

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, S.S.

SUPERIOR COURT

Civil No. 24-1734-BLS1

JOHN DWYER, & another¹
Plaintiffs

vs.

ALAN TREFLER, & others²
Defendants

CONSOLIDATED WITH
Civil No. 24-3076-BLS1

JAYNE BIRCH, & another³
Plaintiffs

vs.

ALAN TREFLER, & others⁴
Defendants

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION
FOR PRELIMINARY APPROVAL OF DERIVATIVE SETTLEMENT**

¹ Ray Gerber.

² Peter Gyenes (“Gyenes”), Richard Jones (“Jones”), Christopher Lafond (“Lafond”), Dianne Ledingham (“Ledingham”), Sharon Rowlands (“Rowlands”), Larry Weber (“Weber”), Leon Trefler (“L. Trefler”), Don Schuerman (“Schuerman”), Kerim Akgonul (“Akgonul”), and Benjamin Baril (“Baril”). Pegasystems Inc. (“Pegasystems”) is named as a nominal defendant.

³ Robert Garfield.

⁴ Gyenes, Jones, Lafond, Ledingham, Rowlands, Weber, L. Trefler, Schuerman, Akgonul, Baril, and Stillwell. Pegasystems is named as a nominal defendant.

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Pursuant to Rule 23.1 of the Massachusetts Rules of Civil Procedure, Plaintiffs John Dwyer (“Dwyer”), Ray Gerber (“Gerber”), Jayne Birch (“Birch”), and Robert Garfield (“Garfield”),⁵ derivatively on behalf of nominal defendant Pegasystems Inc. (“Pegasystems” or the “Company”), respectfully submit this Memorandum of Law in Support of Plaintiffs’ Unopposed Motion for Preliminary Approval of Settlement.⁶

I. INTRODUCTION

Plaintiffs hereby present for preliminary approval this proposed shareholder derivative Settlement, which is the culmination of extensive, arm’s-length negotiations by experienced and well-informed counsel on both sides that will result in substantial benefits for Pegasystems and its stockholders. The Proposed Settlement will deliver \$7 million directly to Pegasystems stockholders—an exceptional result in shareholder derivative litigation, in which monetary recoveries are rare—and maintain critical corporate governance reforms adopted in response to Plaintiffs’ claims. As set forth in the Stipulation, the Settlement fully and finally resolves all claims asserted in the above-captioned consolidated derivative action (the “State Derivative Action”) as well as the related consolidated derivative action pending in federal court (the “Federal Derivative Action”), and a related outstanding litigation demand.⁷ The Federal Plaintiffs and Brenner support the Settlement.

Plaintiffs assert derivative claims for breach of fiduciary duty and related causes of action

⁵ “Plaintiffs” collectively refers to plaintiffs Dwyer, Gerber, Birch, and Garfield in the State Derivative Action (“State Plaintiffs”), plaintiffs Mary Larkin (“Larkin”) and Dag Sagfors (“Sagfors”) in the Federal Derivative Action (“Federal Plaintiffs”), and Pegasystems stockholder George Fielding Brenner (“Brenner”), who made a related litigation demand upon the Company. The State Derivative Action and Federal Derivative Action are collectively referred to herein as the “Actions.”

⁶ Unless otherwise noted, all capitalized terms herein have the same meaning as set forth in the Stipulation of Settlement, dated February 9, 2026 (“Stipulation” or “Stip.”), annexed as Exhibit 1 to the Declaration of Lauren Godles Milgroom (“Milgroom Decl.”) submitted herewith.

⁷ The Federal Derivative Action is entitled *Larkin et al. v. Trefler et al.*, No. 1:25-cv-10303-WGY (D. Mass.).

under Massachusetts law predicated on allegations that the Settling Defendants—certain current and former directors, officers, and employees of nominal defendant Pegasystems—took part or were complicit in alleged misconduct underlying a related Virginia litigation,⁸ which also gave rise to a securities class action⁹ described below.

Pursuant to the Settlement of those claims, Pegasystems’ Board of Directors (the “Board”) has declared a special cash dividend in the amount of \$7 million to be distributed directly to Pegasystems’ stockholders (the “Special Dividend”), excluding any Defendant who holds Pegasystems common stock, should all conditions of the settlement be met, including Court approval.¹⁰ The Special Dividend sets the Settlement apart from most derivative settlements, which typically secure only non-monetary benefits.¹¹ In addition, the Settlement provides that Pegasystems will maintain a series of meaningful corporate governance enhancements adopted after the Actions were filed that go to the heart of the alleged wrongdoing (the “Reforms”).¹²

After the Settling Parties agreed in principle to the Special Dividend and Reforms and all other material terms, they separately negotiated concerning the attorneys’ fees and expenses that

⁸ The Virginia Litigation is *Appian Corp. v. Pegasystems Inc., et al.*, Civ. No. 2020-07216 (Cir. Ct. Fairfax Cnty., Va.), and the appellate actions are *Pegasystems Inc. v. Appian Corp.*, No. 1399-22-4 (Va. Ct. App.) and *Appian Corporation v. Pegasystems Inc., et al.*, No. 240736 (Va.).

⁹ The “Class Action” is *In re Pegasystems Inc. Securities Litigation*, No. 1:22-cv-11220-WGY (D. Mass.).

¹⁰ The Stipulation defines the “Excluded Holders.”

¹¹ See Laarni T. Bulan and Matthew Davis, Cornerstone Research, *Parallel Derivative Action Settlement Outcomes* (Aug. 2022), at 2 (noting that “[m]onetary settlements in derivative suits are relatively uncommon”); *In re Johnson & Johnson Derivative Litig.* (“J&J”), 900 F. Supp. 2d 467, 480 (D.N.J. 2012) (explaining that an “empirical study of shareholder derivative actions concluded that the overwhelming majority of settlements result solely in corporate governance changes”).

