## IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

Civil Action No.: 1:17-cv-00304-WJM-NRN

PEACE OFFICERS' ANNUITY AND BENEFIT FUND OF GEORGIA, Individually and on Behalf of All Others Similarly Situated, and JACKSONVILLE POLICE AND FIRE PENSION FUND, Individually and on Behalf of All Others Similarly Situated,

Plaintiffs,

v.

DAVITA INC., KENT J. THIRY, JAMES K. HILGER, and JAVIER J. RODRIGUEZ

Defendants.

DECLARATION OF JOSEPH E. WHITE, III IN SUPPORT OF (I) LEAD PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION; AND (II) LEAD PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

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## **EXHIBIT LIST**

<b>EXHIBIT</b>	<u>DESCRIPTION</u>
A	Declaration of Former United States District Court Judge Layn R. Phillips in Support of: (I) Lead Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation; and (II) Lead Plaintiffs' Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses
В	Declaration of Robert W. Carter in Support of: (I) Lead Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation; and (II) Lead Plaintiffs' Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses
С	Declaration of Timothy H. Johnson in Support of: (I) Lead Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation; and (II) Lead Plaintiffs' Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses
D	Supplemental Declaration of Matthew Mulvihill Regarding (A) Mailing of the Notice and Claim Form; (B) Call Center Services; (C) Settlement Website Maintenance; and (D) Report on Objections or Requests for Exclusion Received
Е	Summary of Plaintiffs' Counsel's Lodestar and Expenses
F	Declaration of Joseph E. White, III in Support of Lead Plaintiffs' Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses, Filed on behalf of Saxena White P.A.
G	Declaration of Rusty Glenn in Support of Lead Plaintiffs' Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses, Filed on behalf of Shuman, Glenn & Stecker

I, Joseph E. White, III, declare as follows:

- 1. I am a co-founder and Shareholder of the law firm Saxena White P.A. ("Saxena White" or "Lead Counsel"). I respectfully submit this declaration in support of Lead Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation (the "Settlement Approval Motion"), and Lead Plaintiffs' Motion for Approval of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Fee and Expense Motion").
- 2. Saxena White is Lead Counsel for Lead Plaintiffs Peace Officers' Annuity and Benefit Fund of Georgia and Jacksonville Police and Fire Pension Fund in the above-captioned action (the "Action"). I have personal knowledge of the matters set forth herein based on my active participation in the prosecution and settlement of the Action.
- 3. Due to the Court's familiarity with the litigation, this Declaration does not seek to detail each and every event during the Action. Rather, the Declaration provides the Court with a summary of the prosecution of the Action, highlights of the events leading to the Settlement, and the basis upon which Lead Counsel and Lead Plaintiffs recommend the Settlement's approval, as well as the approval of Lead Counsel's request for attorneys' fees and litigation expenses.

#### I. PRELIMINARY STATEMENT

4. After four years of hard-fought litigation, Lead Plaintiffs and Lead Counsel have secured an outstanding recovery of \$135,000,000 on behalf of the Settlement Class. If approved, the proposed Settlement will be the second largest all-cash securities class action recovery ever obtained in the District of Colorado, and will rank among the Tenth Circuit's top five securities fraud class action recoveries in history. Significantly, the Settlement recovers between 31% and 43% of the Settlement Class's likely maximum damages at trial, which is eight to eleven times

<sup>&</sup>lt;sup>1</sup> Unless otherwise stated, all capitalized terms herein have the meanings as in the Stipulation and Agreement of Settlement, dated September 18, 2020 (ECF No. 103-1), and the Exhibit List.

greater than the median 3.9% recovery in similarly-sized cases. Thus, by any measure, the proposed Settlement provides an outstanding benefit for the Settlement Class that far outpaces the normal range of recoveries in complex securities class actions.

- 5. Before agreeing to settle this Action, Lead Plaintiffs and Lead Counsel undertook extensive efforts to advance the Class' claims and to ensure that Plaintiffs were in a position to maximize their recovery. Indeed, Lead Plaintiffs and Lead Counsel not only initiated this Action by filing the initial complaint, but they also filed the only leadership application at the lead plaintiff stage—a rare occurrence in these types of cases, where the PSLRA specifically requires that notice of the lead plaintiff deadline be disseminated to shareholders, and multiple applications are routinely filed. Thus, absent the efforts of Lead Plaintiffs and Lead Counsel, it is almost certain that Settlement Class Members would have recovered nothing for their claims.
- 6. Moreover, the Settlement is the product of four years of vigorous prosecution conducted by Lead Plaintiffs and Lead Counsel. The litigation efforts included, among other things, conducting a comprehensive legal and factual investigation into the events underlying the Class's claims, including locating critical internal Company documents and interviewing knowledgeable confidential witnesses that were instrumental in drafting a highly detailed, 111-page amended complaint. Furthermore, Lead Plaintiffs successfully opposed Defendants' motion to dismiss, which meaningfully challenged every major element of Plaintiffs' claims. Thereafter, Plaintiffs aggressively pursued extensive discovery, including consulting with several experts and consultants to develop a comprehensive approach to establishing liability and damages in the Action; obtaining and reviewing 845,000 pages of documents produced by Defendants and over twenty non-parties; defending Lead Plaintiffs' depositions and the deposition of Plaintiffs' expert on market efficiency, deposing Defendants' rebuttal expert, and

preparing for numerous fact witness depositions; moving for class certification, engaging in extensive class certification discovery, and opposing Defendants' motion for reconsideration.

- 7. These diligent and exhaustive efforts were undertaken against a background of significant risks. Indeed, at the pleading stage, the Court sustained only five out of 27 alleged misstatements in the Complaint, and withheld judgment on the remaining 22 misstatements because they were predicated on a finding that DaVita's steering practices were "illegal." Subsequently, the DOJ declined to intervene in a *qui tam* action against DaVita (which action was subsequently voluntarily dismissed); no regulator found or even accused DaVita of engaging in illegal steering misconduct; and Defendants subsequently filed a motion for reconsideration seeking the dismissal of the "illegality" misstatements because the DOJ's decision purportedly negated the sole basis for Plaintiffs' claim of illegality. The substantial risk of establishing illegality would have persisted through summary judgment and trial if litigation had continued.
- 8. In addition, Plaintiffs also faced significant risks in establishing loss causation for their claims. For instance, Defendants argued that the truth regarding DaVita's alleged fraud was purportedly fully disclosed nearly one year before the end of the Class Period when the *St. Louis Post Dispatch* published a detailed article regarding DaVita's steering practices, and the Company subsequently issued a press release disclosing that it would be suspending the Medicaid Opportunity and the financial ramifications for doing so—a disclosure that caused DaVita's stock price to *increase*. Defendants also argued that the stock price declines following several of Plaintiffs' alleged corrective disclosures were caused by factors other than Defendants' fraud, and therefore the Class could not recover damages for such disclosures.
- 9. While Lead Plaintiffs believed that they had strong arguments to respond to these points, there is no question that Defendants' arguments could easily have been accepted by this

Court on Defendants' motion for partial reconsideration, at class certification or on summary judgment, or by a jury at trial. And if the Court or jury ultimately concluded that Defendants' statements were not materially false or otherwise actionable, or that all (or a substantial portion) of the stock price declines following the alleged corrective disclosures were not attributable to the alleged fraud, the potential recovery would be reduced dramatically, or eliminated altogether. Even a favorable jury verdict would have been subjected to an inevitable and uncertain appeals process. Thus, even if Plaintiffs had prevailed at trial, it is highly questionable as to whether Plaintiffs would have recovered more than (or even as much as) the substantial Settlement.

- 10. The Settlement is also eminently fair, adequate, and reasonable given the extensive settlement negotiations between the Parties, including six mediation sessions before former Federal District Court Judge Layn R. Phillips, an experienced and highly respected mediator who sat by designation on the Tenth Circuit. In preparation for these mediation sessions, the Parties submitted several rounds of extensive briefing regarding key legal and factual disputes in this Action, made numerous presentations on liability and damages, and engaged in vigorous, multiparty debate about the strengths and weaknesses of their positions. After lengthy negotiations, on July 20, 2020, the Parties accepted a mediator's proposal to settle this Action, and proceeded to memorialize their agreement in the Stipulation. Significantly, Judge Phillips has wholly endorsed the Settlement as fair, adequate and reasonable, and has also endorsed the attorneys' fee request as fair and consistent with fees in similar cases. See Ex. A.
- 11. As set forth in the Settlement Approval Motion, Plaintiffs respectfully submit that the Settlement represents an outstanding recovery for the Settlement Class that is supported by each of the factors that the Tenth Circuit advises courts to consider in the settlement approval process, as set forth in Federal Rule of Civil Procedure 23(e)(2) and *Rutter & Wilbanks Corp. v.*

Shell Oil Co., 314 F.3d 1180, 1188 (10th Cir. 2002). This is especially true given that the Settlement provides a certain, immediate, and substantial cash recovery for the Settlement Class, while avoiding highly uncertain, risky and costly protracted litigation.

- 12. In addition to seeking the Court's final approval of the Settlement, Lead Plaintiffs also seek approval of the proposed Plan of Allocation as fair and reasonable. Under the proposed Plan of Allocation, the Net Settlement Fund will be distributed on a pro rata basis to members of the Settlement Class who timely submit valid proofs of claim based on their "Recognized Loss" amount as calculated pursuant to the Plan—a methodology that is standard in securities fraud class action settlements and has been approved by courts nationwide.
- 13. Lead Plaintiffs also request an award of attorneys' fees and reimbursement of litigation expenses. Specifically, Lead Counsel is applying for an attorneys' fee award of 30% of the Settlement Fund (i.e., 30% of the Settlement Amount, plus interest earned thereon), and for reimbursement of litigation expenses in the amount of \$547,409.27. Lead Counsel's requested fee is well within the range of fees routinely approved by courts in this District and the Tenth Circuit in comparable securities and other complex class actions, and is amply supported by each of the relevant factors set forth in *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 717–19 (5th Cir. 1979). Indeed, "[c]ourts in the Tenth Circuit have noted that the typical fee award in complex cases is around *one third of the common fund*." *In re Crocs, Inc. Sec. Litig.*, 2014 WL 4670886, at \*3 (D. Colo. Sept. 18, 2014) (Brimmer, J.); *Diaz v. Lost Dog Pizza, LLC*, 2019 WL 2189485, at \*5 (D. Colo. May 21, 2019) (Martínez, J.) ("33% fee award falls within the norm").
- 14. The reasonableness of Lead Counsel's requested 30% fee is also confirmed by a lodestar cross-check, which yields a multiplier of 2.75—which is on the low end of the range of positive multipliers routinely approved within the Tenth Circuit. *See, e.g., In re DaVita*

Healthcare Partners, Inc. Deriv. Litig., 2015 WL 3582265, at \*5 (D. Colo. June 5, 2015) (Martínez, J.) (multiplier of 3 "in line with the multipliers awarded in similar cases"); Crocs, 2014 WL 4670886, at \*4 ("collecting District of Colorado cases approving multipliers ranging from 2.5 to 4.6%"); In re Urethane Antitrust Litig., 2016 WL 4060156, at \*7 (D. Kan. July 29, 2016) (approving 3.2 multiplier in large megafund case, finding multipliers of 4 or 5 have been "accepted by a number of courts in megafund cases").

- 15. Lastly, Plaintiffs fully complied with all aspects of the Notice program set forth in the Preliminary Approval Order. 132,884 Notices have been disseminated to potential Settlement Class Members. In addition, the Summary Notice was published in Investor's Business Daily and over the PR Newswire. The Notice explains the Settlement and that Lead Counsel would seek fees of up to 30% of the Settlement Fund. Significantly, no members of the Class have objected even though the February 16, 2021 deadline for doing so has now passed, and only one individual investor with a minimal number of shares has requested exclusion, which is significant given that approximately 87% of the Settlement Class consists of sophisticated institutional investors with the resources and motivation to object, if warranted. Moreover, Lead Plaintiffs—two sophisticated institutional investors who have actively overseen the prosecution of this Action and who fully understand their fiduciary duty to act in the best interest of the Settlement Class—wholly endorse the Settlement and Lead Counsel's requested fee award.
- 16. For all of the reasons discussed in this Declaration, its attached exhibits and in the accompanying memoranda, Lead Plaintiffs and Lead Counsel respectfully submit that the Settlement and the Plan of Allocation are fair, reasonable, and adequate and should be approved. In addition, Lead Plaintiffs respectfully submit that Lead Counsel's request for attorneys' fees and reimbursement of litigation expenses is also fair and reasonable and should be approved.

#### II. THE PROSECUTION OF THE ACTION

#### A. The Commencement of the Action and Appointment of Lead Plaintiffs

- 17. On February 1, 2017, Georgia Peace Officers filed the original securities class action complaint, thereby commencing this Action. ECF No. 1. The preliminary investigation was based upon review and analysis of publicly available information concerning the Company, including (a) DaVita's public filings with the SEC; (b) press releases and other publications disseminated by certain of the Defendants and other related non-parties; (c) news articles, shareholder communications, conference call transcripts, and postings on DaVita's website concerning the Company's public statements; and (d) other publicly available information concerning DaVita and the Individual Defendants.
- 18. On April 3, 2017, Georgia Peace Officers and Jacksonville P&F moved the Court for entry of an order appointing them as Lead Plaintiffs in the Action and approving their selection of Saxena White P.A. as Lead Counsel and Shuman Glenn & Stecker as Liaison Counsel. ECF No. 26. Notably, no other shareholders filed motions for appointment as Lead Plaintiff. ECF No. 29. On November 6, 2017, the Court granted Plaintiffs' motion. ECF No. 30.

#### B. Lead Counsel's Investigation and Filing of the Amended Complaint

19. Prior to filing the amended complaint, Lead Counsel further investigated Plaintiffs' claims. In addition to expanding upon its initial review and analysis of publicly available information concerning Defendants, Lead Counsel's multi-faceted investigation included, among other things: (i) review of internal e-mails between high-level DaVita employees discussing the implementation and oversight of the alleged fraud; widely circulated internal spreadsheets that documented the progress of Defendants' alleged scheme; and internal employee training materials and PowerPoint presentations that explicitly detailed and

incentivized the alleged fraud; (ii) interviews with numerous, high-level former employees of DaVita, including executives directly responsible for the oversight and management of DaVita dialysis clinics across the country, and who were present at large-scale Company meetings, conference calls and training sessions where the alleged scheme was explicitly discussed and implemented; (iii) research reports by securities and financial analysts concerning DaVita; (iv) data reflecting the pricing of DaVita common stock; (v) rules and regulations implemented by the Centers for Medicare and Medicaid Services ("CMS"), including a formal Request for Information ("RFI") issued by CMS during the Class Period and public responses thereto, an advisory opinion issued to DaVita in 1997 by the Office of Inspector General (the "OIG Advisory Opinion"), and federal and state false claims act statutes and anti-kickback laws; and (vi) consultations with relevant economic and industry experts.

20. Lead Counsel's investigation significantly bolstered the strength of Plaintiffs' claims. For instance, Lead Counsel's exhaustive investigation located several highly credible former DaVita and AKF employees with relevant information about the facts of the case, thereby bolstering Plaintiffs' particularized allegations. Indeed, this Court noted these internal documents and specific testimony by three confidential witnesses in its later order denying Defendants' motion to dismiss. In my experience, counsel typically lacks access to such key internal documents in securities class actions until after the complaint survives dismissal and the PSLRA's automatic discovery stay is lifted. Furthermore, by continuing to investigate Plaintiffs' claims during the period between the filing of the original complaint in February 2017 and filing the amended complaint in January 2018, Lead Counsel expanded the class period by more than one year to capture relevant disclosures and potential damages in the Action. Thus, Lead Counsel's comprehensive investigation provided highly valuable benefits to the Class.

- 21. Lead Counsel also became intensely familiar with the interplay among Medicare, Medicaid, COBRA and EGHP health plans, and how such plans applied to DaVita's end-stage renal disease ("ESRD") patients. Lead Counsel similarly spent countless hours gaining a deep understanding of the convoluted intricacies of numerous federal and state healthcare laws, rules and regulations pertinent to the amended complaint's allegations that Defendants' steering scheme and DaVita's relationship with the American Kidney Fund ("AKF") were illegal. These tasks not only were difficult and time consuming, but also necessitated frequent consultation with relevant experts and consultants throughout the litigation.
- 22. On January 12, 2018, Lead Plaintiffs filed a 111-page amended complaint (the "Complaint," ECF No. 36). The Complaint alleged, among other things, that throughout the Class Period, Defendants made materially false and misleading statements and omissions regarding DaVita's alleged scheme to "steer" all patients eligible for and/or enrolled in Medicare and/or Medicaid away from government insurance and into high-cost commercial insurance plans in order for DaVita to obtain dialysis reimbursement rates that were up to ten times higher than the rates that government plans paid for the same dialysis treatments. The Complaint alleged that this scheme was facilitated though DaVita's relationship with the AKF—a 501(c)(3) charitable organization to which DaVita purportedly "donated" over \$100 million in annual charitable contributions, which the AKF would in turn use to pay the commercial insurance premiums for the patients Plaintiffs alleged Defendants had steered.
- 23. The Complaint alleged that DaVita's stock price was artificially inflated throughout the Class Period due to Defendants' alleged materially false and misleading statements and omissions and that shareholders were harmed when the truth about that fraud was revealed. Specifically, the Complaint asserted that Defendants made false statements by denying

that that DaVita was steering, by representing that DaVita's and the AKF's relationship was above board and that DaVita's donations were charitable in nature, while failing to disclose the illicit *quid pro quo* nature of their relationship, and by attributing DaVita's strong financial performance to the Company's improving commercial mix rather than to Defendants' fraud.

- 24. Plaintiffs alleged that the truth regarding Defendants' fraud was revealed in piecemeal fashion through a series of corrective disclosures:
  - a) After DaVita held a conference call on August 8, 2016 with analysts and investors revealing that the DaVita had been donating money to the AKF for decades, the Company's stock price experienced declines on August 9, 2016 and August 10, 2016, totaling 7%.
  - b) After CMS' August 18, 2016 RFI revealed that the Company was steering ESRD patients, the price of DaVita stock declined on August 19, 2016, falling 4.7%.
  - c) After the *St. Louis Post-Dispatch* revealed on October 23, 2016 that DaVita systematically steered all patients to commercial plans backed by AKF-funded premium payments, the Company's stock price dropped 4.7% on October 24, 2016.
  - d) After *The Wall Street Journal* revealed on January 6, 2017 that DaVita had been subpoenaed by regulators concerning the Company's donations to the AKF (the "DOJ Investigation"), the Company's stock price declined 3.7% on January 9, 2017.
  - e) On May 3, 2017, after DaVita disclosed that it had lost all of the 2,000 Medicaid patients enrolled in commercial plans with AKF assistance, DaVita's stock price declined 5.2%.
  - f) On August 2, 2017, after DaVita reported a downturn in its commercial mix improvements in the payer climate due to payers' refusal to accept third party charitable premium assistance from the AKF, the Company's stock price declined 8.84%.
  - g) On September 22, 2017, after SIRF revealed the AKF provided DaVita with "up to half its operating profits," the Company's stock price declined 6.2%.
  - h) Finally, on October 9, 2017, when J.P. Morgan revealed that as much as 60-80% of DaVita's earning power was derived from the AKF, DaVita's stock price fell by 10%.

#### C. Defendants' Motion to Dismiss the Complaint and the Court's Order

25. On March 27, 2018, Defendants filed their motion to dismiss the Complaint, challenging the adequacy of the Complaint's allegations with respect to nearly every element of Plaintiffs' claims. ECF No. 43.

- 26. Defendants argued that DaVita, like many other dialysis providers, had openly donated to AKF for decades, and eligible patients of all providers, whether those providers donated to AKF or not, could use AKF's assistance to pay monthly insurance premiums for ESRD patients. According to Defendants, Plaintiffs could not show that the alleged steering scheme was illegal because no statute, regulation or other authority prohibited these activities. Thus, according to Defendants, Plaintiffs lacked law or facts supporting their premise that some type of hidden, illegal conduct occurred that could possibly have rendered the challenged statements false. Defendants argued that Plaintiffs did not plead particularized facts giving rise to a strong inference that Defendants acted with the requisite state of mind (scienter). Defendants claimed that Plaintiffs did not and could not plead that Defendants would have been aware that their conduct was illegal. Additionally, Defendants argued that the Complaint's allegations were not sufficient to support a showing of loss causation. The announcements on which Plaintiffs relied to establish that DaVita's stock price dropped after the purported "truth" was disclosed to the market did not actually reveal any fraudulent or illegal activity (because there was none). Defendants moved to dismiss Plaintiffs' Section 20(a) claim on the ground that the Complaint failed to establish an underlying primary violation.
- 27. Lead Plaintiffs filed their opposition to Defendants' motion to dismiss on June 6, 2018. ECF No. 47. In their opposition, Lead Plaintiffs argued that numerous courts have held that violations of the securities laws do not hinge on whether underlying conduct has been found to be illegal, but on whether Defendants' statements were false. Plaintiffs argued that they had alleged numerous facts establishing that, in contrast to Defendants' public statements, DaVita steered thousands of patients from government programs to private insurance for the Company's financial gain. Plaintiffs further claimed that the Complaint pled scienter with allegations

establishing that Defendants were fully aware of rampant, Company-wide steering while simultaneously denying such practices, and falsely representing that DaVita merely "educated" its patients. Plaintiffs also argued that documents cited in the Complaint, as well as CW testimonials, made clear that the Individual Defendants were responsible for implementing the Company's steering campaign. Thus, to establish a strong inference of scienter, Plaintiffs only needed to show that Defendants knew, or were reckless in not knowing, that their public statements were false and misleading, not that their conduct was illegal. Regarding loss causation, Plaintiffs argued that the Complaint adequately alleged that the truth of Defendants' steering scheme was slowly revealed through a series of partial disclosures that directly caused DaVita's stock price to drop.

- 28. On July 20, 2018, Defendants filed their reply brief, which again focused entirely on illegality. However, this time Defendants supported their argument with a recent decision opining on the topic, *Hogan v. Pilgrim's Pride Corporation*, 2018 WL 1316979 (D. Colo. Mar. 14, 2018). ECF No. 48. On August 3, 2018, with Court approval, Plaintiffs filed a surreply distinguishing this Action from *Hogan*. ECF No. 51.
- 29. On March 28, 2019, the Court issued its Order denying Defendants' motion to dismiss in its entirety (the "Order," ECF No. 53). In the Order, the Court sustained five of the Complaint's false statements concerning steering and DaVita's commercial mix, noting that the falsity of those statements was not "predicated on an underlying illegal scheme." *Id.* at 21. The Court also held, however, that the "remainder" of the Complaint's 27 alleged false statements were "premised on the impropriety or illegality of DaVita's relationship with the AKF," and reserved judgment on whether the Complaint's allegations of illegality were sufficient to survive dismissal. *Id.* at 22. The Court rejected Defendants arguments on scienter, finding that the

Complaint, supported by "reference to internal documents and confidential witness statements" obtained by Lead Counsel during its exhaustive investigation, "d[id] much more . . . than make generalized allegations related to scienter." *Id.* at 23-24. Despite agreeing with Defendants that "an announcement of an investigation, without more, is insufficient to establish loss causation," the Court also declined to dismiss the Complaint on that ground. *Id.* at 26-27.

#### D. Lead Plaintiffs' and Lead Counsel's Extensive Discovery Efforts

30. Discovery commenced immediately after the Court's denial of Defendants' motion to dismiss. On May 28, 2019, Defendants filed their Answer to the Complaint. ECF No. 60. Given the length of the Class Period, the scope of Lead Plaintiffs' claims, and the complex subject matter at issue in this Action, factual discovery was an enormous undertaking. Among other things, Plaintiffs served separate sets of document requests on Defendants, and subpoenaed documents from 23 non-parties, including DaVita's primary dialysis competitor, Fresenius; the AKF; multiple private insurance companies; and multiple kidney transplant facilities. Plaintiffs ultimately obtained and reviewed approximately 845,000 pages of documents and also produced thousands of pages of documents to Defendants during the course of discovery. The amount of work done by Lead Plaintiffs during this time period is extraordinarily compelling evidence of Lead Plaintiffs' vigorous prosecution of and commitment to this Action, as set forth below.

#### 1. Discovery Obtained from Defendants

31. Lead Plaintiffs served all Defendants with their First Set of Requests for Production of Documents on June 10, 2019. These 46 requests sought, among other things, documents concerning: (i) DaVita's relationship with the AKF, including communications between those parties relevant to the allegations of the Complaint; (ii) the Medicaid Opportunity and all other steering efforts; (iii) Defendants' communications with analysts and shareholders

during the Class Period; (iv) sources of improvements in DaVita's commercial mix; (v) CMS's RFI and RFI responses; and (vi) the DOJ Investigation. Defendants served their responses and objections to Plaintiffs' first document request on July 17, 2019. Lead Plaintiffs served all Defendants with their Second Set of Requests for Production of Documents on October 9, 2019, which included additional discovery requests concerning DaVita's tax treatment of its AKF donations and Defendant Thiry's resignation. Defendants served their responses and objections to Plaintiffs' second request on November 8, 2019.

- 32. Beginning in August 2019, the Parties frequently exchanged written correspondence and held numerous meet-and-confer conferences to negotiate the appropriate scope of discovery. Those interactions involved lengthy disputes about the length of the relevant time period, the number of custodians whose e-mail accounts should be searched and what terms to use, and whether the Individual Defendants personally possessed discoverable information. Conflicts also arose when Defendants initially asserted they would only produce the discovery DaVita produced during the DOJ Investigation, a proposal which Plaintiffs rejected and Defendants eventually withdrew. The relevancy of DaVita's tax treatment of its AKF donations was also disputed.
- 33. In response to Plaintiffs' requests, Defendants produced e-mails and attachments from the custodial files of more than 50 individual custodians, including each of the Individual Defendants. Ultimately, Defendants made a total of 22 document productions, beginning on July 18, 2019 and concluding on July 10, 2020, which collectively contained approximately 766,204 pages of information contained in 203,000 documents.

#### 2. Discovery Obtained from Third Parties

- 34. On September 27, 2019, Lead Plaintiffs served the AKF with a third-party document subpoena, containing 33 separate requests. Lead Plaintiffs' AKF subpoena sought discovery concerning, among other items: (i) the AKF's relationship with DaVita, including AKF's internal communications; (ii) the Medicaid Opportunity and all other steering efforts of which the AKF was aware; (iii) AKF's policies and procedures regarding charitable premium assistance, including the tracking of DaVita's donations and compliance with the OIG Advisory Opinion; and (iv) the DOJ Investigation. On October 22, 2019, the AKF served Lead Plaintiffs with its responses and objections.
- 35. During the course of negotiating this discovery, Lead Plaintiffs and the AKF exchanged letters and engaged in multiple meet-and-confer conferences regarding the proper scope, timing, cost and reimbursement of the AKF's production and planned depositions of certain AKF senior executives. Ultimately, the AKF made a total of two document productions, which collectively contained approximately 74,979 pages in 19,630 documents.
- 36. Between roughly November 22, 2019 and January 15, 2020, Lead Plaintiffs served subpoenas on 22 other non-party entities: UnitedHealthcare Inc.; Aetna, Inc.; Assurant, Inc.; Blue Cross of Idaho Health Service, Inc.; Blue Cross and Blue Shield of North Carolina; Blue Cross and Blue Shield of Florida Inc. DBA Florida Blue; Blue Shield of California Life & Health Insurance Company; Humana, Inc.; Health Net, LLC; Premera Blue Cross; Sierra Health and Life Insurance Company, Inc.; Regence BlueShield; Fresenius Medical Care North America; UCLA Department of Transplantation Services, the Ohio State University Wexner Medical Center-Comprehensive Transplant Center; Jackson Health System—Miami Transplant Institute; Ann & Robert H. Lurie Children's Hospital of Chicago; Keck Hospital of USC, Harbor-UCLA

Medical Center; Cleveland Clinic Florida; The Regents University of California on behalf of Ronald Reagan UCLA Medical Center; and the Missouri Kidney Program. Ultimately these parties collectively produced, and Lead Plaintiffs reviewed, 3,745 pages from 1,000 documents.

#### 3. Discovery from Lead Plaintiffs

- 37. Defendants served Lead Plaintiffs with their First Set of Requests for Production of Documents and their First Set of Interrogatories on January 29, 2020, composed of 46 document requests, and 11 interrogatories issued to each Lead Plaintiff. Defendants' discovery requests primarily sought information relevant to issues of class certification, including information concerning: (i) Lead Plaintiffs' purchases and sales of DaVita securities, and their decisions to buy, sell, or hold the same; (ii) any research, due diligence, investigation, analysis, or evaluation of DaVita; (iii) internal investment approval processes, policies, and guidelines, including investment management agreements; (iv) Lead Plaintiffs' investigation of allegations in the Complaint; (v) communications with DaVita and its current and former employees; and (vi) Lead Plaintiffs' decision or authorization to commence the Action. Lead Plaintiffs served their responses and objections to Defendants' discovery requests on February 28, 2020.
- 38. The Parties engaged in multiple meet-and-confer conferences and ultimately came to an agreement as to the scope and manner of Lead Plaintiffs' document production. Thereafter, over the course of several months, Lead Plaintiffs and Lead Counsel engaged in extensive efforts to identify, collect, review and produce documents responsive to Defendants' document requests. Collectively, Lead Plaintiffs made a total of six productions, between March 6, 2020 and June 19, 2020, which contained approximately 25,267 pages of information in 798 documents.

#### 4. Lead Counsel's Document Review and Deposition Preparations

- 39. Collectively, the Defendants and third parties produced approximately 845,000 pages contained in 223,000 documents to Lead Plaintiffs in discovery, with the first production on July 18, 2019 and the last production on July 10, 2020. Lead Counsel devoted substantial time to reviewing and analyzing these documents, including in preparation for 15 fact witness depositions. Moreover, this process needed to be completed efficiently, as fact discovery initially was set to close on July 17, 2020 before modifications to the case schedule were made in response to the COVID-19 pandemic. To that end, Lead Counsel generated an effective and efficient discovery plan and took significant steps designed to quickly identify the custodians and documents most important to uncovering the facts at the heart of the Action. As a result of these efforts, Lead Counsel was able to utilize this discovery in connection with class certification and during the Parties' settlement negotiations. Accordingly, the discovery work conducted by Lead Counsel was critically important to achieving the Settlement.
- 40. Lead Counsel's discovery plan leveraged a sophisticated electronic document hosting system, and a dedicated team of attorneys with substantial experience in electronic document discovery, deposition and trial preparation. Attorneys on the litigation team for the Action prepared and continuously updated a highly detailed document review coding manual and protocol, which included detailed case information as well as instructions on coding documents. Document reviewers were trained to code documents for level of responsiveness or importance to the case (e.g. "Hot," "Warm," "Not Relevant"), for case issues (e.g. "Medicaid Opportunity," "Commercial Mix," "Donations to AKF"), and for deposition of specified deponents.
- 41. Throughout document discovery, senior attorneys in the litigation team met regularly with document reviewers to discuss key facts uncovered by the review, and staff

attorneys were instructed to prepare memoranda on subject matters of importance to assist senior attorneys in their understanding of the case.

- 42. Many of the documents produced to Plaintiffs were substantively complex and laden with healthcare and insurance jargon and terms of art. Throughout the course of discovery, Lead Counsel consulted with a healthcare expert and conducted independent reading and research to enhance their understanding of these documents. Lead Counsel also developed and continuously updated a set of reference resources to aid members of the document review team, including chronologies of significant events, lists of key players, and a glossary of technical terms and acronyms utilized in the healthcare industry.
- 43. To prepare for fact witness depositions, the review team was divided into small subgroups, and each group was assigned to conduct an in-depth review of the custodial files of a particular deponent, identify a set of key documents for that deponent, and prepare a memorandum explaining why that deponent was important to the case and which issues should be addressed during the deponent's deposition. The review team engaged in this process for 15 separate deponents.
- 44. On May 22, 2020, Plaintiffs served Defendants with an initial set of six Notices of Deposition, seeking to schedule depositions for five fact witnesses currently or formerly employed by DaVita and one fact witness currently employed by the AKF, and the Parties subsequently negotiated definitive dates for five out of the six deponents. Plaintiffs also informally noticed depositions for approximately ten additional current or former employees of DaVita, including the depositions of the Individual Defendants. The first deposition was scheduled to take place on July 21, 2020, the day after an agreement in principle to settle the Action was reached, and the second deposition was scheduled for later that same week.

#### 5. Lead Counsel's Experts

- 45. Lead Counsel consulted extensively throughout the litigation with experts in the fields of economics, tax, and healthcare.
- 46. Chad Coffman of Global Economics Group, LLC provided opinions on the complex securities-litigation-specific issues of market efficiency, loss causation, and damages. Mr. Coffman authored a report that was submitted with Lead Plaintiffs' motion for class certification. His report opined that: (i) DaVita common stock traded in an efficient market; and (ii) damages could be calculated through a common methodology. Mr. Coffman's 34-page opening report was based on event studies he conducted, and was supported by 14 exhibits and 2 appendices totaling an additional 40 pages. ECF Nos. 83-1 and 83-2.
- 47. In addition, Lead Counsel also consulted with other members of the Global Economics Group, LLC team, including Mr. Jeremy Marmer, who assisted in developing the Plan of Allocation for the Settlement.
- 48. Lead Counsel also retained and consulted with the Stanford Consulting Group, Inc., which specializes in securities class action damages, to provide analyses and consultation regarding damages and loss causation issues in the Action.
- 49. Lead Counsel retained and consulted with Ms. Kirsten Flanagan, CPA of Friedman LLP, an accounting, tax, and business consulting firm, as well as other members of her team. Ms. Flanagan advised Lead Counsel regarding certain aspects of DaVita's accounting and SEC filings to be reviewed during discovery, and provided assistance in reviewing and analyzing certain tax and accounting issues. Primarily, Ms. Flanagan provided expertise regarding the appropriate tax treatment and disclosure of the charitable contributions DaVita made to the AKF.

50. Finally, Lead Counsel retained and consulted with Dr. Barbara Grenell and Ms. Debbie Brandel of Preferred Health Strategies, a prominent healthcare consulting firm. These experts conducted expansive research into steering practices in the dialysis industry and the application of various healthcare rules and regulations to the facts alleged in the Complaint. Dr. Grenell and Ms. Brandel also reviewed and interpreted documents obtained in discovery, bolstering Lead Counsel's understanding of the interplay between Medicare, Medicaid, COBRA and EGHP health plans and the unique treatment by those plans of patients with ESRD.

#### E. Plaintiffs' Motion for Class Certification and Expert Depositions

- 51. On January 31, 2020, Plaintiffs filed their motion for class certification, together with the expert report of Mr. Coffman who opined on market efficiency. ECF No. 83. The documents Mr. Coffman relied upon in his expert report were produced to Defendants on March 6, 2020, and Lead Counsel defended Mr. Coffman's deposition on May 27, 2020.
- 52. On May 12, 2020 and May 21, 2020, Lead Counsel defended the depositions of Georgia Peace Officers and Jacksonville P&F, respectively. Robert W. Carter, Secretary/Treasurer, was deposed on behalf of Georgia Peace Officers, and Timothy H. Johnson, Executive Director, was deposed on behalf of Jacksonville P&F. *See* Exs. B and C, ¶7(e). Lead Counsel met in person, telephonically and/or virtually on multiple occasions and reviewed numerous documents with Lead Plaintiffs' representatives to prepare for those depositions.
- 53. On June 29, 2020, Defendants filed their opposition to Plaintiffs' motion for class certification and submitted the expert report of their rebuttal expert, Dr. Vinita Juneja, who is an expert on economics and a Managing Director and Chair of the White Collar, Investigations, and Enforcement Practice at NERA Economic Consulting. ECF Nos. 102, 102-1. Defendants' opposition did not challenge Plaintiffs' showing that the Class should be certified pursuant to

Rule 23(a) and (b)(3), or Mr. Coffman's conclusion that DaVita's common stock traded in an efficient market during the Class Period. Instead, Defendants' sole argument in opposition to class certification was that "the only class that may be certified includes purchasers of DaVita securities from May 4, 2016 through October 31, 2016"- i.e., Defendants proposed truncating the Class Period alleged in the Complaint from 32 months to 17 months. ECF No. 102 at 6.

- 54. In their opposition, Defendants drew a bright line distinction between the five allegedly false statements the Court had sustained at the motion to dismiss stage, which Defendants labeled the "Steering Statements," and the 22 alleged misstatements that the Court had reserved judgment on at that time, which Defendants labeled the "Illegality Statements." Defendants then relied on this distinction to support shortening the Class Period to be certified by attacking Plaintiffs' ability to establish loss causation.
- 55. With respect to the Illegality Statements, Defendants' argument was two-fold. First, Defendants argued that the Illegality Statements were not sustained at the motion to dismiss stage and, given that the DOJ had since closed its investigation of DaVita in July 2019, the Illegality Statements could not be sustained.<sup>2</sup> According to Defendants, no class period based on the Illegality Statements could be certified because "the PSLRA does not permit certification of a class for statements that have not been determined to satisfy the PSLRA." *Id.* at 7. As a result, Defendants asserted that the class period to be certified had to begin on May 14, 2016, rather than on February 26, 2015 as alleged in the Complaint, because that was the date on which the first of the five Steering Statements was made.

<sup>&</sup>lt;sup>2</sup> Specifically, Defendants' claim that the DOJ Investigation was "closed" largely rested upon the fact that, on July 23, 2019, the DOJ filed a Notice in the related *qui tam* case then-pending against DaVita announcing that DOJ declined to intervene in that case. This Notice subsequently resulted in the voluntary dismissal of the *qui tam* action.

- 56. Second, Defendants claimed that, even if the Illegality Statements could survive the dictates of the PSLRA, no class period based on them could be certified because Plaintiffs could never prove loss causation for those Statements. Specifically, Defendants contended that the January 6, 2017 announcement of the DOJ Investigation by *The Wall Street Journal* was not corrective of the Illegality Statements, as the Court previously had held that "an announcement of an investigation, without more, is insufficient to establish loss causation." Moreover, even if that were not the case, any loss causation related to that disclosure had now been eviscerated by the closing of the DOJ Investigation. According to Defendants, because there was not a corrective disclosure revealing that the alleged steering scheme was illegal, no class period based on the Illegality Statements could be certified.
- 57. Regarding the Steering Statements, Defendants reiterated that the class period to be certified for those Statements must begin on May 4, 2016, rather than February 26, 2015, because that marked the date the first of the five Steering Statements was made. As to when the class period pertaining to the Steering Statements should end, Defendants argued that the period certified must end on October 31, 2016—nearly a year prior to the October 6, 2017 date alleged in the Complaint—for two reasons.
- 58. First, Defendants claimed that the only disclosure by DaVita that even arguably could have been corrective of the Steering Statements was made when DaVita disclosed it was suspending the Medicaid Opportunity and the financial ramifications from doing so on October 31, 2016. Thus, Defendants asserted that the certified class period must end one full year earlier than the end of the Class Period alleged in the Complaint. Moreover, following the October 31, 2016 disclosure, Defendants noted that "DaVita's stock price *rose* \$3.46" rather than declining,

thereby "more than recovering from the \$2.86 drop following the [publication of the *St. Louis* Article]." *Id.* at 15 (emphasis in original).

