

**COMMONWEALTH OF MASSACHUSETTS**

**SUFFOLK, S.S.**

**SUPERIOR COURT**

**Civil No. 24-1734-BLS1**

**JOHN DWYER, & another<sup>1</sup>**  
**Plaintiffs**

**vs.**

**ALAN TREFLER, & others<sup>2</sup>**  
**Defendants**

**CONSOLIDATED WITH**  
**Civil No. 24-3076-BLS1**

**JAYNE BIRCH, & another<sup>3</sup>**  
**Plaintiffs**

**vs.**

**ALAN TREFLER, & others<sup>4</sup>**  
**Defendants**

**JOINT SUPPLEMENTAL MEMORANDUM OF LAW**  
**IN SUPPORT OF PRELIMINARY APPROVAL**

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<sup>1</sup> Ray Gerber.

<sup>2</sup> 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.

<sup>3</sup> Robert Garfield.

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

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## I. INTRODUCTION

The Proposed Settlement<sup>5</sup> provides long-term therapeutic benefits to Pegasystems and its shareholders and further provides immediate financial benefits to Pegasystems' shareholders. The Settlement secures three durable corporate governance reforms that address the specific deficiencies alleged in the derivative matters, each of which must remain in place for at least five years and which together support preliminary approval. In addition to these corporate therapeutics, Pegasystems will fund a special cash dividend of \$7 million to be distributed directly to the Company's eligible shareholders, excluding the Individual Defendants, their immediate family members, and affiliated entities except for charitable foundations and nonprofits. This combination of meaningful corporate governance reforms and certain, tangible financial relief is what sets this Settlement apart from the vast majority of derivative settlements.<sup>6</sup> The Board has already approved the Special Dividend as a contingent dividend and stands ready to formally declare the Special Dividend upon this Court's final approval of the Settlement. Pegasystems and its Board have also already implemented the governance reforms.

The \$7 million Special Dividend is a rare and significant result in shareholder derivative litigation. "Indeed, most shareholder derivative actions [*i.e.*, actions brought on behalf and for the benefit of the company] are settled solely on the basis of corporate governance reforms that the defendants agree to implement for a specific period, usually between two and five years."<sup>7</sup> The per-

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<sup>5</sup> Capitalized terms not otherwise defined here have the same meaning as in Plaintiffs' Memorandum of Law in Support of Preliminary Approval (the "Original Memo"), Dkt. 55.

<sup>6</sup> *See, e.g., In re Synchronoss Techs., Inc. S'holder Deriv. Demand Refused Litig.*, 2021 WL 5881638, at \*4 (D.N.J. Dec. 13, 2021) ("[The] overwhelming majority of [derivative] settlements result solely in corporate governance changes[.]"); *see also* Appendix A (selection of derivative settlements approved by Massachusetts state and federal courts 2005-present); Appendix B (selection of derivative settlements approved by the Delaware Court of Chancery 2020-present).

<sup>7</sup> *Dismissal or Compromise Requires Court Approval*, 2 McLaughlin on Class Actions § 9:21 (22d ed., Nov. 2025 update); *see also* Jack K. Levin, *Costs, Allowances, and Attorney's Fees in Derivative Action*, 15 *Cyclopedia of Federal Procedure* § 78:68 (3d ed., Feb. 2026 update) ("To be entitled to an

share distribution to shareholders eligible for the dividend is expected to be more than 2.5 times the Company's current dividend – a concrete and immediate financial benefit that shareholders will receive directly. Importantly, the monetary portion of the Settlement expressly excludes all Individual Defendants and certain of their affiliates<sup>8</sup> from receiving any portion of the dividend.

The three Reforms secured by the Settlement are equally significant.<sup>9</sup> First, Defendants have acknowledged Plaintiffs' material causal role in the Board's decision to appoint a new independent director—an action that meaningfully strengthens the Board's capacity for independent oversight. Second, the Settlement requires the Company to maintain a newly created Risk Subcommittee of the Board's Audit Committee for at least five years. Third, the Settlement requires enhancements to the Management-Level Compliance and Risk Governing Committee, also to be maintained for at least five years. These reforms directly address the alleged absence of structured reporting mechanisms between the Board and management with respect to trade secret protection and intellectual property compliance—the alleged deficiencies at the heart of Plaintiffs' claims.

These substantial monetary and non-monetary benefits were achieved for the Company and its shareholders notwithstanding formidable obstacles to the Plaintiffs. This Court allowed Defendants' motions to dismiss the consolidated derivative claims in October 2025, crediting the independence and good faith of the Demand Review Committee (“DRC”) and affording deference to the DRC's conclusions under the business judgment rule.<sup>10</sup> Prospects of overturning that decision

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award of attorney's fees and expenses in a shareholder derivative action, the plaintiffs' counsel need not confer a monetary benefit on the corporation; corporate governance reforms and other nonmonetary relief are sufficient.”).