¹² See Stip., ¶¶2.2-2.5. As detailed further below, the Reforms include the creation of a Risk Subcommittee of the Board’s Audit Committee and enhancements to the Management-Level Compliance and Risk Governing Committee. *Id.* Defendants also acknowledge Plaintiffs’ material causal role in the Board’s decision to take the extraordinary action of appointing a new independent director. *Id.*; see also DRC Report at 112-15.

would be payable to Plaintiffs' Counsel subject to Court approval (the "Fee and Expense Amount") in good faith and on an informed basis. Ultimately, the Settling Parties agreed that Plaintiffs' Counsel would seek and the Company would not oppose a fee-and-expense award not to exceed \$2.75 million.

At the preliminary approval stage, the Court need only conclude that a proposed derivative settlement is within the range of reasonableness that might ultimately be found to be fair, reasonable, and adequate such that Notice should be provided to current stockholders and schedule a final Settlement Hearing. The Settlement meets this standard. Thus, Plaintiffs respectfully request that the Court enter the Proposed Preliminary Approval Order attached to the Stipulation as Exhibit A, which preliminarily approves the Settlement, authorizes the form and manner of providing Settlement Notice to current stockholders, and sets a date for the Settlement Hearing (the "Preliminary Approval Order"). Defendants, the Company, and the Demand Review Committee (the "DRC," defined below) support entry of the Preliminary Approval Order.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Factual Background¹³

Pegasystems, a Massachusetts corporation headquartered in Waltham, Massachusetts, operates in the Business Process Management ("BPM") industry, providing customers a platform to build customized workflow-based applications. ¶1. Plaintiffs alleged that the Officer Defendants resorted to illegal and unethical means to compete with Appian Corporation ("Appian"), Pegasystems' primary competitor in the BPM industry, in breach of their fiduciary duties, which the Board failed to detect because it had abdicated its oversight obligations. *Id.*

Plaintiffs alleged that, beginning as early as 2012, the Officer Defendants directed Pegasystems to engage in a scheme to misappropriate and profit from Appian's trade secrets and

¹³ "¶" refers to paragraphs in Plaintiffs' Consolidated Complaint in the State Court Action ("Complaint"). Dkt. No. 37.

confidential information in violation of Virginia law (the “Scheme”). *Id.* at ¶2. Plaintiffs alleged that the Scheme involved Pega’s hiring a third-party to assist in the theft, who was paid for his services through a middleman company. *Id.* Plaintiffs alleged that, later and through 2021, Pegasystems employees used false identities to surreptitiously access Appian’s proprietary software to collect non-public information that Pegasystems used to compete against Appian. *Id.* Plaintiffs alleged that Defendants concealed the Scheme from stockholders for many years as well as the related Virginia Litigation that Appian filed against the Company in May 2020. *Id.* In that case, Appian alleged that Pegasystems had misappropriated its trade secrets, and, initially, obtained a judgment against Pegasystems for over \$2 billion. That judgment was reversed on appeal. *Id.* The case has since been remanded to the trial court.¹⁴

Plaintiffs alleged that the members of the Board—which included Defendant Alan Trefler—breached their fiduciary duties by failing to implement and monitor a system of corporate controls sufficient to oversee Pegasystems’ intellectual property compliance and competitive intelligence activities. ¶4. Plaintiffs alleged that the Director Defendants’ lack of oversight of Pegasystems’ competitive intelligence practices fostered a corporate culture that encouraged and protected illegal activity and unethical conduct in pursuit of profits. *Id.* Plaintiffs further alleged that the Director Defendants breached their fiduciary duties by failing to monitor and oversee the Company’s public disclosures and ensure that those statements were accurate with respect to Pega’s purported compliance with the law, its internal Code, and litigation risks. ¶5. Plaintiffs alleged that as a result of these breaches of fiduciary duty, Pegasystems investors sued the Company, Defendant Alan Trefler, and Defendant Kenneth Stillwell for violations of the federal securities laws in the Class Action, a case that settled last year. *Id.*

¹⁴ *Appian Corporation v. Pegasystems Inc., et al.*, No. 240736 (Va. Jan. 13, 2026) (Order).

B. Procedural Background

1. The Demands and Demand Review Committee

Beginning in March 2023, the Board received demand letters from Pegasystems stockholders pursuant to G.L. ch. 156D § 7.42. These letters demanded that the Board investigate (and potentially initiate litigation concerning) potential breaches of fiduciary duties, securities law violations, and/or other alleged wrongdoing related to purported misconduct by Pegasystems employees, officers, and directors in relation to the claims asserted in, and the events arising from, the Virginia Litigation (the “Demands”).

On April 12, 2023, the Board (excluding A. Trefler, who recused himself) formed a Demand Review Committee (the “DRC”) comprised of Defendants Lafond, Ledingham, and Rowlands to, *inter alia*, review, analyze, and investigate the matters raised in the Demands. The Board delegated its full and exclusive authority to the DRC to determine what, if any, actions were reasonably believed to be appropriate and in the Company’s best interests in response to the Demands. The DRC, aided by legal counsel, conducted an investigation of the allegations raised in the Demands. On October 7, 2024, the DRC issued a report (the “DRC Report”) explaining that it unanimously determined that it would not be in the Company’s best interests to pursue litigation concerning the matters raised in the Demands and that there were no valid claims against Defendants.