- 59. Second, Defendants argued that Plaintiffs could not establish loss causation for several other of the alleged corrective disclosures, including the final disclosure by J.P. Morgan on October 9, 2017, because such disclosures did not contain new information, and the resulting stock price declines were attributable only to non-fraudulent, confounding information. For instance, Defendants asserted there could be no loss causation stemming from the J.P. Morgan report because, among other reasons, the report contained no new information about the truth of the Steering Statements, which had not already been disclosed by DaVita's announcement suspending the Medicaid Opportunity on October 31, 2016. Accordingly, Defendants claimed the end of the certified class period must be truncated by one full year.
- 60. The loss causation arguments asserted in opposition to Plaintiffs' motion for class certification not only were complex, but also would have necessitated further substantial reports and testimony from experts, and would have persisted throughout the litigation. Also, had the Court or a jury sided with Defendants on any one or more of their loss causation challenges, the Class would have recovered a far inferior recovery, or even no recovery whatsoever.
- 61. On July 6, 2020, Defendants produced the documents Dr. Juneja relied upon in her expert rebuttal report, and on July 16, 2020, Lead Counsel took Dr. Juneja's deposition.
- 62. At the time that the Parties agreed in principle to the Settlement, Lead Plaintiffs and Lead Counsel were in the process of finalizing their class certification reply brief and Mr. Coffman's supplemental expert report, which were due to be filed on August 7, 2020.

#### F. Defendants' Motion for Partial Reconsideration

- 63. On February 24, 2020, Defendants filed a Motion for Partial Reconsideration of the Court's Order Denying the Motion to Dismiss, and amended this motion on February 27, 2020 (the "Motion for Reconsideration," ECF Nos. 90, 91). Defendants asked the Court to reconsider its reservation of judgment and to dismiss Plaintiffs' claims concerning the Illegality Statements. Defendants argued that dismissal was appropriate because the DOJ had determined that it would not intervene in a related *qui tam* action that was later voluntarily dismissed.
- 64. Defendants argued that the Illegality Statements comprised roughly 80% of Plaintiffs' allegations, and spanned a much longer class period than the five Steering Statements (17 months versus 32 months). Defendants argued that a ruling dismissing those statements would substantially narrow the scope of the case and discovery, reduce potential damages, simplify the issues to be tried, and speed up resolution of the case.
- 65. On April 10, 2020, Lead Plaintiffs' filed their opposition to the Motion for Reconsideration. ECF No. 99. On May 1, 2020, Defendants filed their reply brief in further support of the Motion for Reconsideration and that Motion was *sub judice* before the Court at the time the Settlement was reached. Had Defendants prevailed, the Class's recoverable damages could have been virtually eliminated and, even if that Motion was denied, the fact that no government entity has found DaVita's conduct to be illegal would have remained a looming threat for the remainder of the litigation.

#### III. THE SETTLEMENT IS FAIR, ADEQUATE AND REASONABLE

66. As set forth in the Final Approval Motion filed contemporaneously herewith, the Settlement is fair, adequate, and reasonable in light of the exceptional and historic recovery; the unique risks and difficulties that the Action presented to Plaintiffs; the extensive litigation efforts

expended by Lead Plaintiffs and Lead Counsel over the course of four years of vigorous litigation; the arm's-length settlement negotiations conducted by the Parties; and the overwhelmingly positive reaction of the Settlement Class. As set forth below and in the Final Approval Motion, Lead Plaintiffs and Lead Counsel respectfully submit that the Settlement readily meets all of the relevant factors that courts in the Tenth Circuit consider under Rule 23(e)(2) and *Rutter & Wilbanks Corp. v. Shell Oil Co.*, 314 F.3d 1180, 1188 (10th Cir. 2002).

#### A. Mediation Sessions with Judge Layn R. Philips (Ret.)

- 67. The Settlement is the product of arm's-length negotiations among experienced and well-informed counsel, and were conducted in the utmost good faith. In a total of six mediation sessions, the Parties and Defendants' directors and officers liability insurers ("Insurers"), engaged in vigorous negotiations regarding a potential resolution of the Action, which are described below.<sup>3</sup>
- After the Court issued its order denying Defendants' motion to dismiss, the Parties agreed to begin exploring the possibility of resolving the Action. To that end, the Parties engaged former Federal Judge Layn R. Phillips, who sat by designation on the Tenth Circuit, to facilitate a series of settlement negotiations. *See* Ex. A (Declaration of Former United States District Court Judge Layn R. Phillips). Judge Phillips has extensive experience overseeing negotiations of complex securities class actions. For example, Judge Phillips assisted in the successful resolution of securities class actions involving Bank of America (\$2.425 billion settlement); Merrill Lynch residential mortgage-backed securities (\$315 million settlement); WellCare (\$200 million settlement); Bank of New York

<sup>&</sup>lt;sup>3</sup> The Parties' mediation sessions are discussed below for the purpose of describing key events in this Action, and do not constitute a waiver of any privilege (including the mediation privilege), doctrine, law, or rule protecting information from disclosure.

Mellon (\$180 million settlement); Wells Fargo residential mortgage-backed securities (\$125 million settlement); and many others.

- 69. On September 25, 2019, the Parties met in New York, New York, for their first mediation session with Judge Phillips. In preparation for that mediation, Judge Phillips requested, and the Parties exchanged, detailed mediation briefs detailing the relevant facts and analyses concerning falsity, scienter, loss causation and damages. In addition, after reviewing those submissions, Judge Phillips sought additional information from Lead Plaintiffs and Plaintiffs prepared a response further detailing their claims and positions, which they shared with Judge Phillips at the mediation.
- 70. During the September 25, 2019 mediation session, Lead Plaintiffs shared their positions and conveyed to Judge Phillips their understanding of the strengths and weaknesses of the claims and defenses in this Action, as well as potential sources of recovery. However, at the conclusion of this mediation session, it was clear that the Parties maintained highly divergent views on the strengths and weaknesses of their claims and defenses, as well as the settlement value of the Action. With no settlement in sight, discovery progressed, and no follow-up mediation sessions were scheduled at that time.
- 71. After significant additional litigation and discovery efforts over the course of the following nine months, on June 8 and 9, 2020, the Parties participated in two additional mediation sessions before Judge Phillips. Prior to those mediation sessions, each side again submitted comprehensive mediation statements and materials setting forth their respective positions on various highly disputed legal and factual issues, but this time benefitted by the factual record developed through extensive discovery. The Parties also provided detailed presentations to each other, the Insurers and Judge Phillips concerning their respective views on

liability, loss causation and damages. At the conclusion of the second and third mediation sessions, the Parties had yet again reached an impasse. Given that the Parties had not reached agreement on a resolution, the Parties agreed to continue litigation and also agreed to continue discussions towards a possible settlement.

- 72. The Parties attended an additional mediation session on Saturday, June 13, 2020. At the conclusion of this fourth mediation session, the negotiations once again broke down and the Parties determined to continue to litigate the Action. No other mediation sessions were scheduled at that time.
- 73. The Parties re-engaged in settlement discussions with a fifth mediation session presided over by Judge Phillips on July 16, 2020. While the Parties did not reach agreement on a resolution of the Action during this session, the Parties agreed to continue settlement discussions. To that end, the Parties engaged in a sixth mediation session on Sunday, July 19, 2020. The Parties made additional presentations concerning their respective views of the Action. At the conclusion of this sixth mediation session, the Parties again had not reached an agreement on the resolution of the Action, but continued discussions with Judge Phillips.
- 74. The following day, on July 20, 2020, Judge Phillips issued a mediator's proposal to resolve the Action for \$135 million and the negotiation of customary terms and conditions. The Parties accepted the mediator's proposal on the evening of July 20, 2020.
- 75. Significantly, the Settlement Amount is not only comprised of the proceeds from Defendants' insurance tower, but also includes a monetary contribution from Defendant DaVita—a rare occurrence in securities class actions that underscores the exceptional nature of the recovery and the tenacity of Lead Counsel's advocacy.

#### B. The Settlement Agreement and Preliminary Approval

76. After accepting the mediator's proposal, the Parties engaged in extensive negotiations regarding the material terms of the Stipulation; the Supplemental Agreement under which Defendants may terminate the Settlement if requests for exclusion from the Settlement Class reach a certain threshold—generally called a "blow provision"; and various supporting documents, including proposed Class notices and proposed orders for the Court.

77. On September 18, 2020, Lead Plaintiffs filed its motion for preliminary approval of the proposed Settlement, along with the Stipulation and its exhibits. ECF No. 103. On October 27, 2020, the Court granted Lead Plaintiffs' motion for preliminary approval of the Settlement, conditionally certified the Settlement Class for settlement purposes, and authorized Notice for the proposed Settlement to be sent to potential members of the Settlement Class (the "Preliminary Approval Order," ECF No. 104).

#### C. Reasons for the Settlement

78. The Settlement provides the Settlement Class with an immediate and certain cash benefit of \$135 million, which not only is the second highest cash recovery in any securities class action in the history of this District, but also represents an exceptionally high percentage of the maximum likely recoverable damages for the Class.

79. Lead Plaintiffs and Lead Counsel fully endorse the Settlement. *See* Exs. B and C, ¶¶8-10 (Lead Plaintiffs' Declarations). Lead Plaintiffs are sophisticated institutional investors who have actively overseen the prosecution of this Action for four years and both understand and have executed their fiduciary duty to act in the best interest of the Settlement Class. Lead Counsel, Saxena White, specializes in complex securities class action litigation, and is highly experienced in such litigation. *See* Ex. F (Ex. 3) (Saxena White firm resume). Based on their

experience and knowledge of the facts and applicable law in this Action, Lead Counsel and Lead Plaintiffs have determined that the Settlement is in the best interest of the Settlement Class.

- Action are meritorious, continued litigation against Defendants posed significant risks that made recovery in any amount uncertain. For example, Plaintiffs were aware of the significant challenges Defendants raised in their Motion for Reconsideration, opposition to Plaintiffs' motion for class certification, and mediation statements on the key issues of falsity, scienter, loss causation, and damages. Indeed, although Lead Plaintiffs were initially successful at the motion to dismiss stage, the Court did not resolve several key issues regarding falsity, scienter and loss causation, and the attendant risks concerning these issues did and would have continued to resurface at every subsequent stage of the litigation—on reconsideration, class certification, summary judgment, at trial, and on appeal. Had any of these arguments been accepted in whole or in part, any potential recovery would have been dramatically reduced or eliminated altogether.
- 81. Moreover, even if Lead Plaintiffs had prevailed at trial, Plaintiffs were further aware that Defendants' damages expert had calculated maximum possible damages far below the maximum aggregate damages that Lead Plaintiffs' expert had calculated—including credible scenarios that the Class's maximum damages were well below \$100 million, or even that the Class had suffered no cognizable damages as a result of Plaintiffs' allegations—which undoubtedly would have resulted in a "battle of the experts" at trial with no certainty of which expert the jury would credit. Thus, there were very significant risks to the continued prosecution of the Action against Defendants.

82. The Settlement eliminates these substantial risks and guarantees the Settlement Class a favorable cash recovery. Lead Counsel firmly believes that settling the Action with Defendants at this stage of the litigation is in the best interest of the Settlement Class.

#### **D.** Notice to the Settlement Class

- 83. As required by the Court's Preliminary Approval Order, beginning on November 25, 2020, Lead Plaintiffs, through the Court-approved Claims Administrator Epiq Class Action & Claims Solutions, Inc. ("Epiq"), notified potential members of the Settlement Class of the Settlement by mailing a copy of the Notice to potential members of the Settlement Class and their nominees. *See* ECF Nos. 106 and 106-1; Ex. D (Supplemental Declaration of Matthew Mulvihill, hereafter "Epiq Supplemental Declaration").
- 84. Epiq used several resources of data to reasonably identify members of the Settlement Class. For example, under the Preliminary Approval Order, DaVita was required to provide Epiq records reasonably available to DaVita or its transfer agent concerning the identity and last known address of Settlement Class Members. *See* ECF No. 104. DaVita also sent the Notice to entities identified on a proprietary list maintained by Epiq of the most common banks, brokers, and other nominees. *See* ECF Nos. 106 and 106-1. In total, 132,884 copies of the Notice Packet were mailed as part of the initial mailing. *See* Ex. D at ¶4.
- 85. The Court-approved Notice also requires brokers/nominees, within ten business days, to either (i) request additional copies of the Notice to send to the beneficial owners of the securities, or (ii) to provide to Epiq the names and addresses of such persons.
- 86. In the aggregate, as of February 23, 2021, Epiq has disseminated 132,884 copies of the Notice to potential members of the Settlement Class and their nominees. *See* Ex. D at ¶4.

- 87. In addition, on December 7, 2020, the Summary Notice was published through *Investor's Business Daily* and over *PR Newswire*. Information regarding the Settlement, including copies of the Notice and Claim Form, was posted on the website established by Epiq specifically for this Settlement, and on Lead Counsel's website. *See* ECF No. 106-1. This method of giving notice, previously approved by the Court, is appropriate because it directs notice in a "reasonable manner to all class members who would be bound by the [proposed] judgment." Fed. R. Civ. P. 23(e)(1).
- 88. The Notice advises members of the Settlement Class of the essential terms of the Settlement, sets forth the procedure for objecting to or opting out of the Settlement, and provides specifics on the date, time, and place for the final approval hearing.
- 89. The Notice also contains information regarding Lead Counsel's fee and expense application and the proposed Plan of Allocation. As explained in the Final Approval Motion, the Notice fairly apprises members of the Settlement Class of their rights with respect to the Settlement, and therefore is the best notice practicable under the circumstances, and complies with the Court's Preliminary Approval Order, Rule 23 of the Federal Rules of Civil Procedure, and due process.
- 90. As discussed in the Final Approval Motion, the February 16, 2021 deadline for objections to, or exclusions from, the Settlement has now passed, and no Settlement Class Member has objected to any aspect of the Settlement, and only a single exclusion request submitted on behalf of an individual investor with 1,425 shares was received. This overwhelmingly positive response from the Settlement Class wholly supports final approval.

#### E. The Plan of Allocation

- 91. Lead Plaintiffs have proposed a plan to allocate the proceeds of the Settlement Fund among members of the Settlement Class who submit valid proofs of claim. The objective of the proposed Plan of Allocation (the "Plan") is to equitably distribute the Settlement proceeds, on a *pro rata* basis, to those members of the Settlement Class who suffered economic losses as a result of Defendants' alleged misrepresentations and omissions.
- 92. Lead Plaintiffs engaged Global Economics Group, LLC as an expert to assist in formulating the Plan. In developing the Plan, Lead Plaintiffs' expert calculated the amount of estimated artificial inflation in the per share closing price of DaVita common stock that was allegedly proximately caused by Defendants' false and misleading statements. In so doing, Lead Plaintiffs' expert considered price changes in DaVita common stock in reaction to the alleged corrective disclosures, adjusting for any price changes attributable to market or industry forces.
- 93. The Notice set forth and explained the proposed Plan of Allocation to members of the Settlement Class. It was prepared in consultation with Lead Plaintiffs' expert, tracks a theory of damages asserted by Lead Plaintiffs, is substantially similar to numerous other plans that have been approved in this District and around the country, and is fair, reasonable, and adequate to the Settlement Class as a whole.
- 94. In response to over 132,884 Notices, there have been no objections to the proposed Plan of Allocation, further underscoring its propriety.

# IV. LEAD PLAINTIFFS' APPLICATION FOR PLAINTIFFS' COUNSEL'S <u>ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES</u>

95. In addition to seeking final approval of the Settlement and Plan of Allocation, Lead Plaintiffs also submit the Fee and Expense Motion, which requests approval of their application to the Court, on behalf of Plaintiffs' Counsel, for an award of attorneys' fees and reimbursement of litigation expenses. Specifically, Lead Plaintiffs are applying for a fee of 30% of the Settlement Fund to be paid from the Settlement Fund. Lead Plaintiffs also request reimbursement of \$547,409.27 in litigation expenses, also to be paid from the Settlement Fund. Lead Counsel further requests the reimbursement of their time and costs related to representation of the Class to each Lead Plaintiff, in accordance with the PSLRA, 15 U.S.C. § 78u-4(a)(4).

- 96. In support of these applications, Plaintiffs' Counsel has submitted the attached Declaration of Joseph E. White, III in Support of Lead Plaintiffs' Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses, Filed on Behalf of Saxena White P.A ("Saxena White Declaration," Ex. F), and the attached Declaration of Rusty Glenn in Support of Lead Plaintiffs' Motion for Attorneys' Fees and Litigation Expenses, Filed on Behalf of Shuman, Glenn & Stecker ("Shuman Declaration," Ex. G).
- 97. Plaintiffs' Counsel's Declarations list the lodestar of Lead and Liaison Counsel, including the amount of time spent by each attorney and professional support staff member on the case. In accordance with D.C.COLO.LCivR 54.3, the Declarations provide a breakdown of the principal tasks that each attorney performed, as well as brief biographies for each timekeeper, including information about his or her position, education, and relevant experience. The declarations also describe the expenses for which Plaintiffs' Counsel seek reimbursement.
- 98. Lead Plaintiffs support Plaintiffs' Counsel's fee request. *See* Exs. B and C, ¶¶11-14. The support and approval of court-appointed lead plaintiffs weighs heavily in favor of approval of a fee request. *See, e.g., In re Veeco Instruments Inc. Sec. Litig.*, 2007 WL 4115808, at \*8 (S.D.N.Y. Nov. 7, 2007) ("[P]ublic policy considerations support the award in this case because the Lead Plaintiff ... —a large public pension fund—conscientiously supervised the work of lead counsel and has approved the fee request[.]"); *In re Genworth Fin. Sec. Litig.*, 2016

WL 7187290, at \*2 (E.D. Va. Sept. 26, 2016) ("Lead Plaintiffs are sophisticated institutional investors that have been directly and extensively involved in the prosecution and resolution of the Action and have a substantial interest in ensuring that any fees paid to the Plaintiffs' Counsel are duly earned and not excessive.").

- 99. Plaintiffs' Counsel's request for a fee based on a percentage of the Settlement Fund is in line with the most typical method of awarding attorney fees in securities and other complex class actions in the Tenth Circuit and in federal courts nationwide. This method of calculating Plaintiffs' Counsel's fee is favored because it aligns the attorneys' interest in being paid a fair fee with the interest of the Settlement Class in achieving the maximum recovery efficiently and in the shortest amount of time.
- 100. As set forth in the Fee and Expense Motion, courts in the Tenth Circuit are guided by the *Johnson* factors in evaluating fee awards, which include: (1) the time and labor required by counsel; (2) the novelty and difficulty of the legal question presented; (3) the skill required to represent the class appropriately; (4) the preclusion of other employment by the attorneys due to the acceptance of this case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) any time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. *See Diaz v. Lost Dog Pizza, LLC*, 2019 WL 2189485, at \*5 (D. Colo. May 21, 2019) (Martínez, J.) (citing *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 717–19 (5th Cir. 1979)).

101. Based on consideration of these factors as set forth below, and on the additional legal authorities set forth in the Fee and Expense Motion, Lead Plaintiffs and Lead Counsel respectfully submit that the requested 30% fee is fair and reasonable, and should be granted.

#### A. The Significant Time and Labor Devoted by Plaintiffs' Counsel

- 102. As described further *supra*, Lead Counsel engaged in an exhaustive and comprehensive investigation and drafted a 111-page amended Complaint, and successfully opposed Defendants' motion to dismiss. Lead Counsel engaged in extensive discovery negotiations, including multiple meet-and-confers with Defendants and third parties and exchanged substantial amounts of contentious correspondence. Lead Counsel reviewed and analyzed approximately 845,000 pages of documents, and consulted with economics, health care and tax experts to better understand the issues in the case. Lead Counsel also opposed Defendants' Motion for Reconsideration, were in the process of fully briefing their motion for class certification, deposed Defendants' class certification expert, and defended depositions of their own expert as well as representatives of each Lead Plaintiff. In total, Plaintiffs' Counsel expended over 31,000 hours litigating this matter.
- 103. Thus, the prosecution of the Action was significantly labor-intensive, and as is often the case with complex securities class actions, the attorneys involved would routinely have to spend significant stretches of time focusing exclusively or near-exclusively on litigating this Action. Accordingly, Lead Counsel's extensive litigation efforts fully support the requested fee.

#### B. The Risks and the Difficulty of Questions Raised by the Litigation

- 104. The risks undertaken and difficulties presented in a complex securities class action such as this one favor approval of the requested fee award.
- 105. Indeed, as discussed herein and in the Fee Memorandum, the Court withheld judgment on 22 of the 27 misstatements at issue in the Action, or over 80% of Plaintiffs' case,

because they were purportedly predicated on a finding that DaVita's conduct was illegal. After the DOJ declined to intervene in a related *qui tam* action, Defendants argued that the "illegality" misstatements should be dismissed because the only purported basis for a finding of illegality was now gone, and to date, no regulator or government agency has found that DaVita's steering conduct was illegal.

months down to only 17 months because, among other reasons, the truth regarding DaVita's steering practices was purportedly fully disclosed approximately one year before the end of the Class Period on October 31, 2016, after which DaVita's stock price increased rather than decreased in value. *See* ECF No. 102 at 23. In addition, Defendants argued that Plaintiffs would not be able to establish loss causation for the vast majority of the eight corrective disclosures alleged in the Complaint—an issue that the Court did not fully adjudicate in its order denying Defendants' motion to dismiss. Defendants argued that several corrective disclosures were not attributable to the alleged fraud, but rather to non-fraudulent, confounding information or the disclosure of information that was already known to the market. Accordingly, loss causation was a significant risk that could have dramatically reduced the value and ultimate recovery in the Action.

107. Whether at reconsideration, class certification, summary judgment, or trial, had Defendants succeeded in these arguments, the pool of available damages would be a small fraction of what it was at the time of the Settlement, meaning that Lead Counsel would earn at best a small fraction of the requested fee award for its substantial work and time. Similarly, at trial, a jury could have dramatically reduced the available damages by finding that only a part of the stock drop after the several disclosures was a result of the fraud.

108. Accordingly, the risks and difficult questions of fact and law presented in this litigation firmly support the requested fee award.

#### C. The Outstanding Result Achieved Supports the Requested Fee Award

- 109. The \$135 million Settlement achieved in this Action is an outstanding result for the Class by any measure. The Settlement is the second largest all-cash settlement ever achieved in a securities class action in this District, the largest all-cash securities class action settlement achieved in this District in the last ten years, and among the top five such settlements in the history of the Tenth Circuit. Indeed, in Colorado, the Settlement ranks behind only the \$445 million settlement obtained in *In re Qwest Commc's Int. Inc., Sec. Litig*, No. 01-cv-1451—a case in which the corporate defendant admitted it had overstated \$2.3 billion in revenue over a two-year period; the company's CEO, CFO, and five other senior executives were convicted of, or pled guilty to, criminal fraud and insider trading (with the CEO receiving a lengthy prison sentence); and estimated damages were upwards of \$90 billion. Here, by contrast, there have been no convictions or admissions of wrongdoing, much less civil or criminal guilty pleas, by DaVita or any of the Individual Defendants, and no regulator has taken any formal action against DaVita over the steering conduct challenged in this Action.
- 110. As elaborated further in the Fee Memorandum, the \$135 million Settlement represents from 31% to 43% of likely maximum damages—an exceptionally high percentage, and far more than the typical recovery achieved in a securities class action.
- 111. Significantly, this remarkable recovery for investors not only includes the proceeds of Defendants' insurance tower, but also includes a substantial monetary contribution by Defendant DaVita—a rare occurrence in securities litigation that further supports the requested fee award. *See In re Genworth Fin. Sec. Litig.*, 210 F. Supp. 3d 837, 842 (E.D. Va.

2016) (company's contribution "of its own cash to the Settlement" "strongly demonstrated the adequacy of the Settlement amount").

112. Accordingly, as elaborated more fully in the Fee Memorandum, the outstanding recovery obtained in the Settlement wholly supports the requested fee.

### D. A 30% Fee Award is Customary and in Accordance with Other Similar Cases in this District and the Tenth Circuit

- 113. As set forth more fully in the Fee Memorandum, "[c]ourts in the Tenth Circuit have noted that the typical fee award in complex cases is around *one third of the common fund*." *Crocs*, 2014 WL 4670886, at \*3; *see also Diaz*, 2019 WL 2189485, at \*5 ("33% fee award falls within the norm").
- 114. Lead Counsel's request for an award of 30% of the Settlement Fund is inherently reasonable given that it is well in line with fees recently awarded in similar securities and other complex class actions in this District, Circuit, and around the country. *See, e.g., In re Syngenta AG MIR 162 Corn Litig.*, 357 F. Supp. 3d 1094, 1114 (D. Kan. 2018) (awarding 33.3% fee of \$1.51 billion settlement); *Cook v. Rockwell International Corp.*, 2017 WL 5076498, at \*4 n.6 (D. Colo. Apr. 28, 2017) (awarding 40% fee of \$150 million settlement and collecting cases with similar percentage awards in megafund cases); *Tennille v. W. Union Co.*, 2014 WL 5394624, at \*4 (D. Colo. Oct. 15, 2014) (30% fee on \$135 million settlement); *In re Oppenheimer Rochester Funds Grp. Sec. Litig.*, 2014 WL 12768451, at \*2 (D. Colo. July 31, 2014) ("fee award of 30% of [\$89.5 million settlement] is consistent with awards made within this District and in similar cases"); *Schuh v. HCA Holdings, Inc.*, 2016 WL 10570957, at \*1 (M.D. Tenn. Apr. 14, 2016) (awarding 30% of \$215 million settlement considering, among other things, that "the awarded fee is in accord with Sixth Circuit authority and consistent with other fee awards in cases of this size"); *City of Pontiac Gen. Emps.' Ret. Sys. v. Wal-Mart Stores, Inc.*, 2019 WL 1529517, at \*2

(W.D. Ark. Apr. 8, 2019) (awarding 30% fee of \$160 million settlement and finding that "the amount of attorneys' fees is consistent with awards in cases that achieved less-significant class recoveries and supported by public policy"); *In re Apollo Grp. Inc. Sec. Litig.*, 2012 WL 1378677, at \*9 (D. Ariz. Apr. 20, 2012) (awarding fee of 33% of \$145 million recovery).

115. Indeed, the following chart demonstrates that the requested fee is firmly in line with fees awarded in comparable securities and other complex class actions by courts in the District of Colorado and other District courts within the Tenth Circuit:

TENTH CIRCUIT Comparable Securities and Other Complex Class Actions	Settlement Amount	Fee Award
Cook v. Rockwell International Corporation, 2017 WL 5076498, at *1 (D. Colo. Apr. 28, 2017) (Kane, J.)	\$375,000,000	40%
Blanco v. Xtreme Drilling & Coil Servs., Inc., 2020 WL 4041456, at *4 (D. Colo. July 17, 2020) (Brimmer, J.)	\$850,000	38%
Davis v. Crilly, 292 F. Supp. 3d 1167, 1174 (D. Colo. 2018) (Arguello, J.)	\$2,180,000	37%
Hill v. Kaiser-Francis Oil Co., 2013 WL 12090048, at *3 (W.D. Okla. July 30, 2013)	\$35,330,000	35%
Prim v. Ensign United States Drilling, Inc., 2019 WL 4751788, at *6 (D. Colo. Sept. 30, 2019) (Brimmer, J.)	\$815,000	35%
<i>In re Urethane Antitrust Litig.</i> , 2016 WL 4060156, at *8 (D. Kan. July 29, 2016)	\$835,000,000	33.3%
Hershey v. ExxonMobil Oil Corp., 2012 WL 5306260, at *7 (D. Kan. Oct. 26, 2012), aff'd in part, dismissed in part, 550 F. App'x 566 (10th Cir. 2013)	\$55,000,000	33.3%
In re California Municipal Fund, Master Docket No. 09-md-02063- JLK-KMT, ECF No. 710 at 4 (D. Colo. Nov. 6, 2017) (Kane, J.)	\$50,750,000	33.3%
In re Universal Serv. Fund Tel. Billing Practices Litig., 2011 WL 1808038, at *2-3 (D. Kan. May 12, 2011)	\$16,477,958	33.3%
Hitch Enterprises, Inc. v. Cimarex Energy Co., 2013 WL 12090055, at *3 (W.D. Okla. July 2, 2013)	\$16,400,000	33.3%
<i>Angres v. Smallworldwide PLC</i> , No. 1:99-cv-01254, ECF No. 118 (D. Colo. June 17, 2003) (Kane, J.)	\$9,850,000	33.3%
Friedman v. Quest Energy Partners LP, 2010 WL 4925133, at *5 (W.D. Okla. Nov. 29, 2010)	\$9,090,000	33.3%
Droegemueller v. Petroleum Dev. Corp., 2009 WL 961539, at *5 (D. Colo. Apr. 7, 2009) (Kane, J.)	\$8,040,493	33.3%
In re Anadarko Basin Oil & Gas Lease Antitrust Litig., 2019 WL 1867446, at *1 (W.D. Okla. Apr. 25, 2019)	\$6,950,000	33.3%
Shaw v. Interthinx, Inc., 2015 WL 1867861, at *8 (D. Colo. Apr. 22, 2015) (Blackburn, J.)	\$6,000,000	33.3%
Braver v. Northstar Alarm Servs., LLC, 2020 WL 6468227, at *4 (W.D.	\$1,850,000	33.3%

TENTH CIRCUIT Comparable Securities and Other Complex Class Actions	Settlement Amount	Fee Award
Okla. Nov. 3, 2020)		
McClintock v. Continuum Producer Servs., LLC, 2020 WL 5524790, at *2 (E.D. Okla. May 19, 2020),	\$900,000	33.3%
Ramos v. Banner Health, 2020 WL 6585849, at *5 (D. Colo. Nov. 10, 2020) (Martínez, J.)	\$500,000	33.3%
Shaulis v. Falcon Subsidiary LLC, 2018 WL 4620388, at *2 (D. Colo. Sept. 26, 2018) (Arguello, J.)	\$595,000	33.3%
In re Syngenta AG MIR 162 Corn Litig., 357 F. Supp. 3d 1094, 1100 (D. Kan. 2018)	\$1.51 billion	33.3%
Campbell v. C.R. England, Inc., 2015 WL 5773709, at *6 (D. Utah Sept. 30, 2015)	\$5,000,000	33.3%
Koehler v. Freightquote.com, Inc., 2016 WL 3743098, at *4 (D. Kan. July 13, 2016)	\$5,000,000	33%
United Food and Comm'l Workers Union and Participating v. Advanced Emissions Solutions, Inc., 2017 WL 11368197, at *1 (D. Colo. Feb. 10, 2017) (Arguello, J.)	\$3,950,000	33%
Nakkumpun v. Taylor, 2016 WL 11724397, at *5 (D. Colo. June 13, 2016) (Arguello, J.)	\$3,200,000	33%
Whittington v. Taco Bell of Am., Inc., 2013 WL 6022972, at *6 (D. Colo. Nov. 13, 2013) (Tafoya, Mag.)	\$2,490,000	33%
Freebird, Inc. v. Merit Energy Co., 2013 WL 1151264, at *5 (D. Kan. Mar. 19, 2013)	\$8,153,908	31%
Farley v. Family Dollar Stores, Inc., 2014 WL 5488897, at *4 (D. Colo. Oct. 30, 2014) (Moore, J.)	\$2,300,000	30.3%
Chieftain Royalty Co. v. QEP Energy Co., 2013 WL 12090676, at *3 (W.D. Okla. May 31, 2013)	\$155,000,000	30%
<i>Tennille v. Western Union Co.</i> , 2014 WL 5394624, at *4 (D. Colo. Oct. 15, 2014) aff'd 809 F.3d 555 (10th Cir. 2015)	\$135,000,000	30%
In re Oppenheimer Rochester Funds, 2014 WL 12768451, at *2 (D. Colo. July 31, 2014) (Kane, J.)	\$89,500,000	30%
In re: Westar Energy, Inc. Securities Litigation, 2005 WL 8153009, at *3 (D. Kan. Sept. 1, 2005)	\$30,000,000	30%
In re Molycorp, Inc. Securities Litigation, 2017 WL 11598681, at *2 (D. Colo. June 16, 2017) (Moore, J.)	\$20,500,000	30%
In re Rhythms Securities Litigation, 2009 WL 10690662, at *4 (D. Colo. Apr. 3, 2009) (Kane, J.)	\$17,500,000	30%
In re Crocs, Inc. Securities Litigation, 2014 WL 4670886, at * 5 (D. Colo. Sept. 18, 2014) (Brimmer, J.)	\$10,000,000	30%
In re Sun Healthcare Group Inc. Sec. Litig. (Sun Healthcare Group II), 6:99-cv-00269-MV-LCS, ECF No. 116 at 1 (D. N.M. Dec. 13, 2004)	\$5,000,000	30%

116. Similarly, a review of fee awards in securities and other complex class action settlements from around the country likewise supports the reasonableness of the fee request here:

NATIONWIDE  Commonship Securities and Other Common Class Actions	Settlement	Fee
Comparable Securities and Other Complex Class Actions	Amount	Award
Haddock v. Nationwide Life Ins. Co., No. 3:01-cv-01552-SRU ECF No. 601 (D. Conn. Apr. 9, 2015)	\$140 million	35%
In re Initial Pub. Offering Sec. Litig., 671 F. Supp. 2d 467, 505 (S.D.N.Y. 2009)	\$586 million	33.3%
<i>In re U.S. Foodservice, Inc. Pricing Litig.</i> , 2014 WL 12862264, at *3 (D. Conn. Dec. 9, 2014)	\$297 million	33.3%
Osberg v. Foot Locker, Inc., No. 07-cv-01358-AT, ECF No. 423 (S.D.N.Y. June 6, 2018)	\$290 million	33.3%
Hale v. State Farm Mut. Auto Ins. Co., 2018 WL 6606079, at *16 (S.D. Ill. Dec. 16, 2018)	\$250 million	33.3%
In re Tricor Direct Purchaser Antitrust Litig., No. 1:05-cv-00340- SLR, ECF No. 543, (D. Del. Apr. 23, 2009)	\$250 million	33.3%
DeLoach v. Phillip Morris Co., 2003 WL 23094907, at *1, 11 (M.D.N.C. Dec. 19, 2003)	\$212 million	33.3%
In re Titanium Dioxide Antitrust Litig., 2013 WL 6577029, at *1 (D. Md. Dec. 13, 2013)	\$163.5 million	33.3%
<i>In re Flonase Antitrust Litig.</i> , 951 F. Supp. 2d 739, 746 (E.D. Pa. 2013)	\$150 million	33.3%
In re Apollo Group Inc. Sec. Litig., 2012 WL 1378677, at *7 (D. Ariz. Apr. 20, 2012)	\$145 million	33.3%
In re: Southeastern Milk Antitrust Litig., 2012 WL 12875983, at *6 (E.D. Tenn. July 11, 2012)	\$140 million	33.3%
<i>In re Loestrin 24 Fe Antitrust Litig.</i> , 2020 WL 4035125, at 6-7 (D. R.I. July 17, 2020)	\$120 million	33.3%
Cabot East Broward 2 LLC v. Cabot, 2018 WL 5905415, at *2, 9 (S.D. Fla. Nov. 9, 2018)	\$100 million	33.3%
In re Prograf Antitrust Litig., No. 11-md-2242, ECF No. 678 (D. Mass. May 20, 2015)	\$98 million	33.3%
In Re Celebrex (Celecoxib) Antitrust Litigation, 2018 WL 2382091, at *5 (E.D. Va. Apr. 18, 2018)	\$94 million	33.3%
Landmen Partners Inc. v. Blackstone Grp., 2013 WL 11330936, at *3 (S.D.N.Y. Dec. 18, 2013)	\$85 million	33.3%
Gutter v. E.I. Dupont De Nemours & Co., No. 1:95-cv-02152, ECF No. 626 at 7 (S.D. Fla. May 30, 2003)	\$77.5 million	33.3%
In re J.P. Morgan Stable Value Fund ERISA Litig., 2019 WL 4734396, at *6 (S.D.N.Y. Sep. 23, 2019)	\$75 million	33.3%
In re Remeron Direct Purchaser Antitrust Litig., 2005 WL 3008808, at *17 (D.N.J. Nov. 9, 2005)	\$75 million	33.3%
In re Skelaxin (Metaxalone) Antitrust Litig., 2014 WL 2946459, at *3 (E.D. Tenn. June 30, 2014)	\$73 million	33.3%
<i>In re Solodyn Antitrust Litig.</i> , 2018 WL 7075881, at *2 (D. Mass. July 18, 2018)	\$72.5 million	33.3%
Krakauer v. Dish Network, 2019 WL 7066834, at *7 (M.D.N.C.	\$61.3 million	33.3%

NATIONWIDE Comparable Securities and Other Complex Class Actions	Settlement Amount	Fee Award
Dec. 23, 2019)	Amount	nwaru
Erica P. John Fund, Inc. v. Halliburton Co., 2018 WL 1942227, at *17 (N.D. Tex. Apr. 25, 2018)	\$100 million	33.3%
Standard Iron Works v. ArcelorMittal, 2014 WL 7781572, at *1 (N.D. Ill. Oct. 22, 2014)	\$163.9 million	33%
Allapattah Services, Inc. v. Exxon Corp., 454 F. Supp. 2d 1185, 1204 (S.D. Fla. 2006)	\$1.06 billion	31.3%
<i>In re TFT-LCD (Flat Panel) Antitrust Litig.</i> , 2013 WL 149692, at *1 (N.D. Cal. Jan 14, 2013), 2011 WL 7575003, at *1 (N.D. Cal. Dec. 27, 2011)	\$473 million	30%
In re (Bank of America) Checking Account Overdraft Litig., 830 F. Supp. 2d 1330, 1366 (S.D. Fla. 2011)	\$410 million	30%
Schuh v. HCA Holdings, Inc., 2016 WL 10570957, at *1 (M.D. Tenn. Apr. 14, 2016)	\$215 million	30%
<i>In re Linerboard Antitrust Litig.</i> , 2004 WL 1221350, at *15-16 (E.D. Pa. June 2, 2004)	\$202.5 million	30%
In re (Chase Bank) Checking Account Overdraft Litig., No. 1:09-md-02036, ECF No. 3134 (S.D. Fla. Dec. 19, 2012)	\$162 million	30%
City of Pontiac General Employees' Retirement System v. Walmart Stores, Inc., 2019 WL 1529517, at *1 (W.D. Ark. Apr. 8, 2019)	\$160 million	30%
In re Polyurethane Foam Antitrust Litig., 2015 WL 1639269, at *7 (N.D. Ohio Feb. 26, 2015)	\$147.8 million	30%
In re (Citizens Bank) Checking Account Overdraft Litig., No. 1:09-md-02036, ECF No. 3331 (S.D. Fla. Mar. 12, 2013)	\$137.5 million	30%
In re Regions Morgan Keegan Secs., Deriv., and ERISA Litig., 2016 WL 8290089, at *8 (W.D. Tenn. Aug. 2, 2016)	\$125 million	30%
In re Dole Food Co., Inc. Stockholder Litig., 2016 WL 541917 (Del. Ch. Feb. 10, 2016)	\$113 million (approx)	30%
In re Ikon Office Solutions, Inc. Sec. Litig., 194 F.R.D. 166, 197 (E.D. Pa. 2000)	\$111 million	30%
Marcus v. J.C. Penney Company, Inc., 2018 WL 11275437, at *1 (E.D. Tex. Jan. 5, 2018)	\$97.5 million	30%
<i>In re Starz Stockholder Litigation</i> , 2018 WL 6515452, at *4 (Del.Ch. Dec. 10, 2018)	\$92.5 million	30%
Local 703, I.B. of T. Grocery & Food Emps. Welf. Fund v. Regions Fin. Corp., 2015 WL 5626414, at *1 (N.D. Ala. Sept. 14, 2015)	\$90 million	30%
<i>In re Rayonier Securities Litigation</i> , 2017 WL 4542852, at *3 (M.D. Fla. Oct. 5, 2017)	\$73 million	30%
In re: The Bank of New York Mellon ADR FX Litigation, No. 1:16-cv-00212, ECF No. 161 (S.D.N.Y. June 17, 2019)	\$72.5 million	30%
Anwar v. Fairfield Greenwich Limited, No. 1:09-cv-00118, ECF No. 1569 (S.D.N.Y. May 6, 2016)	\$55 million	30%
In re HD Supply Holdings, Inc., Securities Litigation, 2020 WL 8572953, at *1 (N.D. Ga. July 21, 2020)	\$50 million	30%
Shah v. Zimmer Biomet Holdings Inc., 2020 WL 5627171, at *13 (N.D. Ind. Sept. 18, 2020)	\$50 million	30%
In re BHP Billiton Limited Securities Litigation, No. 1:16-cv-01445, ECF No. 139 (S.D.N.Y. Apr. 10, 2019)	\$50 million	30%

NATIONWIDE Comparable Securities and Other Complex Class Actions	Settlement Amount	Fee Award
<i>KBC Asset Mgmt. v. 3D Systems Corp.</i> , 2018 WL 3105072, at *1 (D.S.C. June 25, 2018)	\$50 million	30%

Furthermore, a lodestar "cross-check" also confirms the reasonableness of Lead 117. Counsel's fee request. As set forth in Exhibits F and G, Plaintiffs' Counsel expended a total of 31,813.60 hours in the investigation, prosecution, and resolution of this Action from inception up through February 16, 2021. The resulting lodestar is \$14,717,351.25. In light of this, the requested fee of 30% of the Settlement Fund yields a multiplier of 2.75—which is well within, and indeed at the lower end of, the range of multipliers awarded by courts in this Circuit and around the country in comparable contingent securities class actions. See, e.g., DaVita Healthcare Partners, 2015 WL 3582265, at \*5 (multiplier of 3 "in line with the multipliers awarded in similar cases"); Crocs, 2014 WL 4670886, at \*4 (referencing District cases approving multipliers ranging from 2.5 to 4.6); Urethane, 2016 WL 4060156, at \*7 (approving 3.2 multiplier in megafund case, finding multipliers of 4 or 5 have been "accepted by a number of courts in megafund cases"); Marcus v. J.C. Penney Company, Inc., 2018 WL 11275437, at \*2 (E.D. Tex. Jan. 5, 2018) (awarding a 30% fee representing a 3.18 lodestar multiplier in a \$97.5 million securities settlement); Schuh, 2016 WL 10570957, at \*1 (M.D. Tenn. Apr. 14, 2016) (awarding a 30% fee representing 4.3 lodestar multiplier in a \$215 million securities settlement).

