

**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**

**DECLARATION OF LAUREN GODLES MILGROOM IN SUPPORT OF PLAINTIFFS’  
APPLICATION FOR AWARD OF ATTORNEYS’ FEES, EXPENSES,  
AND SERVICE AWARDS**

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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.

I, Lauren Godles Milgroom, declare as follows:

1. I am a partner of Equity Litigation Group LLP (“Equity”) and am admitted to practice in Massachusetts. My firm serves as counsel to plaintiffs John Dwyer, Ray Gerber, Jayne Birch, and Robert Garfield.

2. For purposes of this Declaration, “Plaintiffs” collectively refers to (i) Plaintiffs in above-captioned consolidated derivative action (the “State Derivative Action”): John Dwyer, Ray Gerber, Jayne Birch, and Robert Garfield; (ii) Plaintiffs in the related consolidated stockholder derivative action entitled *Larkin et al. v. Trefler et al.*, No. 1:25-cv-10303-WGY (the “Federal Derivative Action”) pending in the U.S. District Court for the District of Massachusetts: Mary Larkin and Dag Sagfors; and (iii) Pegasystems Inc. (“Pegasystems” or the “Company”) stockholder George Fielding Brenner, who made a related litigation demand upon the Company (together with the State Derivative Action and Federal Derivative Action, the “Actions.”).

3. I respectfully submit this affidavit in support of Plaintiffs’ Motion for an Award of Attorneys’ Fees, Expenses, and Service Awards.

4. Based on the time and expense affidavits submitted herewith as Exhibits A-K, the total reported time for Plaintiffs’ Counsel collectively for prosecuting the Actions through April 16, 2026 (*i.e.*, when the Court granted Plaintiffs’ Motion for Preliminary Approval of the Settlement) was **4,327.90** hours for attorneys and professional staff for a total lodestar of **\$4,067,251.75**. The total reported expenses for Plaintiffs’ Counsel were **\$98,223.28**. The requested fee of \$2,750,000, less \$98,223.28 in expenses and \$17,500 in service awards for a net fee of **\$2,634,276.72**, is less than Plaintiffs’ Counsel’s reported lodestar of approximately 0.65 (representing an approximate 35% discount to lodestar).

5. Equity undertook this Action on an entirely contingent basis. From the inception of this matter through April 16, 2026 (*i.e.*, when the Court granted Plaintiffs’ Motion for Preliminary

Approval of the Settlement), Equity attorneys expended a combined total of 216.6 hours on the prosecution of this Action for a total lodestar of \$228,485.00 based on Equity's current hourly rates. While Equity's practice is primarily contingent, our firm does represent clients who retain our services on an hourly basis, and these are the same rates charged to those clients. Equity attorneys expended additional hours from April 17, 2026 and beyond that are not included here.

6. The chart below reflects Equity's time, hourly rates, and lodestar through April 16, 2026:

<b>Timekeeper</b>	<b>Position</b>	<b>Hourly Rate</b>	<b>Hours through April 16, 2026</b>	<b>Lodestar</b>
Lauren Godles Milgroom	Partner	\$950	149.7	\$142,215.00
Joel Fleming	Partner	\$1,300	62.2	\$80,860.00
David Dorfman	Partner	\$1,300	2.7	\$3,510.00
Amanda Crawford	Partner	\$950	2.0	\$1,900.00
<b>TOTAL</b>			<b>216.6</b>	<b>\$228,485.00</b>

7. Equity's activities during the litigation included researching and drafting the omnibus opposition to Defendants' motions to dismiss, negotiating the substantive terms of the settlement, negotiating the formal terms of the Stipulation of Settlement, drafting the brief in support of preliminary approval and joint supplemental filing in support thereof, and representing Plaintiffs at numerous hearings in this Action and in the Federal Derivative Action.

8. Equity has also incurred \$1,030.41 in litigation expenses to date, all of which were necessary to the prosecution of the Action. These expenses break down as follows:

<b>Expense Category</b>	<b>Amount</b>
Court/Filing Fees	\$655.18
Travel/Meals	\$80.14
Printing/Photocopying	\$295.09
<b>TOTAL EXPENSES</b>	<b>\$1,030.41</b>

9. These expenses are reflected in the books and records of the firm. These books and records are prepared from invoices, bills, expense vouchers, and check records kept in the normal course of business and are available for the Court to review *in camera* upon request.

