)

HIGHLIGHTS

Prior to joining Scott+Scott, Ms. Swartz was Senior Counsel in the Special Federal Litigation Division of the New York City Law Department, Office of the Corporation Counsel, where she defended federal civil rights cases from initial receipt of complaint through trial verdict.

Ms. Swartz also spent more than four years as an associate at Sullivan & Cromwell LLP in New York, representing major financial institutions in civil and regulatory matters involving securities, antitrust, corporate governance, and employment law issues.

Ms. Swartz clerked for the Honorable Joan M. Azrack in the Eastern District of New York.

REPRESENTATIVE CASES

Ms. Swartz has helped secure Scott+Scott's leadership in many federal and state class actions, including: *Corwin v. ViewRay, Inc.*, No. 1:19-cv-02115 (N.D. Ohio); *In re Weight Watchers Int'l, Inc. Sec. Litigation*, No. 1:19-cv-02005 (S.D.N.Y.); *Mustafin v. GreenSky, Inc.*, No. 1:18-cv-11071 (S.D.N.Y.); *In re Evoqua Water Techs. Corp. Sec. Litigation*, No. 1:18-cv-10320 (S.D.N.Y.); *Kanugonda v. Funko, Inc.*, No. 2:18-cv-00812 (W.D. Wash.); *Silverberg v. DryShips Inc.*, No. 2:17-cv-04547 (E.D.N.Y.); *Robinson v. Diana Containerships Inc.*, No. 2:17-cv-06160 (E.D.N.Y.); and *In re Altice USA, Inc. Sec. Litigation*, Index No. 711788/2018 (NY Sup. Ct. Queens Cty.).



ANA DEL CASTILLO

PRACTICE EMPHASIS

Ana Del Castillo focuses on complex antitrust litigation and class actions.

ADMISSIONS

State of California

EDUCATION

California Western School of Law (J.D., 2006); University of San Diego (B.A., International Relations, 1998)

HIGHLIGHTS

Cases represented by Ms. Del Castillo include *Jones v. Pfizer Inc.*, No. 1:10-CV-03864-AKH (S.D.N.Y.) (\$400 million settlement); *In re Wells Fargo Collateral Protection Insurance Litigation*, No. 8:17-ML-2797-AG-KES (C.D. Cal) (\$393.5 million settlement); and *In re Yahoo! Customer Data Security Breach Litigation*, No. 5:16-MD-02752-lhk (N.D. Cal.) (\$117.5 million settlement).

Ms. Del Castillo was awarded the State Bar of California Wiley Manuel Certificate for Pro Bono Legal Services and awarded Casa Cornelia's La Mancha Award for providing pro bono legal services to asylum seekers.

Ms. Del Castillo enjoys outdoor activities, cooking, and spending time with her family.



J. ALEX VARGAS

PRACTICE EMPHASIS

J. Alex Vargas serves as Scott+Scott's Director of Investigations

ADMISSIONS

States of New York and California; District of Columbia

EDUCATION

University of San Diego School of Law (J.D., 2004); University of San Diego (B.A., 1997)

HIGHLIGHTS

Mr. Vargas is based in Scott+Scott's New York office and heads up our investigation department. He conducts and oversees investigations across all practice groups.

Mr. Vargas has devoted over a decade of his career investigating claims on behalf of institutional investors and other stakeholders in the class action arena. He has been involved in several high-profile securities fraud cases, including one where he served as the principal investigator in connection with a 14-year litigation, resulting in the largest securities fraud settlement following a trial; a record \$1.575 billion recovery in *Jaffe v. Household Int'l, Inc.*, No. 02-C-05893 (N.D. Ill.).

In 2019, Mr. Vargas was named to Lawdragon's prestigious list of 500 Leading Plaintiff Financial Lawyers.

Representative antitrust class actions include:

- *In re GSE Bonds Antitrust Litigation*, No. 1:19-cv-01704 (S.D.N.Y.) (\$386 million settlement)
 - **Case Contributions:** In June 2018 news reports indicated that the DOJ was investigating price-fixing in the secondary market for GSE bonds. After a thorough investigation, S+S filed suit alleging that investment banks serving as syndicate members in the primary GSE bond market had conspired to fix the price at which GSE bonds were traded in the secondary market. Mr. Vargas conducted an extensive pre-filing investigation and in doing so identified, interviewed, and retained a key industry expert. Mr. Vargas worked closely with this expert to develop an intricate understanding of the industry, its key players, and the problematic practices alleged by the DOJ. Obtaining this highly relevant human intelligence at a very early stage in the investigation was instrumental in assessing the case's viability, and ultimately, in being first to file a highly detailed complaint.