118. Furthermore, Plaintiffs' Counsel's hourly rates are the same as, or comparable to, the rates submitted by comparable firms for lodestar cross-checks in other securities class action fee applications that have been granted in this District, Circuit and others. *See, e.g., Ramos v. Banner Health*, 15-cv-2556, 2020 WL 6585849 (D. Colo. Nov. 10, 2020) (Martínez, J.) and ECF No. 504 (approving rates ranging from \$490 to \$1,060 per hour); *Crocs*, 2014 WL 4670886, at \*4 (approving fee request where hourly rates were "higher than the rates charged by attorneys of

similar skill and experience in the Denver legal market"); *Chieftain Royalty Co. v. Marathon Oil Co.*, 2019 WL 7758915, at \*12 (E.D. Ok. Mar. 8, 2019) (recognizing "partner rates ranging from \$850 - \$1,150 per hour" in shareholder and other complex litigation and citing cases and studies supporting the propriety of such rates).

- 119. In addition, while this Court previously expressed concerns regarding non-Denver-based law firm rates in a prior shareholder representative action, the Court ultimately awarded a fee that represented a lodestar multiplier of 3.0 and a blended hourly rate of \$600. See DaVita, 2015 WL 3582265, at \*4-5. Here, Lead Counsel's fee request represents a lodestar multiplier of just 2.75, and Lead Counsel's blended hourly rate is just \$457, which is significantly lower than blended hourly rates approved by this Court and others in the Tenth Circuit. See Oppenheimer, 2014 WL 12768451, at \*3 (approving 30% fee request with blended rate of \$512 per hour); Syngenta, 357 F. Supp. 3d at 1115 (approving 33.3% fee in \$1.51 billion settlement with average rate of \$500 per hour).
- 120. Each attorney that prosecuted this Action performed substantive work that directly benefitted the Settlement Class. The time spent by each attorney was reasonable, non-duplicative, beneficial to effective and efficient litigation, and was important to Lead Counsel's and Lead Plaintiffs' ability to understand the strengths and weaknesses of the case in order to negotiate intelligently and evaluate the Settlement, which ultimately led to the successful and favorable resolution of the case.

### E. The Contingent Nature of the Fee, the Undesirability of the Action, and Preclusion of Other Employment

121. As with all contingency fee cases, Plaintiffs' Counsel faced a substantial risk that they would obtain no fee whatsoever. However, given the magnitude and complexity of this Action, this risk was particularly acute here. From the outset, Lead Counsel understood that they

were embarking on a complex, expensive, and lengthy litigation with no guarantee of ever being compensated for the substantial investment of time and money the case would require. Indeed, Lead Counsel not only initiated this litigation by filing the initial complaint on behalf of Georgia Peace Officers, but was the only law firm to submit a leadership application at the lead plaintiff stage—a fact that underscores the perceived "undesirability" and difficulty of the Action. Had Saxena White not willingly and vigorously undertaken the responsibility of representing the Class's interests here, the Class would almost certainly have recovered nothing for their claims.

- 122. Additionally, securities class actions such as this one are not only time- and labor-intensive, but require substantial up-front cost outlays. In undertaking that responsibility, Lead Counsel were obligated to ensure that sufficient resources were dedicated to the prosecution of the Action, and that funds were available to compensate staff and to cover the considerable litigation costs that a case like this requires. Lead Counsel not only had to pay for its standard overhead expenses during the entirety of the litigation, but had to cover costs and expenses, including substantial electronic discovery costs and the fees of various healthcare, tax, economic and market efficiency experts, all without guarantee of any recovery. With an average lag time of several years for these cases to conclude, the financial burden on contingent-fee counsel is far greater than on a firm that is paid on an ongoing basis, which heavily supports the requested fee.
- 123. Courts have repeatedly recognized that it is in the public interest to have experienced and qualified counsel privately enforce the securities laws. However, as recognized by Congress through the passage of the PSLRA, vigorous private enforcement of the federal securities laws can only occur if private plaintiffs, and particularly institutional investors, take an active role in protecting the interests of investors. If this important public policy is to be carried

out, Plaintiffs' Counsel should be adequately compensated, taking into account the substantial risks undertaken in prosecuting securities class actions.

124. At each step of the process, Plaintiffs' Counsel faced a substantial risk that the litigation could end either without remuneration to them or with remuneration far less than the time, effort, and expense put in by Lead Counsel. Lead Counsel could have had the Complaint dismissed by the Court after expending the substantial effort and expense required to complete their investigation and draft the Complaint. And even after surviving that hurdle, were litigation to continue, Plaintiffs could have faced an adverse determination on reconsideration, at class certification, on summary judgment, a total loss at trial, or—even in the event of a victory at trial—a minimal recovery or a reversal on appeal. Any of these occurrences would have deprived Lead Counsel of the opportunity to earn any fee whatsoever for their four years of work and expenditure—efforts that necessarily precluded other projects.

### F. The Skill Required and the Experience, Reputation and Ability of the Attorneys

125. Lead Counsel are highly skilled and experienced securities litigators, who expended a substantial amount of time and effort litigating the Action—an Action that presented unique and difficult challenges that were not easy to overcome. The attorneys who were principally responsible for leading the prosecution of this case have prosecuted securities claims throughout their careers, overseen numerous litigations, and recovered billions of dollars on behalf of investors over the course of decades. <sup>4</sup>

<sup>&</sup>lt;sup>4</sup> Recent securities class action settlements obtained by Lead Counsel include *In re Wilmington Tr. Sec. Litig.*, 2018 WL 6046452, at \*8 (D. Del. Nov. 19, 2018) (\$210 million common fund in securities class action); *In re Rayonier Inc. Sec. Litig.*, 2017 WL 4542852, at \*1 (M.D. Fla. Oct. 5, 2017) (\$73 million common fund in securities class action); *In re HD Supply Holdings, Inc. Sec. Litig.*, 2020 WL 8572953 (N.D. Ga. Jul. 21, 2020) (\$50 million common fund).

- 126. Informed by this experience, they developed and implemented strategies to overcome myriad obstacles raised by Defendants. We respectfully suggest that Plaintiffs' Counsel's depth of skill and experience, including their experience in this District and throughout the country successfully prosecuting securities class actions, allowed Lead Plaintiffs and the Settlement Class to achieve a result that might not have been achieved by less skillful or experienced counsel.
- 127. As an initial matter, while Plaintiffs believe they developed an exceedingly strong case, Defendants' fraud was not obvious at the outset. Plaintiffs' case remained very much in doubt, and to date, not only has the DOJ Investigation concluded with no action, but in fact no regulator or government agency has found that DaVita engaged in illegal steering conduct. Thus, the case required an extensive investigation, sophisticated motion practice, in-depth discovery, and highly skilled advocacy to obtain the achieved result.
- 128. Furthermore, the fact that no other movant or law firm sought appointment as lead plaintiff and lead counsel suggests that Defendants' fraud was not plain to see. Indeed, Plaintiffs likely could not sufficiently have pleaded fraud based on public facts alone, and it was only through Lead Counsel's intensive investigation uncovering internal documents and obtaining credible testimony by numerous confidential witnesses that Plaintiffs learned the facts necessary to survive Defendants' motion to dismiss.
- 129. Successfully pleading securities fraud—always a challenging and complex endeavor under the PSLRA—presented special challenges here that required skilled lawyering. This Action involved complex and intricate legal and factual issues, and the numerous federal and state healthcare laws implicated in this Action also added a significant level of difficulty

unique to this case. Lead Counsel, therefore, continually consulted with experts throughout the litigation.

- 130. In addition, the quality of the work performed by Lead Counsel in attaining the Settlement should also be evaluated in light of the quality of the opposition. Here, Defendants were represented by Morgan, Lewis & Bockius LLP and Faegre Baker Daniels LLP, two of the country's most prestigious and experienced defense firms.
  - 131. Lead Counsel believe that all of these factors support the requested fee award.

#### G. The Reaction of the Settlement Class to the Fee and Expense Application

Motion further supports its approval. The Notice advised Settlement Class Members that Lead Counsel would apply for fees not to exceed 30% of the Settlement Fund, and that the deadline for filing objections to the fee application was February 16, 2021. That deadline has now passed and not one member of the Settlement Class has filed an objection to the Settlement, Plan of Allocation, or the Fees and Expense Motion. Ex. D, ¶12-13. This reaction is particularly significant given that the vast majority of the Settlement Class, approximately 87%, is comprised of sophisticated institutional investors who have the resources, professional staff and financial motivation to object to the requested fee, if an objection was warranted. See ECF No. 83-1 at ¶72; see also In re Crocs Sec. Litig., 2014 WL 4670886, at \*5 (D. Colo. Sept. 18, 2014) ("the fact that none of the class members objected to the requested attorneys' fees is significant and weighs in favor of the requested award"); McKeon v. Integrity Pizza LLC, 2020 WL 6782238, at \*2 (D. Colo. Nov. 18, 2020) (same). Accordingly, all relevant factors support the fee request here.

#### H. Lead Counsel's Request for Reimbursement of Litigation Expenses

- 133. Plaintiffs' Counsel seeks reimbursement of \$547,409.27 in litigation expenses. Lead Counsel respectfully submits that these expenses were reasonable and necessary in light of the length and complexity of the litigation, and that reimbursement of these expenses would be appropriate and fair to the Class.
- 134. Courts in this District and nationwide have held that counsel in complex class actions are entitled to be reimbursed for reasonable expenses of the exact type incurred here, such as "court and court reporter fees; legal research; document and database reproduction and analysis; expert witnesses; travel for meetings, depositions, and document review and production; and other customary expenditures." *Columbus Drywall & Insulation, Inc. v. Masco Corp.*, 2008 WL 11234103, at \*6 (N.D. Ga. Mar. 4, 2008); *see also Crocs*, 2014 WL 4670886, at \*5 (D. Colo. Sept. 18, 2014) ("Fees for computer research, investigation, and experts/consultants appear to be among the largest expenditures, which, given the nature of this case, is an appropriate use of resources"); *Oppenheimer*, 2014 WL 12768451, at \*3 (finding approximately \$3.5 million of expenses to be reasonably incurred in prosecuting securities class action).
- 135. The requested expense reimbursement of \$547,409.27 is also significantly less than the \$750,000 upper limit set forth in the Notice, and no Settlement Class Member has objected to the reimbursement request, further supporting its reasonableness.

#### I. Lead Plaintiffs' Representative Reimbursement Requests

136. In accordance with the PSLRA, Lead Plaintiffs seek reimbursement of their reasonable costs and expenses incurred directly in connection with their representation of the Settlement Class, in the amount of \$10,000 per Lead Plaintiff—an amount that is less than the total estimated value of the time that the Lead Plaintiffs spent in overseeing and participating in the Action. The amount of time and effort devoted to this Action by the representatives of Lead

Plaintiffs—who expended considerable time and effort in actively supervising the litigation over a multi-year period, including by collecting and producing numerous documents and responding to interrogatories; preparing for and attending their depositions; and participating in ongoing settlement discussions—is detailed in the accompanying Lead Plaintiff Declarations. Exs. B and C, ¶¶3-7, 15-17.

137. Lead Plaintiffs respectfully submit that the reimbursement requested is fully consistent with congressional intent, as expressed in the PSLRA, of encouraging institutional and other highly experienced plaintiffs to take an active role in bringing and supervising actions of this type. As set forth in the Lead Plaintiff Declarations, each of the Lead Plaintiffs has, throughout the litigation of the Action, been fully committed to pursuing the interests of the Settlement Class. Lead Plaintiffs have actively and effectively complied with all of the many demands that arose during the litigation and the Settlement of this Action. Lead Plaintiffs' efforts are precisely the type that courts have found to warrant reimbursement to class representatives, and fully supports Lead Plaintiffs' reimbursement request.

#### V. <u>CONCLUSION</u>

138. For all the reasons discussed above and in the Final Approval Motion, Lead Plaintiffs and Lead Counsel respectfully submit that the Settlement and the Plan of Allocation should be approved as fair, reasonable, and adequate. In addition, as set forth above and in the Fee and Expense Motion, Lead Plaintiffs and Plaintiffs' Counsel further submit that the requested 30% fee award should be approved as fair and reasonable; the request for reimbursement of litigation expenses in the total amount of \$547,409.27 should be approved; and Lead Plaintiffs' Representative Reimbursements of \$10,000 each should also be approved.

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

Executed on this 23<sup>rd</sup> day of February, 2021, at Boca Raton, FL.

/s/ Joseph E. White, III
Joseph E. White, III

## EXHIBIT A

### IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

Civil Action No. 1:17-cv-00304-WJM-NRN

PEACE OFFICERS' ANNUITY AND BENEFIT FUND OF GEORGIA, Individually and on Behalf of All Others Similarly Situated, and JACKSONVILLE POLICE AND FIRE PENSION FUND, Individually and on Behalf of All Others Similarly Situated,

Plaintiffs,

v.

DAVITA INC., KENT J. THIRY, JAMES K. HILGER, and JAVIER J. RODRIGUEZ,

Defendants.

DECLARATION OF FORMER UNITED STATES DISTRICT COURT JUDGE LAYN R. PHILLIPS IN SUPPORT OF: (I) LEAD PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION; AND (II) LEAD PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

- I, LAYN R. PHILLIPS, declare under penalty of perjury as follows:
- 1. I submit this Declaration in my capacity as the mediator in connection with the proposed settlement of the above-captioned securities class action (the "Action"), and in support of: (i) Lead Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation (the "Motion for Final Approval"); and (ii) Lead Plaintiffs' Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Motion for Fees and Expenses"). I make this Declaration based on personal knowledge and if called and sworn as a witness could and would testify competently thereto.

#### I. BACKGROUND AND QUALIFICATIONS

- 2. I am a former U.S. District Court Judge, a former Judge by designation on the United States Court of Appeals for the Tenth Circuit in Denver, Colorado, a former United States Attorney, and a former litigation partner with the firm of Irell & Manella LLP. I currently serve as a mediator and arbitrator with my own alternative dispute resolution company, Phillips ADR Enterprises, P.C. ("PADRE"). I am a member of the bars of Oklahoma, Texas, California, and the District of Columbia, as well as the U.S. Courts of Appeals for the Ninth and Tenth Circuits and the Federal Circuit.
- 3. I earned my Bachelor of Science in Economics as well as my J.D. from the University of Tulsa. I also completed two years of L.L.M. work at Georgetown University Law Center in the area of economic regulation of industry. After serving as an antitrust prosecutor and an Assistant United States Attorney in Los Angeles, California, I was nominated by President Reagan to serve as a United States Attorney in Oklahoma, and did so for approximately four years. I personally tried many cases and oversaw the trials of numerous other cases as a United States Attorney.

- 4. While serving as a United States Attorney, I was nominated by President Reagan to serve as a United States District Court Judge for the Western District of Oklahoma. While on the bench, I presided over more than 140 federal trials and sat by designation in the United States Court of Appeals for the Tenth Circuit. I also presided over cases in Texas, New Mexico, and Colorado.
- 5. I left the federal bench in 1991 and joined the law firm of Irell & Manella LLP, where for 23 years I specialized in alternative dispute resolution, complex civil litigation, and internal investigations. In 2014, I left Irell & Manella to found my own company, PADRE, which provides mediation and other alternative dispute resolution services.
- 6. Over the past 30 years, I have devoted a considerable amount of my professional life to serving as a mediator and arbitrator in connection with large, complex cases such as this one. I have successfully mediated numerous complex cases, including hundreds of securities class actions.
- 7. The Parties' negotiations in this Action were conducted in confidence and under my supervision. All participants in the mediations and negotiations executed a confidentiality agreement indicating that the mediation process was to be considered settlement negotiations for the purpose of Rule 408 of the Federal Rules of Evidence, protecting disclosures made during such process from later discovery, dissemination, publication, and/or use in evidence.
- 8. By making this Declaration, neither I nor the Parties waive in any way the provisions of the confidentiality agreement or the protections of Rule 408. While I cannot discuss the contents of the mediation sessions, the Parties have authorized me to inform the Court of the procedural and substantive matters set forth below to be used in support of the Motion for Final Approval and the Motion for Fees and Expenses.

#### II. THE ARM'S-LENGTH SETTLEMENT NEGOTIATIONS

- 9. For this Action, I conducted six mediations, held on: September 25, 2019; June 8, 2020; June 9, 2020; June 13, 2020; July 16, 2020; and July 19, 2020. The participants included: (i) representatives of Lead Plaintiffs, the Peace Officers' Annuity and Benefit Fund of Georgia and the Jacksonville Police and Fire Pension Fund; (ii) Lead Counsel, Saxena White P.A.; (iii) representatives of Defendant DaVita; (iv) Defendants' counsel, Morgan, Lewis & Bockius LLP; and (v) representatives from DaVita's D&O insurance carriers.
- 10. In connection with the mediation sessions, the Parties also exchanged and submitted to me detailed mediation statements and responses thereto. These mediation submissions included numerous exhibits addressing liability and damages. I reviewed the briefing submitted by the Parties and provided a confidential list of specific questions to each side to help them thoroughly evaluate the strengths and weaknesses of their case, as well as clarify where substantial disputes on liability and damages still existed.
- 11. I found the discussions in the mediation submissions to be extremely valuable in helping me understand the relative merits of each Party's positions, and to identify the issues that were likely to serve as the primary drivers and obstacles to achieving a settlement. Counsel for both Parties presented significant arguments regarding their clients' positions, and it was apparent to me that both sides possessed strong, non-frivolous arguments, and that neither side was assured of victory.
- 12. Because the Parties submitted their mediation statements and arguments in the context of a confidential mediation process pursuant to Federal Rule of Evidence 408, I cannot reveal their content. I can say, however, that the arguments and positions asserted by all involved were the product of much hard work, and they were complex and highly adversarial. After

reviewing all of the written mediation statements and exhibits, I believed that the negotiation would be a difficult and adversarial process through which all involved would hold strong to their convictions that they had the better legal and factual arguments, and that a resolution without further litigation or trial was by no means certain.

- 13. With these issues, and many others, in mind I held the first mediation on September 25, 2019. Over the course of the day, I engaged in extensive discussions with the Parties in an effort to find common ground between the Parties' respective positions. The initial mediation session was not successful, however, as the Parties maintained highly divergent views on the strengths and weaknesses of their claims and defenses and, in turn, the settlement value of the Action.
- 14. Following the first mediation session, I believed that efforts to settle this case would continue to be challenging, as those involved continued to hold strong and vastly divergent views as to the relevant legal and substantive arguments, and that a resolution without further litigation and/or trial seemed highly unlikely.
- 15. After the Parties engaged in many months of additional litigation and extensive discovery, on June 8, 9, and 13, 2020, the Parties reconvened for three additional mediation sessions. Prior to those mediation sessions, the Parties provided me with comprehensive submissions updating me on the factual status of the litigation, particularly with respect to developments in discovery as it pertained to proving liability and damages. During these sessions, I engaged in numerous communications between myself and the Parties' counsel. Although the Parties had substantive and productive discussions concerning the merits and settlement value of the Action, no resolution was reached. After these sessions, I continued to have regular dialogue with the Parties about their respective settlement positions.

- 16. On July 16 and 19, 2020, the Parties attended the fifth and sixth mediation sessions. At the end of the day on July 19, 2020, the Parties still had not reached an agreement to settle the Action, but had substantially closed the distance between their respective positions.
- 17. On July 20, 2020, following further negotiations, I made a recommendation to attempt to move the Parties to a monetary sum for which settlement might be achievable. This recommendation suggested that each side agree to settle based upon a specified monetary sum that I thought was fair, reasonable and had some possibility of being accepted based on my review and consideration of the evidence submitted and arguments offered by both sides; my experience mediating other securities and complex class actions; and taking into account the substantial risks to both sides that the future litigation landscape presented. I was nonetheless mindful that the settlement amount I proposed was one to which both sides would have difficulty agreeing in light of their prior positions, and that it was quite possible that one or both sides would reject the proposal. The recommendation was made to the Parties on a double-blind basis, such that neither Party would know if the other Party had accepted or rejected the proposal unless both sides agreed to accept it.
- 18. The Parties ultimately agreed to accept my recommendation to settle the Action. On the evening of July 20, 2020, counsel for the Parties agreed to a non-binding settlement subject to the necessary client and board approvals by both sides.
- 19. From my experience and personal involvement as the mediator for this case, I observed first-hand that the Parties engaged in hard-fought litigation and negotiation from beginning to end. Although I cannot disclose specifics regarding the participants' positions, there were many complex issues that required significant thought and practical solutions. Throughout

the mediation process, the negotiations between the Parties were vigorous and conducted at arm's-length and in good faith.

### III. THE RECOVERY FOR THE CLASS IS SUBSTANTIAL, AND THE SETTLEMENT IS FAIR AND ADEQUATE

- 20. Having mediated hundreds of securities class actions over the past thirty years, I believe the monetary relief obtained by the Lead Plaintiffs and Lead Counsel in this case is an excellent result for the settlement class, particularly in light of the significant risks that Lead Plaintiffs faced in establishing liability and damages.
- 21. My experience as a federal judge, a litigator, and a mediator has exposed me to hundreds of complex class action cases. I am well aware of the risks facing Lead Plaintiffs and Lead Counsel in a case of this nature. Lead Plaintiffs and Lead Counsel faced a well-funded, sophisticated and respected defendant-entity. DaVita's in-house counsel and litigation counsel are among the most capable and most respected defense lawyers in the country.
- 22. As experienced litigators, the Parties' counsel understood that continued litigation promised to be lengthy, expensive and uncertain. The settlement provides the class with a significant recovery in the face of potentially losing some or all of the critical motions for class certification and reconsideration of the Court's order on Defendants' motion to dismiss (which were pending at the time of the settlement), summary judgment, and, of course, the risk of losing at a jury trial or on appeal. Balancing the very real risks and costs of continued litigation, against the certain, immediate, and substantial benefits achieved by the proposed settlement, further confirms that the proposed settlement is fair and reasonable for class members. This takes into account the relative strengths of Lead Plaintiffs' allegations and evidence, Defendants' denials of wrongdoing and evidence in support of Defendants' positions, and the risks associated with both liability and calculating damages.

- 23. While Lead Plaintiffs were confident in their assembly of evidence and legal theories, as in all cases there is a risk at trial of recovering nothing for the class in light of Defendants' defenses to the underlying claims. Based on my review of the pleadings and submissions supplied in advance of the mediations and the quality of the advocacy during the mediations, I can attest that the representation provided by counsel for each of the Parties was of the highest caliber. Counsel for the Parties not only are highly experienced in this kind of litigation, but also demonstrated their deep knowledge of the specific factual and legal issues and principles at the heart of the case, the relative strengths and weaknesses of their positions, and in particular, the risks of continued litigation. Based on this documentation, I am confident that counsel for the Parties were sufficiently well informed to enter into the proposed settlement.
- 24. The product of this effort, in my view, is a fair and reasonable compromise and an outstanding recovery that provides an immediate benefit to class members. I further believe it was in the best interests of the Parties that they agree on the proposed settlement and avoid the burdens and risks associated with taking a case of this size and complexity further into litigation, including a very real possibility of trial and likely appeals.
- 25. In light of these considerations, it is my opinion that the settlement is fair and reasonable, and I strongly support the Court's approval of the settlement in all respects.
- 26. The issue of an award of attorney's fees is, of course, left to the discretion of the District Court. In this case, I believe the following are among the relevant factors which warrant granting Lead Counsel's fee request of 30% of the settlement fund: (a) the monetary result achieved through this settlement is excellent and far exceeds the median settlement amounts in similar securities class actions; (b) the substantial recovery here was due in substantial part to Lead Counsel's experience, reputation, and advocacy capabilities; (c) Lead Counsel's unique dedication

to this case is evidenced by its filing of the initial complaint and its status as the only law firm to file a lead plaintiff motion, which suggests that other firms did not want to bring or litigate this case against DaVita; (d) Lead Counsel litigated numerous significant motions, including a motion to dismiss, a motion for partial reconsideration and a motion for class certification, any one of which could have put an end to this litigation; and (d) over the course of the last four years, Lead Counsel devoted substantial time, money and resources towards litigating this Action on a contingency fee basis with no guarantee of recovery. It is also my opinion that a fee award in the range requested by Lead Counsel is in line with amounts approved by other courts as being fair and reasonable in contingent fee securities and other complex class action settlements. Therefore, I respectfully endorse Lead Counsel's fee request.

I declare under penalty of perjury that the foregoing facts are true and correct, and that this Declaration was executed this 18<sup>th</sup> day of February, 2021, at Corona del Mar, California.

LAYN R. PHILLIPS

Former U.S. District Judge

# EXHIBIT B

### IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

Civil Action No. 1:17-cv-00304-WJM-NRN

PEACE OFFICERS' ANNUITY AND BENEFIT FUND OF GEORGIA, Individually and on Behalf of All Others Similarly Situated, and JACKSONVILLE POLICE AND FIRE PENSION FUND, Individually and on Behalf of All Others Similarly Situated,

Plaintiffs,

v.

DAVITA INC., KENT J. THIRY, JAMES K. HILGER, and JAVIER J. RODRIGUEZ,

Defendants.

DECLARATION OF ROBERT W. CARTER IN SUPPORT OF: (I) LEAD PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION; AND (II) LEAD PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

- I, ROBERT W. CARTER, hereby declare under penalty of perjury as follows:
- 1. I am the Associate Secretary-Treasurer for the Peace Officers' Annuity and Benefit Fund of Georgia ("Georgia Peace Officers"), which, along with the Jacksonville Police and Fire Pension Fund ("Jacksonville P&F"), are the Court-appointed Lead Plaintiffs in this securities class action (the "Action"). I have served at Georgia Peace Officers from 1996 through the present. I submit this declaration on behalf of Georgia Peace Officers and in support of: (i) Lead Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation; and (ii) Lead Plaintiffs' Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses.
- 2. I am aware of and understand the requirements and responsibilities of a lead plaintiff in a securities class action, including those set forth in the Private Securities Litigation Reform Act of 1995 ("PSLRA"). I have personal knowledge of the matters set forth in this Declaration, and I could and would testify competently thereto.

#### I. Georgia Peace Officers' Oversight of the Action

3. Georgia Peace Officers is a public pension system based in Griffin, Georgia that was created by Act of the General Assembly and signed into law by Governor Herman Talmadge on February 1, 1950. The stated purpose of the Act was to provide revenue to fund annuities and benefits to the peace officers of the State of Georgia. As of February 1, 2021, Georgia Peace Officers has approximately 20,000 active and retired members and their beneficiaries, and approximately \$941 million in assets under management. Georgia Peace Officers purchased shares of DaVita common stock during the Settlement Class Period and suffered substantial

<sup>&</sup>lt;sup>1</sup> Unless otherwise defined herein, all capitalized terms have the meanings set forth in the Stipulation and Agreement of Settlement dated September 18, 2020 (the "Stipulation") previously filed with the Court. ECF No. 103-1.

losses as a result. Georgia Peace Officers is accustomed to serving as a fiduciary, and believes that its active participation in appropriate litigation, such as this Action, is necessary to protect the interest of its pension fund participants.

- 4. One of my responsibilities as Secretary-Treasurer involved overseeing litigation brought by Georgia Peace Officers, including with respect to this Action, which included monitoring Georgia Peace Officers' selected outside counsel for litigation through Georgia Peace Officers' current fiduciary counsel David C. Will, PC ("Will Law"), and former fiduciary counsel William Johnston ("Johnston Law"), coordinating my staff in the collection of documents on behalf of Georgia Peace Officers, and participating in strategic decision making and settlement approval.
- 5. On behalf of Georgia Peace Officers, I had regular communications with Courtappointed Lead Counsel Saxena White P.A. ("Saxena White"), Will Law, and Johnston Law. Georgia Peace Officers, through the active and continuous involvement by me and my colleagues, as detailed below, closely supervised and participated in all material aspects of the prosecution of the Action.
- 6. Georgia Peace Officers received regular status reports from Saxena White, Will Law, and Johnston Law on case developments, and participated in regular discussions with attorneys from Saxena White, Will Law and Johnston Law concerning the prosecution of the Action, the strengths of and risks to the claims, and settlement.
- 7. In particular, throughout the course of this Action, I or others on behalf of Georgia Peace Officers coordinated with Lead Counsel about, and participated in, the following case events:

- a. **Initiating the Action**. Georgia Peace Officers demonstrated its commitment to vigorously prosecuting this Action by investigating the claims asserted and filing the initial complaint in this Action. In connection with filing the initial complaint, myself, Roger Garrison, Georgia Peace Officers' Former Board Chairman, and Johnston Law reviewed certain materials provided by Saxena White—including, among other documents, a draft of the initial complaint and Georgia Peace Officers' PSLRA certification—and communicated with Saxena White, Johnston Law and our colleagues at Georgia Peace Officers. In total, Georgia Peace Officers' representatives devoted approximately <u>4.5</u> hours in connection with commencing this Action.
- b. Lead Plaintiff Appointment Process. In connection with the Court's appointment of Georgia Peace Officers as a Lead Plaintiff (along with Jacksonville P&F), myself, Mr. Garrison and Johnston Law reviewed Georgia Peace Officers' lead plaintiff application, communicated with Saxena White, Johnston Law and Jacksonville P&F regarding their co-lead plaintiff application, participated in a joint conference call with Saxena White, Johnston Law and Jacksonville P&F, and executed a joint declaration detailing Lead Plaintiffs' commitment to efficiently and effectively litigating the Class' claims under our supervision. Notably, Georgia Peace Officers, Jacksonville P&F and their counsel were the only DaVita shareholders and counsel willing to take an active role in this litigation on behalf of DaVita investors. In total, Georgia Peace Officers' representatives devoted approximately 5.75 hours in connection with the lead plaintiff appointment process.
- c. **Significant Pleadings and Briefs**. Either I or other of my colleagues at Georgia Peace Officers, Will Law, and Johnston Law reviewed and commented on drafts of Lead Plaintiffs' amended complaint, opposition to and surreply regarding Defendants' motion to

dismiss, the motion for class certification, opposition to Defendants' motion for partial reconsideration, the motion for preliminary approval of the Settlement, the motion for final approval of the Settlement, and other key filings throughout the litigation. I contributed my perspective as a representative of Georgia Peace Officers, a DaVita shareholder during the Class Period, to help ensure the Class' best interests were reflected in Lead Counsel's litigation strategy and legal arguments. In total, Georgia Peace Officers' representatives devoted approximately 21.5 hours reviewing and commenting on significant pleadings and briefs.

- d. Rule 26(a) Initial Disclosures and Discovery. During the course of discovery in the Action, I and several of my colleagues conferred with Saxena White attorneys regarding Co-Lead Plaintiffs' Rule 26(a) initial disclosures, and reviewed the disclosures before they were served on Defendants. Additionally, I and other Georgia Peace Officers' representatives sought, reviewed, and addressed follow-up issues relating to potentially relevant and discoverable Georgia Peace Officers' documents and data. I and other Georgia Peace Officers' representatives also had regular discussions with, and received regular updates from, Saxena White regarding the overall discovery efforts in the litigation. In total, Georgia Peace Officers' representatives devoted approximately 14.5 hours in connection with Rule 26(a) initial disclosures and discovery.
- e. **Deposition Preparation and Attendance.** On May 12, 2020, I was deposed by video conference in connection with Lead Plaintiffs' Motion for Class Certification. In advance of my deposition, I reviewed numerous pleadings, documents, and other materials concerning the Action and participated in multiple telephonic and video conference meetings with Saxena White to prepare for the deposition. In total, I devoted approximately <u>22</u> hours to preparation for my deposition, as well as attendance at my deposition.

- f. Other Significant Litigation Developments. In addition to the specific tasks mentioned above, I and other Georgia Peace Officers' representatives continually coordinated with Saxena White attorneys concerning significant developments in the litigation. Those efforts included discussing discovery requests, interrogatories, discovery disputes, document productions, case scheduling, and case strategy. In total, Georgia Peace Officers' representatives devoted approximately 17.25 hours to those litigation efforts.
- g. Settlement Negotiations. Georgia Peace Officers oversaw the extensive settlement negotiations in this Action, including six formal mediation sessions, numerous calls with counsel and significant additional discussions between the Parties, which led to the Settlement. On behalf of Georgia Peace Officers, Will Law traveled to New York and attended the September 25, 2019 mediation session before the Honorable Layn Phillips, the mediator for the Action. Before, during, and after each of the mediation sessions, Georgia Peace Officers' representatives conferred with Saxena White and Co-Lead Plaintiff, Jacksonville P&F, at length regarding the Parties' respective positions on the facts and the law (including reviewing the Parties' respective mediation submissions and presentations). Further, after the final mediation session, Georgia Peace Officers' representatives evaluated and approved the proposed settlement. In total, Georgia Peace Officers' representatives devoted approximately 27.5 hours to mediation and related efforts to settle this Action, including travel between Lawrenceville and New York to participate in the first mediation session.
- h. **Total**. Throughout the prosecution of the Action, Georgia Peace Officers were represented and supported by myself, Mr. Garrison, and our Chief Financial Officer, N. Brandt Barlow. In total, I and my colleagues at Georgia Peace Officers devoted approximately 113 hours in support of Georgia Peace Officers' efforts in furtherance of the prosecution of this

Action and to achieve this historic recovery on behalf of DaVita shareholders during the Class Period.<sup>2</sup>

### II. Georgia Peace Officers Strongly Endorses Approval of the Settlement

- 8. Based on its participation throughout the prosecution and resolution of the claims in the Action, Georgia Peace Officers believes that the proposed Settlement is fair, reasonable and adequate to the Settlement Class. The Settlement provides an excellent recovery for the Settlement Class, particularly in light of the risks of continued litigation.
- 9. Indicative of the unique risks of the Action, Lead Plaintiffs were the only shareholders who sought to represent the Class at the Lead Plaintiff stage. The United States Department of Justice declined to intervene in a *qui tam* action against DaVita, further highlighting how difficult these claims were to prosecute. The prosecution and settlement of this Action required extensive efforts on the part of Lead Plaintiffs and Lead Counsel, particularly given the complexity of the legal and factual issues and the vigorous defense by Defendants and their defense counsel. The risk of no recovery was very real here, and there was no guarantee that the entirety of Lead Plaintiffs' claims would survive Defendants' motion for reconsideration, class certification and summary judgment, much less succeed at trial.
- 10. Georgia Peace Officers believes that this is an extraordinary recovery given that the \$135 million settlement represents the second largest all-cash settlement of a securities class action in this District's history. Georgia Peace Officers strongly endorses approval of the Settlement by the Court.

<sup>&</sup>lt;sup>2</sup> While Georgia Peace Officers devoted a significant amount of time to this Action, our request for reimbursement of costs is based on a very conservative estimate of the amount of time we collectively spent on this litigation as supported by our and Saxena White's records.

### III. Approval of the Attorneys' Fee Request and Reimbursement of Litigation Expenses

- 11. Georgia Peace Officers believes that the request for an award of attorneys' fees in the amount of 30% of the Settlement Fund is fair and reasonable in light of the exceptional work that Plaintiffs' Counsel performed on behalf of the Class. A thirty percent award is particularly appropriate here because of the highly complex issues involved, the extraordinary investment of time and resources, the remarkable result achieved, the approval of the Settlement Class, and the significant risks in the litigation.
- 12. After the agreement to settle the Action was reached, Georgia Peace Officers evaluated the fee request by considering the substantial recovery obtained for the Class in this Action and authorized Saxena White's requested fee award to the Court for its ultimate determination.
- 13. Georgia Peace Officers takes seriously its role as a lead plaintiff to ensure that attorneys' fees are fair in light of the result achieved for the Class and reasonably compensate Lead Counsel for the work involved and the substantial risks Lead Counsel undertook in litigating the Action.
- 14. Georgia Peace Officers further believes that the Litigation Expenses being requested for reimbursement to Plaintiffs' Counsel are reasonable, and represent costs and expenses necessary for the initiation, prosecution, and resolution of the claims in the Action. Based on the foregoing, Georgia Peace Officers fully supports the motion for an award of attorneys' fees and reimbursement of Litigation Expenses.

#### IV. Georgia Peace Officers' Representative Reimbursement

15. Georgia Peace Officers understands that reimbursement of a class representative's reasonable costs and expenses is authorized under the PSLRA, 15 U.S.C. § 78u-4(a)(4), which

provides for an "award of reasonable costs and expenses (including lost wages) directly relating to the representation of the class to any representative party serving on behalf of a class." For this reason, in connection with Lead Counsel's request for reimbursement of Litigation Expenses, Georgia Peace Officers seeks reimbursement for the costs and expenses that it incurred directly related to its representation of the Settlement Class in the Action.