<sup>8</sup> Defined as the “Excluded Holders.” Stip. ¶1.12.

<sup>9</sup> See Stip. ¶2.5.

<sup>10</sup> Dkt. 49; see Ex. 1 (Report of the Demand Review Committee of the Pegasystems Board of Directors) (the “DRC Report”).

on appeal were daunting, as Plaintiffs would have been required to demonstrate that the Court erred in crediting the DRC's independence and good faith—a heavy burden under Massachusetts law.

Moreover, the Virginia Supreme Court's decision affirming the Virginia Court of Appeals' vacatur of the \$2 billion Appian jury verdict introduced significant additional uncertainty as to the value of the derivative claims.<sup>11</sup> With the Appian judgment vacated and potentially years of retrials and further appeals ahead, the Defendants' exposure to damages attributable to the Individual Defendants' alleged misconduct had become highly speculative. It is against that backdrop—dismissed derivative claims, a vacated multibillion-dollar judgment, and years of uncertain litigation ahead—that the parties reached a resolution providing certain, immediate, and tangible benefits to the Company and its shareholders.

In response to the questions raised by the Court at the March 18, 2026 preliminary approval hearing, the parties respectfully submit this supplemental brief in further support of preliminary approval.

## **II. THE PROPOSED SETTLEMENT IS FAIR AND REASONABLE AND MEETS THE STANDARDS FOR PRELIMINARY APPROVAL**

### **A. Legal Standard for Preliminary Approval**

“This Court understands that the standard for preliminary approval is less stringent than for final approval, because preliminary approval means simply that notice of the proposed settlement will be sent to class members, who will then be given a chance to be heard at the hearing regarding final approval.”<sup>12</sup> At the preliminary approval stage, the Court merely determines whether the

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<sup>11</sup> See *Appian Corp. v. Pegasystems, Inc.*, 924 S.E.2d 621 (Va. 2026).

<sup>12</sup> *In re Mass. Smokeless Tobacco Litig.*, 2008 WL 1923063, at \*3 (Mass. Super. Apr. 9, 2008); Original Memo at 10.

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.”<sup>13</sup>

**B. Plaintiffs’ Allegations and Likelihood of Success on the Merits**

Pegasystems, incorporated in Massachusetts, operates in the intensely competitive business process management industry. This consolidated derivative action (and the related federal derivative action)<sup>14</sup> allege that Defendants engaged in anti-competitive activities to misappropriate trade secrets and confidential business information from Appian Corporation (“Appian”) in breach of their fiduciary duties, as alleged in the Virginia case brought by Appian against Pegasystems in which the verdict against Pegasystems has been vacated. Plaintiffs also allege that Pegasystems’ Board members failed to fulfill their fiduciary duties with regard to the alleged misappropriation.

The derivative actions further allege that as a result of the Individual Defendants’ alleged misconduct, the Company was allegedly exposed to damages by virtue of the litigation brought against it by Appian, as well as the securities class action brought against it by Pega investors.<sup>15</sup> Appian eventually obtained a jury verdict of over \$2 billion, but the verdict was later reversed and vacated by the Virginia Court of Appeals. The Virginia Supreme Court subsequently affirmed the appellate court ruling, finding that the trial court deprived Pegasystems of a fair trial by, among other things, wrongly excluding evidence that the information at issue did not constitute trade secrets and was not used to improve Pegasystems’s product, improperly barring key evidence to disprove

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<sup>13</sup> *Scott v. First Am. Title Ins. Co.*, 2008 WL 4820498, at \*3 (D.N.H. Nov. 5, 2008); Original Memo at 10.

<sup>14</sup> This Settlement also resolves the parallel Federal Derivative Action entitled *Larkin et al. v. Trefler et al.*, No. 1:25-cv-10303-WGY (D. Mass.).