- Mr. Vargas “interviewed numerous industry insiders and ultimately retained a former highly-placed GSE Bond trader. [Mr. Vargas] worked with these industry experts to understand the regulatory framework and gain a thorough understanding of the GSE Bond market and the players in that market. Due to Counsel’s extensive investigation, Plaintiff’s complaint was the first to identify and allege the Defendants involved in the price-fixing conspiracy, its scope, and its duration.” ECF No. 349, ¶¶18-19.
 - S+S was appointed Co-Lead based in part on their “substantial investigative work and invest[ment] of significant resources.” Memorandum Order at 23, ECF No 159 (May 2, 2019)
- *In re Cattle Antitrust Litigation*, No. 19-cv-1222-JRT-HB (D. Minn.)
 - *In re Foreign Exchange Benchmark Rates Antitrust Litigation*, No. 1:13-cv-07789 (S.D.N.Y.)
 - *Putman Bank v. Intercontinental Exchange, Inc.*, No 1:19-cv-00439 (S.D.N.Y.)

Representative securities class actions include:

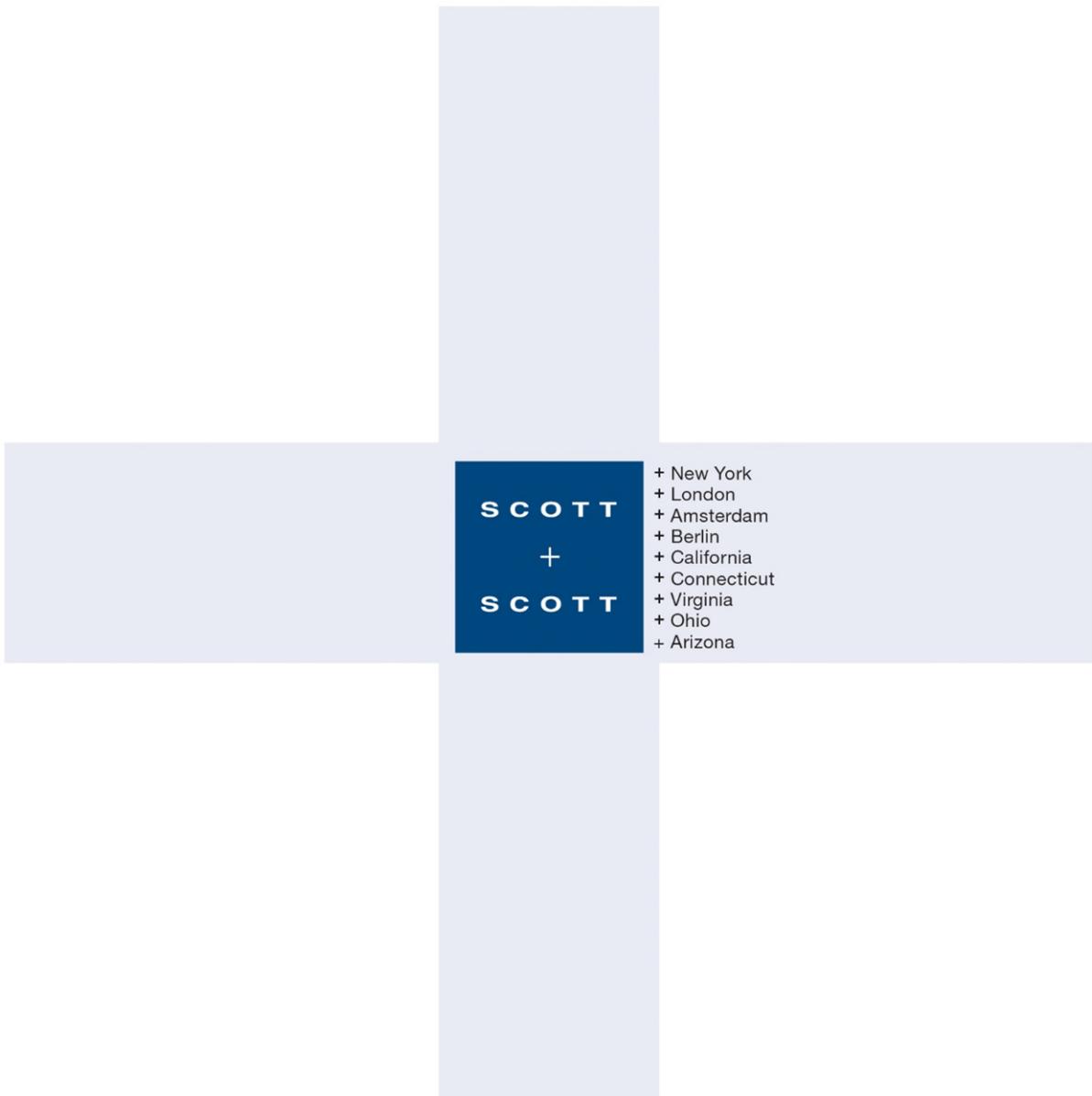
- *Banerjee v. Avinger, Inc.*, No. 4:17-cv-03400 (N.D. Cal.) (\$5 million settlement)
- *Union Asset Management Holding AG v. SanDisk LLC*, No. 3:15-cv-01455-VC (N.D. Cal.) (\$50 million settlement)
 - **Case Contributions:** S+S filed suit alleging that the defendant – a flash memory drive manufacturer – misled investors concerning the health and prospects of one of the company’s business segments, as well as its success integrating a recently acquired entity. Through his investigation, Mr. Vargas obtained highly corroborative intelligence that attributed knowledge of the fraud to the company’s CEO and CFO, thereby enabling S+S to overcome opposing counsel’s Motion to Dismiss. Mr. Vargas provided ongoing support throughout the life of the case in order to fully authenticate the sourcing and accuracy of the information he had developed through the investigation; a point which had been highly contested by opposing counsel.
- *In re LendingClub Corp. S’holder, Litigation*, No. CIV537300 (Cal. Super. Ct., San Mateo County) (\$125 million settlement)
- *In re: EndoChoice Holdings, Inc. Securities Litigation*, No. 2016-CV-277772 (Sup. Court, Fulton Cty, GA) (\$8.5 million settlement, preliminarily approved)