- 16. Georgia Peace Officers respectfully submits that its significant oversight of counsel in this Action, its active participation in all aspects of the litigation and resolution of the case, and the time Georgia Peace Officers' representatives devoted to pursuing claims on behalf of the Class, helped to achieve this historic settlement and justifies this request.
- 17. The time that I and other staff members of Georgia Peace Officers devoted to pursuing the Class' interests in this Action was time we otherwise would have devoted to other work for Georgia Peace Officers, and thus represents a direct cost to Georgia Peace Officers. As detailed above, Georgia Peace Officers' representatives collectively devoted approximately 113 hours to this Action. Applying a reasonable blended hourly rate of \$100 per hour for our work would surpass the requested \$10,000 Representative Reimbursement requested herein.<sup>3</sup>

### V. <u>Conclusion</u>

18. In light of the foregoing facts, Georgia Peace Officers respectfully submits that the Court should grant Lead Plaintiffs' Motion for Final Approval of the Settlement and the Plan of Allocation, grant Lead Plaintiffs' Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses, and approve Lead Counsel's request to award Georgia Peace Officers a Representative Reimbursement of \$10,000 for its substantial work in connection with the prosecution of this Action.

<sup>&</sup>lt;sup>3</sup> The hourly rates used for purposes of this request are based on the annual salaries and benefits of the respective personnel who worked on this Action.

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

Executed this 22 day of February, 2021.

Robert W. Carter

Associate Secretary/Treasurer

On behalf of the Peace Officers' Annuity and Benefit Fund of Georgia

## EXHIBIT C

### IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

Civil Action No. 1:17-cv-00304-WJM-NRN

PEACE OFFICERS' ANNUITY AND BENEFIT FUND OF GEORGIA, Individually and on Behalf of All Others Similarly Situated, and JACKSONVILLE POLICE AND FIRE PENSION FUND, Individually and on Behalf of All Others Similarly Situated,

Plaintiffs,

v.

DAVITA INC., KENT J. THIRY, JAMES K. HILGER, and JAVIER J. RODRIGUEZ,

Defendants.

DECLARATION OF TIMOTHY H. JOHNSON IN SUPPORT OF: (I) LEAD PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION; AND (II) LEAD PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

### I, TIMOTHY H. JOHNSON, hereby declare under penalty of perjury as follows:

- 1. I am the Executive Director for the Jacksonville Police and Fire Pension Fund ("Jacksonville P&F" or the "Fund"), which, along with the Peace Officers' Annuity and Benefit Fund of Georgia ("Georgia Peace Officers"), are the Court-appointed Lead Plaintiffs in this securities class action (the "Action"). I have served in my position as Executive Director since August 2016. I submit this declaration on behalf of Jacksonville P&F and in support of: (i) Lead Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation; and (ii) Lead Plaintiffs' Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses.
- 2. I am aware of and understand the requirements and responsibilities of a lead plaintiff in a securities class action, including those set forth in the Private Securities Litigation Reform Act of 1995 ("PSLRA"). I have personal knowledge of the matters set forth in this Declaration, and I could and would testify competently thereto.

### I. <u>Jacksonville P&F's Oversight of the Action</u>

3. Jacksonville P&F is a single-employer contributing defined benefit pension plan covering all full-time police officers and firefighters of the Consolidated City of Jacksonville, Florida. The Fund was created in 1937 and is structured as an independent agency of the City of Jacksonville. As of December 2020, Jacksonville P&F has approximately 5,400 active and retired members and their beneficiaries, and approximately \$2 billion in assets under management. Jacksonville P&F purchased shares of DaVita common stock during the Settlement Class Period and suffered substantial losses as a result. Jacksonville P&F is

<sup>&</sup>lt;sup>1</sup> Unless otherwise defined herein, all capitalized terms have the meanings set forth in the Stipulation and Agreement of Settlement dated September 18, 2020 (the "Stipulation") previously filed with the Court. ECF No. 103-1.

accustomed to serving as a fiduciary, and believes that its active participation in appropriate litigation, such as this Action, is necessary to protect the interest of its pension fund participants.

- 4. One of my responsibilities as Executive Director involves overseeing litigation brought by Jacksonville P&F, including with respect to this Action, which included monitoring Jacksonville P&F's selected outside counsel for litigation through the Office of General Counsel for the City of Jacksonville ("Jacksonville General Counsel"), coordinating my staff in the collection of documents on behalf of Jacksonville P&F, and participating in strategic decision making and settlement approval.
- 5. On behalf of Jacksonville P&F, I had regular communications with Courtappointed Lead Counsel Saxena White P.A. ("Saxena White") and Jacksonville General Counsel. Jacksonville P&F, through the active and continuous involvement by me and my colleagues, as detailed below, closely supervised and participated in all material aspects of the prosecution of the Action.
- 6. Jacksonville P&F received regular status reports from Saxena White and Jacksonville General Counsel on case developments, and participated in regular discussions with attorneys from Saxena White and Jacksonville General Counsel concerning the prosecution of the Action, the strengths of and risks to the claims, and settlement.
- 7. In particular, throughout the course of this Action, I or others on behalf of Jacksonville P&F coordinated with Lead Counsel about, and participated in, the following case events:
- a. **Lead Plaintiff Appointment Process**. In connection with the Court's appointment of Jacksonville P&F as a Lead Plaintiff (along with Georgia Peace Officers), Jacksonville General Counsel, and I reviewed the initial complaint filed by Georgia Peace

Officers in this Action; reviewed Jacksonville P&F's lead plaintiff application; communicated with Saxena White, Georgia Peace Officers, and Jacksonville General Counsel regarding their co-lead plaintiff application; participated in a joint conference call with Saxena White, Jacksonville General Counsel, and Georgia Peace Officers; and executed a joint declaration detailing Lead Plaintiffs' commitment to efficiently and effectively litigating the Class' claims under our supervision. Notably, Jacksonville P&F, Georgia Peace Officers, and their counsel were the only DaVita shareholders and counsel willing to take an active role in this litigation on behalf of DaVita investors. In total, Jacksonville P&F's representatives devoted approximately 6.25 hours in connection with the lead plaintiff appointment process.

- b. Significant Pleadings and Briefs. Either I or other of my colleagues at Jacksonville P&F and Jacksonville General Counsel reviewed and commented on drafts of Lead Plaintiffs' amended complaint, opposition to and surreply regarding Defendants' motion to dismiss, the motion for class certification, opposition to Defendants' motion for partial reconsideration, the motion for preliminary approval of the Settlement, the motion for final approval of the Settlement, and other key filings throughout the litigation. I contributed my perspective as a representative of Jacksonville P&F, a DaVita shareholder during the Class Period, to help ensure the Class' best interests were reflected in Lead Counsel's litigation strategy and legal arguments. In total, Jacksonville P&F's representatives devoted approximately 25 hours reviewing and commenting on significant pleadings and briefs.
- c. Rule 26(a) Initial Disclosures and Discovery. During the course of discovery in the Action, I and several of my colleagues conferred with Saxena White attorneys regarding Co-Lead Plaintiffs' Rule 26(a) initial disclosures, and reviewed the disclosures before they were served on Defendants. Additionally, I and other Jacksonville P&F representatives

sought, reviewed, and addressed follow-up issues relating to potentially relevant and discoverable Jacksonville P&F documents and data. I and other Jacksonville P&F representatives also had regular discussions with, and received regular updates from, Saxena White regarding the overall discovery efforts in the litigation. In total, Jacksonville P&F's representatives devoted approximately 23.25 hours in connection with Rule 26(a) initial disclosures and discovery.

- d. **Deposition Preparation and Attendance.** On May 21, 2020, I was deposed by video conference in connection with Lead Plaintiffs' Motion for Class Certification. In advance of my deposition, I reviewed numerous pleadings, documents, and other materials concerning the Action and participated in multiple telephonic, in-person and video conference meetings with Saxena White to prepare for the deposition. In total, I devoted approximately <u>19</u> hours to preparation for my deposition, as well as attendance at my deposition.
- e. Other Significant Litigation Developments. In addition to the specific tasks mentioned above, I and other Jacksonville P&F representatives continually coordinated with Saxena White attorneys concerning significant developments in the litigation. Those efforts included discussing discovery requests, interrogatories, discovery disputes, document productions, case scheduling, and case strategy. In total, Jacksonville P&F's representatives devoted approximately 21.5 hours to those litigation efforts.
- f. **Settlement Negotiations**. Jacksonville P&F oversaw the extensive settlement negotiations in this Action, including six formal mediation sessions, numerous calls with counsel and significant additional discussions between the Parties, which led to the Settlement. On behalf of Jacksonville P&F, Jacksonville General Counsel traveled to New York and attended the September 25, 2019 mediation session before the Honorable Layn Phillips, the

mediator for the Action. Before, during, and after each of the mediation sessions, Jacksonville P&F's representatives conferred with Saxena White and Co-Lead Plaintiff, Georgia Peace Officers, at length regarding the Parties' respective positions on the facts and the law (including reviewing the Parties' respective mediation submissions and presentations). Further, after the final mediation session, Jacksonville P&F's representatives evaluated and approved the proposed settlement. In total, Jacksonville P&F's representatives devoted approximately 32.5 hours to mediation and related efforts to settle this Action, including travel between Jacksonville and New York to participate in the first mediation session.

g. **Total**. Throughout the prosecution of the Action, Jacksonville P&F were represented and supported by myself and my administrative staff. In total, I and my colleagues at Jacksonville P&F devoted approximately <u>127.5</u> hours in support of Jacksonville P&F's efforts in furtherance of the prosecution of this Action and to achieve this historic recovery on behalf of DaVita shareholders during the Class Period.<sup>2</sup>

### II. <u>Jacksonville P&F Strongly Endorses Approval of the Settlement</u>

- 8. Based on its participation throughout the prosecution and resolution of the claims in the Action, Jacksonville P&F believes that the proposed Settlement is fair, reasonable and adequate to the Settlement Class. The Settlement provides an excellent recovery for the Settlement Class, particularly in light of the risks of continued litigation.
- 9. Indicative of the unique risks of the Action, Lead Plaintiffs were the only shareholders who sought to represent the Class at the Lead Plaintiff stage. The United States Department of Justice declined to intervene in a *qui tam* action against DaVita, further

<sup>&</sup>lt;sup>2</sup> While Jacksonville P&F devoted a significant amount of time to this Action, our request for reimbursement of costs is based on a very conservative estimate of the amount of time we collectively spent on this litigation as supported by our and Saxena White's records.

highlighting how difficult these claims were to prosecute. The prosecution and settlement of this Action required extensive efforts on the part of Lead Plaintiffs and Lead Counsel, particularly given the complexity of the legal and factual issues and the vigorous defense by Defendants and their defense counsel. The risk of no recovery was very real here, and there was no guarantee that the entirety of Lead Plaintiffs' claims would survive Defendants' motion for reconsideration, class certification and summary judgment, much less succeed at trial.

10. Jacksonville P&F believes that this is an extraordinary recovery given that the \$135 million settlement represents the second largest all-cash settlement of a securities class action in this District's history. Jacksonville P&F strongly endorses approval of the Settlement by the Court.

### III. Approval of the Attorneys' Fee Request and Reimbursement of Litigation Expenses

- 11. Jacksonville P&F believes that the request for an award of attorneys' fees in the amount of 30% of the Settlement Fund is fair and reasonable in light of the exceptional work that Plaintiffs' Counsel performed on behalf of the Class. A thirty percent award is particularly appropriate here because of the highly complex issues involved, the extraordinary investment of time and resources, the remarkable result achieved, the approval of the Settlement Class, and the significant risks in the litigation.
- 12. After the agreement to settle the Action was reached, Jacksonville P&F evaluated the fee request by considering the substantial recovery obtained for the Class in this Action and authorized Saxena White's requested fee award to the Court for its ultimate determination.
- 13. Jacksonville P&F takes seriously its role as a lead plaintiff to ensure that attorneys' fees are fair in light of the result achieved for the Class and reasonably compensate

Lead Counsel for the work involved and the substantial risks Lead Counsel undertook in litigating the Action.

14. Jacksonville P&F further believes that the Litigation Expenses being requested for reimbursement to Plaintiffs' Counsel are reasonable, and represent costs and expenses necessary for the initiation, prosecution, and resolution of the claims in the Action. Based on the foregoing, Jacksonville P&F fully supports the motion for an award of attorneys' fees and reimbursement of Litigation Expenses.

#### IV. Jacksonville P&F's Representative Reimbursement

- 15. Jacksonville P&F understands that reimbursement of a class representative's reasonable costs and expenses is authorized under the PSLRA, 15 U.S.C. § 78u-4(a)(4), which provides for an "award of reasonable costs and expenses (including lost wages) directly relating to the representation of the class to any representative party serving on behalf of a class." For this reason, in connection with Lead Counsel's request for reimbursement of Litigation Expenses, Jacksonville P&F seeks reimbursement for the costs and expenses that it incurred directly related to its representation of the Settlement Class in the Action.
- 16. Jacksonville P&F respectfully submits that its significant oversight of counsel in this Action, its active participation in all aspects of the litigation and resolution of the case, and the time Jacksonville P&F's representatives devoted to pursuing claims on behalf of the Class, helped to achieve this historic settlement and justifies this request.
- 17. The time that I and other staff members of Jacksonville P&F devoted to pursuing the Class' interests in this Action was time we otherwise would have devoted to other work for Jacksonville P&F, and thus represents a direct cost to Jacksonville P&F. As detailed above, Jacksonville P&F's representatives collectively devoted approximately 127.5 hours to this

Action. Applying a reasonable blended hourly rate of \$100 per hour for our work would surpass the requested \$10,000 Representative Reimbursement requested herein.<sup>3</sup>

### V. Conclusion

18. In light of the foregoing facts, Jacksonville P&F respectfully submits that the Court should grant Lead Plaintiffs' Motion for Final Approval of the Settlement and the Plan of Allocation, grant Lead Plaintiffs' Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses, and approve Lead Counsel's request to award Jacksonville P&F a Representative Reimbursement of \$10,000 for its substantial work in connection with the prosecution of this Action.

<sup>&</sup>lt;sup>3</sup> The hourly rates used for purposes of this request are based on the annual salaries and benefits of the respective personnel who worked on this Action.

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

Executed this 2 day of February, 2021.

Timothy H Lohnson Executive Director

On behalf of the Jacksonville Police and Fire Pension Fund

## EXHIBIT D

### IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

Civil Action No. 1:17-cv-00304-WJM-NRN

PEACE OFFICERS' ANNUITY AND BENEFIT FUND OF GEORGIA, Individually and on Behalf of All Others Similarly Situated, and JACKSONVILLE POLICE AND FIRE PENSION FUND, Individually and on Behalf of All Others Similarly Situated,

Plaintiffs,

v.

DAVITA INC., KENT J. THIRY, JAMES K. HILGER, and JAVIER J. RODRIGUEZ,

Defendants.

SUPPLEMENTAL DECLARATION OF MATTHEW MULVIHILL REGARDING (A) MAILING OF NOTICE AND CLAIM FORM; (B) CALL CENTER SERVICES; (C) SETTLEMENT WEBSITE MAINTENANCE; AND (D) REPORT ON OBJECTIONS OR REQUESTS FOR EXCLUSIONS RECEIVED

- I, Matthew Mulvihill, declare and state as follows:
- 1. I am a Settlement Project Manager employed by Epiq Class Action & Claims Solutions, Inc. ("Epiq"). Pursuant to the Court's Order Granting Lead Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement, dated October 27, 2020 (the "Preliminary Approval Order," ECF No. 104), Epiq is authorized to act as the Claims Administrator for the Settlement in the above-captioned action (the "Action").
- 2. The following statements are based on my personal knowledge and information provided by Epiq employees working under my supervision, and if called on to do so, I could and would testify competently thereto.
- 3. I submit this Declaration as a supplement to my earlier declaration, the Declaration of Matthew Mulvihill Regarding (A) Mailing of the Notice and Claim Form; (B) Publication of Summary Notice; (C) Call Center Services; (D) Posting of the Notice and Claim Form on Settlement Website; and (E) Report on Objections or Requests for exclusion Received to Date, dated December 21, 2020 (the "Initial Mailing Declaration," ECF No. 106-1).

### I. MAILING OF THE NOTICE AND CLAIM FORM

4. Since the execution of the Initial Mailing Declaration, Epiq has continued to mail copies of the Notice and Claim Form (together, the "Notice Packet") in response to requests from potential Settlement Class Members, brokers, banks, and other nominees. Epiq has monitored nominees' responses and noted that the largest nominees had responded to the Court's Order. Epiq communicated with nominees to field any questions and to ensure that they identified potential Settlement Class Member or requested copies of the Notice Packet to forward directly to their clients. In total, from project inception through close of business on February 22, 2021, Epiq has mailed 132,884 Notice Packets to potential Settlement Class members and nominees.

- 5. Additionally, Epiq has re-mailed 199 Notice Packets to potential Settlement Class Members whose Notice Packets were returned by the U.S. Postal Service ("USPS") and for whom updated addresses were provided to Epiq by the USPS.
- 6. For potential Settlement Class Members whose updated addresses were not provided, Epiq caused advanced address research to be performed through a National Change of Address ("NCOA") search. As a result of NCOA research, Epiq re-mailed an additional 127 Notice Packets to potential Settlement Class Members.
- 7. When updated addresses were not provided through NCOA, Epiq engaged TransUnion to conduct additional business and individual address searches. As a result of TransUnion research, Epiq re-mailed an additional 239 Notice Packets to potential Settlement Class Members.

#### II. <u>CALL CENTER SERVICES</u>

8. Epiq continues to maintain the toll-free phone number for the Settlement, (888) 490-0619, which became operational on November 25, 2020. Epiq has promptly responded to each telephone inquiry and will continue to address potential Settlement Class Members' inquiries.

### III. <u>SETTLEMENT WEBSITE MAINTENANCE</u>

9. Epiq continues to maintain the Settlement Website (www.DaVitaSecuritiesLitigation.com), which became operational on November 25, 2020, and is accessible 24 hours a day, 7 days a week. Copies of the Notice, Claim Form, Stipulation, Preliminary Approval Order, and other documents related to the Action are posted on the Settlement Website and are available for downloading. Epiq will continue operating, maintaining and, as appropriate, updating the Settlement Website until the conclusion of this administration.

### IV. REQUESTS FOR EXCLUSION AND OBJECTIONS RECEIVED TO DATE

- 10. The Notice, Summary Notice, and Settlement Website informed Settlement Class Members that, pursuant to the Preliminary Approval Order, requests for exclusion from the Settlement Class must be received by February 16, 2021. The Notice directed Settlement Class Members who wished to request exclusion to mail their request to DaVita Securities Litigation, EXCLUSIONS, P.O. Box 6659, Portland, OR 97228- 6659. The Notice also set forth the information that must be included in each request for exclusion. Epiq has monitored, and continues to monitor, all mail delivered to this P.O. Box.
- 11. As of February 16, 2021, Epiq received one (1) valid request for exclusion, representing the purchase/acquisition of 1,425 shares of DaVita common stock. A copy of this exclusion request is attached hereto as Exhibit A.
- 12. The Notice, Summary Notice, and Settlement Website also informed Settlement Class Members that they may object to the Settlement, the proposed Plan of Allocation or Lead Plaintiffs' Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses. Pursuant to the Preliminary Approval Order, any such objections were required to be postmarked on or before February 16, 2021, in writing, delivered to representatives of Lead Counsel and Defendants' Counsel, and filed with the Court.
- 13. As of February 22, 2021, Epiq has not received or been informed of any objection by any Settlement Class Member to any aspect of the Settlement, the Plan of Allocation, or Lead Plaintiffs' Motion for Attorneys' Fees and Reimbursement of Litigation Expenses.

	I declare unde	er penalty of	perjury that tl	ne foregoing i	is true and	d correct to	the best	of my
know	ledge.							

Executed on February 23, 2021

Matthew Mulvihill

Matthew Mulvihill

## EXHIBIT A

E A

 $M\ r \qquad \ \ d$ 

February 8, 2021

TO: DaVita Securities Litigation EXCLUSIONS PO BOX 6659 Portland, OR. 97228-6659

FROM: Mary H. Hodge

Dallas, Texas

I, Mary H. Hodge, request exclusion from the Settlement Class in Peace Officers Annuity and Benefit fund of Georgia et. al. v. DaVita Inc. et. al. 1:17-cv-00304-WJM-NRN, Colorado.

Number of shares requesting exclusion: 1425

Number of shares purchased: 1425

Date of shares purchased: settlement date 3/21/16

Price of shares purchased: 70.015094

Number of shares sold: 1425

Date of shares sold: settlement date 5/15/19

Price of shares sold: 50.2929

Number of shares held at the beginning of the

Settlement Class Period: 1425

Mary H. Hodge

# EXHIBIT E

Peace Officers' Annuity and Benefit Fund of Georgia, et al. v. DaVita Inc., et al, No. 1:17-cv-00304-WJM-NRN (D. Colo.)

### SCHEDULE OF LODESTAR AND EXPENSES FOR ALL PLAINTIFFS' COUNSEL

FIRM	HOURS	LODESTAR	EXPENSES
Saxena White P.A.	31,098.25	\$14,227,443.75	\$544,746.05
Shuman, Glenn & Stecker	715.35	\$489,907.50	\$2,663.22
TOTAL:	31,813.60	\$14,717,351.25	\$547,409.27

## EXHIBIT F

### IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

Civil Action No. 1:17-cv-00304-WJM-NRN

PEACE OFFICERS' ANNUITY AND BENEFIT FUND OF GEORGIA, Individually and on Behalf of All Others Similarly Situated, and JACKSONVILLE POLICE AND FIRE PENSION FUND, Individually and on Behalf of All Others Similarly Situated,

Plaintiffs,

v.

DAVITA INC., KENT J. THIRY, JAMES K. HILGER, and JAVIER J. RODRIGUEZ,

Defendants.

DECLARATION OF JOSEPH E. WHITE, III IN SUPPORT OF LEAD PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES, FILED ON BEHALF OF SAXENA WHITE P.A.

I, Joseph E. White, III, declare under penalty of perjury as follows:

1. I am a co-founder and Shareholder of the law firm Saxena White P.A. ("Saxena White"), Court-appointed Lead Counsel in the above-captioned securities class action (the "Action"). I submit this Declaration in support of Lead Plaintiffs' motion for an award of attorneys' fees in connection with services rendered in the Action, as well as for reimbursement of Litigation Expenses incurred by my firm in connection with the Action. I have knowledge of the matters set forth herein based on personal knowledge, my review of the firm's records, and consultation with other firm personnel.

<sup>&</sup>lt;sup>1</sup> Unless otherwise defined in this Declaration, all capitalized terms have the same meanings ascribed to them in the Stipulation and Agreement of Settlement, dated September 18, 2020 (ECF No. 103-1).

- 2. My firm, as Lead Counsel and counsel for Lead Plaintiffs Peace Officers' Annuity and Benefit Fund of Georgia and Jacksonville Police and Fire Pension Fund (collectively, "Lead Plaintiffs" or "Plaintiffs"), was involved in all aspects of the prosecution and resolution of the Action, as set forth in my Declaration in Support of Lead Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation and Lead Plaintiffs' Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses.
- 3. The information in this Declaration regarding the firm's time, including the schedule attached hereto as Exhibit 1, was prepared from daily time records regularly prepared and maintained by my firm in the ordinary course of business. I am the shareholder who oversaw my firm's activities in the Action, and I, together with attorneys working under my direction, reviewed my firm's daily time records to confirm their accuracy.
- 4. This audit confirmed the accuracy of the time entries as well as the necessity for, and reasonableness of, the time committed to this Action. Only time that inured to the benefit of Lead Plaintiffs and the Class, and that advanced the claims resolved by the Settlement, is reflected in the firm's lodestar calculation. Accordingly, some reductions were made to time in the exercise of billing judgment. Time expended in preparing Lead Plaintiffs' Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses has not been included in this report, and time for timekeepers who worked fewer than ten hours on the Action also was removed from the time report.
- 5. I believe that the time reflected in the firm's lodestar calculation is reasonable in amount and was necessary for the effective and efficient prosecution and resolution of this four-year litigation. The total number of hours expended on this Action by my firm's attorneys and professional support staff employees from its inception through February 16, 2021 was

31,098.25. The total resulting lodestar for my firm is \$14,227,443.75, and the resulting blended hourly rate for my firm is \$457. The schedule attached hereto as Exhibit 1 is a detailed summary reflecting the amount of time spent by each attorney and professional support staff employee of my firm who was involved in the Action, and the lodestar calculation is based on my firm's current hourly rates.

- 6. The hourly rates shown in Exhibit 1 are the current rates set by the firm for each individual. These hourly rates are the same as, or comparable to, the rates accepted by courts in other securities class action litigation or shareholder litigation, including courts in this District and Circuit. My firm's rates are set based on periodic analysis of rates charged by firms performing comparable work that have been approved by courts in other securities class actions and complex actions within this Circuit and nationwide. Different timekeepers within the same employment category (e.g., shareholders, directors, associates, paralegals, etc.) may have different rates based on a variety of factors, including years of practice, years at the firm, years in their current position (e.g., years as a director), relevant experience, relative expertise, and the rates of similarly experienced peers at our firm or other firms. For personnel who are no longer employed by my firm, the lodestar calculation is based upon the rate for that person in his or her final year of employment with my firm.
- 7. My firm's lodestar figures do not include expense items. Expense items are recorded separately, and these amounts are not duplicated in my firm's hourly rates.
- 8. My firm has incurred a total of \$544,746.05 in unreimbursed Litigation Expenses in connection with the prosecution of this Action from its inception through February 16, 2021. Those Litigation Expenses are fully categorized and set forth in Exhibit 2 attached hereto. The following is additional information regarding certain major categories of those expenses:

- a) **Experts** (\$196,377.25). Lead Plaintiffs consulted with and retained a number of economic, accounting and industry experts during the prosecution of the Action, including:
  - i. Lead Plaintiffs retained Mr. Chad Coffman, CFA of Global Economics Group—a company with expertise in both securities class action damages and in settlement plans of allocation— to provide expert advice on market efficiency, damages, and loss causation issues. Lead Counsel consulted with Mr. Coffman throughout the litigation of the Action. In addition, Lead Counsel worked with Mr. Coffman to prepare an expert report on market efficiency and class-wide damages methodology that was filed in support of Lead Plaintiffs' class certification motion. Mr. Coffman was also deposed by Defendants and spent significant amounts of time preparing for his deposition.
  - ii. Lead Counsel also worked with Jeremy Marmer of Global Economics Group in developing the proposed Plan of Allocation.
  - iii. Lead Counsel also consulted with the Stanford Consulting Group, Inc., which specializes in securities class action damages, to provide consultation regarding damages and loss causation issues in the Action.
  - iv. Lead Counsel also consulted with Ms. Kirsten Flanagan, CPA of Friedman LLP—an accounting, tax, and business consulting firm—to provide expert advice relating to the tax treatment of DaVita's charitable donations.
  - v. Lead Counsel also worked with Dr. Barbara Grenell and Ms. Debbie Brandel of Preferred Health Strategies—a national health care consulting firm—to assist Plaintiffs in understanding the interplay between DaVita's dialysis business and Medicare, Medicaid, COBRA and EGHP health plans, as well as the application of various healthcare rules and regulations.
- b) **Mediator** (\$67,008.75). This represents Lead Plaintiffs' fees paid to Phillips ADR Enterprises for the services of the mediator, Judge Layn R. Phillips (Ret.), who conducted the six mediation sessions in September 2019, June 2020, and July 2020, and participated in follow up negotiation efforts that lead to the Settlement of the Action.
- c) **Investigation Expense** (\$50,000). Saxena White employed an outside investigator, Quest Research & Investigations LLC, to assist the firm in timely identifying and interviewing numerous potential witnesses, including former employees of DaVita, in connection with the preparation of the Complaint.
- d) **Discovery Costs** (\$67,695.68). Plaintiffs paid a third-party vendor, KL Discovery, for services that included maintaining a document database, preparing documents for production, and assisting in search and organization of documents. In addition, Plaintiffs incurred costs related to third-party discovery, including documents produced by the AKF.
- e) Online Legal and Factual Research (\$95,568.05). The charges reflected are for out-of-pocket payments to legal, financial, and factual research services such as Westlaw, Lexis/Nexis, PACER, Thomson Reuters Eikon, The Capitol Forum and Law360, for research

done in connection with this litigation. These resources were used to obtain access to court filings, to conduct legal research and cite-checking of briefs, and to obtain factual and financial information regarding the claims asserted through access to various financial and news databases and other factual databases. These expenses represent the actual expenses incurred by Saxena White for use of these services in connection with this litigation. There are no administrative charges included in these figures. On-line research is billed to each case based on actual usage at a charge set by the vendor. When Saxena White utilizes online services provided by a vendor with a flat-rate contract, access to the service is by a billing code entered for the specific case being litigated. At the end of each billing period, Saxena White's costs for such services are allocated to specific cases based on the percentage of use in connection with that specific case in the billing period.

- f) **Transcript & Deposition Expense** (\$14,169.95). Plaintiffs paid a third-party vendor, Veritext Legal Solutions, for services pertaining to the remote taking of depositions, including fees for transcription and video recording.
- g) **Travel Expenses** (\$41,293.22). In connection with the prosecution of this Action, my firm has incurred travel expenses for its attorneys and representatives of Lead Plaintiffs to attend depositions, client meetings, in-person interviews of confidential witnesses, and mediations. The expenses reflected in Exhibit 2 are the expenses actually incurred by my firm.
- 9. The Litigation Expenses in this Action are reflected in the books and records of Saxena White, which are regularly prepared and maintained in the ordinary course of business. These records are prepared from expense vouchers, check records and other source materials and are an accurate record of the monetary value of the expenses incurred.
- 10. With respect to the standing of my firm, attached hereto as Exhibit 3 is Saxena White's Firm Resume.
- 11. In accordance with D.C.COLO.LCivR 54.3, a breakdown of the principal tasks that each attorney in my firm performed in the Action is set forth in Exhibit 4 below,<sup>2</sup> and brief biographies for each timekeeper in the Action, including information about his or her position, education, and relevant experience, is set forth in Exhibit 5 below.

<sup>&</sup>lt;sup>2</sup> The tasks detailed therein are intended to be a summary, not an exhaustive list of all work performed by each attorney in the case.

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

Executed this 23<sup>rd</sup> day of February, 2021, at Boca Raton, Florida.

/s/ Joseph E. White, III
Joseph E. White, III

**EXHIBIT 1** 

Peace Officers' Annuity and Benefit Fund of Georgia, et al. v. DaVita Inc., et al, No. 1:17-cv-00304-WJM-NRN (D. Colo.)

### **SAXENA WHITE TIME REPORT**

### **Inception Through February 16, 2021**

NAME	HOURS	HOURLY RATE	LODESTAR
Shareholders			
Joseph E White	497.00	\$895.00	\$444,815.00
Maya S Saxena	298.75	\$895.00	\$267,381.25
Directors			
Kyla J Grant	1,317.50	\$675.00	\$889,312.50
Lester R Hooker	1,356.00	\$800.00	\$1,084,800.00
Steven B Singer	599.25	\$895.00	\$536,328.75
Attorneys			
Dianne Pitre	1,420.50	\$550.00	\$781,275.00
Donald Grunewald	502.50	\$525.00	\$263,812.50
Jill M Schorr-Miller	879.25	\$525.00	\$461,606.25
Manuel A Miranda	77.00	\$450.00	\$34,650.00
Sara DiLeo	1,203.00	\$625.00	\$751,875.00
Scott Guarcello	598.50	\$625.00	\$374,062.50
Scott Koren	972.75	\$450.00	\$437,737.50
Staff Attorneys			
Andrew Greenidge	383.00	\$365.00	\$139,795.00
Athma Birju	369.00	\$365.00	\$134,685.00
Billie Tarnove	431.25	\$365.00	\$157,406.25
Christian Vazquez	469.50	\$365.00	\$171,367.50
Christine Sciarrino	1,412.50	\$420.00	\$593,250.00
Christopher Donnelly	384.00	\$365.00	\$140,160.00
David Stauber	978.00	\$365.00	\$356,970.00
Denise H Bryan	54.75	\$420.00	\$22,995.00
Elisabeth Porter	406.75	\$365.00	\$148,463.75
Emely Ramirez	368.75	\$365.00	\$134,593.75
Forest Neal	391.25	\$365.00	\$142,806.25
Harriet Atsegbua	1,142.50	\$365.00	\$417,012.50
Isha Kochhar	107.00	\$365.00	\$39,055.00

NAME	HOURS	HOURLY RATE	LODESTAR
Kwabena Mensah	1,393.75	\$365.00	\$508,718.75
Leslie Martey	268.75	\$365.00	\$98,093.75
Lorianne Williams	318.25	\$365.00	\$116,161.25
Mario Campos	179.00	\$365.00	\$65,335.00
Marjorie Peralta	487.25	\$365.00	\$177,846.25
Marlon Onias	34.75	\$365.00	\$12,683.75
Matt Anderson	263.25	\$365.00	\$96,086.25
Mauri Lynn Levy	403.50	\$365.00	\$147,277.50
Michele Fassberg	1,302.75	\$365.00	\$475,503.75
Myrna Roure	222.50	\$365.00	\$81,212.50
Nicholas Atkinson	38.25	\$420.00	\$16,065.00
Paul Burns	414.00	\$365.00	\$151,110.00
Rebecca Nilsen	669.00	\$420.00	\$280,980.00
Richard Steele	385.50	\$365.00	\$140,707.50
Robyn Marcus	372.00	\$365.00	\$135,780.00
Ryan Joseph	1,895.75	\$365.00	\$691,948.75
Sara Wigmore	362.00	\$365.00	\$132,130.00
Sherry Woodbine	1,078.50	\$365.00	\$393,652.50
Tara Heydt	1,654.75	\$365.00	\$603,983.75
Timothy Odroniec	354.00	\$365.00	\$129,210.00
Valerie Kanner Bonk	389.25	\$365.00	\$142,076.25
Victoria Cook	413.75	\$365.00	\$151,018.75
Zeeta Nanan	390.50	\$365.00	\$142,532.50
Zerin Taher	936.50	\$365.00	\$341,822.50
Financial Analyst			
Marc D Grobler	78.00	\$295.00	\$23,010.00
Support Staff			
Brandon Smith	73.25	\$275.00	\$20,143.75
Charlene Wallace	46.25	\$250.00	\$11,562.50
Stefanie Leverette	53.00	\$275.00	\$14,575.00
TOTALS	31,098.25		\$14,227,443.75

### **EXHIBIT 2**

Peace Officers' Annuity and Benefit Fund of Georgia, et al. v. DaVita Inc., et al, No. 1:17-cv-00304-WJM-NRN (D. Colo.)

### **SAXENA WHITE EXPENSE REPORT**

### **Inception through February 16, 2021**

CATEGORY	AMOUNT
Discovery Costs	\$67,695.68
Experts	\$196,377.25
Filing Fees	\$432.00
Investigating Expense	\$50,000.00
Mediator	\$67,008.75
Online Legal and Factual Research*	\$95,568.05
Travel Expenses	\$41,293.22
Postage and Delivery	\$1,072.32
Press Releases/Marketing	\$449.00
Printing and Photocopy	\$5,334.12
Processing Services	\$4,268.21
Telephone, Conference Call	\$1,077.50
Transcript & Deposition Expense	\$14,169.95
TOTAL EXPENSES	\$544,746.05

<sup>\*</sup> The charges reflected for on-line research are for out-of-pocket payments to the vendors for research done in connection with this litigation. There are no administrative charges included in these figures.

# **EXHIBIT 3**

Peace Officers' Annuity and Benefit Fund of Georgia, et al. v. DaVita Inc., et al, No. 1:17-cv-00304-WJM-NRN (D. Colo.)

# **FIRM RESUME**



# SAXENA WHITE

"A highly experienced group of lawyers

with national reputations in large securities class actions..."

- Hon. Alan Gold, U.S. District Court, Southern District of Florida

### FIRM RESUME

FLORIDA I NEW YORK I CALIFORNIA I DELAWARE www.saxenawhite.com



#### SAXENA WHITE

Saxena White P.A. was founded in 2006 by Maya Saxena and Joseph White. After spending many years at one of the country's largest class action law firms, we wanted to do business a different way. Our goal in forming the Firm was to become big enough to handle prominent and complex litigation while remaining small enough to offer each client responsive, ethical, and personalized service.

Today our Firm's capabilities rival those of our largest competitors. We obtain victories against major corporations represented by the nation's top defense firms. We represent some of the largest pension funds in major securities fraud cases and have recovered over \$2 billion on behalf of injured investors. We have succeeded in improving how corporations do business by requiring the implementation of significant corporate governance reforms. We have formed long-lasting relationships with our clients who know we are only a phone call away. However, the most important attribute of the Firm, and the key to its continued success, is the people. Saxena White was built upon the quality, integrity, and camaraderie, of its people — attributes that continue to be its greatest legacy.

#### What Makes us Different?

- We are proud to be the only certified woman- and minority-owned firm in the securities litigation business representing institutional investors and have an ongoing commitment to diversity.
- We take a selective approach to litigation, recommending only a few fraud cases per year and litigating them aggressively.
- The securities fraud cases in which we have served as lead counsel are rarely dismissed due to our careful selection criteria.
- We offer tailored portfolio monitoring services to our clients that reflect their individual philosophies toward litigation.
- We emphasize community outreach and welcome opportunities to support our clients in their communities.



#### RECENT RECOVERIES

### ■ In re Wells Fargo & Company Shareholder Derivative Litigation

Saxena White served as co-Lead Counsel in this landmark case alleging that the Board and executive management of Wells Fargo knew or consciously disregarded that Wells Fargo employees were illicitly creating millions of deposit and credit card accounts for their customers, without those customers' consent, in an attempt to drive up "cross selling," i.e., selling complementary Wells Fargo banking products to prospective or existing customers.

Over significant competition from the top law firms in our industry, the Court selected Saxena White as one of the two firms most qualified in the nation to lead this high-profile case, noting the superior quality of the work performed. Through this shareholder derivative action, Saxena White held Defendants accountable for a scandal that has significantly damaged one of America's largest financial institutions.

On April 7, 2020, the Northern District of California approved a \$320 million settlement on behalf of nominal Defendant Wells Fargo & Company with the Company's officers, directors, and senior management. The Settlement includes a \$240 million cash payment from Defendants' insurers—representing the largest insurance-funded monetary component of any shareholder derivative settlement by over \$100 million.

Saxena White zealously advocated for the interests of the Company and obtained excellent results. In sum, after a thorough investigation of the relevant claims; the filing of a detailed complaint; success in defeating two motions to dismiss; active intervention in, stays of, and dismissals of multiple state court actions; consolidation and coordination with related federal actions; extensive review of over 3.5 million pages of documents from Defendants, Wells Fargo, and numerous third parties; consultation with experts; and research and preparation for depositions, the \$320 million settlement was reached in this derivative action.

In approving the historic Settlement, the Court remarked that "this represents an excellent result for the shareholders" of Wells Fargo. The Court went on to praise "the risk" that Saxena White "took in litigation on a contingency basis - a risk they have borne for more than three years."