2. The Federal Derivative Action

On November 21, 2022, and April 28, 2023, respectively, Plaintiffs Larkin and Sagfors each filed separate, substantially similar shareholder derivative lawsuits in the U.S. District Court for the District of Massachusetts against Defendants Gyenes, Jones, Lafond, Ledingham, Rowlands, A. Trefler, Weber, and Stillwell, on behalf of nominal defendant Pegasystems, alleging breaches of fiduciary duty and other claims relating to the Virginia Litigation. Following consolidation of those actions, Plaintiffs Larkin and Sagfors negotiated for Defendants’ production of over 363,000 pages of discovery that included documents from the Class Action and internal Board-level books and

records. Following dismissal of their original action without prejudice, Plaintiffs Larkin and Sagfors jointly filed the currently pending Federal Derivative Action. The complaint in the Federal Derivative Action asserts claims for breach of fiduciary duty and unjust enrichment under Massachusetts law and for violations of Section 10(b) of the Exchange Act, relating to, *inter alia*, (i) the Virginia Litigation, (ii) the conduct alleged in the Virginia Litigation, and (iii) the Class Action.

The DRC, on behalf of the Company, and all defendants in the Federal Derivative Action moved to dismiss on April 28, 2025. On June 6, 2025, the State Plaintiffs moved to intervene and stay the Federal Derivative Action pending the resolution of State Derivative Action. The Federal Plaintiffs filed an opposition to the motions to dismiss on June 9, 2025, and opposed the intervention motion on June 20, 2025. On August 21, 2025, the Federal Plaintiffs filed a motion for limited additional discovery. Defendants filed an opposition to that motion on September 4, 2025. The court in the Federal Derivative Action has not ruled on the pending motions, and the Action remains pending, subject to approval of the Proposed Settlement, which would resolve both actions.

3. **The State Derivative Action**

By letter dated February 6, 2023, Plaintiff Birch sent an inspection demand to Pegasystems pursuant to G.L. ch. 156D § 16.02 (“Section 16.02”), demanding the right to inspect certain corporate books and records related to the facts underlying the Virginia Litigation. On April 18, 2023, Plaintiff Garfield sent a substantially similar demand. In response, and pursuant to confidentiality agreements, the Company produced non-public corporate records to Plaintiffs Birch and Garfield in May 2023.

On June 28, 2024, Plaintiffs Dwyer and Gerber filed a shareholder derivative lawsuit in this Court against Defendants Gyenes, Jones, Lafond, Ledingham, Rowlands, A. Trefler, Weber, and nominal defendant Pegasystems, captioned *Dwyer et al. v. Trefler et al.*, No. 2484CV01734-BLS-1 (Mass. Sup. Ct.) (the “Dwyer Action”). On November 22, 2024, Plaintiffs Birch and Garfield filed a substantially similar shareholder derivative lawsuit in this Court against Defendants, plus Douglas

Kim and John Petronio, under the caption *Birch et al v. Trefler et al.*, No. 2484CV03076-BLS-1 (Mass. Sup. Ct.) (the “*Birch* Action”). On February 12, 2025, the Court consolidated the *Dwyer* Action and the *Birch* Action. On March 18, 2025, the State Plaintiffs filed a consolidated amended complaint against Defendants in the State Derivative Action (the “Complaint”). The Complaint alleged that Defendants breached their fiduciary duties in connection with, *inter alia*, the (i) the Virginia Litigation, (ii) the conduct alleged in the Virginia Litigation, and (iii) the DRC’s investigation and issuance of the DRC report regarding the same.

The DRC, on behalf of the Company, and Defendants moved to dismiss the Complaint in the State Derivative Action, and, after briefing by the parties, Justice Christopher K. Barry-Smith held a hearing in connection with Defendants’ motions on September 4, 2025. On October 3, 2025, this Court granted Defendants’ motions to dismiss. The judgment in the State Derivative Action was entered on January 13, 2026. On January 23, 2026, the parties filed a joint motion in this Court to reopen the judgment under Rules 59 and 60 so the Court could retain jurisdiction to consider approval of the Proposed Settlement discussed herein. The Court took no action on the motion and set a 30-day deadline for the parties to seek preliminary approval of the Proposed Settlement.

4. The Parties’ Settlement Efforts

The Settling Parties engaged in months of extensive arm’s-length negotiations regarding a possible resolution of the Actions both before and after the Court granted Defendants’ motion to dismiss. Ultimately, the Settling Parties reached an agreement-in-principle to settle the Actions whereby the Company agreed to the Special Dividend and to maintain the Reforms set forth in the Stipulation, subject to Court approval. After agreeing on all the material terms of the Settlement, the Settling Parties negotiated Plaintiffs’ request for attorneys’ fees and expenses. The Settling Parties agreed Plaintiffs’ Counsel would seek and the Company would not oppose a fee and expense award of \$2,750,000.00 to be paid by the Company, subject to Court approval.

III. TERMS OF THE PROPOSED SETTLEMENT

The Proposed Settlement represents an excellent result, reached after extensive, arm's-length negotiations. If the Proposed Settlement is approved, and the other conditions of settlement are met, the Board will fund a special cash dividend in an amount of \$7 million to be distributed to the Company's shareholders other than the Excluded Holders. Stip., ¶2.2. Defendants agree that the pendency of the Actions and the Settlement were the cause of the Board's consideration and declaration of the Special Dividend. *Id.* The Proposed Settlement provides that within 60 days of the Funding Date, the Company shall distribute the Special Dividend to its shareholders other than the Excluded Holders in the same manner in which the Company normally pays dividends to its shareholders. *Id.* at ¶2.3. It further provides that the Company shall distribute the Special Dividend (i) to its shareholders who held one or more shares of common stock of the Company as of the date that is five business days prior to the Funding Date (the "Record Date") and (ii) *pro rata* based on shareholders' relative ownership of the Company's common stock on the Record Date vis-à-vis other shareholders. *Id.*¹⁵

Defendants and Pegasystems also acknowledge that the Actions and the Demands played a material causal role in the adoption of the Reforms by the Board and Pegasystems, including: (i) the decision to appoint a new independent director to the Board (who was appointed in January 2025); (ii) the creation of a Risk Sub-Committee of the Board's Audit Committee, as described on pages 112-13 of the DRC Report, which, pursuant to the Settlement, will be in place for at least five years from the date of its inception; and (iii) enhancements to the Management-Level Compliance and Risk Governing Committee, as described on page 113 of the DRC Report, which enhancements, pursuant to the Settlement, will be in place for at least five years from the date of adoption. Stip., ¶2.5.