<sup>15</sup> The securities class action is entitled *In re Pegasystems Inc. Securities Litigation*, No. 1:22-cv-11220-WGY (D. Mass.) (the “Class Action”). The Class Action was settled for \$35 million.

damages, and impermissibly shifting the burden of proof regarding proximate cause from Appian to Pegasystems.<sup>16</sup>

Shortly after entry of the jury verdict, as required by Massachusetts law,<sup>17</sup> Plaintiffs in the derivative actions served demands on the Board to investigate their claims of alleged wrongdoing and to take appropriate action against certain of Pega's officers and directors. The Massachusetts Business Corporation Act and Massachusetts common law provide that derivative litigation claims (*i.e.*, claims brought on a corporation's behalf and for the corporation's benefit) are assets that belong to the corporation and are controlled by the corporation's board.<sup>18</sup> In other words, here, Plaintiffs' claims belong to the Company, and potential liability (if any) for the alleged breaches of fiduciary duty would fall on the Individual Defendants.<sup>19</sup>

In response to Plaintiffs' demands, the Board appointed three independent directors to the DRC and empowered the DRC to investigate the allegations in the demand letters. The DRC conducted an investigation with the assistance of independent counsel and concluded that it was not in the best interests of the Company to bring the claims demanded by Plaintiffs. Significantly, the DRC also concluded that notwithstanding the Appian jury verdict, Pegasystems's officers and directors had not breached their fiduciary duties. Defendants moved to dismiss the derivative claims under Massachusetts law, and on September 30, 2025, Justice Barry-Smith granted the motions in a 13-page written decision that is appended to this briefing (the "MTD Order").<sup>20</sup>

The parties to the derivative actions conducted settlement negotiations both before and after the Court issued its decision dismissing the derivative claims. Ultimately, the parties reached the

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<sup>16</sup> *Appian Corp.*, 924 S.E.2d at 631, 642-47.

<sup>17</sup> Massachusetts Business Corporations Act, G.L. Ch. 156D ("Ch. 156D").

<sup>18</sup> *See* Ch. 156D §§ 7.42, 7.44(a), 8.01(b); *Halebian v. Bery*, 457 Mass. 620, 625-26 (2010).

<sup>19</sup> *See* Decl. ¶¶ 8-9.

<sup>20</sup> Ex. 2.

Settlement only after the judgment in the Appian litigation was vacated and after this Court had dismissed the consolidated action with prejudice. Given the vacatur of the verdict, the DRC's findings, and the strong presumptions afforded to those findings under Massachusetts law, Plaintiffs concluded that the Company's exposure to threatened and actual damages based on the Individual Defendants' alleged misconduct was highly speculative. A new trial and subsequent appeals in the Appian litigation could take years, and any potential damages recovery for the Company was far from guaranteed. While the Appian litigation was certain to drag on, Plaintiffs here would be forced to appeal the motion to dismiss ruling immediately. Any appeal of the derivative claims, therefore, would likely conclude before the Appian litigation concluded, further reducing the chances that Justice Barry-Smith's decision would be reversed on appeal.

In addition, Plaintiffs would have faced serious obstacles on appeal given the MTD Order. In the MTD Order, Justice Barry-Smith gave great deference to the DRC and its process, holding that "where the DRC reasonably viewed the underlying facts about the competitive intelligence gathered **as not establishing misconduct or oversight failures**, particularly to the degree to establish bad faith, the DRC's demand refusals were reasonable and supported, and fell within the discretion afforded to it under the business judgment rule."<sup>21</sup>

Moreover, even in the unlikely event that Plaintiffs were successful on appeal and able to litigate the derivative claims to trial, they would have to prove Defendants violated their *Caremark* duties, one of the most difficult claims to prove in corporate law.<sup>22</sup> Plaintiffs also considered that the alleged misconduct did not prompt any criminal or regulatory actions and that an inquiry commenced by the SEC in 2023 had been closed without any action brought against the Company or the

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<sup>21</sup> MTD Order at 12 (emphasis added).

<sup>22</sup> See *South v. Baker*, 62 A.3d 1, 25 (Del. Ch. 2012) ("*Caremark* claims are difficult to plead and harder to prove.").

Individual Defendants. Finally, the only insurance potentially available to cover a settlement in this Action was exhausted and/or is not available due to the indemnification of the directors and officers.<sup>23</sup>

Because most settlements of derivative cases do not include any financial relief, the achievement of a significant monetary recovery together with substantial corporate governance enhancements is a significant result under the circumstances. All of these factors were considered in reaching the decision to settle.

### **C. The Value Conferred by the Governance Reforms**

Courts have long recognized that “[c]orporate therapeutics . . . furnish a benefit to all shareholders.”<sup>24</sup> In particular, corporate governance reforms that serve to prevent and protect a company from the events which allegedly harmed the corporation confer a substantial benefit on the corporation and its shareholders and merit preliminary approval of settlement.<sup>25</sup> Here, the Settlement significantly benefits Pegasystems and its shareholders by solidifying concrete corporate governance reforms to be maintained by Pegasystems for a period of five years that have been adopted as a result of the DRC’s Report and Settlement. The corporate governance reforms are tailored to enhance the Board’s existing oversight of risk and thereby prevent future events of the sort alleged to be actionable in this case, which the Defendants continue to deny occurred.