10. I respectfully request that the Court award the attorneys' fees and expense reimbursement requested.

11. Attached hereto are true and accurate copies of the following:

<b>Exhibit</b>	<b>Description</b>
<b>A</b>	Declaration of Mark Lebovitch in Support of Plaintiffs' Application for Award of Attorneys' Fees, Expenses, and Service Awards (Bernstein Litowitz Berger & Grossmann LLP)
<b>B</b>	Declaration of Richard A. Speirs in Support of Plaintiffs' Application for Award of Attorneys' Fees, Expenses, and Service Awards (Cohen Milstein Sellers & Toll PLLC)
<b>C</b>	Declaration of Brett D. Stecker in Support of Plaintiffs' Application for Award of Attorneys' Fees, Expenses, and Service Awards (Shuman, Glenn & Stecker)
<b>D</b>	Declaration of Eitan Kimelman in Support of Plaintiffs' Application for Award of Attorneys' Fees, Expenses, and Service Awards (Bronstein, Gewirtz & Grossman LLC)
<b>E</b>	Declaration of Michele S. Carino in Support of Plaintiffs' Application for Award of Attorneys' Fees, Expenses, and Service Awards (Greenwich Legal Associates, LLC)
<b>F</b>	Declaration of Lawrence P. Eigel in Support of Plaintiffs' Application for Award of Attorneys' Fees, Expenses, and Service Awards (Bragar Eigel & Squire, P.C.)
<b>G</b>	Declaration of Badge Humphries in Support of Plaintiffs' Application for Award of Attorneys' Fees, Expenses, and Service Awards (Griffin Humphries LLC)
<b>H</b>	Declaration of Daryl Andrews in Support of Plaintiffs' Application for Award of Attorneys' Fees, Expenses, and Service Awards (Andrews Devalerio LLP)
<b>I</b>	Declaration of Vincent A. Licata in Support of Plaintiffs' Application for Award of Attorneys' Fees, Expenses, and Service Awards (Rigrodsky Law, P.A.)
<b>J</b>	Declaration of Daniel Tepper in Support of Plaintiffs' Application for Award of Attorneys' Fees, Expenses, and Service Awards (Levi & Korsinsky, LLP)
<b>K</b>	Declaration of Francis A. Bottini, Jr. in Support of Plaintiffs' Application for Award of Attorneys' Fees, Expenses, and Service Awards (Bottini & Bottini Inc.)
<b>L</b>	Report of the Demand Review Committee of the Pegasystems Board of Directors (Oct. 7, 2024)
<b>M</b>	Memorandum of Decision and Order on Defendants' Motion to Dismiss (Oct. 2, 2025) (Dkt. 49)
<b>N</b>	Stipulation of Settlement (Feb. 9, 2026) (Dkt. 56)

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 21st day of May, 2026 in Somerville, Massachusetts.

/s/ Lauren Godles Milgroom  
Lauren Godles Milgroom

# Exhibit A

**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**

**DECLARATION OF MARK LBOVITCH IN SUPPORT OF PLAINTIFFS’  
APPLICATION FOR AWARD OF ATTORNEYS’ FEES AND EXPENSES AND  
INCENTIVE AWARDS**

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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.

I, Mark Lebovitch, declare as follows:

1. I am a Partner in the law firm of Bernstein Litowitz Berger & Grossmann LLP (“BLB&G”).<sup>5</sup> My firm serves as counsel to plaintiffs John Dwyer, Ray Gerber, Jayne Birch, and Robert Garfield (“Plaintiffs”), in this action (the “Action”).

2. I respectfully submit this declaration in support of Plaintiffs’ Motion for an Award of Attorneys’ Fees and Expenses and Incentive Awards to Plaintiffs.

3. BLB&G undertook this Action on an entirely contingent basis. From the inception of this matter through April 16, 2026 (*i.e.*, when the Court granted Plaintiffs’ Motion for Preliminary Approval of the Settlement), BLB&G attorneys and professional support staff expended a combined total of 638.25 hours on the prosecution of this Action for a total lodestar of \$549,241.25 based on BLB&G’s current hourly rates.<sup>6</sup> The hourly rates for the BLB&G attorneys and professional support staff employees included in this application are their standard current rates and are the same as, or comparable to, the rates submitted by BLB&G and accepted by courts for lodestar cross-checks in other class action fee applications.<sup>7</sup> BLB&G attorneys and professional support staff expended additional hours from April 17, 2026 and beyond that are not included here.