### In re Wilmington Trust Securities Litigation

Saxena White served as co-Lead Counsel in a class action against Wilmington Trust, its senior executives, board of directors, outside auditor, and the underwriters of one of its secondary offerings. Following the appointment of the Coral Springs Police Pension Fund, St. Petersburg Firefighters' Retirement System, Pompano Beach General Employees Retirement System as co-Lead Plaintiffs and Saxena White as co-Lead Counsel, Lead Plaintiffs conducted a comprehensive and wide-ranging investigation, culminating in an amended complaint that detailed how Defendants violated the Securities Exchange Act of 1934 by concealing the drastic deterioration of Wilmington Trust's loan portfolio and improperly accounting for the value of its loans under Generally Accepted Accounting Principles. In particular, Defendants understated Wilmington Trust's provision for loan losses as its loan portfolio declined in quality, improperly delayed recognition of losses on the portfolio, and inflated its financial results by misstating the fair value of its loan portfolio. Defendants' misconduct served to artificially inflate the price of Wilmington Trust securities during the Class Period. Lead Plaintiffs further alleged that Defendants violated the Securities Act of 1933 by issuing untrue statements in connection with the Company's February 23, 2010 public equity offering, by understating Wilmington Trust's provision for loan losses.



After prevailing over thousands of pages of briefing on Defendants' multiple motions to dismiss, Lead Plaintiffs sought to be appointed as class representatives and certify a class of damaged investors. After extensive briefing and discovery, the Court certified a class on September 3, 2015. In certifying the class, Saxena White also secured important new precedent for aggrieved shareholders nationwide who have fallen victim to securities fraud. The Court's opinion rejected Defendants' argument that the Supreme Court's opinion in Comcast Corp. v. Behrend, 569 U.S. 27 (2013) requires plaintiffs to submit a damages methodology and model at the class certification stage. Having defeated an argument that securities fraud defendants are increasingly relying upon to avoid responsibility for their illegal actions, Saxena White's efforts have again provided investors with a powerful weapon with which to combat corporate wrongdoing at the class certification stage. Indeed, in addition to certifying the class, the Court applauded Saxena White's "excellent lawyers" and noted that Ms. Saxena's "argument was very well argued."

Having certified a class, Saxena White and Lead Plaintiffs embarked on a monumental discovery effort to marshal the highly complex and technical evidence required to establish Defendants' fraud. As part of this massive undertaking, we closely reviewed and analyzed nearly 13 million pages of documents. Our efforts required us to not only take on a veritable who's who of highly skilled defense counsel, but also multiple branches of the U.S. Government. After two years of hard-fought motion practice, we successfully compelled the Federal Reserve and the Office of the Comptroller of the Currency to waive the bank examination privilege for over 35,000 documents that those regulators had withheld. Compelling the production of such documents is a rare feat and was the culmination of a multi-year effort to relentlessly fight for the information and facts that were relevant to the prosecution of the case. We also prevailed over the U.S. Attorney's Office, successfully moving to lift the discovery stay imposed at its request. As a result, we were able to depose key fact witnesses. In all, we deposed 39 witnesses in seven states, which generated nearly 11,000 pages of testimony and almost 900 exhibits.

After nearly eight years of hard-fought litigation, we negotiated an outstanding \$210 million recovery on behalf of the Class. This remarkable settlement represents a recovery of nearly 40% of the Class's maximum likely recoverable damages, which is eight times greater than the 5% median recovery in the Third Circuit. The recovery also ranks among the top ten securities fraud settlements in the Third Circuit, and is in the top 5% of all securities fraud settlements since the PSLRA was enacted in 1995. On November 19, 2018, the Court approved the settlement in its entirety. Notably, the Court twice observed that Saxena White achieved the recovery independently of the Government's criminal investigation. The Court was also complimentary of the "legal prowess" exhibited by Saxena White's "highly experienced attorneys."

### In re HD Supply Securities Litigation

Saxena White served as Lead Counsel in a class action against HD Supply Holdings, Inc., a commercial distributor whose financial success rises and falls with the efficacy of its supply chain. In 2016, the Company disclosed it had experienced significant failures that paralyzed the functionality of its supply chain and financially harmed the business. Following that operational breakdown, the complaint alleged that the company and its senior executives misled investors about the extent to which its supply chain had recovered. At the start of the class period, Defendants assured investors that the recovery was "on track" and the company was "perfectly poised" to deliver strong results in 2017. HD Supply's stock price skyrocketed in response. What Defendants then knew but failed to disclose, however, was that the supply chain was not in "as good condition as it's ever been," but in reality suffered from systemic problems and required a multi-million-dollar overhaul. The complaint further alleged that, while in possession of that material non-public information, HD Supply's then-CEO whom had not sold a single share over the last year, liquidated



an astonishing 80% of his holdings in HD Supply, for proceeds of \$54 million, shortly after making those representations. When the truth about the catastrophic state of the Company's supply chain and the need for heavy spending to remedy its deficiencies was subsequently revealed to the market, the company's stock price declined significantly, causing investors substantial losses.

Saxena White engaged in extensive litigation efforts against HD Supply, including defeating Defendants' motion to dismiss, engaging in extensive fact discovery and deposition preparations, and moving for class certification. Moreover, as a result of the filing of the complaint, the SEC subsequently commenced an investigation into HD Supply's then-CEO's alleged insider trading. Ultimately, the parties participated in settlement negotiations through which Plaintiffs obtained a \$50 million cash settlement on behalf of the Class - one of the largest securities class action settlements ever achieved in the U.S. District Court for the Northern District of Georgia.

### ■ Milbeck v. TrueCar, et al.

Saxena White served as Lead Counsel in a class action against TrueCar, Inc. that alleged that the company and its senior executives misled investors about TrueCar's relationship with its most significant business partner, United States Automobile Association (USAA). TrueCar's SEC filings disclosed that USAA's marketing of TrueCar's services on USAA's website alone generated approximately one third of TrueCar's annual revenue and warned that if USAA made even a minor change to its marketing of TrueCar on USAA's website, TrueCar's business could be harmed. The complaint alleged that, prior to the start of the Class Period, USAA informed TrueCar that it intended to substantially modify its website, including by reducing the prominence of its marketing of TrueCar's services. Thus, defendants knew that the risk TrueCar had warned investors about had, in fact, materialized, but failed to disclose this material information. The complaint also alleged that TrueCar's CFO and other insiders engaged in insider trading while in possession of material non-public information regarding the impending USAA website changes. When the truth that TrueCar's earnings were severely negatively impacted as a result of USAA's website redesign was finally revealed, the company's stock price declined significantly, causing investors substantial losses.

Saxena White engaged in extensive litigation efforts on an exceptionally expedited case schedule, including defeating Defendants' motion to dismiss, reviewing over 200,000 documents produced by defendants and obtaining class certification. Thereafter, the parties participated in negotiations through which Plaintiff ultimately obtained a \$28.25 million cash settlement on behalf of the Class.

### ■ John Cumming v. Wesley R. Edens, et al. (New Senior Investment Group)

Described as a "landmark" settlement by Law360, in 2019 the Delaware Court of Chancery approved a \$53 million settlement in a shareholder derivative action against real estate investment trust New Senior Investment Group. The suit targeted New Senior's \$640 million acquisition of a portfolio of senior living properties owned by an affiliate of its investment manager, which, according to Plaintiff's experts, damaged New Senior by over \$100 million. The settlement is the largest derivative action settlement as a percentage of market capitalization to date in Delaware and is one of the top ten derivative action settlements in the history of the Court of Chancery.

The Plaintiff's extensive discovery efforts in the case included the review of more than 800,000 pages of documents, 16 depositions, and the filing of six motions to compel. Following fact discovery, the parties exchanged ten expert reports related to the damages from the real estate portfolio purchase and from a



related secondary stock offering. After a mediation and extensive follow-up negotiations, the parties agreed to settle the litigation in exchange for the payment of \$53 million in cash to New Senior. The settlement also included valuable corporate governance reforms, including the board's agreement to approve and submit to New Senior's stockholders for adoption at the annual meeting amendments to New Senior's bylaws and certificate of incorporation which would (a) provide that directors be elected by a majority of the votes cast in any uncontested election of directors, and (b) eliminate New Senior's staggered board, so that all directors are elected on an annual basis.

In his remarks at the final settlement hearing, Vice-Chancellor Joseph R. Slights called the settlement "impressive" and further described counsel's efforts as "hard fought, but fought in the right way to reach a productive result."

### In re Rayonier Inc. Securities Litigation

Saxena White served as co-Lead Counsel in a class action against Rayonier that accused the company and its senior executives of misleading investors about its timber inventory and harvesting rates in the Pacific Northwest. When the company's new management ultimately disclosed that Rayonier had overharvested its premium Pacific Northwest timberlands by over 40% each year for over a decade and overstated its merchantable timber by 20% in this critical region, the company's stock price declined significantly, causing investors substantial losses.

After litigating this case for nearly three years and defeating Defendants' motion to dismiss, Plaintiffs ultimately negotiated a \$73 million cash settlement on behalf of the Class, the second largest recovery from a securities class action achieved in the Middle District of Florida. The \$73 million settlement is nearly nine times the national median settlement and nearly ten times greater than the median recovery in the Eleventh Circuit. As noted by Judge Timothy J. Corrigan, M.D. Fla., this was an "exceptional result[] achieved for the benefit of the Settlement Class."

### Westchester Putnam Counties Heavy & Highway Laborers Local 60 Benefit Funds v. Brixmor Property Group, Inc. et al.

Saxena White filed an original action in the United States District Court for the Southern District of New York against Brixmor and certain of its senior executives for securities fraud on May 31, 2016. Following the appointment of the Westchester Putnam Counties Heavy & Highway Laborers Local 60 Benefit Funds, Teamsters Local 456 Annuity Fund, and City of Birmingham Retirement and Relief System as Lead Plaintiffs and Saxena White as Lead Counsel, Lead Plaintiffs filed a comprehensive amended complaint alleging that throughout the Class Period, Defendants purposefully falsified Brixmor's income items for over two years in order to portray consistent quarterly same property NOI growth; the Company lacked adequate internal and financial controls; and as a result, Defendants' Class Period statements about Brixmor's business, operations, and prospects were false and misleading.

After extensive litigation efforts and negotiation, Lead Plaintiffs obtained a \$28 million settlement. The Settlement is an exceptional recovery for the Class, representing a significant percentage of the Class's maximum estimated aggregate damages that was multiples ahead of the typical recovery in securities class actions. After a fairness hearing to evaluate the merits of the settlement, on December 13, 2017, the Honorable Analisa Torres issued an order granting the final approval of the Settlement as fair, adequate, and reasonable. Saxena White is pleased to achieve such a favorable settlement for shareholders.



### In re Jefferies Group, Inc. Shareholders Litigation

Saxena White served as co-Lead Counsel in a class action involving breach of fiduciary duty claims against the board of directors of Jefferies Group, Inc., in connection with that company's merger with Leucadia National Corporation. In 2012, Jefferies entered into a merger agreement with Leucadia, a holding company which owned 28% of Jefferies and whose founders served on Jefferies' board. Leucadia's founders had a longstanding personal and professional relationship with Jefferies CEO, Richard Handler, which included lucrative joint ventures, personal investment advice and support, numerous financing transactions, and offmarket stock purchases. As Leucadia's founders neared retirement, Handler recognized an opportunity to merge his company with Leucadia and serve as CEO of the much larger, combined company. Negotiating in secret for months before informing the independent board members, Handler and Leucadia's founders structured a deal that greatly benefitted Leucadia, to the detriment of Jefferies shareholders.

After aggressively litigating this case for almost two years and defeating Defendants' motion to dismiss and motion for summary judgment, Plaintiffs ultimately negotiated a settlement which required Leucadia to pay \$70 million to class members, an outstanding result for former Jefferies shareholders.

### City Pension Fund for Firefighters and Police Officers in the City of Miami Beach v. Aracruz Celulose S.A., et al.

One of our Firm's areas of expertise is litigating cases against foreign corporations. We recently obtained a significant victory against a Brazilian corporation, Aracruz Celulose. Accomplishing what no other law firm has ever done, Saxena White successfully served process on all three individual executives under the Inter-American Convention on Letters Rogatory. Our efforts included working closely with a Brazilian law firm to defeat Defendants' challenges to service in both the Brazilian trial and appellate courts.

After defeating three motions to dismiss filed by the foreign Defendants, Saxena White began the massive and highly technical discovery process. Because the vast majority of the documents were in Portuguese, we hired native Brazilian attorneys to analyze and translate the tens of thousands of documents that were produced. These documents were also incredibly complex, dealing with five dozen separate financial derivative instruments. Simply valuing one instrument required approximately 50,000 calculations. We consulted closely with highly-respected industry and academic experts to gain an unprecedented understanding of the workings of these instruments and how they were valued.

In the end, our hard work paid off. Saxena White successfully negotiated a \$37.5 million settlement against Aracruz and its executives. This represents up to 50% of maximum provable damages – an outstanding result compared to the average national recovery of just 2.5% in cases of this magnitude.

#### In re Bank of America Securities, Derivative and ERISA Litigation

This derivative case arose out of Bank of America's acquisition of Merrill Lynch during the height of the financial crisis in late 2008. After successfully defending the complaint's core allegations against multiple motions to dismiss, Saxena White embarked on an extensive discovery process that included 31 depositions of senior BofA and Merrill executives and their attorneys, the review and analysis of 3 million pages of documents from BofA, Merrill, and multiple third parties, and close consultation with nationally recognized financial and economic experts.

On January 11, 2013, the Court approved the Settlement, which includes a \$62.5 million cash component and fundamental corporate governance reforms. The cash component alone ranks this Settlement among the top



ten derivative settlements approved by federal courts. The extensive corporate governance reforms include the creation of a Board-level committee tasked with special oversight of mergers and acquisitions, which is aimed at preventing the alleged deficiencies surrounding the Merrill Lynch acquisition. The corporate governance reforms also include other components, including revisions to committee charters and director education requirements, which caused one noted scholar to observe that BofA is now at the forefront of corporate governance practices.

### In re Lehman Brothers Equity/Debt Securities Litigation

After conducting an extensive investigation into Lehman and its executives, Saxena White was the first firm to file a complaint alleging violations of the federal securities laws. Subsequent events, including the largest bankruptcy filing in U.S. history, interjected unique challenges to prosecuting this case – not the least of which was that because Lehman itself was in bankruptcy, damaged shareholders could not recover damages from it.

Despite these formidable obstacles, we continued to prosecute the case. Our efforts paid off. In the spring of 2012, the Court approved a \$90 million partial settlement with Lehman's senior executives and directors, and a \$426 million settlement with several dozen underwriters of its securities. After nearly two more years of hard-fought litigation, we reached a \$99 million settlement with E&Y, Lehman's outside auditor, which was approved in the spring of 2014. The \$99 million settlement ranks among the largest ever obtained from an outside auditor and is an outstanding recovery for damaged shareholders.

### FindWhat Investor Group v. FindWhat.com

Saxena White also has significant appellate experience. In this Eleventh Circuit appeal, we won a precedent-setting opinion with the court holding that corporations and their executives who make fraudulent statements that prevent artificial inflation in a company's stock price from dissipating are just as liable under the securities laws as those whose fraudulent statements introduce artificial inflation into the stock price in the first place. The Eleventh Circuit rejected Defendants' position that the mere repetition of lies already transmitted to the market cannot damage investors. "We decline to erect a per se rule," wrote the court, that "once a market is already misinformed about a particular truth, corporations are free to knowingly and intentionally reinforce material misconceptions by repeating falsehoods with impunity."

The Eleventh Circuit's opinion is a significant win for aggrieved investors. It is the first such ruling from any of the Courts of Appeals in the nation, and will help defrauded investors seeking to recover damages due to fraud.

### ■ Central Laborers' Pension Fund v. Sirva

Saxena White served as sole Lead Counsel in this case, which was litigated in the Northern District of Illinois (SIRVA is the parent company of North American Van Lines). After two and a half years of hard-fought litigation, an extensive investigation which involved conducting nearly 120 witness interviews, and the review of approximately 2.7 million documents produced by Defendants, a two day mediation was conducted at which we were able to reach a global \$53.3 million settlement on behalf of the proposed shareholder class. In addition, Saxena White conducted a comprehensive review of SIRVA's corporate governance procedures in an effort to ensure that securities fraud and accounting violations were less likely to occur at the Company in the future. This careful and comprehensive review, which was spearheaded in conjunction with retained corporate governance experts, confirmed that SIRVA had made great strides in improving its governance



standards over the course of our lawsuit. This was especially true in the area of its internal controls, which was a primary concern. The company formally recognized, in writing, that the lawsuit was one of the main reasons it reformed its governance standards, which confirmed that Saxena White was the key catalyst compelling SIRVA to recognize the need to change the way it does business.

In addition, Saxena White was able to obtain even more governance improvements by convincing the Board to discard their plurality (also known as "cumulative") standard for the election of their directors in favor of a modified majority standard (also known as the "Pfizer model"). This important change gives every SIRVA shareholder a greater voice, as well as improving director accountability, by forcing directors who do not receive a majority of the votes to tender their resignation for the Board's consideration. Furthermore, SIRVA also agreed to strengthen its requirements regarding director attendance at shareholder meetings, which created more director accountability and increased shareholder input. Importantly, judges are unable to order these types of governance changes – it was only the negotiation and litigation pressure that we imposed upon the Company that allowed these changes to be implemented.

### In re Sadia S.A. Securities Litigation

Sadia was a Brazilian company specializing in poultry and frozen goods that exported a majority of its products. Like Aracruz, it engaged in wildly speculative currency hedging while telling investors that its hedges were conservative and used to protect against sudden changes in currency fluctuation. Plaintiffs filed a securities fraud complaint against Sadia and its senior executives and board members alleging violations of the federal securities laws. Because the individual Defendants in this case were also citizens of Brazil, they had to be served pursuant to the Inter-American Convention on Letters Rogatory. We were successful in serving the individuals, once again accomplishing what few other law firms have been able to do.

We prevailed on the motion to dismiss and on the motion for class certification. Discovery was greatly complicated by the fact that the vast majority of the documents were in Portuguese, and the Court had no subpoena power to force witnesses to appear for deposition. In spite of this, we hired attorneys fluent in Portuguese to help us with the review, and we were able to depose one of the Company's executives. After three mediations over the course of eight months, we were able to reach a \$27 million cash settlement with the Defendants.

#### In re Cox Radio, Inc. Shareholders Litigation

Saxena White represented a Florida Police Pension Plan in an action against Cox Radio. The Pension Plan alleged that the initial price offered to public shareholders in the tender offer was unfair and did not properly value the assets of Cox Radio. After considerable discovery and expedited motion practice, we were instrumental in raising the price of the deal by nearly 30%, creating nearly \$18 million in additional value for all public shareholders, including the Pension Plan. We also obtained the issuance of additional meaningful disclosures regarding the valuation process used in the deal.

### In re Clear Channel Outdoor Holdings, Inc. Derivative Litigation

Saxena White, on behalf of an institutional investor client, filed a derivative action on behalf of nominal Defendant Clear Channel Outdoor Holdings ("Outdoor" or the "Company") against certain of the Company's current and former directors, its majority stockholder, Clear Channel Communications, Inc. ("Clear Channel"), and other entities with respect to a 2009 agreement between the Company and Clear Channel. The derivative action brought forth claims that Outdoor's directors breached their fiduciary duties by approving a \$1 billion

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unsecured loan on highly unfavorable terms to Clear Channel. In response to the claims brought forth in the derivative action, the Company's Board of Directors established a Special Litigation Committee (the "SLC") and empowered it to investigate the matters and claims raised in the action.

After an extensive evaluation and investigation of the derivative claims, the SLC initiated discussions with certain of the Defendants to explore the prospects of settlement. The SLC also initiated discussions with Plaintiffs in order to explore the prospects of settling the derivative action. After several months of working with the SLC, the parties to the derivative action reached an agreement in principle to resolve the action on terms that will provide substantial and meaningful benefits to the Company and its shareholders, including an agreement that would provide a dividend to shareholders in the amount of \$200 million, as well as additional corporate governance reforms. The settlement agreement acknowledges that Plaintiffs' involvement in the settlement negotiations was a factor in achieving the benefits received by Outdoor and its shareholders as a result of the settlement.



### SHAREHOLDERS & DIRECTORS



### MAYA SAXENA

Maya Saxena, co-founder of Saxena White P.A., has been practicing exclusively in the securities litigation field for over 20 years, representing institutional investors in shareholder actions involving breaches of fiduciary duty and violations of the federal securities laws. Prior to

forming Saxena White, Ms. Saxena served as the Managing Partner of the Florida office of one of the nation's largest securities litigation firms, successfully directing numerous high profile securities cases. Ms. Saxena gained valuable trial experience before entering private practice while employed as an Assistant Attorney General in Ft. Lauderdale, Florida. During her time as an Assistant Attorney General, Ms. Saxena represented the State of Florida in civil cases at the appellate and trial level and prepared amicus curiae briefs in support of state policies at issue in state and federal courts. In addition, Ms. Saxena represented the Florida Highway Patrol and other law enforcement agencies in civil forfeiture trials.

Ms. Saxena has been instrumental in recovering nearly a billion dollars on behalf of investors. Recently, Ms. Saxena played a key role in obtaining a \$320 million settlement against Wells Fargo & Company. The settlement includes a \$240 million cash payment from Defendants' insurers-representing the largest insurance-funded monetary component of any shareholder derivative settlement by over \$100 million. Ms. Saxena also led the litigation team that settled against Wilmington Trust for \$210 million, one of the largest settlements in 2018. Other prominent settlements include: Rayonier, Inc. (\$73 million settlement), SIRVA, Inc. (\$53.3 million settlement), Aracruz Celulose (\$37.5 million settlement), Brixmor Property Group (\$28 million settlement), and Sunbeam (settled with Arthur Andersen LLP for \$110 million-one of the largest settlements ever with an accounting firm-and a \$15 million personal contribution from former CEO Al Dunlap).

Ms. Saxena is a frequent speaker at educational forums involving public pension funds and advises public and multi-employer pension funds on how to address fraud-related investment losses. She is an active member of the National Association of Public Pension Attorneys ("NAPPA") and co-chairs its Securities Litigation Committee. As part of her professional endeavors, Ms. Saxena writes numerous articles on protecting shareholder rights, and works closely with other NAPPA members to author, update, and publish a white paper on post-*Morrison* International Securities Litigation.

Ms. Saxena has been recognized in the *South Florida Business Journal's* "Best of the Bar" as one of the top lawyers in South Florida, and has been selected to the Florida *Super Lawyers* list for ten consecutive years in a row. Ms. Saxena was also selected by her peers for inclusion in *The Best Lawyers in America*® four years in a row, as well as one of Florida's "Legal Elite" by *Florida Tren*d magazine. Recently, Ms. Saxena was named a "500 Leading Plaintiff Financial Lawyer" by *Lawdragon*.

Ms. Saxena graduated from Syracuse University *summa cum laude* in 1993 with a dual degree in policy studies and economics, and graduated from Pepperdine University School of Law in 1996. Ms. Saxena is a member of the Florida Bar, and is admitted to practice before the United States District Courts for the Southern and Middle Districts of Florida, as well as the Eleventh Circuit Court of Appeals, and the Supreme Court of the United States.





### JOSEPH E. WHITE, III

Joseph E. White, III, co-founder of Saxena White P.A., has represented shareholders as lead counsel in major securities fraud class actions and derivative actions for nearly 20 years. He has represented lead and representative plaintiffs in front-page cases, including actions against

Bank of America, Lehman Brothers and Washington Mutual. He has successfully settled cases yielding over one billion dollars against numerous publicly traded companies, including cases against Rayonier, Inc. (\$73 million), Brixmor Property Group (\$28 million), SIRVA, Inc. (\$53.3 million), and one of the largest settlements in 2018, Wilmington Trust (\$210 million). Mr. White has also developed an expertise in litigating precedent-setting cases against foreign publicly traded companies, and settled two cases involving Brazilian corporations: Sadia, Inc. (\$27 million) and Aracruz Celulose (\$37.5 million).

Mr. White has also helped achieve meaningful corporate governance and monetary recoveries for shareholders in merger related and derivative lawsuits. Recently, Mr. White played an instrumental role in obtaining a \$320 million settlement in *In re Wells Fargo & Company Shareholder Litigation*. The settlement includes a \$240 million cash payment from Defendants' insurers-representing the largest insurance-funded monetary component of any shareholder derivative settlement by over \$100 million. In *In re Clear Channel Outdoor Holdings Derivative Litigation*, Mr. White's efforts obtained repayment of a \$200 million loan from Outdoor's parent which was then paid as a special dividend to Outdoor shareholders. Mr. White regularly lectures on topics of interest to pension trustees, and advises municipal, state, and international institutional investors on instituting effective systems to monitor and prosecute securities and related litigation.

Mr. White has been recognized by *Palm Beach Illustrated* as a "Top Lawyer," and is a current *Lawyers of Distinction* Certified Member. He was also named a Florida's "Legal Elite" by *Florida Trend* magazine. Recently, Mr. White was named a "500 Leading Plaintiff Financial Lawyer" by *Lawdragon*.

Mr. White earned an undergraduate degree in Political Science from Tufts University before obtaining his Juris Doctor from Suffolk University School of Law.

Mr. White is a member of the Massachusetts, Florida, New York and Pennsylvania Bars. He is also admitted to the United States District Courts for the Southern, Northern, and Middle Districts of Florida, the Southern District of New York, the District of Massachusetts, the District of Colorado, the Western District of Michigan, and the Northern District of Illinois. Mr. White is also a member of the United States Circuit Courts of Appeals for the First and Eleventh Circuits, and the Supreme Court of the United States.



### STEVEN B. SINGER

Steven B. Singer is a Director at Saxena White P.A., and oversees the Firm's securities litigation practice. Prior to joining the Firm, Mr. Singer was employed for more than 20 years at Bernstein Litowitz Berger & Grossmann LLP, a well-known plaintiffs' firm, where he served as a senior

partner and member of the firm's management committee.

During his career Mr. Singer has been the lead partner responsible for prosecuting many of the most significant and high-profile securities cases in the country, which collectively have recovered billions of dollars for investors. He led the litigation against Bank of America relating to its acquisition of Merrill Lynch, which resulted in a landmark settlement shortly before trial (\$2.43 billion), one of the largest recoveries in history. Mr. Singer's work on that case was the subject of extensive media coverage, including numerous



articles published in The New York Times. He also has substantial trial experience and was one of the lead trial lawyers on the WorldCom Securities Litigation (\$6 billion settlement) after a four-week jury trial.

Recently, Mr. Singer led the litigation team that successfully recovered \$320 million against Wells Fargo & Company. The settlement includes a \$240 million cash payment from Defendants' insurers-representing the largest insurance-funded monetary component of any shareholder derivative settlement by over \$100 million. In addition, Mr. Singer has been lead counsel in numerous other actions that have resulted in substantial settlements, including cases involving Citigroup Inc. (\$730 million, representing the second largest recovery in a case brought on behalf of bond purchasers), Lucent Technologies (\$675 million), Mills Corp. (\$203 million), WellCare Health Plans (\$200 million), Satyam Computer Services (\$150 million), Biovail Corp. (\$138 million), Bank of New York Mellon (\$180 million), JP Morgan Chase (\$150 million), and one of the largest settlements in 2018, Wilmington Trust (\$210 million).

At Saxena White, Mr. Singer serves as lead counsel in many highly significant securities matters, including class actions involving The Chemours Company, Novo Nordisk, DaVita, Inc., and Credit Suisse Group AG.

Mr. Singer has been consistently recognized by industry observers for his legal excellence and achievements. He has been selected by *Lawdragon* magazine as one of the "500 Leading Lawyers in America," by *Benchmark Plaintiff* as a "Litigation Star", and by the *Legal 500 US Guide* as one of the "Leading Lawyers" in securities litigation — one of only seven plaintiffs' attorneys so recognized. Recently, Mr. Singer was named a "500 Leading Plaintiff Financial Lawyer" by *Lawdragon*.

Mr. Singer graduated *cum laude* from Duke University in 1988, and from Northwestern University School of Law in 1991. He is a member of the New York State Bar, as well as the United States District Courts for the Southern and Eastern Districts of New York, the Northern District of Illinois, and the District of Colorado.



### DAVID KAPLAN

David R. Kaplan is a Director at Saxena White and manages the Firm's California office. Mr. Kaplan has over fifteen years of experience in the field of securities and shareholder litigation. He has helped investors achieve hundreds of millions of dollars in recoveries in federal and state

courts nationwide, including in class actions, direct "opt out" actions, and shareholder derivative litigation.

Prior to joining Saxena White, Mr. Kaplan was a partner at Bernstein Litowitz Berger & Grossman LLP, where he co-chaired its direct-action practice, and counseled institutional investor clients on potential legal claims as a member of the firm's new matters department. Before that, Mr. Kaplan was a senior associate at Irell & Manella LLP, where he handled a variety of high-stakes business disputes and complex litigation matters.

A large part of Mr. Kaplan's day-to-day practice involves advising mutual funds, insurance companies, pension funds, hedge funds, and other institutional asset managers on whether to remain passive participants in securities class actions or opt out to maximize, accelerate, and protect their securities fraud recoveries. Most recently, Mr. Kaplan represented prominent institutional investor opt out groups in New York, New Jersey, Connecticut, and Texas federal courts. Mr. Kaplan has also successfully represented institutional investors in opt out actions in California federal and state courts.

Mr. Kaplan also has extensive experience advising institutional clients on pursuing securities fraud recoveries in international jurisdictions. His work in this area includes virtually all countries in which shareholder collective actions are authorized by law, including Canada, Australia, England, the Netherlands, Germany, Italy, France, Japan, Israel, and Brazil.



Mr. Kaplan has authored multiple articles relating to class actions and the federal securities laws, which have been published in *The National Law Journal, The Daily Journal, Law360, Pensions & Investments*, and *The NAPPA Report*, among other publications. Mr. Kaplan is an editor of the *American Bar Association's* Class Actions and Derivative Suits Committee's Newsletter. For his achievements, Mr. Kaplan has been selected as a "Rising Star" by *Super Lawyers* and a "500 Leading Plaintiff Financial Lawyer" by *Lawdragon*.

Mr. Kaplan graduated with a Bachelor of Arts, *cum laude*, from Washington and Lee University, and earned his Juris Doctor, High Honors, from Duke University School of Law, where he was an editor of *Duke Law Review*. He is admitted to practice in California, United States District Courts for the Central, Northern, and Southern Districts of California, and the Eastern District of Wisconsin. He is also admitted to the United States Court of Appeals for the Ninth Circuit, and the and United States Bankruptcy Court for the Central District of California.



### LESTER R. HOOKER

Lester Hooker, Director, is involved in all of Saxena White's practice areas, including securities class action litigation and shareholder derivative actions. During his tenure at Saxena White, Mr. Hooker has obtained substantial monetary recoveries and secured valuable corporate

governance reforms on behalf of investors nationwide.

Mr. Hooker played a key role on the litigation teams that have successfully prosecuted securities fraud class and derivative actions, including *In re Wells Fargo & Company Shareholder Litigation* (\$320 million settlement, which includes a \$240 million cash payment from Defendants' insurers - representing the largest insurance - funded monetary component of any shareholder derivative settlement by over \$100 million), *In re HD Supply Holdings, Inc. Securities Litigation* (\$50 million settlement-one of the largest securities class action settlements ever achieved in the U.S. District Court for the Northern District of Georgia), *In re Rayonier Inc. Securities Litigation* (\$73 million settlement), *Westchester Putnam Counties Heavy and Highway Laborers Local 60 Benefit Funds v. Brixmor Property Group, Inc. et al.*, (\$28 million settlement), Central Laborers' Pension Fund v. Sirva, Inc., (\$53.3 million settlement along with the adoption of important corporate governance reforms), *City Pension Fund for Firefighters and Police Officers in the City of Miami Beach v. Aracruz Celulose S.A., et al.*, (\$37.5 million settlement), *In re Sadia, Inc. Securities Litigation* (\$27 million settlement), and *In re Tower Group International, Ltd. Securities Litigation* (\$20.5 million settlement). Mr. Hooker is currently part of the litigation teams prosecuting securities fraud class actions against companies such as The Chemours Company, DaVita, Inc., Patterson Companies, Inc., Perrigo Company plc, and Sinclair Broadcast Group.

Mr. Hooker received a Bachelor of Arts degree with a major in English from the University of California at Berkeley. He earned his Juris Doctor from the University of San Diego School of Law, where he was awarded the Dean's Outstanding Scholar Scholarship. Mr. Hooker received his master's degree in Business Administration with an emphasis in International Business from the University of San Diego School of Business, where he was awarded the Ahlers Center International Graduate Studies Scholarship. Mr. Hooker has recently been recognized as a *Super Lawyer* "Rising Star" for 2017 and 2018, a *South Florida Legal Guide's* "Up and Comer" in 2017, and a *Palm Beach Illustrated* "Top Lawyer" in 2018. Recently, Mr. Hooker was named a "500 Leading Plaintiff Financial Lawyer" by *Lawdragon*.



Mr. Hooker is a member of the State Bars of California, Florida, New York, and the District of Columbia, and is admitted to practice law in the United States District Courts for the Northern, Central, Southern and Eastern Districts of California, the Southern, Middle and Northern Districts of Florida, the Western District of Michigan, the District of Colorado, and the Northern District of Illinois. Mr. Hooker is also admitted to practice law in the United States Courts of Appeals for the Ninth Circuit.



#### BRANDON GRZANDZIEL

Brandon Grzandziel, Director, is involved in all of Saxena White's practice areas, including securities class action litigation and shareholder derivative actions. During his tenure at Saxena White, Mr. Grzandziel has obtained substantial monetary recoveries including the one of the

largest settlements in 2018, In re Wilmington Trust Corporation Securities Litigation (\$210 million).

Additionally, Mr. Grzandziel has been a member of the teams securing significant recoveries for investors *In re Rayonier Securities Litigation* (\$73 million), *City Pension Fund v. Aracruz Celulose S.A.* (\$37.5 million against a foreign defendant), *In re Bank of America* (\$62.5 million, which ranks among the top ten derivative settlements approved by the federal courts), and *In re Sadia, S.A. Securities Litigation* (\$27 million against foreign defendants). Having extensive appellate experience, Mr. Grzandziel has also successfully secured important new precedent for the protection of investors in cases such as FindWhat Investor Group v. FindWhat.com.

Mr. Grzandziel earned his Bachelor of Arts from Wake Forest University, where he graduated with Honors in 2005. In 2008, he received his Juris Doctor from the University of Miami School of Law while being Executive Editor of the University of Miami Business Law Review. His article, "A New Argument for Fair Use Under the Digital Millennium Copyright Act," was published in the Spring/Summer 2008 issue. During his recent legal career, Mr. Grzandziel has been recognized as a *Super Lawyer* "Rising Star" for 2017 through 2019.

Mr. Grzandziel is a member of the Florida Bar, the United States District Courts for the Southern and Middle Districts of Florida, and the United States Court of Appeals for the Second Circuit.



#### THOMAS CURRY

Thomas Curry is a Director at Saxena White and manages the Firm's Delaware office. He represents investors in corporate governance matters, with a particular focus on M&A litigation in the Delaware Court of Chancery.

Prior to joining Saxena White, Mr. Curry was an associate at Labaton Sucharow LLP, where he represented investors in many of the most significant and highest profile corporate governance matters to arise in recent years. Mr. Curry has particular expertise in representing public investors shortchanged by corporate sales and other M&A activity influenced by insider conflicts of interest. He has successfully represented investors in a wide variety of derivative, class, and appraisal matters challenging conflicted M&A transactions in the Delaware Court of Chancery and other jurisdictions around the United States. Mr. Curry also has significant experience advising United States-based investors seeking to protect their interests in connection with M&A activity subject to the law of foreign jurisdictions.



Mr. Curry successfully represented the lead petitioners in appraisal actions arising from Coach's acquisition of Kate Spade and General Electric's combination of its oil and gas business with Baker Hughes. He was a key member of teams that secured a \$35.5 million derivative recovery in litigation arising from AGNC Investment Corp.'s internalization of its investment manager and corporate reforms valued at approximately \$25 million in litigation arising from a related-party loan extended by Clear Channel Outdoor Holdings to its controlling stockholder, iHeart Communications.

Mr. Curry has been named a "Rising Star" in the field of M&A litigation by *The Legal 500* in both 2019 and 2020.

Mr. Curry began his legal career at the prominent Wilmington defense firm Morris, Nichols, Arsht & Tunnell LLP. He earned a Juris Doctor from Cornell Law School and a Bachelor of Arts from Temple University.

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



#### KYLA GRANT

Kyla Grant has extensive experience in federal securities class action suits, securities enforcement, and complex commercial litigation in both federal and state courts. Before joining Saxena White, Ms. Grant practiced securities litigation at two top-ranked global law firms,

Shearman & Sterling LLP and WilmerHale. Ms. Grant has been a member of the litigation teams that have successfully recovered hundreds of millions of dollars on behalf of injured shareholders, including the recent \$320 million derivative settlement against Wells Fargo & Company. She was also a member of the litigation team that obtained a \$28 million settlement against Brixmor Property Group, Inc. Ms. Grant is currently a member of the litigation teams prosecuting significant securities fraud class actions against Patterson Companies, Inc., Perrigo Company plc, and DaVita, Inc.

Ms. Grant graduated from the University of Hawai'i at Mānoa with distinction in 2004, where she received a Bachelor of Arts degree, majoring in both English and Political Science. She received her Juris Doctor degree from the University of Virginia School of Law in 2008. While attending law school, she was a recipient of the Dean's Scholarship, was appointed as a Dillard Fellow (a role in which she worked with first year students to improve their persuasive writing skills) and was an Articles Editor for the *Virginia Journal of International Law*.

Ms. Grant is a member of the New York State Bar and the United States District Court for the Southern District of New York.



#### ATTORNEYS



### MARIO ALVITE

Mario Alvite performs analysis of potential securities and shareholder rights actions. Mr. Alvite's efforts are focused on stages of litigation including case origination and pre-trial discovery. Mr. Alvite is experienced in e-discovery and project management in the corporate litigation,

transactional, and regulatory areas. He has served on teams representing investors against Wilmington Trust and Rayonier Inc.

Mr. Alvite received his Bachelor of Business Administration from Florida International University. He later earned his Juris Doctor from Nova Southeastern University. He is a member of the Florida Bar, and is admitted to practice in the United States District Court for the Southern and Middle Districts of Florida.



#### TAYLER BOLTON

Tayler Bolton has extensive litigation experience with a particular focus on litigation in the courts of Delaware. Ms. Bolton's practice focuses on corporate governance and fiduciary duty litigation. She also has significant experience in corporate bankruptcy and commercial litigation.

Ms. Bolton earned a Bachelor of Music (Voice) and a Bachelor of Arts (Communication) from the University of Oklahoma. She received her Juris Doctor from Emory University School of Law where she served as an editor of the Emory Corporate Governance and Accountability Review, served as the elected Conduct Court Justice of the Student Bar Association, received the Emory Woman of Excellence Award, and was inducted into the Order of Barristers.

Following graduation from law school, Ms. Bolton served as a foreign law clerk to the Honorable Hanan Melcer in the Supreme Court of the State of Israel and served as a law clerk to the Honorable Diane Clarke-Streett in the Superior Court of Delaware.

Ms. Bolton is currently active in the Delaware Barristers Association, the Richard S. Rodney Inn of Court, and the Multicultural Judges and Lawyers Section where she received the Haile L. Alford Excellence Award.

Ms. Bolton is a member of the Delaware and New York State Bars, and is admitted to practice law in the United States District Court for the District of Delaware.