#### *1. The Addition of an Independent Director Strengthens the Independence of the Board and Improves Oversight*

Following the addition of the new independent director, Rohit Ghai, Pegasystems’ Board consists of eight members, of whom seven are independent under applicable NASDAQ standards.<sup>26</sup> The eighth member of the Board is Defendant Trefler, who is the company’s founder and CEO.

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<sup>23</sup> Decl. ¶ 10.

<sup>24</sup> *Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375, 395-96 (1970).

<sup>25</sup> *See United Nat’l Ret. Fund v. Watts*, 2005 WL 2877899, at \*5 (D.N.J. Oct. 28, 2005).

<sup>26</sup> Pegasystems Inc., Definitive Proxy Statement (Schedule 14A), at 18 (Apr. 25, 2025).

As of Pegasystems' most recent definitive proxy statement, Defendant Trefler held approximately 46.8% of the Company's outstanding shares of common stock.<sup>27</sup> This ownership stake does not make Pegasystems a "controlled company" under NASDAQ Listing Rule 5615(c)(1), which requires beneficial ownership of more than 50% of the combined voting power.

Defendants acknowledge that Plaintiffs' Actions and related Demands played a material causal role in the Board's decision to appoint Mr. Ghai as an independent director in January 2025 following the Board's evaluation of the Demands and the issues raised therein.<sup>28</sup> Mr. Ghai is subject to the full scope of fiduciary duties owed to the Company and its shareholders under Massachusetts law, including the duties of care, loyalty, and good faith.<sup>29</sup> In Mr. Ghai, Pegasystems found a new director with more than two decades of leadership experience in the enterprise software industry with deep expertise in operational and digital transformation as well as cybersecurity best practices for enterprises, including SaaS, mergers and acquisitions, and go-to-market optimization.<sup>30</sup> He was named to the Audit Committee and to Chair the newly formed Risk Subcommittee of the Audit Committee, described further below.<sup>31</sup>

The addition of a seventh independent director ensures the Board's independence moving forward and solidifies the appropriate checks and balances with Company management, benefits that Delaware courts have previously held conferred a substantial benefit on the corporation.<sup>32</sup> And a new

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<sup>27</sup> Pegasystems Inc., Definitive Proxy Statement (Schedule 14A), at 12 (Apr. 25, 2025).

<sup>28</sup> Stip. ¶ 2.5; Original Memo at 14.

<sup>29</sup> Ch. 156D, §8.30.

<sup>30</sup> See Pegasystems Inc., Definitive Proxy Statement (Schedule 14A), at 14-16 (Apr. 25, 2025).

<sup>31</sup> See Pegasystems, *Audit Committee*, <https://www.pega.com/about/leadership/governance/audit-committee> (last accessed Apr. 10, 2026); Ex. 3 (Pegasystems Assistant Secretary's Certificate).

<sup>32</sup> See *In re Tile Shop Holdings, Inc. S'holder Derivative Litig.*, No. 10884-VCG, Tr. At 41:14-15 (Del. Ch. Aug. 23, 2018) ("getting an independent director is a substantial benefit to the corporation"). Cf. *City of Miami Gen. Emps.' & Sanitation Emps.' Ret. Tr. v. Foley*, No. 2020-0650-KSJM, Tr. at 45:11-15 (Del. Ch. June 21, 2022) ("it should be obvious to all that [this] is an excellent settlement for the company" in part because "independent directors ... improve the integrity of the

independent director who was not present at the time of the alleged misconduct brings fresh eyes to the Company's disclosures and oversight of the Company's intellectual property compliance and competitive intelligence activities, further benefitting the Company and its shareholders for years to come.

2. *The Additional Reforms Enhance The Assessment of Potential Risks Facing the Company, Including Those Related to Intellectual Property*

As detailed in the accompanying Declaration of Richard A. Speirs (the "Declaration"), the DRC recommended that the Board establish the Risk Subcommittee of the Audit Committee (the "Risk Subcommittee") upon recognizing that "even activity that participants genuinely understand to be lawful can yield unpredictable and potentially costly corporate liabilities."<sup>33</sup> The Risk Subcommittee, which the Settlement requires to remain in place for at least five years from the date of its inception,<sup>34</sup> was proposed by the DRC "in order to further mitigate this risk moving forward."<sup>35</sup>

The Risk Subcommittee, which is chaired by Rohit Ghai and includes Larry Weber and Christopher Lafond, carries meaningful responsibilities and real oversight authority directly related to the nature of the alleged misconduct, which Defendants continue to deny. It is responsible for: (a) reviewing the Company's risk management policies and procedures; (b) overseeing and monitoring the operation of the Company's risk management framework; and (c) identifying material risks relating to the Company's compliance with all applicable regulations, including those concerning trade secret protection and intellectual property compliance.<sup>36</sup> The Risk Subcommittee serves as the primary vehicle for Board- and Audit-Committee-level oversight of the Company's

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board process").

