

**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**

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

**vs.**

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

**DECLARATION OF RICHARD A. SPEIRS IN SUPPORT OF 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. 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 Inc. is named as a nominal defendant.

I, Richard A. Speirs, declare as follows:

1. I am Of Counsel at the law firm of Cohen Milstein Sellers & Toll PLLC and a member in good standing of the New York State Bar. I am over the age of eighteen (18) years, I am competent to testify to the matters set forth herein, and I have personal knowledge of the facts stated in this declaration.

2. I respectfully submit this declaration in support of the Joint Supplemental Submission in further support of Plaintiffs' Unopposed Motion for Preliminary Approval of Derivative Settlement. I make this declaration in response to questions raised by the Court at the March 18, 2026 preliminary approval hearing concerning the basis for the \$7 million Special Dividend, the alleged wrongdoing under investigation, the nature of potential exposure, the Company's shareholder structure and number of shareholders and shares outstanding, the composition and powers of the Board, and the significance of the three corporate governance reforms.

3. I am familiar with the facts and circumstances stated herein, based on personal knowledge, the Report of the Demand Review Committee dated October 7, 2024 (the "DRC Report"),<sup>5</sup> the record of the state and federal court proceedings, discussions with counsel in the derivative actions, the settlement negotiations between the Parties, and the public filings of Pegasystems Inc. ("Pegasystems" or the "Company").

**A. The Arms-Length Negotiations Leading to the \$7 Million Special Dividend**

4. For an extended period spanning several months, the parties to the State Derivative Action and Federal Derivative Action engaged in extensive, contested, arms-length negotiations

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<sup>5</sup> The DRC Report is attached as Ex. 1 to the Joint Supplemental Memorandum in Support of Preliminary Approval.

regarding a possible resolution of the derivative actions.<sup>6</sup> Throughout these negotiations, Plaintiffs insisted that any settlement would have to include a significant financial component and believed that a monetary settlement, along with corporate governance measures, would fairly resolve the dismissed claims. Defendants consistently and repeatedly refused to include any financial component in a settlement, and the negotiations reached impasse on multiple occasions, with discussions slowing or halting entirely before resuming. These negotiations were conducted at arm's length and in an adversarial posture between sophisticated counsel representing all parties. After the parties agreed upon the structure of the financial component, 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, their immediate family members, and affiliated entities except for charitable foundations and non-profits, which the Stipulation defines as "Excluded Holders."<sup>7</sup>

5. The \$7 million figure reflects the resolution of derivative claims brought by Plaintiffs *on behalf of* and for the benefit of nominal defendant Pegasystems against the Individual Defendants for alleged breaches of their fiduciary duties under Massachusetts law. *See* Stip. ¶ 2.2. These claims are wholly distinct from, and are not predicated upon, the civil trade secret claims that Appian Corporation ("Appian") brought directly against Pegasystems in Virginia state court. As described more fully in Section B below, the derivative claims against the Individual Defendants arise in part from the same alleged underlying conduct, but the cause of action, the nature of the claims, the applicable legal standards, and the potential defendants and their exposure

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<sup>6</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>7</sup> *See* Stip. ¶ 1.12.

are fundamentally different. *See* DRC Report at 74-87 (analyzing distinct legal theories underlying derivative claims versus Appian’s civil claims).

6. The monetary portion of the settlement is structured specifically to benefit shareholders of Pegasystems. The Stipulation expressly carves out the “Excluded Holders” from receiving any portion of the Special Dividend and from the pro rata denominator used to calculate per-share distributions, ensuring that no Individual Defendant benefits from a settlement of claims asserted against them. *See* Stip. ¶¶ 1.12, 2.3; Original Memo at 8 n.15. Plaintiffs have been advised by counsel to Defendants that the Board has already approved both the Settlement and the Special Dividend as a contingent dividend, standing ready to formally declare it upon this Court’s final approval of the Settlement. *See* Stip. ¶ 2.2; Hr’g. Tr. 13:17-23 (Mar. 18, 2026).