### RHONDA CAVAGNARO

Rhonda Cavagnaro is Special Counsel to Saxena White and a member of the Firm's Institutional Outreach group. She brings extensive expertise in many areas of employee benefits and pension administration with nearly two decades of public fund experience. Ms. Cavagnaro frequently

speaks at industry conferences to further trustee education on fiduciary issues facing institutional investors.

Ms. Cavagnaro began her legal career as an Assistant District Attorney in New York City, where she was instrumental in creating the office's General Crimes Unit, covering major crimes. As an ADA, Ms. Cavagnaro gained valuable trial experience and prosecuted hundreds of misdemeanor and felony cases.



Ms. Cavagnaro started her career serving public pensions as Assistant General Counsel at the New York City Employees' Retirement System. She then went on to become the first General Counsel to the New York City Police Pension Fund in February 2002, where she worked for over 11 years, providing advice to the Board of Trustees and 140-member staff with respect to benefits administration, fiduciary issues, employment issues, legislation, and transactional matters. Ms. Cavagnaro last served as the Assistant CEO for the Santa Barbara County Employee's Retirement System, where under the general direction of the CEO and Board of Trustees, she oversaw the day to day operations of the System.

Ms. Cavagnaro graduated with a Bachelor of Arts in Political Science and History from the University of Rochester, in Rochester, New York, and earned her Juris Doctor from the California Western School of Law in San Diego, California. She is a member of the New York and New Jersey State Bars, and is admitted to the United States District Court for the Southern and Eastern Districts of New York, and is a current member of the National Association of Public Pension Attorneys.



### SARA DILEO

Sara DiLeo has extensive experience in federal securities class action lawsuits, derivative litigation, and complex commercial litigation in both federal and state courts. Ms. DiLeo is currently part of the litigation teams prosecuting securities fraud class actions against companies

such as DaVita, Inc. and Evolent Health, Inc. Recently, Ms. DiLeo was a member of the litigation team that successfully recovered a \$320 million derivative settlement for shareholders of Wells Fargo & Company. She was also part of the litigation teams that obtained a \$28.25 million settlement for shareholders of TrueCar, Inc., and a \$50 million settlement for shareholders of HD Supply Holdings, Inc.-one of the largest securities class action settlements ever achieved in the U.S. District Court for the Northern District of Georgia. Before joining Saxena White, Ms. DiLeo practiced securities litigation for nine years at a top-ranked global law firm, Skadden, Arps, Slate, Meagher & Flom LLP.

Ms. DiLeo graduated from New York University's College of Arts & Sciences program in 2003, where she received a Bachelor of Arts degree with a double major in Political Science and Psychology. She received her Juris Doctor degree from Fordham University School of Law in 2008. While attending law school, Ms. DiLeo was an Articles Editor for the *Fordham Urban Law Journal* and interned for the Hon. Barbara Jones in the United States District Court for the Southern District of New York.

Ms. DiLeo is a member of the New York Bar.



### HANI FARAH

Hani Farah is an Attorney at Saxena White's California office. Prior to joining Saxena White, Mr. Farah practiced at a leading securities litigation law firm where he analyzed potential new cases, primarily U.S. securities class action and individual opt-outs suits, as well as international

securities litigation.

Prior to joining traditional practice, Mr. Farah was the primary legal counsel for a U.S. presidential candidate. In this role, Mr. Farah researched and provided counsel on myriad issues relevant during the 2016 campaign.

Mr. Farah graduated *cum laude* from the University of California San Diego in 2011. He later graduated *cum laude* from the University of San Diego School of Law in 2015. He is a member of the California Bar, and is admitted to practice in the United States District Court for the Central District of California.





### WILLIAM FORGIONE

Prior to joining Saxena White, William Forgione served as a senior legal executive with Teachers Insurance and Annuity Association ("TIAA") and its subsidiaries for over 25 years. While at TIAA, he held a variety of leadership positions, including as Executive Vice President

and General Counsel with TIAA Global Asset Management and Nuveen, a leading financial services group of companies that provides investment advice and portfolio management through TIAA and numerous investment advisors. He oversaw the legal, compliance, and corporate governance aspects associated with the organization's \$900 billion investment portfolios and asset management businesses, including TIAA's general account, various separate accounts, registered and unregistered funds and institutional investment mandates.

Under Mr. Forgione's leadership, TIAA was actively involved in a number of significant investment litigation matters in order to recover the maximum amount for the benefit of its investment portfolios and the beneficial owners. These included acting as lead plaintiff in class action lawsuits, initiating proxy contests, pursuing direct actions where appropriate and asserting appraisal rights when it felt the consideration to be paid to shareholders in connection with various merger and acquisition activity involving portfolio companies was inadequate.

Mr. Forgione also served as Deputy General Counsel to TIAA, where among his many responsibilities, he acted as a strategic partner and advisor to the heads of TIAA's pension and insurance business lines. He also served as a member of TIAA's Senior Leadership Team, actively participating on a number of management committees. In addition, Mr. Forgione has valuable corporate governance experience, having advised and served on a number of Boards, including Nuveen, the Westchester Group, several foreign operating subsidiaries of TIAA, as well as various Risk Management, Investment, Asset-Liability and Audit Committees. He also has served as lead counsel on several large business acquisitions.

After graduating *summa cum laude* from Binghamton University with a B.S. in Accounting, Mr. Forgione received his J.D. degree from Boston University. Among many industry associations, he has served as President and a member of the Board of Trustees of the Association of Life Insurance Counsel, President and Trustee of the American College of Investment Counsel and Chairman of the Investment Committee of the Life Insurance Council of New York. Mr. Forgione has spoken at many industry conferences and seminars, taught undergraduate and graduate courses in Accounting and Law and has won such awards as *Charlotte Business Journal's* Corporate Counsel Award for his success in corporate law.

Prior to joining TIAA, Mr. Forgione was associated with Fried, Frank, Harris, Shriver & Jacobson LLP, and Csaplar & Bok, where he practiced in the areas of mergers and acquisitions and corporate finance. He is admitted to the Bar of the State of New York.



### DONALD GRUNEWALD

Donald Grunewald focuses on performing research for securities and derivatives litigation. Before joining Saxena White, Mr. Grunewald taught Legal Research and other legal courses at a college in New York for six years. He has prepared economic and legal research for litigation,

businesses, and academics.

Mr. Grunewald earned his Bachelor of Arts in Economics, *magna cum laude*, from Haverford College in 2004. He later earned a Bachelor of Arts in Jurisprudence from Oxford University and a Master of Laws from the University of Pennsylvania Law School.

Mr. Grunewald has been a member of the New York State Bar since 2008.





### SCOTT GUARCELLO

Scott Guarcello's practice focuses on the discovery stage of litigation. With over ten years of significant complex e-discovery experience, he brings to Saxena White an expertise honed by the numerous e-discovery services and training programs that he created, led and supported

while serving as a Senior Managing Attorney for a global e-discovery consulting and services provider.

Combining both discovery and technical expertise, Mr. Guarcello advises on best practices concerning information governance principles, ESI protocols, collections, processing, large-scale document reviews, production management, and related infrastructure applications. Recently, Mr. Guarcello was a member of the litigation team that successfully obtained a \$320 million derivative settlement against Wells Fargo & Company. He was also part of the litigation teams that recovered a \$28.25 million settlement against TrueCar, Inc., and secured a \$50 million settlement against HD Supply Holdings, Inc.-one of the largest securities class action settlements ever achieved in the U.S. District Court for the Northern District of Georgia. He is currently a member of the litigation teams prosecuting securities class actions against Credit Suisse Group AG, Evolent Health, Inc., DaVita, Inc., Perrigo Company plc, and Patterson Companies.

Mr. Guarcello earned a Bachelor of Science from Stetson University and received a Juris Doctor from Florida International University where he graduated *cum laude* with a concentration in securities law. He was a regular recipient of the Dean's List Award and received the CALI Book Awards for the Complex Litigation and Corporate Tax courses. Mr. Guarcello has also received the Legal Elite Award for 2017 and 2018 and holds extensive industry certifications that span review tools, feature-specific technical applications, project management and analytics. As an active member in the e-discovery community, Mr. Guarcello has been a guest speaker for both intimate and large audiences.

Mr. Guarcello is a member of the Florida Bar.



#### SCOTT KOREN

Scott Koren is an Attorney at Saxena White. Mr. Koren concentrates on new case development by performing research on potential securities class actions and new derivative and corporate governance actions. Mr. Koren's efforts are focused on beginning stages of litigation including

case origination and pre-trial discovery. Additionally, Mr. Koren has served on teams representing investors against HD Supply Holdings Inc. and DaVita, Inc.

Mr. Koren received his undergraduate degree in Business Management and Entrepreneurship from the University of Arizona and received his Juris Doctor degree from Pace University School of Law.



### JONATHAN D. LAMET

Jonathan D. Lamet has extensive experience in litigating direct securities actions and derivative actions involving publicly traded companies. Mr. Lamet is currently part of the litigation teams prosecuting securities fraud class actions against companies such as Health Insurance

Innovations, Inc. n/k/a Benefytt Technologies and Patterson Companies, Inc.

Before joining Saxena White, Mr. Lamet practiced commercial and civil litigation, including directors and officers liability, securities and fraud litigation, bankruptcy adversary proceedings, and class action defense for seven years at an Am-Law 100 firm, Akerman LLP.



Mr. Lamet graduated from Yeshiva University, Sy Syms School of Business in 2010, where he received his Bachelor of Science in Business Management. He received his Juris Doctor degree from University of Miami School of Law in 2013. Mr. Lamet was a member of the University of Miami Law Review. While attending law school, Mr. Lamet interned for the United States Attorney's Office, Economic Crimes Division, for the Southern District of Florida, and for the Hon. William Turnoff in the United States District Court for the Southern District of Florida.

Mr. Lamet is a member of the Florida Bar, the United States District Courts for the Southern and Middle Districts of Florida, and the United States Court of Appeals for the Eleventh Circuit.



#### **DOUG MCKEIGE**

Douglas McKeige, Counsel, brings unparalleled experience investigating, commencing and prosecuting meritorious securities fraud and corporate governance cases to Saxena White. Mr. McKeige was co-managing partner of Bernstein Litowitz Berger & Grossmann LLP, a well-

known plaintiffs' firm, for many years. During his time at that firm, he spearheaded the firm's institutional investor practice and developed and led its case starting department. Utilizing his extensive knowledge of the securities markets, Mr. McKeige counseled pension funds, hedge funds, private equity firms and, most importantly, hardworking men and women saving for their retirement, on potential claims and avenues for case prosecution. Under Mr. McKeige's supervision, the firm successfully commenced and prosecuted hundreds of cases in state and federal courts throughout the country, and recovered more than \$12 billion on behalf of defrauded investors, including cases involving WorldCom (\$6.2 billion), Nortel Networks (\$2.45 billion), Freddie Mac (\$410 million), Bristol-Myers Squibb (\$300 million), and Mills Corporation (\$203 million).

Mr. McKeige combines at Saxena White his more than two decades of legal experience with years of knowledge as a hedge fund Managing Director, during which time he helped build two multi-billion dollar hedge funds. As a result of his hedge fund experience, Mr. McKeige has extensive experience with macroeconomic themes, company-specific opportunities and trade implementation strategies across all asset classes (equities, fixed income, foreign exchange and commodities), and with using derivatives across all major geographies. His unique perspective on the workings of the financial markets provides Saxena White's institutional clients with valuable information when considering strategies for recovering investment losses.

Mr. McKeige earned his B.A. in Economics from Tufts University, *cum laude*, and his J.D. from Tulane Law School, *magna cum laude*, Order of the Coif. Mr. McKeige was Articles Editor of the *Tulane Law Review* and is admitted to the Bar of the State of New York.



### JILL MILLER

Jill Miller focuses her practice on e-discovery, including project management and litigation support services for class actions and other complex litigation. Ms. Miller was a member of the team that secured one of the largest settlements in 2018, In re Wilmington Trust Corporation

Securities Litigation (\$210 million). Prior to joining Saxena White, Ms. Miller served as team lead at various law firms for discovery in large, complex class actions and mass torts in the areas of securities fraud, software technology, pharmaceutical and patent infringement.



Prior to her litigation experience, Ms. Miller was an associate at Ruden McClosky where she practiced real estate law. During her 11 years with the firm, she represented large developers of residential and commercial real estate throughout the South Florida area. Ms. Miller began her legal career as an associate in the real estate practice division of a major New Jersey law firm where she concentrated her practice on residential and commercial real estate transactions and development. She also dedicated a significant portion of her practice to casino licensing and compliance.

For the past several years, Ms. Miller has volunteered her time as a Guardian ad Litem, protecting the rights of abused and neglected children in Broward County, Florida.

Ms. Miller received her law degree from Hofstra University in New York where she was the Articles Editor of the *International Property Investment Journal*. She also interned at the United States Federal Court, Eastern District of New York during her third year of law school.

Ms. Miller is admitted to practice in Florida, and the United States District Court for the Southern District of Florida.



### DIANNE PITRE

Dianne Pitre prosecutes securities fraud, corporate governance and shareholder rights litigation on behalf of injured shareholders. Ms. Pitre has served on the litigation teams that successfully prosecuted securities fraud class actions such as *In re Wells Fargo & Company Shareholder* 

Litigation (\$320 million settlement), In re Rayonier Inc. Securities Litigation (\$73 million settlement), Westchester Putnam Counties Heavy and Highway Laborers Local 60 Benefit Funds v. Brixmor Property Group, Inc. et al. (\$28 million settlement), and In re Tower Group International, Ltd. Securities Litigation, (\$20.5 million settlement). Ms. Pitre is currently a member of the litigation teams prosecuting significant securities fraud class actions against Patterson Companies, Sinclair Broadcast Group, Novo Nordisk, and The Chemours Company.

Before joining Saxena White, Ms. Pitre was a legal intern for Jack in the Box, Inc. and Alliant Insurance Services, Inc. She worked extensively with their in-house departments, assisting in a variety of corporate, employment, and government regulation matters. Ms. Pitre was an intern for Jewish Family Service of San Diego and Housing Opportunities Collaborative, two San Diego pro bono legal organizations. Additionally, she served as a Legal Intern for the San Diego City Attorney's Office with their Advisory Division, Public Works Section. Ms. Pitre has recently been recognized as a *Super Lawyer* "Rising Star" for 2018 and 2019.

Ms. Pitre graduated from the University of California, San Diego in 2008, where she received a Bachelor of Arts degree, majoring in Political Science with a minor in Law and Society. In 2012, she received her Juris Doctor degree from the University of San Diego School of Law. While attending law school, Ms. Pitre earned various scholarships and awards, including the San Diego La Raza Lawyers Association Scholarship and Frank E. and Dimitra F. Rogozienski Scholarship for outstanding academic performance in business law courses. Her outstanding law school academic achievements culminated in two CALI Excellence for the Future Awards for receiving the top grade in her Fall 2011 International Sports Law and Entertainment Law classes. Ms. Pitre is an alumnus of Phi Delta Phi, the international legal honor society and oldest legal organization in continuous existence in the United States.

Ms. Pitre is a member of the Florida and California State Bars. She is admitted to practice before the United States District Courts for the Southern and Northern Districts of Florida and the Northern, Central, Southern, and Eastern Districts of California.





### JOSHUA SALTZMAN

Joshua Saltzman focuses his practice on securities and derivative litigation. Before joining Saxena White, Mr. Saltzman litigated investor class actions, opt-out securities actions and derivative actions at two boutique law firms in New York City. Recently, Mr. Saltzman was a

member of the litigation team that obtained a \$53 million derivative settlement on behalf of New Senior Investment Group, which was the largest settlement of all time in a derivative lawsuit when measured as a percentage of the company's total market capitalization. He was also a member of the litigation team that obtained a \$50 million settlement on behalf of HD Supply Holdings, Inc. – one of the largest securities class action settlements ever achieved in the U.S. District Court for the Northern District of Georgia.

Additionally, Mr. Saltzman has been a member of litigation teams that have obtained numerous other substantial recoveries on behalf of investors, including cases involving American International Group (\$40 million settlement on behalf of AIG employees who invested in AIG's company stock fund, representing one of the largest ERISA stock drop recoveries of all time), Cornerstone Therapeutics (\$17.9 million for minority stockholders of Cornerstone Therapeutics whose shares were purchased in a controller buyout), and Petrobras (high percentage recovery on behalf of state pension system in opt-out securities action). Mr. Saltzman is currently a member of the litigation teams prosecuting securities fraud class actions against companies such as Perrigo Company plc, and Evolent Health, Inc.

Mr. Saltzman received a Bachelor of Arts degree in English from Rutgers University in 2002, and a Juris Doctor degree from Brooklyn Law School in 2011, graduating *magna cum laude*. During law school, Mr. Saltzman served as an editor on the Brooklyn Law Review, where he published a note, and interned for the Honorable Victor Marrero in the United States District Court for the Southern District of New York.

Mr. Saltzman is a member of the New York Bar, the United States District Court for the Southern District of New York, and the United States Court of Appeals for the Third Circuit.



### ADAM WARDEN

Adam Warden is involved in all of Saxena White's practice areas, including shareholder derivative actions, securities fraud litigation, and merger and acquisition litigation. During his tenure at Saxena White, Mr. Warden has been a member of the teams securing significant recoveries,

including *Cumming v. Edens* (derivative settlement of \$53 million for claims challenging acquisition by senior living operator New Senior Investment Group, Inc., representing more than 10% of the company's market capitalization), *In re Wells Fargo & Company Shareholder Litigation* (derivative settlement valued at \$320 million, including \$240 million in cash and corporate governance reforms), *In re Jefferies Group, Inc. Shareholders Litigation* (class action settlement of \$70 million, one of the largest settlements in the history of the Delaware Court of Chancery), and *In re Parametric Sound Corporation Shareholders' Litigation* (\$9.65 million settlement, the second largest post-merger class action settlement in Nevada state history). Mr. Warden is currently part of the litigation teams prosecuting securities fraud class actions against Credit Suisse Group AG, Health Insurance Innovations, Inc. n/k/a Benefytt Technologies, and AmTrust Financial Services, Inc.

Mr. Warden has been recognized as a *Super Lawyer* "Rising Star" in 2018, a *South Florida Legal Guide's* "Up and Comer" from 2018-2020, and a *Palm Beach Illustrated* "Top Lawyer" in 2020. Mr. Warden is also a member of Saxena White's Diversity and Social Responsibility Committee.



Mr. Warden earned his Bachelor of Arts degree from Emory University in 2001 with a double major in Political Science and Psychology. He received his Juris Doctor from the University of Miami School of Law in 2004. During law school, Mr. Warden served as the Articles Editor of the *University of Miami International and Comparative Law Review*.

Mr. Warden is a member of the Florida Bar and the District of Columbia Bar. He is admitted to the United States District Courts for the Southern, Middle, and Northern Districts of Florida.



### KATHRYN WEIDNER

Kathryn Weidner has extensive experience in prosecuting securities class actions. Ms. Weidner has obtained substantial monetary recoveries including one of the largest settlements in 2018, *In re Wilmington Trust Corporation Securities Litigation* (\$210 million). She has also prosecuted

numerous other class actions that resulted in significant recoveries for investors, such as *In re HD Supply Holdings, Inc.* (\$50 million, and one of the largest securities class action settlements ever achieved in the U.S. District Court for the Northern District of Georgia), *In re Rayonier Securities Litigation* (\$73 million), and *In re Tower Group International, Ltd. Securities Litigation* (\$20.5 million).

Ms. Weidner is very involved in the community and participates in organizations such as the League of Women Voters and the Women's Foundation of Florida and is also a member of numerous professional organizations such as FAWL, NAWL, and NAPPA. Ms. Weidner is a regular contributor at conferences, publications, CLE courses, and is the Chair of Saxena White's Diversity and Social Responsibility Committee. In addition, Ms. Weidner has been recognized as a *Super Lawyer* "Rising Star" for 2017 through 2019, and as a *South Florida Legal Guide* "Up and Comer" for 2018 and 2019.

Prior to joining Saxena White, Ms. Weidner developed valuable litigation skills as a Certified Legal Intern for the Department of Homeland Security. Ms. Weidner earned a Bachelor of Business Administration from the University of Miami in 2003, with a major in Political Science. During college, she studied abroad at Oxford University, as part of an Honors program for law and politics. Ms. Weidner received her Juris Doctor from Nova Southeastern University in 2006, where she graduated *cum laude* with a concentration in International Law. While at Nova, her outstanding course work regularly earned Dean's List and Provost Honor Roll, and she was honored with CALI Book Awards for Secured Transactions and Business Planning Law. Upon graduation, Ms. Weidner was the recipient of the Larry Kalevitch Scholarship Award for exhibiting the most promise in Business and Bankruptcy law.

Ms. Weidner is a member of the Florida Bar, and the United States District Courts for the Southern and Northern Districts of Florida.



### PROFESSIONALS



SHERRIL CHEEVERS Client Services Specialist

Ms. Cheevers is a Client Services Specialist at Saxena White. She is responsible for client outreach and business development among institutional investors. Ms. Cheevers attends industry conferences and organizes events and opportunities to give back to the community.

Prior to joining Saxena White, Ms. Cheevers worked as a sales and community liaison in multiple markets. Ms. Cheevers earned her Bachelor of Science from the University of Tampa.



MARC GROBLER
Manager of Case Analysis

Marc Grobler plays a key role in new case development including performing in-depth investigations into potential securities fraud class actions, derivative, and other corporate

governance related actions. By using an array of financial and legal industry research tools, Mr. Grobler analyzes information that helps support the theories behind our litigation efforts. He is also responsible for protecting the financial interests of our clients by managing the Firm's portfolio monitoring services and performing complex loss and damage calculations.

Prior to joining the Firm, he served as the Senior Business Analyst in the New York office of a leading securities class action law firm and has worked within the securities litigation industry for over 15 years.

Mr. Grobler graduated *cum laude* from Tulane University's A.B. Freeman School of Business in 1997, with a concentration in Accounting. With over 20 years of overall professional financial experience, he started his career in New York at PricewaterhouseCoopers performing audits within the Financial Services Group. Prior to entering the securities litigation industry, he worked within the asset management group at Goldman Sachs where he was responsible for the financial reporting of a group of billion dollar fund-of-fund investments. Mr. Grobler also previously worked at UBS Warburg as a Financial Analyst in the investment banking division that focused on financial institutions such as banks, asset managers, insurance and start-up financial technology companies.



CHUCK JEROLOMAN Senior Client Services Specialist

Chuck Jeroloman, Senior Client Services Specialist, has been with the Firm since 2010. Mr. Jeroloman focuses on public pension clients to provide relevant educational materials, and

personalized communication and service. Mr. Jeroloman is a frequent participant and speaker at state and national investor conferences, including the Georgia Public Pension Trustee Association, the Florida Public Pension Trustee Association, the National Conference on Public Employee Retirement Systems, and many more. He currently serves on the Florida Public Pension Trustees Association's Advisory Board.

Prior to joining Saxena White, Mr. Jeroloman worked in law enforcement for 28 years. He was at the Delray Beach Police Department for 23 years, and served as a homicide/robbery detective, street level narcotics



investigator, field training officer, and a member of the S.W.A.T. and Terrorists Task Force. He was a Delray Beach Police and Fire Pension Board Trustee for 14 years, five of which he served as Chairman, and was also a member of the Delray Beach Fire and Police VEBA Board. Mr. Jeroloman also spent five years as a Deputy Sheriff with the Rockland County Sheriff's Department in New York. During that time, he was a member of the Joint Terrorists Task Force with the FBI, NYPD, Rockland County Sheriff's Department. During his tenure in law enforcement, Mr. Jeroloman served for 23 years as Union Representative for the Police Benevolent Association (PBA) and Fraternal Order of Police (FOP) as Union Treasurer for PBA in N.Y from 1982-87, then for Delray Beach FOP 1988-94, and last with Delray Beach PBA from 1994-2006 with 2001-2006 as President.

Mr. Jeroloman earned his Associate Degree in Criminal Justice from Pasco-Hernando Community College. After college, Mr. Jeroloman was very active in the baseball community. He was an associate scout with the Anaheim Angels and Texas Rangers, and volunteered as a youth baseball coach through high school levels. Mr. Jeroloman also served as a director vice president for the Okeeheelee Athletic Association, and was Founding Chairman to Wellington High Baseball Booster Association and Palm Beach Central Baseball Booster Association.



SAM JONES Financial Analyst

Sam Jones is a Financial Analyst with Saxena White's California office. Prior to joining Saxena White, Mr. Jones worked for over ten years as a financial analyst at a leading securities litigation

law firm where he specialized in developing techniques for data modeling and visualization. He worked on numerous landmark securities cases including *In re Bank of America Securities Litigation* (\$2.425 billion recovery); *In re Lehman Brothers Equity/Debt Securities Litigation* (\$735 million recovery); *In re Wachovia Corp. Securities Litigation* (\$627 million recovery); and *Merrill Lynch Mortgage Pass-Through Litigation* (\$315 million recovery).

In the fallout of the housing and credit crisis, Sam pioneered techniques in data management and analysis for the firm's then-developing RMBS and structured finance practice. He has worked on numerous individual and class action RMBS cases against most of the major Wall Street banks.

Sam graduated from Vassar College in 1996, where he studied anthropology with a focus on economics. After graduation he worked extensively as a field archaeologist throughout the U.S. and in Israel before transitioning to a career in securities litigation and financial analysis.



STEFANIE LEVERETTE

Manager of Client Services

Stefanie Leverette is Saxena White's Manager of Client Services. In this role, she manages the Firm's client outreach and developmental programs and oversees the Firm's portfolio monitoring program. Since joining Saxena White in 2008, Ms. Leverette has coordinated the Firm's presence at industry conferences attended by representatives of various institutional clients throughout the United States. In addition, Ms. Leverette is responsible for the timely dissemination of all reports, notifications and all new cases and class action settlements that may have an impact to an investment portfolio. Ms. Leverette's main role is acting as the liaison between institutional clients and the Firm.



Ms. Leverette is a member of the Firm's Diversity and Social Responsibility Committee and a member of the Women's Initiative Subcommittee. She is also a member of the Firm's Case Starting Team, providing institutional clients with important information regarding potential litigation.

Ms. Leverette earned her undergraduate degree in Business Administration with a focus on Management from the University of Central Florida, and her Master's in Business Administration with a focus on International Business at Florida Atlantic University.



JEROME PONTRELLI
Chief of Investigations

With over two decades of law enforcement experience, including 12 years with the Federal Bureau of Investigation, Jerome Pontrelli serves as Saxena White's Chief of Investigations.

He oversees all of the Firm's efforts to detect, investigate, and prosecute securities cases. Prior to joining Saxena White, Mr. Pontrellli was Director of Investigations at Labaton Sucharow LLP, where his cases resulted in monetary relief for harmed investors in excess of \$4 billion. He was also part of the firm's initial SEC Whistleblower Program.

Over the years, in the FBI and in private practice, Mr. Pontrelli has led over one hundred investigations of possible securities violations. Throughout his award-winning career, he has developed extensive experience in securities-related matters. Mr. Pontrelli began his career with the FBI in Covert Special Operations, and was later assigned to the FBI/NYPD Joint Bank Robbery Task Force. Following the September 11th attacks, Mr. Pontrelli was assigned to the Joint Terrorism Task Force. He later transferred to the White Collar Crime Heath Care Fraud Unit. Mr. Pontrelli has an extensive network of high-level relationships throughout the state and federal law enforcement communities.

Mr. Pontrelli received a Bachelor of Arts degree from St. Thomas Aquinas College and a Master of Arts degree from Seton Hall University. He graduated from the FBI Academy in 1996.



RIAN WROBLEWSKI Head of Investigative Intelligence

With over eighteen years of intelligence gathering experience, Rian Wroblewski serves as Saxena White's Head of Investigative Intelligence. He oversees all of the Firm's efforts to

generate proprietary sources of intelligence using advanced technological tools, systems, and methods. Prior to joining Saxena White, Mr. Wroblewski was Senior Manager of Investigative Intelligence at Labaton Sucharow LLP, where his cases resulted in monetary relief for harmed investors in excess of \$4 billion. He was also part of the firm's initial SEC Whistleblower Program.

Over the years, Mr. Wroblewski has provided expert commentary to The Washington Post, Investor's Business Daily, Canadian Broadcasting Corporation, and other news outlets. Mr. Wroblewski has provided consulting to database providers, eDiscovery vendors, corporate boards, and government entities throughout the world. He has extensive pro bono experience assisting political asylum seekers and targets of honor killings, working alongside the FBI and Department of State. Mr. Wroblewski is an active member of the FBI's InfraGard Program. He has an extensive network of high-level relationships within the global intelligence community.

Mr. Wroblewski received a Bachelor of Science degree from John Jay College of Criminal Justice.



#### STAFF ATTORNEYS



#### **DENISE BRYAN**

With over 20 years of overall professional experience, Ms. Bryan began her legal career in New York at Prudential Securities. While at Prudential Securities, she reviewed claims alleging fraudulent practices and determined settlements in accordance with the guidelines of the

Limited Partnership Settlement Fund as established by the Securities and Exchange Commission.

Ms. Bryan gained experience in the insurance industry as an attorney in the Environmental Claims Department of American International Group, and as an underwriter focusing on Professional Liability coverage for financial institutions including banks, insurance companies, and broker dealers. She was an Assistant Vice President at Marsh Inc. in New York and Chicago, where she was an insurance broker focused on providing Professional Liability coverage to Fortune 500 companies.

Ms. Bryan has been working in the area of e-discovery since 2007. She supervised teams of attorneys conducting large scale document reviews at a consulting group specializing in providing litigation support services to national and international companies. Ms. Bryan is a member of the New York Bar.



#### REBECCA NILSEN

Ms. Nilsen is experienced in e-discovery and litigation support services for class actions and other complex litigation. She has over 13 years of litigation experience in matters related to Federal Trade Commission, U.S Securities and Exchange Commission, Fair Debt Collection

Practices and Consumer Financial Protection Bureau.

Ms. Nilsen graduated cum laude from Florida Atlantic University where she received a Bachelor of Arts with a major in Criminal Justice. In 2002, she received her Juris Doctorate degree from Nova Southeastern University, Shepard Broad College of Law. While attending law school, Ms. Nilsen interned in the Pro Bono Honor Program earning the Gold Award for 2001 – 2002. Ms. Nilsen is a member of the Florida Bar, and is admitted to practice before the United States District Courts for the Southern and Northern Districts of Florida.



### CHRISTINE SCIARRINO

Christine Sciarrino has extensive experience in e-discovery as a project attorney for class action securities fraud litigation. Her legal practice has focused primarily on early resolution of matters, with an objective toward achieving optimum results for litigating parties through

superb pre-trial preparation and informed decision making. As an experienced practitioner for plaintiffs who have been wronged by financial institutions and other entities, Ms. Sciarrino has most recently dedicated her expertise exclusively to this area.

Ms. Sciarrino graduated from Florida Atlantic University in 1988, where she received a Bachelor of Arts degree with a major in History. In 1992, she received her Juris Doctor from the St. Thomas University School of Law. Ms. Sciarrino also earned a Master of Fine Arts in Creative Writing at Florida Atlantic University in 2004. Ms. Sciarrino is a member of the Florida Bar.



#### HARRIET ATSEGBUA

Ms. Atsegbua received her Juris Doctor from the Southern Methodist University Dedman School of Law, Master of Arts from the University of Denver, Josef Korbel School of International Studies, and her Bachelor of Science from Emory University. Ms. Atsegbua is a member of the New York and Texas Bars.

#### ATHMA BIRJU

Mr. Birju received his Juris Doctor from Western Michigan University Thomas M. Cooley Law School and his Bachelor of Science from Nova Southeastern University Farquhar College of Arts and Sciences. Mr. Birju is a member of the Florida Bar.

#### VALERIE KANNER BONK

Ms. Bonk received her Juris Doctor from Catholic University of America Columbus School of Law and her Bachelor of Arts from University of Maryland. Ms. Bonk is a member of the Maryland Bar.

#### PAUL BURNS

Mr. Burns received his Juris Doctor from St. Thomas University School of Law and his Bachelor of Science from University of Central Florida. Mr. Burns is member of the Florida Bar.

### CHRISTOPHER DONNELLY

Mr. Donnelly received his Juris Doctor from University of Pennsylvania Law School, his LL.M from New York University and his Bachelor of Arts from Rutgers University. Mr. Donnelly is a member of the Florida, California, New Jersey, and New York Bars, and he is admitted to practice before the United States District Court for the Southern District of Florida.

### MICHELE FASSBERG

Ms. Fassberg received her Juris Doctor from St. Thomas University School of Law and her Bachelor of Arts from Florida International University. Ms. Fassberg is a member of the Florida Bar.

#### NINA HAKOUN

Ms. Hakoun received her Juris Doctor from Nova Southeastern University and her Bachelor of Arts from Florida International University. Ms. Hakoun is a member of the Florida Bar.

#### TARA HEYDT

Ms. Heydt received her Juris Doctor from UCLA School of Law and her Bachelor of Arts from the University of Pennsylvania. Ms. Heydt is a member of the Florida Bar.

### RYAN JOSEPH

Mr. Joseph received his Juris Doctor from New York Law School and his Bachelor of Science from Boston University. Mr. Joseph is a member of the Florida Bar.

### MAX KOTELEVETS

Mr. Kotelevets received his Juris Doctor from New York Law School and his Bachelor of Arts from Stony Brook University. Mr. Kotelevets is a member of the New York, Florida and New Jersey Bars, and is admitted to practice before the United States District Courts for the Southern and Eastern Districts of New York.



#### MAURI LEVY

Ms. Levy received her Juris Doctor Degree from Villanova University School of Law and her Bachelor of General Arts and Sciences from Pennsylvania State University. Ms. Levy is a member of the Pennsylvania Bar and is admitted to practice before the United States District Court for the Eastern District of Pennsylvania.

#### LESLIE MARTEY

Ms. Martey received her Juris Doctor from Fordham University School of Law and her Bachelor of Arts from C.W. Post College. Ms. Martey is a member of the New York Bar.

#### ELISABETH PORTER

Ms. Porter received her Juris Doctor from University of Miami School of Law, her Master of Arts from Hunter College-CUNY, and her Bachelor of Arts from Columbia College. Ms. Porter is a member of the Florida Bar and is admitted to practice before the United States Supreme Court and the United States District Court for the Southern District of Florida.

### ZERIN TAHER

Ms. Taher received her Juris Doctor from Western Michigan University, and her Masters of Business Administration and Bachelor of Science from Nova Southeastern University. Ms. Taher is a member of the Florida Bar.

#### KAREN THOMPSON

Karen Thompson received her Juris Doctor from St. Thomas University School of Law and her Bachelor of Arts from the University of Bridgeport. Ms. Thompson is a member of the Florida Bar.

### **COURTNEY WEISHOLTZ**

Ms. Weisholtz received her Juris Doctor from Nova Southeastern University and her Bachelor of Arts from Northern Illinois University. She is a member of the Florida Bar, and is admitted to practice before the United States District Court for the Southern District of Florida.

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### **EXHIBIT 4**

Peace Officers' Annuity and Benefit Fund of Georgia, et al. v. DaVita Inc., et al., No. 1:17-cv-00304-WJM-NRN (D. Colo.)

### TASK BREAKDOWN

### **SHAREHOLDERS**

MAYA SAXENA (298.75 hours): Ms. Saxena, one of the Firm's founding shareholders, was actively involved in litigation strategy and participated in high-level decision making on case development, direction, and management of the Action since its inception. She was also one of the primary attorneys who communicated with Lead Plaintiffs, was intricately involved with client participation in the early stages of the litigation process and maintained client involvement during the later stages. Ms. Saxena supervised the development and drafting of the initial complaint, the amended complaint, the opposition to Defendants' motion to dismiss, and Plaintiffs' briefing on their motion for class certification, and reviewed subsequent briefings.

**JOSEPH E. WHITE, III** (497 hours): Mr. White, one of the Firm's founding shareholders, was actively involved in strategy and oversight of the litigation since its inception. Mr. White participated in case planning, tactical discussions, and complex decision making. He was also involved in case management and reviewing and editing important briefings and mediation submissions. Mr. White actively participated in each of the six mediation sessions in the Action and principally negotiated the terms of the settlement stipulation.

### **DIRECTORS**

STEVEN B. SINGER (599.25 hours): Mr. Singer, Director of Litigation at Saxena White, was one of the lead attorneys on the case from its inception. He helped direct the investigations for both the initial complaint and amended complaint and helped review, edit, and finalize each of those documents. Mr. Singer also was involved in litigation strategy and participated in decisions on case management. Mr. Singer was primarily responsible for supervising the prosecution of the Action, including by reviewing and editing Plaintiffs' briefing in opposition to Defendants' motion to dismiss, in support of their motion for class certification, and in opposition to Defendants' motion for partial reconsideration. He developed negotiation strategies in advance of each of the six mediation sessions in the Action, reviewed and edited Plaintiffs' mediation submissions, and actively participated in all mediation sessions.

**LESTER HOOKER** (1,356 hours): Mr. Hooker, a Director at Saxena White, was primarily responsible for actively managing and supervising the day-to-day litigation activities, as well as communicating regularly with Defendants and Lead Plaintiffs from the inception of the Action through its resolution. He was intricately involved in all aspects of case initiation, including financial analysis of the Company, research on client losses, development of legal theories and allegations, interviews with confidential witnesses, and personal involvement in the comprehensive investigation and drafting of Plaintiffs' amended complaint. Mr. Hooker had

primary responsibility for leading the team of attorneys actively litigating the Action, including by spearheading weekly team meetings, coordinating the research, drafting, and editing of the Lead Plaintiffs' motion practice, which included Plaintiffs' opposition to Defendants' motion to dismiss, their opposition to the motion for partial reconsideration, and their motion for class certification and all other documents that were filed with the Court. He also oversaw client communications in the Action, prepared each of the Lead Plaintiffs to sit for deposition in connection with class certification, and defended both of those depositions. Mr. Hooker was actively involved in reviewing key documents produced by Defendants and preparing all mediation submissions. He also attended and participated in all six mediation sessions, and helped to direct the negotiation process on behalf of Plaintiffs. Mr. Hooker also contributed to drafting the stipulation, plan of allocation, motion for preliminary approval of the settlement, motion for final approval of the settlement, and all other supporting documents. Mr. Hooker contributed to overseeing the notice and claims process, including by frequently communicating with potential settlement class members to assist in answering their questions.

**KYLA (STEWART) GRANT** (1,317.50 hours): Ms. Grant, a Director at Saxena White, played a significant role in formulating Plaintiffs' theories of the case, including by directing and overseeing Plaintiffs' investigation and drafting of the amended complaint. She also led the research and drafting of Plaintiffs' opposition to Defendants' motion to dismiss. Ms. Grant commenced and actively participated in the discovery process, including drafting and editing discovery requests, search proposals and subpoenas, participating in meet-and-confers, drafting correspondence, and analyzing key documents. She spearheaded discussions with Plaintiffs' tax expert. Ms. Grant also helped draft and review all of Plaintiffs' mediation submissions and attended and participated in mediation sessions.