<sup>33</sup> Decl. ¶ 15.

<sup>34</sup> Stip. ¶ 2.5.

<sup>35</sup> Decl. ¶ 15; DRC Report at 112-13.

<sup>36</sup> *Id.*

Enterprise Risk Management program, and significantly enhances the Board's focus on compliance and risk by codifying and requiring oversight of the same issues that were the basis of the alleged misconduct.<sup>37</sup>

Specifically, it receives and reviews quarterly reports from the Chief Compliance Officer concerning: (a) the Company's risk management framework and policies; (b) the Company's material compliance with applicable laws and regulations, including those concerning trade secrets and intellectual property; and (c) any related recommendations.<sup>38</sup> The Risk Subcommittee also provides quarterly updates to the full Board, including its assessment of senior management's contribution to the Company's culture of ethics and compliance, and of senior management's effectiveness and dedication to ensuring the Company's material compliance with applicable laws, rules, and regulations.<sup>39</sup> The Risk Subcommittee has free access to all management and Company employees for the purpose of fulfilling its responsibilities.<sup>40</sup> To ensure that resource limitations or time-constraints do not hinder the Risk Subcommittee's ability to carry out these important functions, Pegasystems also has authorized the Risk Subcommittee to retain separate and independent advisors or counsel, at the Company's expense.<sup>41</sup>

As the Declaration further describes, the enhancements to the existing Management-Level Compliance and Risk Governing Committee (the "Compliance Committee") also reflect the DRC's determination—grounded in the same reasoning that prompted the creation of the Risk

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<sup>37</sup> Decl. ¶ 21; DRC Report at 112-13.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

Subcommittee—that strengthening compliance structures at the management level and avenues of communication would further benefit the Company.<sup>42</sup>

The Compliance Committee is composed of senior representatives from across the Company that report to and assist the Board in the oversight of regulatory, compliance, and governance matters as well as risk management.<sup>43</sup> Under the enhanced structure, the Compliance Committee must provide written quarterly updates to both the Risk Subcommittee and the full Board covering: (a) the Company’s material compliance with applicable laws and regulations, including those concerning trade secret protection and intellectual property compliance; (b) material changes to the Company’s business, strategy, and compliance risk; (c) the risks and benefits assessment for any planned material changes thereto; and (d) the effect of any material changes to the Company’s business and/or its business strategy.<sup>44</sup> These enhancements, like the Risk Subcommittee itself, must remain in place for at least five years from the date of adoption.<sup>45</sup> Similar to the benefits posed by the creation of the Risk Subcommittee, the enhancements to the Compliance Committee’s role overseeing compliance and risk management programs at Pegasystems further increase the Board’s attention to, and oversight of, risk, including risks related to intellectual property and trade secret protections which are at the heart of the allegations of misconduct in the derivative actions, which Defendants continue to deny.

The value of durable corporate governance reforms as settlement consideration in shareholder derivative actions is well established. Courts have long recognized that a corporation receives a “substantial benefit” from a derivative suit whose resolution results in the adoption and maintenance

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<sup>42</sup> *Id.*

<sup>43</sup> *See* Pegasystems Inc., Definitive Proxy Statement (Schedule 14A), at 17 (Apr. 25, 2025).

<sup>44</sup> Decl. ¶ 17.

<sup>45</sup> Stip. ¶ 2.5.

of meaningful governance improvements “regardless of whether the benefit is pecuniary in nature.”<sup>46</sup> Indeed, robust governance reforms “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.”<sup>47</sup> Empirical research confirms that corporate governance enhancements are by far the most common component of parallel derivative settlements: of 110 parallel derivative action settlements studied between 2019 and 2023, 92% called for some form of corporate therapeutics, while only 26% included a monetary component.<sup>48</sup> Unlike the vast majority of parallel derivative settlements, which provide therapeutics alone, the Settlement here delivers both—pairing the governance reforms with a direct \$7 million cash payment to Company shareholders, excluding the Defendants and certain affiliates. Moreover, the reforms directly address the specific oversight deficiencies that Plaintiffs alleged were absent—namely, the alleged absence of adequate Board-level structured reporting mechanisms between the Board and management with respect to trade secret protection and intellectual property compliance.<sup>49</sup>

#### **D. The Benefit Conferred By the Special Dividend**

Shareholders eligible to receive the special dividend are expected to receive \$0.077 per share from the Settlement, which is more than 2.5x the Company’s current dividend, which is paid quarterly.<sup>50</sup> The \$7 million amount of the special dividend was the result of extensive negotiations

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<sup>46</sup> *Mills*, 396 U.S. at 395-96; Original Memo at 13 (collecting cases).