¹⁵ The Excluded Holders shall not receive any portion of the Special Dividend, and the Excluded Holders' shares of the Company's common stock will be excluded in determining the *pro rata* distribution to the Company's shareholders.

The Reforms directly address the oversight deficiencies alleged in the Actions. The Risk Sub-Committee will serve as the primary vehicle for Board-level oversight of the Company's Enterprise Risk Management program. It will receive and review quarterly reports from the Chief Compliance Officer concerning the Company's risk management framework and policies, material compliance with applicable laws and regulations—including those concerning trade secrets and intellectual property—and any related recommendations. *See* DRC Report at 112-13. The Risk Sub-Committee will also report quarterly to the full Board, including its assessment of senior management's contribution to the Company's culture of ethics and compliance. *Id.* Additionally, the Management-Level Compliance and Risk Governing Committee will now provide written quarterly updates to both the Risk Sub-Committee and the full Board, covering the Company's material compliance with laws and regulations (including trade secret and intellectual property compliance), material changes to the Company's business strategy and compliance risk, risk-benefit assessments for any planned material changes, and the effect of any material changes to the Company's business and business strategy. *Id.* Collectively, these Reforms establish the Board-level controls and reporting mechanisms that Plaintiffs allege were absent during the period of alleged wrongdoing.

IV. THE PROPOSED SETTLEMENT WARRANTS PRELIMINARY APPROVAL

A. Applicable Legal Standards

Settlement of shareholder derivative claims requires Court approval.¹⁶ But “[n]o appellate court in Massachusetts appears to have established the standard for court approval under Rule 23.1.”¹⁷ *Id.* Accordingly, Plaintiffs rely, primarily, on federal law on derivative settlements, which requires that proponents of a settlement “establish that it is fair and reasonable and in the best interests

¹⁶ Mass. R. Civ. P. 23.1; *see Chin v. Chinese Merchants Ass'n of Mass.*, 1999 WL 1318958, at *2 (Mass. Super. Mar. 10, 1999) (“Under Mass. R. Civ. P. 23.1, court approval is a prerequisite to the dismissal or compromise of a derivative action.”).

¹⁷ *Id.*

of those whom it will affect.”¹⁸ The court must “exercise judgment sufficiently independent and objective to safeguard the interests of shareholders not directly involved in the action.”¹⁹

The two-step approval process in derivative cases is materially the same as that followed in the class action context.²⁰ “The standard for preliminary approval is less stringent than for final approval, because preliminary approval means simply that notice” will be issued and stockholders “will then be given a chance to be heard at the hearing regarding final approval.”²¹

At final approval, the court decides whether the settlement is ultimately “fair, reasonable, and adequate.”²² At the preliminary approval stage, the court merely determines whether the proposed settlement “appears to meet” the fair, reasonable, and adequate standard that will be used at final approval and, as a result, falls “within the range of possible approval.”²³ The court’s review at preliminary approval is “limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.”²⁴

As a public policy matter, courts have long found that the settlements of disputed claims, particularly in complex class actions and shareholder derivative litigation, are strongly favored and

¹⁸ See *id.* (citing *Greenspun v. Bogan*, 492 F.2d 375, 378 (1st Cir. 1974)); *Sniffin v. Prudential Ins. Co. of America*, 395 Mass. 415, 421 (1982).

¹⁹ *Bogan*, 492 F.2d at 378-79.

²⁰ See *Schlusselberg v. Colonial Mgmt. Assocs., Inc.*, 389 F. Supp. 733, 735 (D. Mass. 1974) (citing to class action approval decisions and applying the “fair, reasonable, and adequate” standard to the approval of a derivative settlement); 7 *Alba Conte & Herbert Newberg, Newberg on Class Actions* § 22.110, at 476 (4th ed. 2002) (“The role of the court and the criteria considered in evaluating the adequacy and fairness of a derivative settlement are substantially the same as in the class action.”).

²¹ *In re Massachusetts Smokeless Tobacco Litig.*, 2008 WL 1923063, at *3 (Mass. Super. Apr. 9, 2008) (Gants, J.).

²² *Manual for Complex Litigation* (Fourth) § 21.634.

²³ *Scott v. First Am. Title Ins. Co.*, 2008 WL 4820498, at *3 (D.N.H. Nov. 5, 2008); see also *In re Lupron Mktg. & Sales Pract. Litig.*, 345 F. Supp. 2d 135, 139 (D. Mass. 2004).

²⁴ *Officers for Just. v. Civ. Serv. Comm’n of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982).

not lightly rejected.²⁵ Thus, “[w]here the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to [plaintiff] and falls within the range of possible approval, preliminary approval should be granted.”²⁶

B. The Settlement Is Within the Range of Possible Final Approval

The Proposed Settlement easily warrants preliminary approval. The Settlement terms were negotiated in good faith and at arm’s-length over many months by sophisticated, experienced counsel. The \$7 million Special Dividend by itself is an excellent result for Pegasystems shareholders and sets the Settlement apart from most shareholder derivative settlements which secure only non-monetary benefits.²⁷ Coupled with the Reforms, which address Plaintiffs’ concerns regarding the alleged misconduct and are designed to prevent a recurrence of similar harm to the Company by similar means, the Settlement’s benefits easily warrant preliminary approval—particularly in view of the risks attendant to further litigation.