### **ATTORNEYS**

**DIANNE (ANDERSON) PITRE** (1,420.50 hours): Ms. Pitre, a senior attorney at Saxena White, was significantly involved in all aspects of the litigation from its inception, including the research and drafting of Plaintiffs' motion for appointment as Lead Plaintiffs, the investigation and drafting of the amended complaint, and helped research and draft Plaintiffs' opposition to the motion to dismiss and motion for class certification. She also coordinated the consolidation of final edits and revisions on various correspondence and filings. Ms. Pitre conducted research and drafted memoranda on numerous legal issues that arose throughout the litigation, and was involved in discovery efforts, including reviewing and drafting Lead Plaintiffs' initial disclosures, discovery requests to Defendants and subpoenas to third parties. Ms. Pitre also assisted in drafting and editing the mediation statements and supplemental materials. In addition, she was instrumental in researching, drafting, and editing of all documentation relating to the Settlement, including the Stipulation, motion for preliminary approval, motion for final approval, the Plan of Allocation, and all other supporting documents. Ms. Pitre also assisted in overseeing the notice and claims process.

**SARA DILEO** (1,203 hours): Ms. DiLeo, a senior attorney at Saxena White, was actively involved in directing and overseeing the discovery process for the Action, including drafting and editing discovery requests, search proposals and subpoenas, participating in meet-and-confers, and drafting correspondence. Ms. DiLeo was primarily responsible for managing the document

review team and supervising the review and analysis of documents produced by Defendants and third parties, including by conducting weekly meetings with the team of staff attorneys to discuss the contents of relevant documents and to provide feedback necessary to better guide the quality of the document review. She also participated in weekly attorney team meetings concerning case management and litigation strategy and helped research and draft Plaintiffs' motion for class certification and their opposition to Defendants' motion for partial reconsideration. Ms. DiLeo spent a substantial amount of time working closely with all of Plaintiffs' experts in the Action, including spearheading the work with the healthcare consultants, preparing Plaintiffs' class certification expert for deposition and defending that deposition, and deposing Defendants' class certification rebuttal expert. Ms. DiLeo prepared Plaintiffs' deponent list, managed the document review team during the deposition preparation process, reviewed multiple deposition preparation memoranda and assisted in drafting and editing those memoranda. She also helped locate key documents and draft Plaintiffs' supplemental mediation submissions, and attended mediation sessions. Finally, Ms. DiLeo assisted in drafting Plaintiffs' briefing and supporting documents in support of final approval of the Settlement.

SCOTT GUARCELLO (598.50 hours): Mr. Guarcello, a senior attorney at Saxena White, oversaw the e-discovery process for the Action. He was primarily responsible throughout the case for administering the document housing and review database and related Technology Assisted Review ("TAR") applications and developed and coordinated all discovery management and document review practices. Mr. Guarcello also actively participated in Plaintiffs' discovery efforts, including drafting the ESI protocol, the protective order, client and third-party litigation holds, initial disclosures, discovery requests and responses, and assisted with drafting the document review protocol. Additionally, Mr. Guarcello was primarily responsible for managing the collection, review, and production of Plaintiffs' documents to Defendants, attending meet-and-confer meetings and drafting related correspondence with Defendants and third parties. He also assisted with preparing each Lead Plaintiff for deposition.

**DONALD F. GRUNEWALD** (502.50 hours): Mr. Grunewald performed legal and in-depth factual research and drafted memoranda on various issues and topics arising during the litigation. He assisted in managing staff attorney discovery efforts by conducting a second-level review, and assisted lead attorneys with preparation for depositions, including reviewing and editing deposition memoranda drafted by staff attorneys and preparing potential questions for use in upcoming depositions. Mr. Grunewald was instrumental in locating key documents for use in Plaintiffs' supplemental mediation submissions. Additionally, Mr. Grunewald contributed to the drafting and editing of all documentation relating to the Settlement, including the motion for final approval, the Plan of Allocation, and all other supporting documents.

**SCOTT KOREN** (972.75 hours): In addition to reviewing the Defendants' and third parties' productions for relevance, Mr. Koren assisted the lead attorneys in running weekly meetings with staff attorneys and attended meet-and-confers with third parties. He also assisted with mediation-related projects, including locating and gathering key documents in support of Plaintiffs' supplemental mediation Submissions. Mr. Koren also performed legal and factual research and drafted memoranda on various issues and topics arising during the litigation.

JILL (SCHORR) MILLER (879.25 hours): Ms. Miller managed and oversaw the document

review process and was primarily responsible throughout the case for managing the work of the staff attorneys in the Action, including by supervising the preparation of the document review protocol, formulating document review strategy and procedures, developing quality control processes, and coordinating all discovery-related tasks including deposition preparations. She also coordinated, supervised and reviewed all work product generated by the document review team before it was provided to the lead attorneys, including all deposition preparation memoranda. Ms. Miller was actively involved in discovery efforts, including working to prepare for weekly team meetings to discuss key documents and analyze key issues in the case and providing quality feedback to review team members to better guide the review. In addition, Ms. Miller performed legal research and drafted memoranda on various legal requirements in Colorado and the Tenth Circuit.

**MANUEL MIRANDA** (77 hours): Mr. Miranda was involved in helping to formulate and execute initial case strategies relating to lead plaintiff appointment and representation, including drafting the initial complaint.

## **STAFF ATTORNEYS**

CHRISTINE SCIARRINO (1,412.50 hours): In addition to reviewing the Defendants' and third parties' productions and participating in weekly team meetings, Ms. Sciarrino assisted in the preparation of mediation submissions by helping to locate key documents, performed legal research and investigated potential experts, and researched and drafted memoranda on various factual issues or topics arising during the litigation, including memoranda on industry guidance for charitable premium assistance and OIG advisory opinions. She also assisted in preparing Plaintiffs for their depositions and in drafting deposition preparation materials for important fact witnesses.

**DENISE BRYAN** (54.75 hours): In addition to reviewing the documents produced by Plaintiffs, Ms. Bryan assisted in drafting Plaintiffs' initial disclosures.

**REBECCA NILSEN** (669 hours): In addition to reviewing the Defendants' and third parties' productions and participating in weekly team meetings, Ms. Nilsen performed factual research for the amended complaint, monitored the status of related litigation concerning DaVita or the AKF, performed legal research and drafted memoranda on discovery issues arising during the litigation, assisted in the preparation of Plaintiffs' deposition preparation materials and facilitated the production of documents to Defendants.

**ANDREW GREENIDGE** (383 hours): In addition to reviewing the Defendants' and third parties' productions and participating in weekly team meetings, Mr. Greenidge performed research and drafted memoranda on various issues arising during the litigation, including research on potential custodians and the organizational structure of DaVita. He also assisted in the preparation of the document review protocol and contributed to drafting Plaintiffs' motion for class certification.

**ATHMA BIRJU** (369 hours): Mr. Birju reviewed the Defendants' and third parties' productions and participated in weekly team meetings.

**BILLIE TARNOVE** (431.25 hours): Ms. Tarnove reviewed the Defendants' and third parties' productions and participated in weekly team meetings.

**CHRISTIAN VAZQUEZ** (469.50 hours): In addition to reviewing the Defendants' and third parties' productions and participating in weekly team meetings, Mr. Vazquez was part of a team that prepared for the deposition certain witnesses.

**CHRISTOPHER DONNELLY** (384 hours): In addition to reviewing the Defendants' and third parties' productions and participating in weekly team meetings, Mr. Donnelly was part of a team that prepared for the depositions of certain witnesses.

**DAVID STAUBER** (978 hours): In addition to reviewing the Defendants' and third parties' productions and participating in weekly team meetings, Mr. Stauber performed legal research and drafted memoranda on various issues arising during the litigation, monitored the status of related litigation concerning DaVita or the AKF, and was part of a team that prepared for the depositions of certain Defendants and witnesses.

**ELISABETH PORTER** (406.75 hours): In addition to reviewing the Defendants' and third parties' productions and participating in weekly team meetings, Ms. Porter was part of a team that prepared for the deposition of certain witnesses.

**EMELY RAMIREZ** (368.75 hours): Ms. Ramirez reviewed the Defendants' and third parties' productions and participated in weekly team meetings.

**FOREST NEAL** (391.25 hours): Mr. Neal reviewed the Defendants' and third parties' productions and participated in weekly team meetings.

**HARRIET ATSEGBUA** (1,142.50 hours): In addition to reviewing the Defendants' and third parties' productions and participating in weekly team meetings, Ms. Atsegbua researched and drafted a case chronology, was part of the second-level review team and was part of a team that prepared for the depositions of certain Defendants and witnesses.

**ISHA KOCHHAR** (107 hours): Ms. Kochhar reviewed the Defendants' and third parties' productions and participated in weekly team meetings.

**KWABENA MENSAH** (1,393.75 hours): In addition to reviewing the Defendants' and third parties' productions and participating in weekly team meetings, Mr. Mensah researched and drafted a case chronology and was part of a team that prepared for the depositions of certain Defendants and witnesses.

**LESLIE MARTEY** (268.75 hours): Ms. Martey reviewed the Defendants' and third parties' productions and participated in weekly team meetings.

LORIANNE WILLIAMS (318.25 hours): In addition to reviewing the Defendants' and third parties' productions and participating in weekly team meetings, Ms. Williams performed legal

research and drafted a memorandum concerning DaVita's Medicaid Opportunity.

**MARIO CAMPOS** (179 hours): Mr. Vazquez reviewed the Defendants' and third parties' productions and participated in weekly team meetings.

**MARJORIE PERALTA** (487.25 hours): In addition to reviewing the Defendants' and third parties' productions and participating in weekly team meetings, Ms. Peralta reviewed the Defendants' privilege log for questionable assertions, was part of the second-level review team, and part of a team that prepared for the depositions of certain witnesses.

**MARLON ONIAS** (34.75): Mr. Onias reviewed the Defendants' and third parties' productions and participated in weekly team meetings.

**MATT ANDERSON** (263.25 hours): In addition to reviewing the Defendants' and third parties' productions and participating in weekly team meetings, Mr. Anderson was part of a team that prepared for the depositions of certain Defendants and witnesses.

**MAURI LYNN LEVY** (403.50 hours): In addition to reviewing the Defendants' and third parties' productions and participating in weekly team meetings, Ms. Levy was part of a team that prepared for the depositions of certain witnesses.

MICHELE FASSBERG (1,302.75 hours): In addition to reviewing the Defendants' and third parties' productions and participating in weekly team meetings, Ms. Fassberg prepared and maintained a spreadsheet of hot documents each week during the course of the litigation, prepared a spreadsheet of documents to be produced to Defendants, assisted in drafting Plaintiffs' deposition preparation materials, performed legal research and drafted memoranda on discovery issues arising during the litigation, was part of the second-level review team and prepared for the depositions of certain Defendants and witnesses.

**MYRNA ROURE** (222.50 hours): Ms. Roure reviewed the Defendants' and third parties' productions for relevance and participated in weekly team meetings.

**NICHOLAS ATKINSON** (38.25 hours): Mr. Atkinson was primarily involved in discovery, including reviewing the Defendants' and third parties' productions, participating in weekly team meetings, and conducting research on various litigation issues.

**PAUL BURNS** (414 hours): In addition to reviewing the Defendants' and third parties' productions and participating in weekly team meetings, Mr. Burns was part of a team that prepared for the depositions of certain Defendants and witnesses.

**RICHARD STEELE** (385.50 hours): In addition to reviewing the Defendants' and third parties' productions and participating in weekly team meetings, Mr. Steele was part of a team that prepared for the deposition of a certain witness.

**ROBYN MARCUS** (372 hours): In addition to reviewing the Defendants' and third parties' productions and participating in weekly team meetings, Ms. Marcus was part of a team that

prepared for the deposition of a certain witness.

**RYAN JOSEPH** (1,895.75 hours): In addition to reviewing the Defendants' and third parties' productions and participating in weekly team meetings, Mr. Joseph performed legal research and drafted memoranda on various issues arising during the litigation, was part of the second-level review team and prepared for the depositions of certain witnesses. He also contributed to the preparation of key employee biographies and key document spreadsheets.

**SARA WIGMORE** (362 hours): Ms. Wigmore reviewed the Defendants' and third parties' productions for relevance and participated in weekly team meetings.

**SHERNESE (SHERRY) WOODBINE** (1,078.50 hours): In addition to reviewing the Defendants' and third parties' productions and participating in weekly team meetings, Ms. Woodbine was part of the second-level review team and was part of a team that prepared for the depositions of certain witnesses.

TARA HEYDT (1,654.75 hours): In addition to reviewing the Defendants' and third parties' productions and participating in weekly team meetings, Ms. Heydt was an integral part of the document review process; contributed to the preparation of key employee biographies; prepared weekly hot document spreadsheets for lead attorneys; reviewed and prepared a memorandum on key documents produced by Defendants; compiled a list of documents to support factual contentions in Lead Plaintiffs' motion briefing; researched and created a spreadsheet tracking DaVita's donations to the AKF; reviewed and provided analysis regarding Defendants' privilege log; was part of the second-level review team; and served as deposition preparation team lead for the depositions of certain witnesses.

**TIMOTHY ODRONIEC** (354 hours): Mr. Odroniec reviewed the Defendants' and third parties' productions and participated in weekly team meetings.

**VALERIE KANNER BONK** (389.25 hours): Ms. Kanner Bonk reviewed the Defendants' and third parties' productions and participated in weekly team meetings.

**VICTORIA COOK** (413.75 hours): Ms. Cook reviewed the Defendants' and third parties' productions and participated in weekly team meetings.

**ZEETA NANAN** (390.50 hours): Ms. Nanan reviewed the Defendants' and third parties' productions and participated in weekly team meetings.

**ZERIN TAHER** (936.50 hours): In addition to reviewing the Defendants' and third parties' productions and participating in weekly team meetings, Ms. Taher was part of a team that prepared for the depositions of certain witnesses.

## **FINANCIAL ANALYST**

**MARC D. GROBLER** (78 hours): Mr. Grobler, the Manager of Case Development at Saxena White, assisted in developing the theories underlying Plaintiffs' initial complaint. He performed

in-depth investigations into and analysis of loss causation, the appropriate length of the class period, and damages and contributed to the analysis of key plaintiff-and-defense-side evidence concerning the same.

## **CLIENT SERVICES**

**STEFANIE LEVERETTE** (53 hours): Mrs. Leverette is Saxena White's Manager of Client Services. In this role, she corresponded extensively with Lead Plaintiffs regarding the initial and amended complaints, declarations, responses to interrogatories and related verifications, and coordinated discovery efforts regarding Lead Plaintiffs' production of documents in response to Defendants' document requests.

## **PARALEGALS**

**CHARLENE WALLACE** (46.25 hours): Ms. Wallace was a litigation paralegal at Saxena White. In that role, she performed work in the case, including monitoring the news and related case dockets to keep the team apprised of relevant developments and maintaining physical and electronic case materials (including discovery).

**BRANDON SMITH** (73.25 hours): Mr. Smith assisted the lead attorneys with many aspects of the case, including proof reading, cite checking and finalizing most of the documents filed with the Court. He prepared exhibits for mediation submissions, assisted with the preparation of third party subpoenas, addressed service of process issues, and researched local rules regarding permissible deposition objections and witness instructions.

Peace Officers' Annuity and Benefit Fund of Georgia, et al. v. DaVita Inc., et al, No. 1:17-cv-00304-WJM-NRN (D. Colo.)

## **TIMEKEEPER BIOGRAPHIES**

## **SHAREHOLDERS**

MAYA SAXENA, co-founder of Saxena White P.A., has been practicing exclusively in the securities litigation field for over 20 years, representing institutional investors in shareholder actions involving breaches of fiduciary duty and violations of the federal securities laws. Prior to forming Saxena White, Ms. Saxena served as the Managing Partner of the Florida office of one of the nation's largest securities litigation firms, successfully directing numerous high-profile securities cases. Ms. Saxena gained valuable trial experience before entering private practice while employed as an Assistant Attorney General in Ft. Lauderdale, Florida. During her time as an Assistant Attorney General, Ms. Saxena represented the State of Florida in civil cases at the appellate and trial level and prepared amicus curiae briefs in support of state policies at issue in state and federal courts. In addition, Ms. Saxena represented the Florida Highway Patrol and other law enforcement agencies in civil forfeiture trials.

Ms. Saxena has been instrumental in recovering nearly a billion dollars on behalf of investors. Recently, Ms. Saxena played a key role in obtaining a \$320 million settlement against Wells Fargo & Company. The settlement includes a \$240 million cash payment from Defendants' insurers-representing the largest insurance-funded monetary component of any shareholder derivative settlement by over \$100 million. Ms. Saxena also led the litigation team that settled against Wilmington Trust for \$210 million, one of the largest settlements in 2018. Other prominent settlements include: Rayonier, Inc. (\$73 million settlement), HD Supply Holdings Inc. (\$50 million recovery), SIRVA, Inc. (\$53.3 million settlement), Aracruz Celulose (\$37.5 million settlement), and Sunbeam (settled with Arthur Andersen LLP for \$110 million-one of the largest settlements ever with an accounting firm-and a \$15 million personal contribution from former CEO Al Dunlap).

Ms. Saxena is a frequent speaker at educational forums involving public pension funds and advises public and multi-employer pension funds on how to address fraud-related investment losses. She is an active member of the National Association of Public Pension Attorneys ("NAPPA") and co-chairs its Securities Litigation Committee. As part of her professional endeavors, Ms. Saxena writes numerous articles on protecting shareholder rights, and has worked closely with other NAPPA members to author, update, and publish a white paper on post-Morrison International Securities Litigation.

Ms. Saxena has been recognized in the South Florida Business Journal's "Best of the Bar" as one of the top lawyers in South Florida, and has been selected to the Florida Super Lawyers list for ten consecutive years in a row. Ms. Saxena was also selected by her peers for inclusion in The Best Lawyers in America® four years in a row, as well as one of Florida's "Legal Elite" by

Florida Trend magazine. Recently, Ms. Saxena was named a "500 Leading Plaintiff Financial Lawyer" by Lawdragon.

EDUCATION: Syracuse University, B.A., *summa cum laude*, 1993. Pepperdine University School of Law, J.D., 1996.

BAR ADMISSIONS: Florida; United States District Courts for the Southern and Middle Districts of Florida; Second, Fourth, Fifth, Ninth, and Eleventh Circuit Courts of Appeals; and United States Supreme Court.

**JOSEPH E. WHITE, III**, co-founder of Saxena White P.A., has represented shareholders as lead counsel in major securities fraud class actions and derivative actions for nearly 20 years. He has represented lead and representative plaintiffs in front-page cases, including actions against Bank of America, Lehman Brothers and Washington Mutual. He has successfully settled cases yielding over one billion dollars against numerous publicly traded companies, including cases against Rayonier, Inc. (\$73 million), SIRVA, Inc. (\$53.3 million), HD Supply Holdings Inc. (\$50 million recovery), and one of the largest settlements in 2018, Wilmington Trust (\$210 million). Mr. White has also developed an expertise in litigating precedent-setting cases against foreign publicly traded companies, and settled two cases involving Brazilian corporations: Sadia, Inc. (\$27 million) and Aracruz Celulose (\$37.5 million).

Mr. White has also helped achieve meaningful corporate governance and monetary recoveries for shareholders in merger related and derivative lawsuits. Recently, Mr. White played an instrumental role in obtaining a \$320 million settlement in *In re Wells Fargo & Company Shareholder Litigation*. The settlement includes a \$240 million cash payment from Defendants' insurers-representing the largest insurance-funded monetary component of any shareholder derivative settlement by over \$100 million. In *In re Clear Channel Outdoor Holdings Derivative Litigation*, Mr. White's efforts obtained repayment of a \$200 million loan from Outdoor's parent which was then paid as a special dividend to Outdoor shareholders. Mr. White regularly lectures on topics of interest to pension trustees, and advises municipal, state, and international institutional investors on instituting effective systems to monitor and prosecute securities and related litigation.

Mr. White has been recognized by Palm Beach Illustrated as a "Top Lawyer," and is a current Lawyers of Distinction Certified Member. He was also named a Florida's "Legal Elite" by Florida Trend magazine. Recently, Mr. White was named a "500 Leading Plaintiff Financial Lawyer" by Lawdragon.

EDUCATION: Tufts University, B.A., 1996. Suffolk University School of Law, J.D., 2000.

BAR ADMISSIONS: Massachusetts; Florida; New York; Pennsylvania; United States District Courts for the Southern, Middle, and Northern Districts of Florida; United States District Courts for the Southern District of New York and the Southern District of Massachusetts; United States Supreme Court; United States Circuit Courts of Appeal for the First, Second, and Eleventh Circuits.

## **DIRECTORS**

**STEVEN B. SINGER** is a Director at Saxena White P.A. and oversees the Firm's securities litigation practice. Prior to joining the Firm, Mr. Singer was employed for more than 20 years at Bernstein Litowitz Berger & Grossmann LLP, a well-known plaintiffs' firm, where he served as a senior partner and member of the firm's management committee.

During his career Mr. Singer has been the lead partner responsible for prosecuting many of the most significant and high-profile securities cases in the country, which collectively have recovered billions of dollars for investors. He led the litigation against Bank of America relating to its acquisition of Merrill Lynch, which resulted in a landmark settlement shortly before trial (\$2.43 billion), one of the largest recoveries in history. Mr. Singer's work on that case was the subject of extensive media coverage, including numerous articles published in *The New York Times*. He also has substantial trial experience and was one of the lead trial lawyers on the *WorldCom Securities Litigation* (\$6 billion settlement) after a four-week jury trial. Recently, Mr. Singer led the litigation team that successfully recovered \$320 million against Wells Fargo & Company. The settlement includes a \$240 million cash payment from Defendants' insurers-representing the largest insurance-funded monetary component of any shareholder derivative settlement by over \$100 million.

In addition, Mr. Singer has been lead counsel in numerous other actions that have resulted in substantial settlements, including cases involving Citigroup Inc. (\$730 million, representing the second largest recovery in a case brought on behalf of bond purchasers), Lucent Technologies (\$675 million), Mills Corp. (\$203 million), WellCare Health Plans (\$200 million), Satyam Computer Services (\$150 million), Biovail Corp. (\$138 million), Bank of New York Mellon (\$180 million), JP Morgan Chase (\$150 million), and one of the largest settlements in 2018, Wilmington Trust (\$210 million).

At Saxena White, Mr. Singer serves as lead counsel in many highly significant securities matters, including class actions involving The Chemours Company and Novo Nordisk.

Mr. Singer has been consistently recognized by industry observers for his legal excellence and achievements. He has been selected by *Lawdragon* magazine as one of the "500 Leading Lawyers in America," by *Benchmark Plaintiff* as a "Litigation Star," and by the *Legal 500 US Guide* as one of the "Leading Lawyers" in securities litigation — one of only seven plaintiffs' attorneys so recognized. Recently, Mr. Singer was named a "500 Leading Plaintiff Financial Lawyer" by *Lawdragon*.

EDUCATION: Duke University, B.A., *cum laude*, 1988; Northwestern University School of Law, J.D., 1991.

BAR ADMISSIONS: New York; U.S. District Court, Southern and Eastern Districts of New York; U.S. Court of Appeals, Second Circuit; U.S. District Court, District of Connecticut; U.S. District Court, District of Illinois.

**LESTER R. HOOKER**, Director, is involved in all of Saxena White's practice areas, including securities class action litigation and shareholder derivative actions. During his tenure at Saxena White, Mr. Hooker has obtained substantial monetary recoveries and secured valuable corporate governance reforms on behalf of investors nationwide.

Mr. Hooker played a leading role on the litigation teams that have successfully prosecuted securities fraud class and derivative actions, including *In re Wells Fargo & Company Shareholder Litigation* (\$320 million settlement, which includes a \$240 million cash payment from Defendants' insurers - representing the largest insurance - funded monetary component of any shareholder derivative settlement by over \$100 million), *In re HD Supply Holdings, Inc. Securities Litigation* (\$50 million settlement-one of the largest securities class action settlements ever achieved in the U.S. District Court for the Northern District of Georgia), *In re Rayonier Inc. Securities Litigation* (\$73 million settlement), *Westchester Putnam Counties Heavy and Highway Laborers Local 60 Benefit Funds v. Brixmor Property Group, Inc. et al.*, (\$28 million settlement), *Central Laborers' Pension Fund v. Sirva, Inc.*, (\$53.3 million settlement along with the adoption of important corporate governance reforms), *City Pension Fund for Firefighters and Police Officers in the City of Miami Beach v. Aracruz Celulose S.A., et al.*, (\$37.5 million settlement), *In re Sadia, Inc. Securities Litigation* (\$27 million settlement), and *In re Tower Group International, Ltd. Securities Litigation* (\$20.5 million settlement).

Mr. Hooker is currently part of the litigation teams prosecuting securities fraud class actions against companies such as The Chemours Company, Patterson Companies, Inc., Perrigo Company plc, and ProAssurance Corporation.

Mr. Hooker has recently been recognized as a *Super Lawyer* "Rising Star" for 2017 and 2018, a *South Florida Legal Guide*'s "Up and Comer" in 2017, and a *Palm Beach Illustrated* "Top Lawyer" in 2018. Recently, Mr. Hooker was named a "500 Leading Plaintiff Financial Lawyer" by *Lawdragon*. He is also fluent in Spanish.

EDUCATION: University of California at Berkeley, B.A., 1999. University of San Diego School of Law, J.D., 2005. Dean's Outstanding Scholar Scholarship; University of San Diego School of Business, M.B.A. in Business Administration with an emphasis in International Business, 2005. Ahlers Center International Graduate Studies Scholarship.

BAR ADMISSIONS: California; Florida; District of Columbia; United States District Courts for the Northern, Central, Southern, and Eastern Districts of California; United States District Courts for the Northern, Middle, and Southern Districts of Florida; United States District Court for the Western District of Michigan; United States Courts of Appeal for the Ninth and Eleventh Circuits.

**KYLA (STEWART) GRANT**, Director, is involved in all of Saxena White's practice areas, focusing on securities class action litigation. Ms. Grant has extensive experience in federal securities class action suits, securities enforcement, and complex commercial litigation in both federal and state courts. Before joining Saxena White, Ms. Grant practiced securities litigation at two top-ranked global law firms, Shearman & Sterling LLP and WilmerHale.

Ms. Grant has been a member of the litigation teams that have successfully recovered hundreds of millions of dollars on behalf of injured shareholders, including the recent \$320 million derivative settlement against Wells Fargo & Company. She was also a key member of the litigation teams that obtained a \$28 million recovery for shareholders of Brixmor Property Group, Inc., a \$28.25 million recovery for shareholders of TrueCar, Inc., a \$15.5 million recovery for shareholders of Credit Suisse Group AG, and a preliminarily approved \$25 million settlement for shareholders of GTT Communications, Inc.

Ms. Grant is currently part of the litigation teams prosecuting securities fraud class actions against companies such as The Chemours Company, Patterson Companies, Inc., and Perrigo Company plc.

EDUCATION: University of Hawai'i, B.A., with distinction, 2004. University of Virginia School of Law, J.D., 2008. Dean's Scholarship; Dillard Fellow; Articles Editor for the Virginia Journal of International Law.

BAR ADMISSIONS: New York; United States District Court for the Southern District of New York.

## **ATTORNEYS**

**DIANNE M. (ANDERSON) PITRE** prosecutes securities fraud, corporate governance and shareholder rights litigation on behalf of injured shareholders. Ms. Pitre has served on the litigation teams that successfully prosecuted securities fraud class actions such as *In re Wells Fargo & Company Shareholder Litigation* (\$320 million settlement), *In re Rayonier Inc. Securities Litigation* (\$73 million settlement), *Leon D. Milbeck v. TrueCar, Inc., et al.*, (28.25 million settlement), *Westchester Putnam Counties Heavy and Highway Laborers Local 60 Benefit Funds v. Brixmor Property Group, Inc. et al.* (\$28 million settlement), and *In re Tower Group International, Ltd. Securities Litigation*, (\$20.5 million settlement).

Ms. Pitre is currently a member of the litigation teams prosecuting significant securities fraud class actions against Patterson Companies, ProAssurance Corporation, and The Chemours Company. Ms. Pitre is also a member of the team prosecuting the derivative action on behalf of FirstEnergy Corp.

Before joining Saxena White, Ms. Pitre was a legal intern for Jack in the Box, Inc. and Alliant Insurance Services, Inc. She worked extensively with their in-house departments, assisting in a variety of corporate, employment, and government regulation matters. Ms. Pitre was an intern for Jewish Family Service of San Diego and Housing Opportunities Collaborative, two San Diego pro bono legal organizations. Additionally, she served as a Legal Intern for the San Diego City Attorney's Office with their Advisory Division, Public Works Section.

Ms. Pitre has recently been recognized as a Super Lawyer "Rising Star" for 2018, 2019 and 2020 and received Palm Beach Illustrated's Top Attorney award for 2020. She is also fluent in Spanish.

EDUCATION: University of California San Diego, B.A., 2008. University of San Diego School of Law, J.D., 2012. San Diego La Raza Lawyers Association Scholarship; Frank E. and Dimitra F. Rogozienski Scholarship; received two CALI Excellence for the Future Awards; *Phi Delta Phi*.

BAR ADMISSIONS: Florida; California; United States District Courts for the Northern and Southern Districts of Florida; United States District Courts for the Northern, Central, Southern, and Eastern Districts of California.

**SARA DILEO** has extensive experience in federal securities class action lawsuits, derivative litigation, and complex commercial litigation in both federal and state courts. Ms. DiLeo is currently part of the litigation teams prosecuting securities fraud class actions against companies such as ProAssurance Corporation and Evolent Health, Inc.

Recently, Ms. DiLeo was a member of the litigation team that successfully recovered a \$320 million derivative settlement for shareholders of Wells Fargo & Company. She was also part of the litigation teams that obtained a \$28.25 million settlement for shareholders of TrueCar, Inc., a \$50 million settlement for shareholders of HD Supply Holdings, Inc., one of the largest securities class action settlements ever achieved in the U.S. District Court for the Northern District of Georgia, and a preliminarily approved \$25 million settlement for shareholders of GTT Communications, Inc.

Before joining Saxena White, Ms. DiLeo practiced securities litigation for nine years at a topranked global law firm, Skadden, Arps, Slate, Meagher & Flom LLP.

EDUCATION: New York University's College of Arts & Sciences, B.A., 2003. Fordham University School of Law, J.D., 2008. Articles Editor for the Fordham Urban Law Journal; interned for the Hon. Barbara Jones in the United States District Court for the Southern District of New York.

BAR ADMISSIONS: New York.

**SCOTT GUARCELLO**'s practice focuses on the discovery stage of litigation. With over eleven years of significant complex e-discovery experience, he brings to Saxena White an expertise honed by the numerous e-discovery services and training programs that he created, led and supported while serving as a Senior Managing Attorney for a global e-discovery consulting and services provider. Combining both discovery and technical expertise, Mr. Guarcello advises on best practices concerning information governance principles, ESI protocols, protective orders, document production requests, collections, processing, large-scale document reviews, production management, and related infrastructure applications and security.

Recently, Mr. Guarcello was a member of the litigation team that successfully obtained a \$320 million derivative settlement against Wells Fargo & Company. He was also part of the litigation teams that recovered a \$28.25 million settlement against TrueCar, Inc., secured a \$50 million settlement against HD Supply Holdings, Inc.-one of the largest securities class action settlements ever achieved in the U.S. District Court for the Northern District of Georgia, and obtained

preliminary approval of a \$25 million settlement for shareholders of GTT Communications, Inc. He is currently a member of the litigation teams prosecuting securities class actions against Evolent Health, Inc., Perrigo Company plc, and Patterson Companies.

Mr. Guarcello has also received the Legal Elite Award for 2017 and 2018, Super Lawyers Rising Star award for 2020, and Palm Beach Illustrated's Top Attorney award for 2020 and holds extensive industry certifications that span review tools, feature-specific technical applications, project management and analytics. As an active member in the e-discovery community, Mr. Guarcello has been a guest speaker for both intimate and large audiences. Mr. Guarcello is a member of the Florida Bar.

EDUCATION: Stetson University, B.S., 1996. Florida International University, J.D., cum laude, 2007.

BAR ADMISSIONS: Florida.

**DONALD F. GRUNEWALD** focuses on performing research for securities and derivatives litigation. Before joining Saxena White, Mr. Grunewald taught Legal Research and other legal courses at a college in New York for six years. He has prepared economic and legal research for litigation, businesses, and academics. Mr. Grunewald has served on the litigation teams that successfully prosecuted securities fraud class actions such against TrueCar, Inc. (\$28.25 million recovery), HD Supply Holdings Inc. (\$50 million recovery), and GTT Communications, Inc. (\$25 million preliminarily approved settlement).

Mr. Grunewald is currently part of the litigation teams prosecuting securities fraud class actions against companies such as The Chemours Company, Evolent Health, Inc., and Perrigo Company plc. He is also a regular contributor to Saxena White's newsletter.

EDUCATION: Haverford College, B.A., *magna cum laude*, 2004. Oxford University, B.A. in Jurisprudence (equivalent to LLB). University of Pennsylvania, Master of Laws, 2007.

BAR ADMISSIONS: New York.

**SCOTT KOREN** is an attorney at Saxena White. Prior to joining Saxena White, Mr. Koren gained experience working as legal intern for the Westchester County Supreme Court – Commercial Division.

Currently, Mr. Koren is an integral member of Saxena White's Case Development Team, where he investigates potential claims on behalf of shareholders, and has been involved in the early prosecution of cases on derivative cases filed on behalf of FirstEnergy Corp. and Citigroup, Inc.

EDUCATION: University of Arizona, B.A., 2015. Pace University Law School, J.D., 2019.

BAR ADMISSIONS: New York.

JILL (SCHORR) MILLER focuses her practice on e-discovery, including project management

and litigation support services for class actions and other complex litigation. Ms. Miller was a member of the team that secured one of the largest settlements in 2018, *In re Wilmington Trust Corporation Securities Litigation* (\$210 million). She was also a member of the litigation teams that successfully obtained a \$320 million derivative settlement against Wells Fargo & Company, a \$28.25 million settlement against TrueCar, Inc., and a \$50 million settlement against HD Supply Holdings, Inc. She is currently a member of the litigation teams prosecuting securities class actions against Perrigo Company plc and Patterson Companies.

Prior to joining Saxena White, Ms. Miller served as team lead at various law firms for discovery in large, complex class actions and mass torts in the areas of securities fraud, software technology, pharmaceutical and patent infringement. Prior to her litigation experience, Ms. Miller was an associate at Ruden McClosky where she practiced real estate law. During her 11 years with the firm, she represented large developers of residential and commercial real estate throughout the South Florida area. Ms. Miller began her legal career as an associate in the real estate practice division of a major New Jersey law firm where she concentrated her practice on residential and commercial real estate transactions and development. She also dedicated a significant portion of her practice to casino licensing and compliance.

For the past several years, Ms. Miller has volunteered her time as a Guardian ad Litem, protecting the rights of abused and neglected children in Broward County, Florida.

EDUCATION: University of Maryland, B.A., with honors, 1983. Hofstra University, School of Law, J.D., 1986. Articles Editor of the *International Property Investment Journal;* interned at the United States Federal Court, Eastern District of New York.

BAR ADMISSIONS: Florida; United States District Court for the Southern District of Florida.

**MANUEL MIRANDA** is currently a Litigation Associate with Holland & Knight LLP in Miami, Florida. Before joining Holland & Knight, Mr. Miranda worked for Saxena White, where he litigated numerous complex, high-profile securities matters.

Prior to working at Saxena White, Mr. Miranda gained valuable experience working as a Law Clerk for the Honorable Daniel R. Dominguez, United States District Judge for the District of Puerto Rico, and as an intern for the U.S. Department of Justice Civil Division. During his time as a Law Clerk, he researched and drafted opinions and orders, and participated and advised in civil and criminal hearings and conferences. Mr. Miranda was a Super Lawyer Rising Star for 2018. He is also fluent in Spanish.

EDUCATION: Bentley University, B.S. in Finance, 2010. Dean's List; American University, Washington College of Law, J.D., 2013. Member of the Mock Trial Honor Society; highest GPA for Civil Trial Advocacy.

BAR ADMISSIONS: Florida; New York; United States District Court for the District of Puerto Rico.

## **STAFF ATTORNEYS**

CHRISTINE SCIARRINO has extensive experience in e-discovery as a project attorney for class action securities fraud litigation. Ms. Sciarrino is particularly skilled in legal research and writing and deposition preparation. Her legal practice has focused primarily on early resolution of matters with an objective toward achieving optimum results for litigating parties through superb pre-trial preparation and informed decision making. As an attorney with the Firm since 2014, Ms. Sciarrino worked on *In re Wilmington Trust Securities Litigation* and the derivative action on behalf of shareholders of Wells Fargo & Company, among other cases. She has practiced in many areas of complex civil litigation, including cases involving natural disasters caused by hurricanes, fires, floods, and structural roof collapse. As an experienced practitioner for plaintiffs who have been wronged by financial institutions and other entities, Ms. Sciarrino has most recently dedicated her expertise exclusively to this area.

EDUCATION: Florida Atlantic University, B.A., 1988, MFA, 2004. St. Thomas University School of Law, J.D., 1992.

BAR ADMISSIONS: Florida.

**DENISE BRYAN** has been working in the area of e-discovery since 2007. She supervised teams of attorneys conducting large scale document reviews at a consulting group specializing in providing litigation support services to national and international companies.

EDUCATION: Boston University, B.A., 1990; Elisabeth Haub School of Law at Pace University, J.D., 1993.

BAR ADMISSIONS: New York.

**REBECCA NILSEN** is experienced in e-discovery and litigation support services for class actions and other complex litigation. She has been a member of the team prosecuting *In re Wells Fargo & Company Shareholder Derivative Litigation*, *In re Rayonier Securities Litigation* and *In re Wilmington Trust Securities Litigation*. Ms. Nilsen has over fifteen years of litigation experience in matters related to the Federal Trade Commission, the U.S Securities and Exchange Commission, the Fair Debt Collection Practices Act, and the Consumer Financial Protection Bureau.

EDUCATION: Florida Atlantic University, B.A., *cum laude*, 1998. Nova Southeastern University, Shepard Broad College of Law, J.D., 2002.

BAR ADMISSIONS: Florida, United States District Court for the Northern and Southern Districts of Florida.

**ANDREW GREENIDGE**, prior to joining the Firm, was a Securities Litigation Attorney with Kaplan Zeena, LLP and Epperson & Greenidge, LLP. Prior to being a Securities Litigation Attorney, he was a Commercial Litigation Attorney with Bressler, Amery & Ross, P.C., where he focused on securities, commercial contracts, and trust law.

EDUCATION: Florida State University, B.S., 2001. Boston College Law School, J.D., 2005.

BAR ADMISSIONS: Florida, the United States District Court for the Southern District of Florida.

**ATHMA BIRJU**, prior to joining the Firm, worked as an e-discovery attorney on class actions and other complex litigation.

EDUCATION: Nova Southeastern University, B.S., 2007. Western Michigan University-Thomas M. Cooley School of Law, J.D., 2012.

BAR ADMISSIONS: Florida.

**BILLIE TARNOVE**, prior to joining the Firm, worked as an e-discovery attorney on class actions and other complex litigation.

EDUCATION: New College, Hofstra University, B.A., *magna cum laude*, 1976. Washington College of Law, American University, J.D., 1978.

BAR ADMISSIONS: Florida, United States District Courts for the Southern and Middle Districts of Florida.

**CHRISTIAN VAZQUEZ**, prior to joining the Firm, worked as an e-discovery attorney on class actions and other complex litigation.

EDUCATION: Tulane University, B.S., 2000. Catholic University, J.D., 2006. Washington University/Chulalongkorn University, L.L.M.

BAR ADMISSIONS: Florida.

**CHRISTOPHER DONNELLY**, prior to joining the Firm, worked as an e-discovery attorney on class actions and other complex litigation.