<sup>47</sup> Original Memo at 13 (citing *Baker v. Sadiq*, 2016 WL 4375250, at \*2 (Del. Ch. Aug. 16, 2016)).

<sup>48</sup> Laarni T. Bulan & Matthew Davis, *Parallel Derivative Action Settlement Outcomes: 2023 Review and Analysis*, CORNERSTONE RESEARCH (2024) at 2 (finding that of 110 parallel derivative action settlements studied, 92% included therapeutic provisions while only 26% included a monetary component).

<sup>49</sup> Original Memo at 9; Decl. ¶¶ 15-16; Consolidated Am. Compl. ¶¶ 185-189 (alleging absence of Board-level controls and reporting mechanisms for competitive intelligence and trade secret compliance).

<sup>50</sup> The number of outstanding shares as of the Company’s latest Form 10-K as of January 30, 2026, was approximately 169,043,716. The number of shares to be excluded from the dividend on behalf

among the parties and is not directly tied to the litigation with Appian in Virginia. Rather, it reflects a compromise following lengthy negotiations between sophisticated, experienced counsel. Few derivative settlements include financial relief, but the size of financial benefit here is consistent with other settlements that have included a pecuniary component.<sup>51</sup> As reflected in the attached appendix summarizing recent derivative settlements approved by state and federal courts in Massachusetts, a \$7 million recovery is a significant result.<sup>52</sup> Moreover, in approving a class settlement, where the defendants agreed to have the corporation make a dividend-like “adjustment payment to a subset of stockholders,” the Court of Chancery observed that this type of approach is “beneficial to [the company]” and creates “benefits in terms of the corporate objectives.”<sup>53</sup>

The Board of Pegasystems has already approved the Settlement and the Special Dividend as a contingent dividend, and the Board stands ready to formally declare the Special Dividend upon this Court’s grant of final approval, consistent with the terms of the Settlement. The Board has not yet formally declared the dividend solely because it did not wish to declare a dividend that it would not

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of the “Excluded Holders” is 78,335,511.66, which includes fractional shares, resulting in an anticipated dividend of \$0.077 per share.

<sup>51</sup> 76% of “parallel” derivative settlements from 2019-2021 had no monetary component, and in the 24% that included financial relief, the median monetary component was less than \$7.2 million. Laarni T. Bulan, *Parallel Derivative Action Settlement Outcomes*, NATIONAL L. REV. (Sept. 9, 2022). Median securities class action settlements generally ranged from \$6 million to \$13 million between 2017 and 2020, with an \$8.3 million median amount in 2021. Janeen McIntosh & Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2020 Full-Year Review*, NERA (Jan. 25, 2021), Figures 15 and 16 at 17 and 20, respectively; Laarni T. Bulan & Laura E. Simmons, *Securities Class Action Settlements – 2021 Review and Analysis*, CORNERSTONE RESEARCH (2021), <https://securities.stanford.edu/research-reports/1996-2021/Securities-Class-Action-Settlements-2021-Review-and-Analysis.pdf> at 4 (“The median [securities class action] settlement amount in 2021 was \$8.3 million.”).

<sup>52</sup> See Appendix A.

<sup>53</sup> See, e.g., Ex. 4, *In re Google Inc. Class C S’holder Litig.*, C.A. No. 7469-CS (Del. Ch. Oct. 28, 2013) (Transcript) at 104-05.

otherwise issue if the Court declined to approve the Settlement.<sup>54</sup> In addition, the Board is precluded from declaring a record date for a dividend that precedes payment by more than 70 days.<sup>55</sup>

In response to the Court's questions regarding the reasonableness of the proposed Settlement, the parties are providing additional information concerning their extensive arm's-length negotiations, which resulted in the agreement to pay a special dividend. From the outset of the negotiations, Plaintiffs insisted that any settlement would have to include a significant financial component, while Defendants consistently refused to include any financial component whatsoever on the grounds that financial recovery was rare and not justified by the allegations here.<sup>56</sup> At several points during the process, the parties reached an impasse based on this sharp disagreement, and the negotiations would slow considerably or halt altogether, only to resume at a later point.<sup>57</sup> Notwithstanding this Court's dismissal of the derivative claims on September 30, 2025 and the prospect of lengthy and difficult appeals if the litigation were to continue, Plaintiffs continued to demand that any settlement include meaningful pecuniary relief. Plaintiffs believed that a monetary settlement, along with corporate governance measures, would fairly resolve the dismissed claims.<sup>58</sup> Defendants, who had long refused to include a financial component in a settlement, understood that Plaintiffs fully intended to pursue appeal absent a resolution. Because Defendants wanted to avoid the further distraction and expense they believed this litigation presented, they finally indicated that they were open to a financial component to the settlement. After the parties agreed upon the structure of the financial component,

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<sup>54</sup> Hr'g. Tr. at 14:7-14; Stip. ¶¶ 2.2, 6.1(f); Decl. ¶ 6.