7. The number of outstanding shares as of January 30, 2026, was approximately 169,043,716. The number of shares to be excluded from the dividend on behalf of the “Excluded Holders” is 78,335,511.66 as of April 3, 2026, which includes fractional shares. Based on the foregoing, each eligible shareholder is expected to receive approximately \$0.077 per share from the special dividend, which represents approximately 2.5 times the Company’s current dividend, which is paid quarterly. *See* Stip. ¶ 2.3 (defining Record Date and pro rata distribution mechanism). Defense counsel has confirmed the precise share count and expected per-share distribution.

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

8. Derivative claims are brought by shareholders on behalf of and for the benefit of the corporation. *See* DRC Report at 15-16, 74-84 (analyzing the distinct nature of derivative fiduciary duty claims). Here, Plaintiffs have asserted that the Individual Defendants’ alleged breaches of fiduciary duty caused harm to the Company and asserted those claims on the Company’s behalf. Potential liability (if any) for the alleged breaches of fiduciary duty would fall on the Defendants.

9. The derivative matters arose out of the same alleged underlying conduct at issue in the Appian litigation: allegations that Pegasystems employees and third-party consultants engaged in conduct between approximately 2012 and 2020 involving access to Appian’s platform and alleged trade secrets. *See* DRC Report at 10-13; Consolidated Am. Compl. ¶¶ 2-3, 52-123. As relevant to the derivative claims, the Demands directed the Board to investigate and commence proceedings against the Company’s current and former officers and directors for alleged breaches of fiduciary duty for allowing the alleged trade secret-related conduct at issue in the Appian litigation. The Demands further alleged the so-called *Caremark* theory of liability<sup>8</sup>: that the Individual Defendants failed to implement and maintain adequate oversight and compliance systems, and that this failure resulted in corporate harm. *See* Consolidated Am. Compl. at ¶¶ 4, 237-39.

10. According to the DRC Report, following extensive investigation which was conducted with the assistance of independent counsel—including the review of over 180,000 non-public documents, manual review of nearly 35,000 documents, and interviews of 17 witnesses—the DRC concluded that the conduct at issue was “*initiated and executed by lower-level employees,*” and that “*none of the Independent Directors were aware of the conduct at issue before the Appian Litigation.*” DRC Report at 4-5. The DRC further found that those Fiduciaries<sup>9</sup> who

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<sup>8</sup> *In re Caremark Int’l Inc. Deriv. Litig.*, 698 A.2d 959 (Del. Ch. 1996) established the framework for director oversight liability in the derivative context. Although the DRC Report does not use the term “*Caremark*,” a portion of its legal analysis addresses the substance of oversight liability under Massachusetts law, which applies analogous principles. *See* DRC Report at 70-87.

<sup>9</sup> As used in the DRC Report and herein, “Fiduciaries” refers collectively to the Independent Directors—Gyenes, Jones, Lafond, Ledingham, Rowlands, and Weber—and the following officers of the Company: Akgonul, Schuerman, Alan Trefler, Leon Trefler, and Stillwell. *See* DRC Report at 3-4. Benjamin Baril, though named as a defendant in the Actions, was not designated as a Fiduciary in the DRC Report because he is not an officer of the Company as defined in Pegasystems’ bylaws. *See* DRC Report at 3 n.1.

were aware of the conduct “*all genuinely, reasonably, and in good faith believed that the Appian information accessed by the third-party consultant or lower-level Pegasystems employees . . . did not constitute trade secrets or otherwise confidential material.*” *Id.* at 5. The DRC also concluded that there were no red flags that should have put the Fiduciaries on notice of potentially unlawful behavior. *Id.* at 4-5, 37, 75. Plaintiffs disputed the DRC’s conclusions and asserted them to be the product of bad faith. Those disputed issues were raised in Plaintiffs’ opposition to the motion to dismiss and rejected by the Court, thus the risk of failing to overturn the dismissal on appeal were important factors in the decision to settle. 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.