EDUCATION: Rutgers University, B.A., 1983. University of Pennsylvania, J.D., 1986. New York University, M.L.T., 1992.

BAR ADMISSIONS: California, Florida, New Jersey, New York.

**DAVID STAUBER**, prior to joining the Firm, worked as an attorney at Litchfield Cavo LLP and Robert Dixon, P.A.

EDUCATION: University of Florida, B.A., cum laude, 2005. Boston University, J.D., 2008.

BAR ADMISSIONS: Florida, United States District Court for the Southern District of Florida.

**ELISABETH PORTER**, prior to joining the Firm, worked on federal case matters under supervision of the litigation manager and partners at Popkin & Rosaler, P.A. Ms. Porter was also previously an attorney in the real estate litigation/foreclosure department at Ward Damon Posner Pheterson & Bleau.

EDUCATION: Columbia College. B.A., 1991. Hunter College-CUNY, M.A., 1997. University of Miami School of Law, J.D., 2002.

BAR ADMISSIONS: Florida, United States District Court for the Southern District of Florida.

**EMELY RAMIREZ**, prior to joining the Firm, worked as an e-discovery attorney on class actions and other complex litigation.

EDUCATION: Florida Atlantic University, B.B.A., 2009. New England Law, Boston, J.D., 2014.

BAR ADMISSIONS: Florida.

**FOREST NEAL**, prior to joining the Firm, worked as an e-discovery attorney on class actions and other complex litigation.

EDUCATION: Florida International University, B.A., *magna cum laude*, 2010. Florida International University College of Law, J.D., 2014.

BAR ADMISSIONS: Florida.

**HARRIET ATSEGBUA** has extensive experience in e-discovery as a project attorney for class action securities fraud litigation, providing all forms of litigation support. Her previous experience includes her time as an investment banker at UBS and an attorney at Epiq, Trustpoint One and Dylzar, Inc.

EDUCATION: Emory University, B.S., 2004. University of Denver, M.A., 2007. Southern Methodist University, Dedman School of Law, J.D., 2013. Saint Mary's University, Post Graduate Certificate in International Business, 2016.

BAR ADMISSIONS: New York.

**ISHA KOCHHAR**, prior to joining the Firm, worked as an e-discovery attorney on class actions and other complex litigation.

EDUCATION: University of Florida, B.A., 2008. Nova Southeastern University, Shepard Broad Law Center, J.D., 2013.

BAR ADMISSIONS: Florida.

KWABENA MENSAH has worked as an e-discovery attorney on numerous complex litigation

actions for various law firms, including Skaaden Arps, Akin Gump Strauss Hauer & Feld LLP, Wilmer Cutler Pickering Hale and Dorr LLP, Jones Day, Paul Weiss Rifkind Wharton & Garrison LLP, and Sidley Austin LLP.

EDUCATION: University of North Carolina, B.A. & B.S. *cum laude*, in 2002. University of North Carolina, M.S. in 2003. Case Western Reserve University School of Law, J.D. in 2008.

BAR ADMISSIONS: Connecticut.

**LESLIE MARTEY**, has worked as an e-discovery attorney on numerous class actions and other complex litigation for various law firms, including Robbins Geller Rudman & Dowd LLP, Labaton Sucharow, LLP, Simpson Thacher & Bartlett LLP, White & Case, and Wolf Haldenstein Adler Freeman & Herz LLP. She also has significant corporate and securities law experience, having worked for several major law firms.

EDUCATION: Long Island University, B.A., 1980. Fordham University School of Law, J.D., 1991.

BAR ADMISSIONS: New York.

**LORIANNE WILLIAMS**, prior to joining the Firm, worked as Vice President Assistant General Counsel at JP Morgan Chase and as an attorney with Berger Singerman and Kelley Drye & Warren LLP.

EDUCATION: University of Pennsylvania, B.A., 1998. New York University School of Law, J.D., 2001.

BAR ADMISSIONS: Florida.

**MARIO CAMPOS**, prior to joining the Firm, worked as an e-discovery attorney on class actions and other complex litigation.

EDUCATION: Fordham University, B.B.A., 1991. University of Miami Law School, J.D., 2003.

BAR ADMISSIONS: Florida, United States District Court for the Southern District of Florida.

**MARJORIE PERALTA**, prior to joining the Firm, worked as an e-discovery attorney on class actions and other complex litigation.

EDUCATION: American University, B.A., with honors, 1997. University of Miami School of Law, J.D., cum laude, 2001.

BAR ADMISSIONS: Florida.

MARLON ONIAS, prior to joining the firm, worked as an e-discovery attorney on class actions and other complex litigation for Morgan, Lewis & Brockius and Greenberg Traurig. He also

practiced foreclosure law with Albertelli Law and had his own law practice specializing in transactional and litigation defense. Prior to becoming an attorney, Mr. Onias was a police officer and detective with the Newport News Police Department in Newport News, Virginia.

EDUCATION: Saint Leo University, B.A., 2002; Florida A&M University College of Law, J.D., 2010.

BAR ADMISSIONS: Florida.

**MATT ANDERSON**, prior to joining the Firm, worked as an e-discovery attorney on class actions and other complex litigation.

EDUCATION: Wheaton College, B.A., 1999. University of St. Thomas School of Law (Minneapolis, Minnesota), J.D., 2007.

BAR ADMISSIONS: Minnesota.

MAURI LYNN LEVY, prior to joining the Firm, worked as an e-discovery attorney on class actions and other complex litigation.

EDUCATION: Pennsylvania State University, B.A., 1988. Villanova University School of Law, J.D., 1992.

BAR ADMISSIONS: Pennsylvania, United States District Court for the Eastern District of Pennsylvania.

**MICHELE FASSBERG** has extensive experience in e-discovery as a project attorney for class action securities fraud litigation, and is highly skilled in deposition preparation. While working as an attorney with the Firm, she has recently worked on *Leon D. Milbeck v. TrueCar, Inc., et. al.* and *In re HD Supply Holdings, Inc. Securities Litigation*.

Prior to joining the Firm, Ms. Fassberg served as Litigation Counsel for lenders and mortgage servicing agents at Shapiro & Fishman, LLC and Allied Home Mortgage Capital Corporation, and as a plaintiff's counsel specializing in personal injury, and workers' compensation claims at the Law office of Robert J. Fenstershieb, P.A.

EDUCATION: Florida International University, B.A., 1995; St. Thomas University School of Law, J.D., 1998.

BAR ADMISSIONS: Florida.

**MYRNA ROURE**, prior to joining the Firm, worked as an e-discovery attorney on class actions and other complex litigation.

EDUCATION: Bentley College, B.S. Boston University School of Law, J.D., cum laude, 1997.

BAR ADMISSIONS: Florida.

**NICHOLAS ATKINSON**, has worked for several years as an e-discovery attorney on numerous class actions and other complex litigation for various agencies. Prior to that, he served as a hearing officer for DUI cases for the State of Florida and served as Secretary and Treasurer for an internal civil engineering firm.

EDUCATION: University of London, King's College, LL.B & AKC, 1972.

BAR ADMISSIONS: New York.

**PAUL BURNS**, prior to joining the Firm, worked as an e-discovery attorney on class actions and other complex litigation.

EDUCATION: University of Central Florida, B.S., 2003. St. Thomas University School of Law, J.D., 2006.

BAR ADMISSIONS: Florida.

**RICHARD STEELE**, prior to joining the Firm, worked as an e-discovery attorney on class actions and other complex litigation.

EDUCATION: University of Florida, B.A., *cum laude*, 2009. Florida International University, J.D., 2014.

BAR ADMISSIONS: Florida.

**ROBYN MARCUS**, prior to joining the Firm, worked as an e-discovery attorney on class actions and other complex litigation.

EDUCATION: Florida Atlantic University, B.S., 2011. Florida State University College of Law, J.D., 2016.

BAR ADMISSIONS: Florida.

**RYAN JOSEPH** has extensive experience in e-discovery as a project attorney for class action securities fraud litigation. Mr. Joseph is particularly skilled in legal research and writing, managing teams of document reviewers and deposition preparation. As an attorney with the Firm since 2019, he worked on *Leon D. Milbeck v. TrueCar, Inc., et al.* and *In re HD Supply Holdings, Inc. Securities Litigation*. Prior to joining the Firm, Mr. Joseph worked at the Brown & Heller law firm and in the legal department for Collectors Coins & Jewelry.

EDUCATION: Boston University, B.S., magna cum laude, 2006. New York Law School, J.D., magna cum laude, 2009.

BAR ADMISSIONS: Florida.

**SARA WIGMORE**, prior to joining the Firm, worked as an e-discovery attorney on class actions and other complex litigation.

EDUCATION: Loyola University Chicago, B.A., 2002. Chicago-Kent College of Law, J.D., 2006.

BAR ADMISSIONS: New York, United States District Court for the Northern District of Illinois.

SHERNISE (SHERRY) WOODBINE, prior to joining the Firm, had many positions in the banking industry where she provided legal strategies for compliance issues, managed complex transactions, and provided litigation management. She was a Compliance Consultant with Chancellor Health Trust, a Vice President and Assistant General Counsel with JPMorgan Chase & Co., an attorney with Cenlar FSB, Tucker Law Group, and Buchanan Ingersoll & Rooney PC, and a Compliance Analyst with Bank of America.

EDUCATION: Alabama A&M University, B.S., *summa cum laude*, in 1999. University of Pennsylvania, J.D., 2003.

BAR ADMISSIONS: Florida.

**TARA HEYDT** has extensive experience in e-discovery as a project attorney for class action securities fraud litigation. Ms. Heydt is particularly skilled in legal research and writing, managing teams of document reviewers and deposition preparation. As an attorney with the Firm since 2018, Ms. Heydt has worked on *Leon D. Milbeck v. TrueCar, Inc., et al.*, and *In re HD Supply Holdings, Inc. Securities Litigation*.

Prior to joining the Firm, Ms. Heydt worked as an e-discovery attorney on class actions and other complex litigation for various firms including Robbins Geller Rudman & Dowd LLP and Wicker Smith O'Hara McCoy & Ford, P.A. Prior to that, Ms. Heydt was an Associate Attorney with Greenspoon Marder, P.A in the foreclosure division. Prior to that, Ms. Heydt was a Research Attorney with the Los Angeles County Superior Court for twelve years, where she provided judges with recommended rulings on civil law and motion matters, both pre-trial and post-trial.

EDUCATION: University of Pennsylvania, B.A., magna cum laude, 1992; UCLA School of Law, J.D., 1996.

BAR ADMISSIONS: California; Florida.

**TIMOTHY ODRONIEC**, prior to joining the Firm, worked as an e-discovery attorney on class actions and other complex litigation.

EDUCATION: University of Central Florida, B.A., 2008. Nova Southeastern University, Shepard Broad Law Center, J.D., 2015.

BAR ADMISSIONS: Florida.

VALERIE KANNER BONK, prior to joining the Firm, worked as an e-discovery attorney on class actions and other complex litigation.

EDUCATION: University of Maryland, College Park, B.A., 2006. Catholic University of America, Columbus School of Law, J.D., 2009.

BAR ADMISSIONS: Maryland.

VICTORIA COOK, prior to joining the Firm, worked as an e-discovery attorney on class actions and other complex litigation.

EDUCATION: Arizona State University, B.A., *cum laude*, 1982. Nova Southeastern University, Shepard Broad Law Center, J.D., 1996.

BAR ADMISSIONS: Florida.

**ZEETA NANAN**, prior to joining the Firm, worked as an e-discovery attorney on class actions and other complex litigation.

EDUCATION: Florida International University, B.A., 2006. St. Thomas University School of Law, J.D., 2012.

BAR ADMISSIONS: Florida.

**ZERIN TAHER**, prior to joining the Firm, worked as an e-discovery attorney at various firms including LawGC and Presser Law.

EDUCATION: Nova Southeastern University, B.A., 2008. Nova Southeastern University, MBA, 2010. Western Michigan University, Thomas M. Cooley Law School, J.D., 2016.

BAR ADMISSIONS: Florida.

## FINANCIAL ANALYST

MARC D. GROBLER is Saxena White's Manager of Case Development. Mr. Grobler plays a key role in new case development including performing in-depth investigations into potential securities fraud class actions, derivative, and other corporate governance related actions. By using an array of financial and legal industry research tools, Mr. Grobler analyzes information that helps support the theories behind our litigation efforts. He is also responsible for protecting the financial interests of our clients by managing the Firm's portfolio monitoring services and performing complex loss and damage calculations. Prior to joining the Firm, he served as the Senior Business Analyst in the New York office of a leading securities class action law firm and has worked within the securities litigation industry for over 15 years.

EDUCATION: Tulane University, A.B. Freeman School of Business, MBA with a concentration in Accounting, *cum laude*, 1997.

## **CLIENT SERVICES**

STEFANIE LEVERETTE is Saxena White's Manager of Client Services. In this role, she manages the Firm's client outreach and developmental programs and oversees the Firm's portfolio monitoring program. Since joining Saxena White in 2008, Ms. Leverette has coordinated the Firm's presence at industry conferences attended by representatives of various institutional clients throughout the United States. In addition, Ms. Leverette is responsible for the timely dissemination of all reports, notifications and all new cases and class action settlements that may have an impact to an investment portfolio. Ms. Leverette's main role is acting as the liaison between institutional clients and the Firm.

Ms. Leverette is a member of the Firm's Diversity and Social Responsibility Committee and a member of the Women's Initiative Subcommittee. She is also a member of the Firm's Case Starting Team, providing institutional clients with important information regarding potential litigation.

EDUCATION: University of Central Florida, B.A. 2008. Florida Atlantic University, MBA, 2011.

## **PARALEGALS**

CHARLENE WALLACE has more than two decades of experience as a litigation paralegal. Prior to joining the firm, she was a paralegal for John Delgado at Bluestein Nichols Thompson and Delgado.

EDUCATION: Drury University, B.S. in Criminal Justice and Sociology, 2002

**BRANDON SMITH** has over ten years of experience as a litigation paralegal. Prior to joining the firm, he was a litigation paralegal at Havkins Rosenfeld Ritzert & Varriale LLP, at Tenaglia & Hunt, P.A., and at Jaffe & Asher LLP.

EDUCATION: Mercy College, B.A., cum laude, 2009.

# EXHIBIT G

## IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

Civil Action No. 1:17-cv-00304-WJM-NRN

PEACE OFFICERS' ANNUITY AND BENEFIT FUND OF GEORGIA, Individually and on Behalf of All Others Similarly Situated, and JACKSONVILLE POLICE AND FIRE PENSION FUND, Individually and on Behalf of All Others Similarly Situated,

Plaintiffs,

v.

DAVITA INC., KENT J. THIRY, JAMES K. HILGER, and JAVIER J. RODRIGUEZ,

Defendants.

DECLARATION OF RUSTY E. GLENN IN SUPPORT OF LEAD PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES, FILED ON BEHALF OF SHUMAN, GLENN & STECKER

- I, Rusty E. Glenn, declare under penalty of perjury as follows:
- 1. I am a partner of the law firm Shuman, Glenn & Stecker ("SGS"), Court-appointed Liaison Counsel in the above-captioned securities class action (the "Action"). I submit this Declaration in support of Lead Plaintiffs' motion for an award of attorneys' fees in connection with services rendered in the Action, as well as for reimbursement of Litigation Expenses incurred by my firm in connection with the Action. I have knowledge of the matters set forth herein based

<sup>&</sup>lt;sup>1</sup> Unless otherwise defined in this Declaration, all capitalized terms have the same meanings ascribed to them in the Stipulation and Agreement of Settlement, dated September 18, 2020 (ECF No. 103-1). Shuman, Glenn & Stecker was formerly known as the Shuman Law Firm. *See* Notice of Change of Contact Information filed on January 17, 2020 (ECF No. 77).

on personal knowledge, my review of the firm's records, and consultation with other firm personnel.

2. My firm, as Liaison Counsel for Lead Plaintiffs Peace Officers' Annuity and Benefit Fund of Georgia and Jacksonville Police and Fire Pension Fund (collectively, "Lead Plaintiffs" or "Plaintiffs"), was involved in many aspects of the prosecution and resolution of the Action and served at the direction of Lead Plaintiffs' Counsel.

#### 3. Pursuant to D.C.COLO.LCivR 54.3:

- a) I, Rusty E. Glenn, was involved in many material aspects of the litigation, including but not limited to, reviewing and commenting on all pleadings, motions and other documents filed by Lead Plaintiffs prior to them be filed, ensuring that all documents filed were compliant with all local rule requirements, filing documents with the Court's ECF system, reviewing discovery materials, and consulting with Lead Plaintiffs' Counsel throughout the litigation on strategy and local practice;
- kip B. Shuman, Partner, was also involved in many material aspects of the litigation and worked extensively and at the direction of Lead Plaintiffs' Counsel. Mr. Shuman reviewed and commented on all major filings by Lead Plaintiffs, including all documents submitted in conjunction with mediation. Mr. Shuman was consulted with and advised Lead Plaintiffs' Counsel on issues throughout the litigation. Mr. Shuman was involved in case strategy and attended mediation;

- c) Brett Stecker, Partner, participated in document review and the preparation of fact deposition materials;
- d) Debbie Goodman, Of Counsel, participated in document review.
- 4. The information in this Declaration regarding my firm's time, including the schedule attached hereto as Exhibit 1, was prepared from daily time records regularly prepared and maintained by my firm in the ordinary course of business. I, along with my partner, Mr. Kip B. Shuman, oversaw my firm's activities in the Action. I, together with Kip B. Shuman, reviewed my firm's daily time records to confirm their accuracy.
- 5. This audit confirmed the accuracy of the time entries as well as the necessity for, and reasonableness of, the time committed to this Action. Only time that inured to the benefit of Lead Plaintiffs and the Class, and that advanced the claims resolved by the Settlement, is reflected in the firm's lodestar calculation. Accordingly, some reductions were made to time in the exercise of billing judgment. Time expended in preparing Lead Plaintiffs' Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses has not been included in this report.
- 6. I believe that the time reflected in the firm's lodestar calculation is reasonable in amount and was necessary for the effective and efficient prosecution and resolution of this four-year litigation. The total number of hours expended on this Action by my firm's attorneys and professional support staff employees from its inception through February 16, 2021 was 715.35. The total resulting lodestar for my firm is \$489,907.50. The schedule attached hereto as Exhibit 1 is a detailed summary reflecting the amount of time spent by each attorney and professional support staff employee of my firm who was involved in the Action, and the lodestar calculation is based on my firm's current hourly rates.

- 7. The hourly rates shown in Exhibit 1 are the current rates set by the firm for each individual. These hourly rates are the same as, or comparable to, the rates accepted by courts in other securities class action litigation or shareholder litigation, including courts in this District and Circuit. My firm's rates are set based on periodic analysis of rates charged by firms performing comparable work that have been approved by courts in other securities class actions and complex actions within this Circuit and nationwide. Different timekeepers within the same employment category (*i.e.*, partners) may have different rates based on a variety of factors, including years of practice, years at the firm, years in their current position (*i.e.* years as a partner), relevant experience, relative expertise, and the rates of similarly experienced peers at our firm or other firms.
- 8. My firm's lodestar figures do not include expense items. Expense items are recorded separately, and these amounts are not duplicated in my firm's hourly rates.
- 9. My firm has incurred a total of \$2,663.22 in unreimbursed Litigation Expenses in connection with the prosecution of this Action from its inception through February 16, 2021. Those Litigation Expenses are categorized in Exhibit 2 attached hereto.
- 10. The Litigation Expenses in this Action are reflected in the books and records of SGS which are regularly prepared and maintained in the ordinary course of business. These records are prepared from expense vouchers, check records and other source materials and are an accurate record of the monetary value of the expenses incurred.
- 11. With respect to the standing of my firm, attached hereto as Exhibit 3 is firm resume containing the biography of my firm.
- 12. Brief biographies for each timekeeper in the Action, including information about his or her position, education, and relevant experience is set forth in Exhibit 4 below.

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

Executed this 23<sup>rd</sup> day of February, 2021, at Denver, Colorado.

Ruty E. GL

Peace Officers' Annuity and Benefit Fund of Georgia, et al. v. DaVita Inc., et al, No. 1:17-cv-00304-WJM-NRN (D. Colo.)

## **SGS TIME REPORT**

## **Inception Through February 16, 2021**

NAME	HOURS	HOURLY RATE	LODESTAR
Partners			
Kip Shuman	136.50	\$825	\$112,670.00
Rusty Glenn	153.15	\$750	\$114,862.50
Brett Stecker	141.20	\$750	\$105,900.00
Of Counsel			
Debra Goodman	284.50	\$550	\$156,475.00
TOTALS	715.35		\$489,907.50

Peace Officers' Annuity and Benefit Fund of Georgia, et al. v. DaVita Inc., et al, No. 1:17-cv-00304-WJM-NRN (D. Colo.)

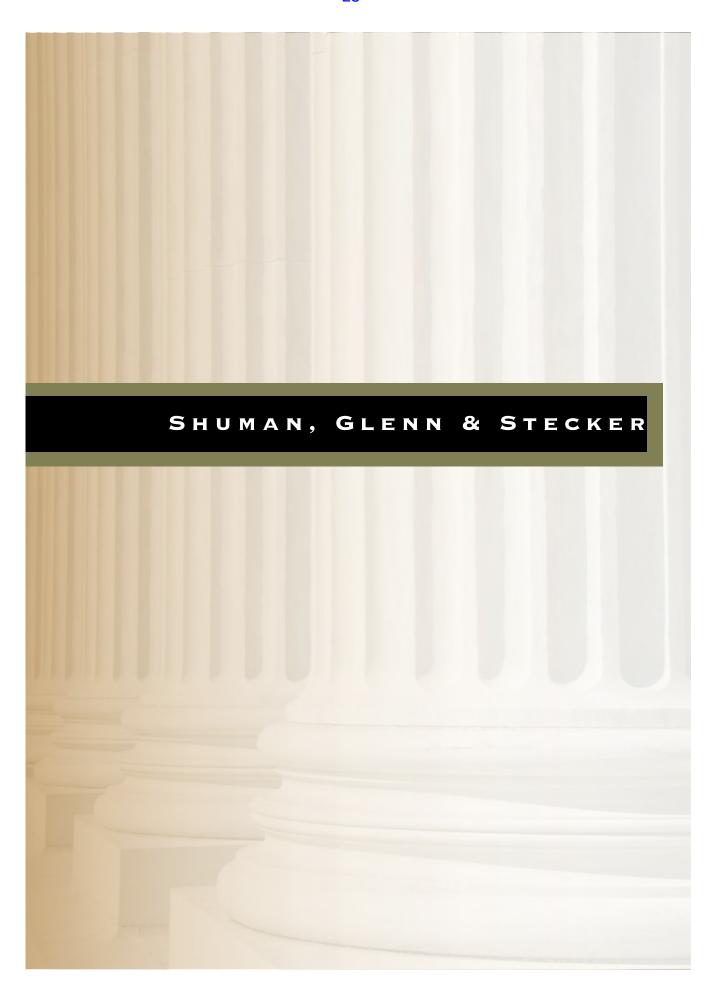
## **SGS EXPENSE REPORT**

## **Inception through February 16, 2021**

CATEGORY	AMOUNT
Filing and Service Fees	\$506.75
Out-of-Town Travel	\$2,156.47
TOTAL EXPENSES:	\$2,663.22

Peace Officers' Annuity and Benefit Fund of Georgia, et al. v. DaVita Inc., et al, No. 1:17-cv-00304-WJM-NRN (D. Colo.)

## **FIRM RESUME**



Shuman, Glenn & Stecker prides itself with its unwavering dedication to serving clients at the highest legal and ethical standards in the prosecution of corporate securities fraud throughout the United States. We are passionate about advancing the rights of defrauded shareholders and work steadfastly to redress

## MISSION STATEMENT

WE ARE PROUD TO ACKNOWLEDGE
THAT RISKMETRICS GROUP'S
SECURITIES CLASS ACTION
SERVICES DIVISION RECOGNIZED
THE SHUMAN LAW FIRM AS ONE
OF THE TOP 50 PLAINTIFFS' LAW
FIRMS IN THE UNITED STATES,
RANKED BY TOTAL DOLLAR AMOUNT
OF FINAL SECURITIES CLASS ACTION
SETTLEMENTS IN 2008 IN WHICH
THE LAW FIRM SERVED AS LEAD
OR CO-LEAD COUNSEL.

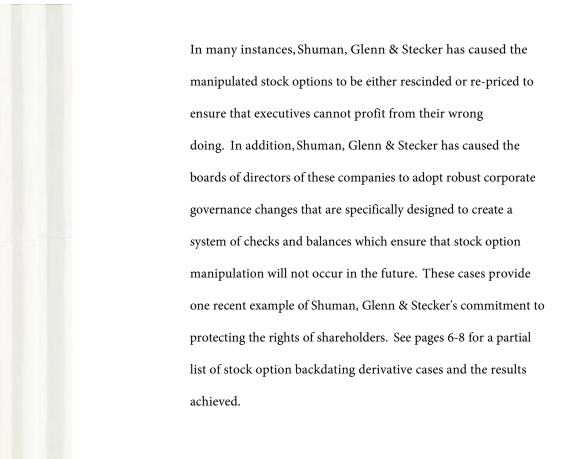
clients. We take great pleasure in our commitment to two fundamental principles - client communication and satisfaction. We view our size as an asset which facilitates communication and enables us to better serve our clients. We believe our success as a law firm cannot only be measured by the amount of money we recover, but also the trust we develop with our clients and their approval of our work done on their behalf.

Shuman, Glenn & Stecker is a nationally recognized law firm with offices in San Francisco, Denver and Philadelphia. We specialize in representing shareholders who have suffered financial losses from corporate securities fraud or other corporate malfeasance.

Since its inception in 1994, Kip B. Shuman, principal of Shuman, Glenn & Stecker has worked to recover hundreds of millions of dollars on behalf of defrauded investors. Shuman, Glenn & Stecker attorneys have acted as class counsel for institutional investors, including public pension funds, labor unions, as well as thousands of individual investors in securities class actions and derivative litigation.

## FIRM BACKGROUND

Shuman, Glenn & Stecker served as counsel in over forty derivative lawsuits emanating from the well-publicized stock option backdating scandal that came to light in 2006. In these cases, corporate executives of publicly-traded companies manipulated company stock options in a manner that allowed the executives to enrich themselves to the tune of hundreds of millions of dollars at the expense of the companies and shareholders. Shuman, Glenn & Stecker has played a central role in causing many corporate executives who received manipulated stock options to return their ill-gotten profits to the companies they served.



## ACCOLADES

In comparison with the thousand-plus attorney mega-firms commonly seen today, Shuman, Glenn & Stecker and its predecessor firms, has been frequently recognized by the courts for the high quality of its work and results achieved.

• At a hearing to appoint lead plaintiffs, lead counsel, and liaison counsel in In Re Rhythms Securities Litigation, United States

District Court Senior Judge John L. Kane complimented Mr.

Shuman on having done an "excellent job" in all of the class action securities matters held in his court to date.



- In *In re Qwest Communications International, Inc., Securities*Litigation, which is believed to be the largest securities fraud case in the history of the State of Colorado, the Court in granting approval of the final settlement of the action stated: "I have for my duration as the presiding judge in this case respected and admired your competent counsel, because as I have commented and as my lead law clerk have commented repeatedly, the quality of your brief-ing and your argument and authority was exemplary and something that I would hope would be emulated by other counsel in the same or similar circumstances."
- In *Queen Uno v. Coeur D'Alene Mines Corporation*, the Court recognized the "skill and experience, reputation and ability" of plaintiffs' counsel, stating that counsel are "well respected litigators in the securities field," "highly skilled in class action litiga-tion and federal securities law," and that "the substantial amount recovered is testament to their skill."
- Likewise, in approving the final settlement of another national securities fraud class action, *Schaffer v. Evolving Systems, Inc.*, the court recognized the effort and ability of plaintiffs' counsel, stating that "the \$10 million settlement ... is a good recovery, in fact, almost extraordinarily good. And I commend counsel for having achieved that result."



Shuman, Glenn & Stecker attorneys have exceptional success in prosecuting shareholder class actions and derivative actions. Below is a sample of their more notable cases.

- Rasner v. FirstWorld Communications Inc., Case No. 00-K-1376
   (D. Colo.) (co-lead counsel) (\$25.925 million recovered).
- In re Tele-Communications, Inc. Sec. Litig., Case No. 97CV421 (Colo.) (co-lead counsel) (\$26.5 million recovered).

#### NOTABLE CASES

- Muhr v. Transcrypt Int'l, Inc., Case No. CI98-333 (Neb.) (co-lead counsel) (approximately \$25 million recovered).
- In re Samsonite Corp. Sec. Litig., Case No. 98-K-1878 (D. Colo.) (co-lead counsel) (\$24 million recovered).
- Queen Uno Ltd. Partnership. v. Coeur D'Alene Mines Corp., Case
   No. 97-WY-1431 (D. Colo.) (co-lead counsel) (\$13 million recovered).
- In re Secure Computing Corp. Sec. Litig., Case No. C-99-1927
   (N.D. Cal.) (co-lead counsel) (\$10.1 million recovered).



- Angres v. Smallworldwide PLC, Case No. 99-K-1254 (D. Colo.) (co-lead counsel) (\$9.85 million recovered).
- In re Qwest Comms. Int'l Sec. Litig., Case No. 01-cv-1451 (D. Colo.) (liaison counsel) (\$450 million recovered).
- In re First American Corporation Shareholder Derivative

  Litigation, Case No. SACV-06-1230 (C.D. Cal.) (corporate

  reforms obtained included, separating roles of the Chairman of
  the Board and CEO, enhanced Chairman of the Board duties,
  the creation of lead independent director, and revised compensation guidelines).
- In re Quest Software, Inc. Derivative Litigation, Case No.

  SACV-06-751 (C.D. Cal.) (corporate reforms obtained included, separating roles for Chairman of Board and CEO, enhanced Chairman of the Board duties, amendments to stock option plans, revisions to compensation committee and audit committee charters, and revised compensation guidelines).
- In re NVIDIA Corp. Derivative Litigation, Case No. C-06-06110 (N.D. Cal.) (payments, re-pricing and other benefits to the company for mispriced stock options valued at over \$15 million; corporate reforms obtained included, enhanced board of director duties and independence requirements, creation of lead independent director with specified duties, and revised compensation and stock option policies).



- In re Newpark Resources, Inc. Derivative Litigation, Case No. 06-7340 (E.D. La.) (payment of \$8.3 million to the company for mispriced stock options; creation and implementation of code of ethics for senior officers and directors, creation and implementation of policy on reporting, cooperating with investigation and discipline in connection with policy violations, modifications to company policy regarding remediation actions related to material weaknesses in internal controls over financial reporting).
- In re Meade Instruments Corp. Derivative Litigation, Case No. 06CC00205 (Cal. Super. Ct., Orange County) (corporate reforms included, enhanced timing, disclosures, and doc-umentation of company equity compensation awards of awards, the creation of a compliance officer and enhanced duties for compensation and audit committees).
- In re Cheesecake Factory Incorporated Derivative Litigation, Case

  No. CV-06-6234 (C.D. Cal.) (repayment to the company by certain

  directors and officers for mispriced exercised stock options; corporate reforms included, the addition of an independent director,

  maintenance of a lead independent director with specified duties,

  enhanced board of director duties and independence requirements,

  and revised compensation and stock option policies).

#### KIP B. SHUMAN

kip@shumanlawfirm.com

Kip B. Shuman, founding member of the firm, has prosecuted class actions and derivative actions in Colorado and through-out the United States for more than twenty-five years. Mr. Shuman concentrates his practice on representing injured shareholders through securities class actions and derivative litigation.

Mr. Shuman graduated from U.C.L.A. in 1984 and the University of San Francisco School of Law in 1989.

#### OUR SECURITIES LITIGATION TEAM



Mr. Shuman has lectured in the area of class actions, teaching a continuing legal education course entitled, Litigating the Class Action Lawsuit in Colorado. He was also a panelist at the 35th Rocky Mountain Securities Conference and presented on the topic of Pleading Requirements in the Tenth Circuit after the Private Securities Litigation Reform Act of 1995.

Mr. Shuman is a member of both the Colorado and California
State Bars, and is admitted to practice before the U.S. District
Courts for the Northern and Central Districts of California, the
U.S. District Court for Colorado, and the United States Ninth and
Tenth Circuit Courts of Appeals.



#### **RUSTY E. GLENN**

rusty@shumanlawfirm.com

Rusty E. Glenn, a partner of the firm, concentrates his practice on representing injured shareholders through securities class actions and derivative litigation.

Mr. Glenn received his B.S., *summa cum laude*, from Baker
University in 2004, an M.A. in Economics from the University of
Kansas GraduateSchool of Economics in 2006 and his law degree
from the University of Kansas School of Law in 2007 where he was
awarded the Hinkle Elkouri Tax Procedure Award for his scholastic
achievement and community service in providing volunteer income
tax assistance to low-income individuals. He also studied at
Bahceshir University in Istanbul, Turkey under U.S. Supreme Court
Justice Antonin Scalia.

Mr. Glenn's professional experience includes two years as

Constituent Director for Kansas Senate Democratic Leader Anthony

Hensley. In addition, Mr. Glenn gained experience in the

investigation and prosecution of financial crimes and corporate fraud
while working for the Federal Bureau of Investigation in

Washington, D.C. and Kansas City, Missouri. Upon graduation from
law school, Mr. Glenn joined Shuman, Glenn & Stecker's predecessor
firm and has prosecuted numerous class actions and derivative
actions in the more than decade since.

Mr. Glenn is a member of the Colorado State Bar, and is admitted to practice before the United States District Court for the District of Colorado, and the United States Tenth Circuit Court of Appeals.



#### BRETT D. STECKER

brett@shumanlawfirm.com

Brett D. Stecker, a partner of the firm, has concentrated his practice on representing injured shareholders through securities class actions and derivative litigation since 2006. Mr. Stecker joined Shuman, Glenn & Stecker as a partner in 2019 and previously was a member of a well-known Pennsylvania shareholder rights law firm for over 13 years. Mr. Stecker has served as lead or co-lead counsel in scores of shareholder class and derivative actions in state and federal courts across the U.S.

Prior to specializing in shareholder rights, Mr. Stecker was associated with two prominent Philadelphia law firms, where he represented Fortune 500 companies as well as large regional financial institutions in various complex commercial litigation matters.

Mr. Stecker graduated from Franklin & Marshall College in 1997 with a B.A. in government, and received his Juris Doctor from the Villanova University School of Law in 2000. While at Villanova University School of Law, Mr. Stecker served as an Executive Member of the Moot Court Board and competed in moot court competitions held at law schools across the U.S.

Mr. Stecker has been a member of both the Pennsylvania and New Jersey state bars since 2000. He is admitted to practice before the Pennsylvania Supreme Court, the United States District Court for the Eastern District of Pennsylvania, and the U.S. Court of Appeals for the Second and Ninth Circuits.

## SHUMAN, GLENN & STECKER San Francisco **Contact Information** 100 Pine Street, Ste. 1250 Tele: (303) 861-3003 San Francisco, CA 94111 Fax: (303) 536-7849 Web: www.shumanlawfirm.com Denver 600 17th Street, Ste. 2800 South Denver, CO 80202

Philadelphia 326 W. Lancaster Avenue Ardmore, PA 19003

Peace Officers' Annuity and Benefit Fund of Georgia, et al. v. DaVita Inc., et al, No. 1:17-cv-00304-WJM-NRN (D. Colo.)

#### TIMEKEEPER BIOGRAPHIES

## Kip B. Shuman - Partner

Mr. Shuman graduated from U.C.L.A. in 1984 and the University of San Francisco School of Law in 1989. Since 1990, Mr. Shuman has concentrated his practice on representing injured shareholders through securities class actions and derivative litigation.

Mr. Shuman has materially participated in or has had primary responsibility for more than fifty class action lawsuits and more than one hundred shareholder derivative actions. He has lectured in the area of class actions, teaching a continuing legal education course entitled, Litigating the Class Action Lawsuit in Colorado. He was also a panelist at the 35th Rocky Mountain Securities Conference and presented on the topic of Pleading Requirements in the Tenth Circuit after the Private Securities Litigation Reform Act of 1995.

Mr. Shuman is a member of both the Colorado and California State Bars, and is admitted to practice before the United States District Courts for the Northern District and Central District of California, the United States District Court for Colorado, and the United States Ninth and Tenth Circuit Courts of Appeals.

## Rusty E. Glenn - Partner

Mr. Glenn has been associated with or a partner with Shuman, Glenn & Stecker (and its predecessor firms) since 2007. Since 2007, Mr. Glenn has concentrated his practice on representing injured shareholders through securities class actions and derivative litigation. Mr. Glenn has had primary responsibility and/or materially participated in more than seventy-five shareholder derivative actions and dozens of securities class actions.

Mr. Glenn received his B.S., summa cum laude, from Baker University, an M.A. in Economics from the University of Kansas and his law degree from the University of Kansas School of Law. He also studied at Bahceshir University in Istanbul, Turkey.

Mr. Glenn's professional experience includes two years as Constituent Director for Kansas Senate Democratic Leader Anthony Hensley. In addition, Mr. Glenn gained experience in the investigation of financial crimes, antitrust violations and corporate fraud while working for the Federal Bureau of Investigation in Washington, D.C. and Kansas City, Missouri.

Mr. Glenn is admitted to practice before the Colorado Supreme Court, the United States District Court for the District of Colorado and Tenth Circuit Court of Appeals.

## **Brett D. Stecker - Partner**

Mr. Stecker, has concentrated his practice on representing injured shareholders through securities class actions and derivative litigation since 2006. Mr. Stecker joined Shuman, Glenn & Stecker as a partner in 2019 and previously was a member of a well-known Pennsylvania shareholder rights law firm for over 13 years. Mr. Stecker has served as lead or co-lead counsel in more than a hundred shareholder class and derivative actions in state and federal courts across the U.S., and over the last several years has lectured institutional investors regarding securities litigation and corporate governance.

Prior to focusing on shareholder rights, Mr. Stecker was associated with two prominent Philadelphia law firms, where he represented Fortune 500 companies as well as large regional financial institutions in various complex commercial litigation matters.

Mr. Stecker graduated from Franklin & Marshall College in 1997 with a B.A. in government, and received his Juris Doctor from the Villanova University School of Law in 2000. While at Villanova University School of Law, Mr. Stecker served as an Executive Member of the Moot Court Board and competed in moot court competitions held at law schools across the U.S.

Mr. Stecker has been a member of both the Pennsylvania and New Jersey state bars since 2000. He is admitted to practice before the Pennsylvania Supreme Court, the United States District Court for the Eastern District of Pennsylvania, and the U.S. Court of Appeals for the Second and Ninth Circuits.

## **Debra S. Goodman – Of Counsel**

Ms. Goodman is a 1984 graduate of George Washington University where she received a B.A. in International Affairs. She received her J.D. in 1987 from the Benjamin N. Cardozo School of Law.

Since graduating in 1987, Ms. Goodman has litigated shareholder class actions, mergers and acquisitions related claims and shareholder derivative claims. She has practiced at several well-known firms in the Philadelphia area, including Margolis Edelstein and the Weiser Law Firm, P.C. Since 2010, Ms. Goodman has primarily served as an expert discovery consultant in complex shareholder matters.

Ms. Goodman is an accomplished civil litigator with diverse practice. In addition to her expertise in complex discovery, Ms. Goodman is experienced in motions practice, trials and settlement negotiations in a variety of complex and general casualty litigation matters.