- *In re MobileIron, Inc. S'holder Litigation*, No. 1-15-cv-284001 (Cal. Super. Ct., Santa Clara County) (\$7.5 million settlement)
- *Rubenstein v. Oilsands Quest Inc.*, No. 11-cv-288 (S.D.N.Y.) (\$10.2 million settlement)

Representative consumer and data breach class actions include:

- *In re Equifax, Inc. Customer Data Security Breach Litigation*, No. 1:17-md-2800 (N.D. Ga.) (preliminary approval of settlement valued at \$32.5 million)
 - **Case Contributions:** S+S filed suit against Equifax in connection with the 2017 hack of the company, which led to the theft of highly sensitive consumer information belonging to nearly 148 million Americans. As alleged in the complaint, Equifax's senior management ignored specific warnings that its systems were vulnerable to attack and refused to take necessary steps to adequately protect consumer data. Mr. Vargas's investigation confirmed that Equifax failed to implement reasonable measures which are critical to safeguarding data; vulnerability scanning and patch management processes and procedures, restrictions, and controls for accessing critical databases; network segmentation between internet facing systems and backend systems, and properly updated endpoint detection software.
- *In re Pacific Coast Oil Trust Securities Litigation*, No. BC550418 (Cal. Sup. Ct., Los Angeles County) (\$7.6 million settlement)
- *Greater Chautauqua Federal Credit Union v. Kmart Corp.*, No. 15-cv-2228 (N.D. Ill.) (\$5.2 million settlement)
- *WinSouth Credit Union v. MAPCO Express, Inc.*, No. 14-cv-1573 (M.D. Tenn.) (largest dollar-per-card settlement obtained on behalf of financial institutions involving data breach of credit and debit card information)
- *First Choice Federal Credit Union v. The Wendy's Co.*, No. 2:16-cv-00506 (W.D. Pa.) (\$50 million settlement)



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