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

11. Under the proposed notice program, within ten business days of the Preliminary Approval Order, Pegasystems will post the Long-Form Notice and the Stipulation on its Investor Relations website at <https://www.pega.com/about/investors>. *See* Stip. ¶ 3.1. In addition, Plaintiffs’ Counsel will ensure that the complete settlement package—including the DRC Report (so that shareholders can review the investigation and its conclusions), the MTD Order, the proposed Judgment and Order, and all briefing submitted in support of the settlement—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. The final approval papers, including Plaintiffs’ brief and supporting materials, will be filed and made similarly available on the website hosted by Plaintiffs’ Counsel at least 35 calendar days before the final approval hearing, with the objection deadline set 21 calendar days before that hearing, providing shareholders 14 days to review the materials before deciding whether to object.

Plaintiffs' Counsel will also provide links to the complete settlement materials on their firm websites.

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

12. Pegasystems' Board of Directors currently consists of eight members, of whom seven are independent directors under applicable NASDAQ standards. *See* Pegasystems Inc., Definitive Proxy Statement (Form DEF 14A), at 18 (Apr. 25, 2025). As a result of the derivative actions and the Demands, the Board appointed a new independent director in January 2025. *See* Stip. ¶ 2.5; Original Memo at 14. Defendants and Pegasystems have acknowledged that Plaintiffs' actions were a material causal factor in that appointment. *See* Stip. ¶ 2.5.

13. The new independent director, Rohit Ghai, like all members of the Board, 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. *See* G.L. ch. 156D, §8.30. Mr. Ghai chairs the newly formed Risk Subcommittee (described in greater detail below). While the new independent director does not hold any separate or additional statutory powers beyond those of other Board members, each additional independent director on the Board meaningfully strengthens the Board's independence and solidifies checks and balances with Company management.

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

14. In addition to the new independent director, the Settlement incorporates two other meaningful corporate governance reforms that Defendants and Pegasystems acknowledge were caused in material part by Plaintiffs' Actions and the Demands. *See* Stip. ¶ 2.5.

15. First, a Risk Subcommittee of the Audit Committee (the "Risk Subcommittee") has been created and is required to remain in place for at least five years from the date of its inception. *See* Stip. ¶ 2.5; DRC Report at 112-13. The DRC recommended that the Board establish the Risk

Subcommittee upon recognizing that “even activity that participants genuinely understand to be lawful can yield unpredictable and potentially costly corporate liabilities.” DRC Report at 112. The Risk Subcommittee was proposed by the DRC “in order to further mitigate this risk moving forward.” *Id.* The Risk Subcommittee is responsible for: (a) reviewing the risk management policies and procedures of the Company; (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. *Id.*

16. The Risk Subcommittee serves as the primary vehicle for Board- and Audit-Committee-level oversight of the Company’s Enterprise Risk Management program. DRC Report at 113. 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 recommendations regarding the foregoing. *See* DRC Report at 112-13. 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 senior management’s effectiveness and dedication to ensuring the Company’s material compliance with applicable laws, rules, and regulations. *See id.* at 113. The Risk Subcommittee has free access to management and Company employees and has authority to retain independent advisors or counsel at the Company’s expense. *See id.*

17. Second, the charter of the Management-Level Compliance and Risk Governing Committee (the “Compliance Committee”) has been enhanced and must remain in place for at least five years from the date of adoption. *See* Stip. ¶ 2.5; DRC Report at 113. As the DRC Report

explains, these enhancements reflect the DRC’s determination—grounded in the same reasoning that prompted the creation of the Risk Subcommittee —that certain enhancements to the Compliance Committee’s work would further benefit the Company. *See* DRC Report at 113. 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. *See id.*

18. Together, the reforms required by the Settlement directly address Plaintiffs’ allegations in the derivative actions—specifically, the alleged absence of adequate Board-level controls and reporting mechanisms connecting the Board to management-level compliance activities during the period of alleged wrongdoing. *See* Consolidated Am. Compl. ¶¶ 185-189; DRC Report at 112-13.

I declare under the pains and penalties of perjury under the laws of the State of New York that the foregoing is true and correct to the best of my knowledge and belief.

Dated this 10th day of April, 2026

*Richard A. Speirs*

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