<sup>55</sup> Chapter 156D does not specifically reference payment and receipt of a dividend, but Section 7.07 states that "with respect to tak[ing] any other action" ... "a record date fixed under this section may not be more than 70 days before the meeting or action requiring a determination of shareholders." Section 11 of Article I of Pega's bylaws mirrors the language of Section 7.07 of Ch. 156D. The bylaws are publicly available as Exhibit 3.2 to Pegasystems Inc. Form 8-K (June 15, 2020).

<sup>56</sup> Decl. ¶ 4.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

negotiations as to the appropriate amount ensued, and the parties eventually were able to reach agreement on the \$7 million special dividend for the benefit of Pegasystems' shareholders, excepting the Individual Defendants and certain affiliates.<sup>59</sup>

**E. The Proposed Form of Notice Fairly and Reasonably Informs Shareholders About the Settlement**

The Settlement provides for a detailed and customary Notice program by which Pegasystems shareholders will be timely apprised of all essential information about the Settlement.<sup>60</sup> The Notice will fairly and reasonably “apprise interested parties of the pendency of the settlement proposed and to afford them an opportunity to present their objections.”<sup>61</sup> Consistent with other derivative and class action settlements,<sup>62</sup> the Notice contains all information necessary for Pegasystems shareholders to access and consider Plaintiffs' final approval papers in advance of the objection deadline.

The Notice program requires that, within ten business days after entry of the Preliminary Approval Order, the Company will post a copy of the Long Form Notice on its Investor Relations website page and publish the Summary Notice in the national edition of *The Wall Street Journal* and via the *BusinessWire*—both containing a link to Pegasystems' website containing the Stipulation.<sup>63</sup> In response to the Court's instructions at the Preliminary Approval hearing, the Parties confirm that the complete settlement package—including the DRC Report,<sup>64</sup> the MTD Order, Plaintiffs' Original and Supplemental Memoranda and all supporting materials, and the forthcoming final approval

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<sup>59</sup> *Id.*

<sup>60</sup> *See* Stip., Exs. B-C.

<sup>61</sup> Adequate settlement notice must fairly and reasonably “apprise interested parties of the pendency of the settlement proposed and to afford them an opportunity to present their objections.” Original Memo at 18-19 (citing *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)).

<sup>62</sup> *See* Original Memo at 19 (citing Massachusetts cases employing the same Notice method).

<sup>63</sup> Stip. ¶ 3.1; Decl. ¶ 11.

<sup>64</sup> The DRC Report will enable shareholders to review the investigation and its conclusions, which in large part constituted the basis for the MTD Order.

papers—will be posted on a dedicated public settlement website hosted by Plaintiffs’ Counsel and linked on the Company’s Investor Relations page in the same location as the Long-Form Notice and Stipulation.<sup>65</sup> Objections are not due until *fourteen days* after Plaintiffs must file their final approval papers, giving shareholders more than sufficient time to consider them. Additionally, fifteen business days after entry of the Preliminary Approval Order, the Company shall *again* cause the Summary Notice to be published in the national edition of *The Wall Street Journal*. Plaintiffs’ Counsel will also provide links to the complete settlement materials on their firm websites.<sup>66</sup>

The use of website posting coupled with other publication has gained broad acceptance in light of the transition of the investment community from a paper-based to a web-based disclosure system.<sup>67</sup> As such, courts have held that the publication of notice to shareholders—on the company’s website and/or in an investor publication such as *Investor’s Business Daily*—“sufficiently apprise[s] . . . shareholders of the nature of the proposed settlement, the upcoming public hearing, and the opportunity to object.”<sup>68</sup> Here, the form and manner of the proposed notice, including publication and website posting, easily satisfy the requirements of Rule 23.1 and due process.

### **III. STATUS OF RELATED DERIVATIVE ACTION IN FEDERAL COURT**

Plaintiffs intend to dismiss the related Federal Derivative Action<sup>69</sup> upon entry of a final judgment in this action. The plaintiffs to the Federal Derivative Action are parties to the Settlement which requires dismissal of the Federal Derivative Action after the Settlement is approved. Further,

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<sup>65</sup> Hr’g. Tr. at 11:9-25 (Mar. 18, 2026); Decl. ¶ 11.