²⁵ *Hotel Holiday Inn de Isla Verde v. N.L.R.B.*, 723 F.2d 169, 173 n.1 (1st Cir. 1983) (“[settlements] will be upheld whenever possible because they are a means of amicably resolving doubts and preventing lawsuits”); *In re India Globalization Cap., Inc., Deriv. Litig.*, 2020 WL 2097641, at *4 (D. Md. May 1, 2020) (“Shareholder derivative litigation is notoriously difficult and unpredictable and therefore settlements are favored.”) (cleaned up); *In re Michael Milkin & Assocs. Sec. Litig.*, 150 F.R.D. 46, 53 (S.D.N.Y. 1993) (“[T]he law favors and encourages the settlement” of complex litigation); *Cohn v. Nelson*, 375 F. Supp. 2d 844, 852 (E.D. Mo. 2005) (“Settlements of shareholder derivative actions are particularly favored because such litigation ‘is notoriously difficult and unpredictable.’”).

²⁶ *In re Nasdaq Market-Makers Antitrust Litig.*, M.D.L. No. 1023, 1997 WL 805062, at *8 (S.D.N.Y. Dec. 31, 1997); *Compact Disc Minimum Advertised Price Antitrust Litig.*, 216 F.R.D. 197, 211 (D. Me. 2003) *judgment entered*, 2003 WL 21685581 (D. Me. July 9, 2003) (“As supervising judge, I am not to prejudge the merits of the case . . . and I am not to second-guess the settlement; I am only to determine if the parties’ conclusion is reasonable”).

²⁷ *Bulan & Davis, Settlement Outcomes* (“[m]onetary settlements in derivative suits are relatively uncommon.”); *J&J*, 900 F. Supp. 2d at 480 (an “empirical study of ... derivative actions concluded that the overwhelming majority of settlements result solely in corporate governance changes”).

Indeed, given the complexities and the uncertainties inherent in shareholder derivative litigation generally and these Actions in particular, the proposed Settlement eliminates the very real risk that the Company might not otherwise obtain any recovery at all. Settlement at this stage will also limit the expense of risky, unnecessary, and protracted litigation, which is in the best interests of the Company and all parties. Thus, the Settlement is procedurally and substantively fair and should be preliminarily approved.

1. The Settlement Fairly Balances the Substantial Benefits Secured for the Company and its Stockholders Against the Risks, Costs, and Delays of Continued Litigation

Plaintiffs submit that the Settlement is a very favorable outcome and easily meets the standards for preliminary and ultimately, final approval when assessed against the relevant factors. To evaluate the substantive fairness of proposed shareholder derivative settlements, many First Circuit courts apply the factors outlined by the Second Circuit in *Detroit v. Grinnell Corp.*²⁸ These factors include, *inter alia*, the following: (1) the reasonableness of the benefits achieved by the settlement in light of the potential recovery at trial; (2) the likelihood of success in light of the risks posed by continued litigation; and (3) the likely duration and cost of continued litigation.²⁹

a. The Settlement Confers Substantial Benefits

“The principal factor to be considered in determining the fairness of a settlement concluding a shareholders’ derivative action is the extent of the benefit to be derived from the proposed settlement by the corporation, the real party in interest.”³⁰ Here, the Settlement benefits Pegasystems shareholders in the form of a direct dividend payment of \$7 million.³¹ “From the investors’

²⁸ 495 F.2d 448, 463 (2d Cir. 1974); see *In re Biopure Corp. Derivative Litig.*, 2009 WL 10692661, at *1 (D. Mass. July 24, 2009), *report and recommendation adopted* (D. Mass Aug. 10, 2009); *In re Ranbaxy Generic Drug Application Antitrust Litig.*, 630 F. Supp. 3d 241, 244 (D. Mass. 2022) (applying *Grinnell* factors to class action settlement).

²⁹ *In re AOL Time Warner S’holder Deriv. Litig.*, 2006 WL 2572114, at *3 (S.D.N.Y. Sep. 6, 2006).

³⁰ *In re OSI Sys., Inc. Derivative Litig.*, 2017 WL 5642304, at *2 (C.D. Cal. May 2, 2017).

³¹ “Parties frequently deploy the transitive property to settle derivative actions using investor-level

standpoint, the prospect of an entity-level recovery leaves the foxes in charge of the henhouse, so having more chickens in the henhouse isn't nearly as attractive as receiving chickens directly."³²

Moreover, corporations and their stockholders receive a "substantial benefit" by adopting and maintaining corporate therapeutics.³³ Robust corporate governance policies make it "far less likely [that the corporation will] become subject to long and costly securities litigation [or to] . . . prosecution or investigation by regulators and prosecutors[,]” and lay the foundation necessary to regain credibility in the capital markets following high profile misconduct such as that alleged here.³⁴

Here, the Actions caused the Board to adopt and the Settlement commits the Board to maintain a package of corporate governance and oversight reforms Plaintiffs believe will help prevent the alleged oversight failures that Plaintiffs contend contributed to Pegasystems' alleged failure to oversee intellectual property compliance and competitive intelligence activities. Plaintiffs allege that ineffective Board oversight, lax internal reporting practices, and weak controls at the management level allowed Company executives to misstate and fail to accurately disclose, *inter alia*, the Company's legal compliance and litigation risks. The Reforms address this alleged breakdown in corporate governance by combining enhancements to the Board and its committees' oversight of

relief.” *Baker v. Sadiq*, 2016 WL 4375250, at *2 (Del. Ch. Aug. 16, 2016) (collecting cases); *see also Goldstein v. Denner*, 2022 WL 1797224, at *19 (Del. Ch. June 2, 2022) (collecting cases “demonstrat[ing] that the functional and equitable equivalent of an entity-level recovery can be an investor-level recovery...”).

³² *Sadiq*, 2016 WL 4375250, at *3.

³³ *See Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375, 395-96 (1970) (“[A] corporation may receive a ‘substantial benefit’ from a derivative suit . . . regardless of whether the benefit is pecuniary in nature.”); *Bell Atl. Corp. v. Bolger*, 2 F.3d 1304, 1311 (3d Cir. 1993) (citing Fourth, Fifth, and Sixth Circuit precedents); *In re FAB Universal Corp. S’holder Derivative Litig*, 148 F. Supp. 3d 277, 281 (S.D.N.Y. 2015) (recognizing corporate governance reforms as significant benefits in approving the settlement of a derivative action); *Maher v. Zapata Corp.*, 714 F.2d 436, 454 (5th Cir. 1983) (affirming settlement of derivative action where the lawsuit was a contributing factor in several beneficial changes to the company including the implementation of corporate governance policies); *Bell Atl.*, 2 F.3d at 1311 (“Despite the difficulties they pose to measurement, nonpecuniary benefits to the corporation may support a settlement”).

³⁴ *Id.*

critical initiatives, risks, and disclosures, with enhancements to monitoring and reporting by key management personnel to ensure oversight over these and other material Company issues is continuous, fully informed, and effective. Plaintiffs submit the Reforms will materially reduce the likelihood that similar missteps will be repeated.³⁵ Additionally, as part of the Reforms, Defendants have also acknowledged Plaintiffs' material causal role in the Board's decision to take the extraordinary action of appointing a new independent director to the Board, strengthening the Board's overall independence. Accordingly, this factor further supports preliminary approval.

b. The Settlement's Benefits Outweigh the Risks, Expense, Complexity, and Likely Duration of Continued Litigation

The Settlement appropriately balances the significant risks of continued litigation with the benefits conferred upon Pegasystems and its stockholders. Indeed, the likelihood of securing a net monetary recovery substantially greater than the value of the Special Dividend plus the probable economic value of the Reforms is remote. The breach of the duty of oversight claim at the heart of the Actions is widely recognized as "possibly the most difficult theory in corporation law upon which a plaintiff might hope to win a judgment."³⁶ The relief obtained for Pegasystems and its shareholders through the Settlement is significant and immediate, and continued litigation creates a substantial risk of no recovery at all.³⁷ Defendants have denied, and continue to deny, any liability or wrongdoing with respect to any and all claims and contentions alleged in the Actions. *Stip.*, §III.

The risks of continued litigation are not theoretical. On October 3, 2025, the Court granted Defendants' motions to dismiss the consolidated amended complaint in the State Derivative Action.

³⁵ See *In re Pfizer Inc. S'holder Derivative Litig.*, 780 F. Supp. 2d 336, 342 (S.D.N.Y. 2011) (approving derivative settlement predicated on "significantly improved institutional structure for detecting and rectifying the types of wrongdoing that have, in recent years, caused extensive harm to the company").

³⁶ *In re Caremark Int'l Inc. Deriv. Litig.*, 698 A.2d 959, 967 (Del. Ch. 1996).

³⁷ See *Cohn*, 375 F. Supp. 2d at 855.

Although Plaintiffs intended to appeal in the absence of the Proposed Settlement, this ruling underscores the substantial hurdles they would face in proceeding further. While Plaintiffs and their counsel believe the claims alleged in the Actions are meritorious, derivative cases are “notably difficult and unpredictable.”³⁸ From the outset, Plaintiffs faced risks that the Actions might not have withstood challenges at the pleading stage, especially given Rule 23.1’s heightened standards for pleading wrongful demand refusal.³⁹ Indeed, in dismissing the State Derivative Action, the Court held that the DRC members were independent and acted in good faith.

Even if Plaintiffs succeeded in appealing the pleading-stage dismissal, Defendants would have fiercely defended the Actions through motions for summary judgment and trial(s). Stip., §III. Plaintiffs would have faced the high costs associated with lengthy and complex litigation, including voluminous discovery and depositions. Massachusetts’ strong business judgment presumption would afford Defendants powerful defenses that would be very difficult to overcome.⁴⁰ For such reasons, “derivative lawsuits are rarely successful.”⁴¹ And even if liability were established, the amount of recoverable damages would still have posed significant issues and would have been subject to further litigation.⁴² Accordingly, there was great risk that Plaintiffs might not fully prevail.

³⁸ *In re Healthcare Servs. Grp., Inc. Deriv. Litig.*, 2022 WL 2985634, at *5 (E.D. Pa. July 27, 2022).

³⁹ *See Spiegel v. Buntrock*, 571 A.2d 767, 774 (Del. 1990) (directors presumed to have “acted on an informed basis, in good faith and in the honest belief that [refusal] was in the best interests of the company”); *Norfolk Cnty. Ret. Sys. v. Jos. A. Bank Clothiers, Inc.*, 2009 WL 353746, at *7 n.51 (Del. Ch. Feb. 12, 2009) (“Demonstrating wrongful refusal is more daunting than demonstrating demand futility.”), *aff’d*, 977 A.2d 899 (Del. 2009).

⁴⁰ *See, e.g.*, Mem. and Op. Granting Motions to Dismiss, Dkt. 49 at 10-11 (“When the court determines that the directors of a special litigation committee (or DRC) are independent ... the business judgment rule applies to the board’s decision to reject the plaintiffs’ demand and the burden falls to the plaintiff to prove that the directors did not make their determination in good faith after a reasonable inquiry”) (citing cases) (cleaned up).