<sup>66</sup> Decl. ¶ 11.

<sup>67</sup> “Use of Electronic Media for Delivery Purposes,” SEC Release No. 33-7233, 60 Fed. Reg. 53458, 53459 (Oct. 6, 1995).

<sup>68</sup> Publication of settlement notice on the company’s website and in investor publications constitutes adequate notice under applicable standards. Original Memo at 19 (citing *Arace v. Thompson*, 2011 WL 2230177, at \*11 (S.D.N.Y. Aug. 17, 2011)); *see also In re PMC-Sierra, Inc. Deriv. Litig.*, 2010 WL 5018906, at \*4 (N.D. Cal. 2010); Ch. 156D, §7.45.

<sup>69</sup> *Larkin et al. v. Trefler et al.*, No. 1:25-cv-10303-WGY (D. Mass.).

as Plaintiffs' counsel represented to the Court at the March 18, 2026 hearing, a final judgment entered by this Court will be preclusive and binding in the Federal Derivative Action, as both are derivative actions brought on behalf of the same corporation.<sup>70</sup> The Federal Derivative Action has already been administratively closed by Judge William G. Young, pending the outcome of this proceeding.<sup>71</sup> In addition, the parties to both the State Derivative Action and Federal Derivative Action notified Judge Young that they had reached a Settlement and would be submitting the Settlement to this Court for approval.<sup>72</sup> There has been no further activity on the docket of the Federal Derivative Action.

#### IV. CONCLUSION

For the foregoing reasons, and for the reasons set forth in Plaintiffs' Original Memo, the Parties respectfully request that this Court grant preliminary approval of the proposed Settlement and enter the Proposed Preliminary Approval Order. The Settlement is the product of months of hard-fought, arms-length negotiations between sophisticated counsel, and it delivers genuine, concrete benefits to Pegasystems and its shareholders: a \$7 million Special Dividend paid directly to shareholders, excluding the Individual Defendants and certain affiliates, combined with three durable corporate governance reforms that directly address the oversight deficiencies alleged in the derivative matters.

When assessed against the formidable obstacles Plaintiffs faced in pursuing these claims—including a MTD Order that deferred to the DRC's investigation and conclusions, the substantial risks and costs of years of additional appellate and trial litigation, and the speculative nature of the Individual Defendants' potential personal exposure on the derivative claims because of the possibility that Appian will not prevail on retrial of its misappropriation claims in Virginia—the Settlement is

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<sup>70</sup> Hr'g. Tr. at 18:5-7.

<sup>71</sup> *Larkin et al. v. Trefler et al.*, No. 1:25-cv-10303-WGY (D. Mass.), Dkt. 74.

<sup>72</sup> *Id.* at Dkt. 76.

well within the range of possible final approval.<sup>73</sup> It merits a presumption of fairness as the product of non-collusive, arms-length negotiations between experienced counsel.<sup>74</sup> The \$7 million Special Dividend is squarely within the range of monetary components in comparable parallel derivative settlements: the most recent empirical data shows that in the “parallel” derivative settlements from that included financial relief, the median monetary component was less than \$7.2 million.<sup>75</sup> The three governance reforms are substantial, targeted, and durable.<sup>76</sup>

Preliminary approval should be granted so that notice may be provided to Pegasystems’ shareholders and a final approval hearing may be scheduled.

Dated: April 10, 2026

Respectfully submitted,

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<sup>73</sup> The Court at the preliminary approval stage determines only whether the proposed settlement falls within the range of possible approval—a standard that “means simply that notice” will be issued and shareholders given a chance to be heard. Original Memo at 10 (citing *Scott v. First Am. Title Ins. Co.*, 2008 WL 4820498, at \*3; *In re Mass. Smokeless Tobacco Litig.*, 2008 WL 1923063, at \*3).

<sup>74</sup> Judicial review at the preliminary approval stage is limited to a reasoned determination that the settlement is not the product of collusion or overreaching by the negotiating parties. Original Memo at 10 (citing *Officers for Just. v. Civ. Serv. Comm’n of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982)).

<sup>75</sup> *See supra*, n. 51. The \$7 million Special Dividend is further distinguished by its direct payment to shareholders and its express exclusion of all Individual Defendants from receiving any portion thereof. *See* Stip. ¶¶ 1.12, 2.3.

<sup>76</sup> Stip. ¶ 2.5; *see* Decl. ¶¶ 12-18.

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