⁴¹ *Principe v. Ukropina (In re Pac. Enters. Sec. Litig.)*, 47 F.3d 373, 378 (9th Cir. 1995).

⁴² *See Bussie v. Allmerica Fin. Corp.*, 50 F. Supp. 2d 59, 76 (D. Mass. May 19, 1999), *enforcement granted*, 2006 WL 8201933 (D. Mass. Sept. 19, 2006) (approving settlement where plaintiffs faced several significant, viable legal defenses, “any one of which, if successful, could result in entry of a judgment *with prejudice* against the Class”); *Duhaime v. John Hancock Mut. Life Ins. Co.*, 177 F.R.D.

The Proposed Settlement eliminates these and other risks, including the risk of no recovery after potentially years of litigation, while ensuring that stockholders obtain the immediate and substantial benefit of the Special Dividend and Pegasystems receives the immediate, long-lasting, and substantial benefits through the Reforms. Although the dismissal of the Action meant that Plaintiffs had been unable to obtain formal discovery, the Company produced substantial non-public documents to Plaintiffs, including the DRC Report; the Settling Parties exchanged additional information in connection with the settlement negotiations; and Plaintiffs undertook their own pre-suit factual investigations. As such, Plaintiffs and their counsel have a strong grasp of the underlying facts to support their opinion that the Proposed Settlement is fair, reasonable, and adequate.⁴³

Additionally, the Settlement frees up Company resources to strengthen internal controls and operations—resources that would otherwise be spent litigating.⁴⁴ Accordingly, resolution of Plaintiffs' claims is beneficial at this stage. Weighed against the risks and expense of further litigation, the benefits conferred upon the Company and its stockholders by the Settlement demonstrate that the recovery here is fair, reasonable, and adequate and merits preliminary approval.

2. The Settlement Merits a Presumption of Fairness Because It Is the Result of Non-Collusive, Arm's-Length Negotiations

“[A] strong initial presumption” of fairness attaches to a settlement where settlement

54, 68 (D. Mass. 1997) (“In evaluating the substantive fairness of a class action settlement, the court cannot, and should not, use as a benchmark the highest award that could be made to the plaintiff after full and successful litigation of the claim.”); *AOL*, 2006 WL 2572114, at *5 (difficulty of “proving highly contested damages” supports derivative settlement approval).

⁴³ *J&J*, 900 F. Supp. 2d at 482 (“Even settlements reached at a very early stage and prior to formal discovery are appropriate where there is no evidence of collusion and the settlement represents substantial concessions by both parties.”); *Plymouth Cnty. Contributory Ret. Sys. v. Hassan*, 2012 WL 664827, at *3 (D.N.J. Feb. 28, 2012) (courts consider “both formal and ‘informal’ discovery” in evaluating whether counsel had an adequate appreciation of the merits of the case before negotiating).

⁴⁴ *See AOL*, 2006 WL 2572114, at *5 (“Termination of the litigation at this stage of the proceedings obviates the expenditure of any future time and expense in connection with this action and will allow the Company to direct its full attention to its substantive business.”) (cleaned up).

negotiations were conducted at arm's-length over several months.⁴⁵ Moreover, “[s]ignificant weight should be attributed to the belief of experienced counsel that settlement is in the best interest of the class.”⁴⁶ Here, the Settlement was reached after extensive arm's-length negotiations between and among experienced and sophisticated counsel for Plaintiffs, Pegasystems, and the Settling Defendants, each of whom independently considered the Settlement and agreed that it is in the best interests of Pegasystems and its shareholders.⁴⁷

Plaintiffs' counsel is well-positioned to assess the merits of the Actions. Formal discovery is not required where, as here, counsel achieved the necessary quantum of information through informal discovery and investigation.⁴⁸ In the Federal Derivative Action, Defendants produced—and Plaintiffs' Counsel reviewed—363,000 pages of discovery, including materials from the Class Action and internal Board-level books and records. In the State Derivative Action, Plaintiffs inspected voluminous corporate books and records. ¶¶14, 211-14. State Plaintiffs also conducted their own independent witness interview of John Petronio, one of the two individuals the DRC Report blamed for the alleged misconduct but whom the DRC declined to interview. ¶¶14, 209, 211-14. Plaintiffs also reviewed the extensive trial record from the Virginia Litigation. Accordingly, this factor supports

⁴⁵ *Bussie*, 50 F. Supp. 2d at 77; *Rolland v. Cellucci*, 191 F.R.D. 3, 6 (D. Mass. Jan. 10, 2000) (“The proponents of a class settlement can obtain a strong initial presumption that the compromise is fair and reasonable by establishing that the settlement was reached after arms-length negotiations, that the proponents' attorneys have experience in similar cases, [and] that there has been sufficient discovery to enable counsel to act intelligently[.]”) (cleaned up).

⁴⁶ *Lake v. First Nationwide Bank*, 900 F. Supp. 726, 732 (E.D. Pa. 1995); *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980), *aff'd*, 661 F.2d 939 (9th Cir. 1981) (finding that “the fact that experienced counsel involved in the case approved the settlement after hard-fought negotiations is entitled to considerable weight”).

⁴⁷ See Milgroom Decl., Exs. 2-9, (Plaintiffs' Counsel Firm Resumes); see *In re Southern Co. S'holder Derivative Litig.*, 2022 WL 4545614, at *6 (N.D. Ga. June 9, 2022) (non-defendant directors' unanimous vote that a derivative settlement should be approved is an “exercise of business judgment” that “warrants substantial judicial deference”) (collecting cases).

⁴⁸ See *Cotton v. Hinton*, 559 F.2d 1326, 1332 (5th Cir. 1977) (explaining that plaintiffs “achieved the desired quantum of information necessary to achieve a settlement” through informal investigation).

preliminary approval of the Settlement.

In sum, the Proposed Settlement is presumptively fair because each element was extensively negotiated between sophisticated and informed counsel on both sides. Agreement on the Settlement's material terms came after months of hard-fought negotiations. Only after the Settling Parties agreed in principle to the material terms of the Proposed Settlement did they separately begin to negotiate, at arm's-length, the Fee and Expense Amount that would be payable to Plaintiffs' Counsel.⁴⁹ The Court should grant preliminarily approval.

3. The Fee and Expense Amount Is Fair and Reasonable

As will be fully explained in Plaintiff's motion in support of final approval of the Settlement following entry of the proposed Preliminary Approval Order, the negotiated and unopposed Fee and Expense Amount to be paid to Plaintiffs' Counsel subject to Court approval is reasonable in light of the relevant factors, including, in particular, the value of the benefits conferred by the Settlement. The Proposed Settlement does not hinge on the proposed Fee and Expense Amount. Stip, ¶5.6.⁵⁰

V. THE PROPOSED NOTICE IS APPROPRIATE UNDER RULE 23.1

Notice of a pending derivative settlement "shall be given to shareholders or members in such manner as the court directs."⁵¹ Such notice must fairly describe, accurately and neutrally, the claims, parties, and proposed settlement.⁵² The Court has substantial discretion in approving the notice's contents and the manner it will be provided.⁵³ The content of the settlement notice "need only be

⁴⁹ Stip., ¶5.1; see *In re EVCI Career Colls. Holding Corp. Sec. Litig.*, 2007 WL 2230177, at *4 (S.D.N.Y. July 27, 2007) ("Absent fraud or collusion, the court should be hesitant to substitute its judgment for that of the parties who negotiated the settlement.").

⁵⁰ Plaintiffs also expect to request modest service awards to be paid from any fee and expense award to counsel.

⁵¹ Mass. R. Civ. P. 23.1.

⁵² See *Bogan*, 492 F.2d at 382.

⁵³ *Arace v. Thompson*, 2011 WL 3627716, at *4 (S.D.N.Y. Aug. 17, 2011) ("In a derivative action, a court may determine that notice of a proposed settlement by publication is appropriate under the circumstances.").

reasonably calculated, under all of the circumstances, to apprise interested parties of the pendency of the settlement proposed and to afford them an opportunity to present their objections.”⁵⁴

Plaintiffs seek Court approval of the proposed form and manner of Notice of the Settlement. *See* Stip., Exs. B-C. The Settlement Notice contains all essential information about the Settlement. It describes in plain language (1) the Settlement terms and the background of the Actions; (2) the procedure and deadline for objecting to the Settlement; (3) the date, time, and place of the Settlement Hearing; and (4) Plaintiffs’ Counsel’s Fee and Expense Amount and service awards for the Plaintiffs. *Id.* The Summary Notice also includes a link to the Investor Relations page on the Company’s website where the Long Form Notice and Stipulation can be viewed.

Within ten (10) business days after entry of the Preliminary Approval Order, the Company will (1) post a copy of the Long Form Notice, substantially in the form of Exhibit C to the Stipulation, on its Investor Relations website page (<https://www.pega.com/about/investors>) and (2) publish the Summary Notice, substantially in the form of Exhibit B to the Stipulation, in the national edition of *The Wall Street Journal* and via the BusinessWire, both containing a link to the “Investor Relations” section of Pegasystems’ website. Stip. ¶3.1. Not later than fifteen business days after entry of the Preliminary Approval Order, the Company shall cause the Summary Notice to be published on one additional occasion in the national edition of *The Wall Street Journal*.

The proposed notice is reasonable, adequate, and constitutes the best notice practicable under the circumstances, thus satisfying the requirements of Rule 23.1. It is typical of settlement notice programs in derivative cases that are regularly approved,⁵⁵ and the Court should approve it here.

⁵⁴ *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 962 F. Supp. 450, 527-28 (D.N.J. 1997), *aff’d sub nom*, *Krell v. Prudential Ins. Co. of Am.*, 148 F.3d 283 (3d Cir. 1998).

⁵⁵ *See, e.g., Operative Plasterers’ & Cement Masons’ Local Union Officers’ & Emp’ees Pension Fund v. Hooley*, 12-cv-10767 (D. Mass.); *Cutler v. Burnes*, SUCV2017-2359-BLS1 (Mass. Super.).

VI. PROPOSED SCHEDULE OF EVENTS

In connection with preliminary approval of the Settlement, the Settling Parties request that the Court establish the following dates:

Event	Time
Short-Form Notice published in <i>The Wall Street Journal</i> and via Business Wire	Within 10 business days of Preliminary Approval Order
Long-Form Notice and the Stipulation published on Company website	Within 10 business days of Preliminary Approval Order
Short-Form Notice published in <i>The Wall Street Journal</i>	Within 15 business days of Preliminary Approval Order
Filing of Proof of Notice distribution by the Company	No later than 35 calendar days before the Settlement Hearing
Filing of papers in support of the Settlement, including the Fee and Expense Amount	No later than 35 calendar days before the Settlement Hearing
Deadline for filing objections to the Settlement	No later than 21 calendar days before the Settlement Hearing
Filing of papers in response to objections, if any	No later than 7 calendar days before the Settlement Hearing

VII. CONCLUSION

Plaintiffs respectfully request that the Court enter the accompanying proposed order (i) preliminarily approving the Settlement, (ii) approving the form and manner of Notice, and (iii) scheduling a Settlement Hearing to consider final approval of the Settlement, the requested Fee and Expense Amount, service awards for Plaintiffs, and any related matters.

Dated: February 9, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 9, 2026, I caused a true copy of the foregoing to be served by email to counsel of record as follows:

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