4. The chart below reflects BLB&G’s time, hourly rates, and lodestar through April 16, 2026:

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<sup>5</sup> All capitalized terms that are not defined in this declaration have the same meanings as set forth in the Stipulation of Settlement dated February 9, 2026 (“Stipulation”).

<sup>6</sup> For personnel who are no longer employed by BLB&G, the lodestar calculation is based upon the hourly rates for such personnel in their final year of employment with BLB&G.

<sup>7</sup> *See, e.g., In re Celgene Corp. Sec. Litig.*, No. 2:18-cv-04772-MEF-JBC (D.N.J. May 8, 2026), ECF No. 505 (approving fee based on lodestar cross-check using BLB&G’s current hourly rates); *In re EQT Corp. Sec. Litig.*, No.: 2:19-cv-00754-RJC (W.D. Pa. Nov. 4, 2025), ECF No. 566 (same); *In re Turquoise Hill Resources, Ltd. Sec. Litig.*, No. 1:20-cv-8585-LJL (S.D.N.Y. Oct. 23, 2025), ECF No. 493 (same); *Allegheny County Employees’ Ret. Sys. v. Energy Transfer LP*, No. 2:20-cv-00200-GAM (E.D. Pa. Oct. 8, 2026), ECF No. 285 (same); *In re Silvergate Capital Corp. Sec. Litig.*, No. 3:22-cv-01936-JES-MSB (S.D. Cal. Sept. 3, 2025), ECF No. 149 (same).

<b>Timekeeper</b>	<b>Position</b>	<b>Hourly Rate</b>	<b>Hours through April 16, 2026</b>	<b>Lodestar</b>
Jeroen van Kwawegen	Parter	\$1,700	3.25	\$5,525.00
Mark Lebovitch	Partner	\$1,300	1.75	\$2,275.00
Christopher J. Orrico	Partner	\$1,300	29.75	\$38,675.00
Edward Timlin	Partner	\$1,300	13.00	\$16,900.00
David Duncan	Senior Counsel	\$1,000	0.25	\$250.00
Daniel Meyer	Senior Counsel	\$1,000	13.00	\$13,000.00
John Mills	Senior Counsel	\$1,100	61.00	\$67,100.00
Eric Riedel	Senior Counsel	\$1,000	311.00	\$311,000.00
Tayler Bolton	Associate	\$750	9.25	\$6,937.50
Shiva Mohan	Associate	\$750	19.25	\$14,437.50
Sara Swartzwelder	Associate	\$475	3.25	\$1,543.75
Stavros Katsetos	Senior Staff Attorney	\$495	1.00	\$495.00
Maureen McCarren	Senior Staff Attorney	\$495	0.75	\$371.25
Sara Wigmore	Staff Attorney	\$450	59.25	\$26,662.50
Alisha Akhtar	Paralegal	\$350	58.00	\$20,300.00
Cindy Bomzer-Stein	Paralegal	\$450	2.00	\$900.00
Jose Echegaray	Paralegal	\$425	13.25	\$5,631.25
Jay Layfield	Paralegal	\$425	17.75	\$7,543.75
Ronald Wittman	Paralegal	\$425	1.00	\$425.00
Gary Weston	Paralegal	\$450	2.00	\$900.00
Tanjila Sultana	Financial Analyst	\$525	1.00	\$525.00
Jason Sung	Financial Analyst	\$500	1.00	\$500.00
Paul Charlotin	Litigation Support	\$450	0.50	\$225.00
Roberto Santamarina	Litigation Support	\$500	1.50	\$750.00
Mahiri Buffong	Managing Clerk	\$475	3.00	\$1,425.00
Jessica Lacon	Docket Clerk	\$425	9.25	\$3,931.25
Janielle Lattimore	Asst. Managing Clerk	\$450	2.25	\$1,012.50
<b>TOTAL</b>			<b>638.25</b>	<b>\$549,241.25</b>

5. BLB&G's activities during the litigation included, among other things, preparing a book and records inspection demand to Pegasystems; researching and drafting an initial complaint and the consolidated amended complaint; researching and drafting a motion to intervene and stay the Federal Derivative Action, *Larkin et al. v. Trefler et al.*, No. 1:25-cv-10303-WGY (D. Mass.); researching and drafting the omnibus opposition to the motions to dismiss; assisting with the preparation of the motion for specified discovery; negotiating the substantive terms of the Settlement; drafting and negotiating the formal terms of the Stipulation of Settlement; drafting the brief in support

of preliminary approval and joint supplemental filing in support thereof; and representing Plaintiffs at numerous hearings in this Action and in the Federal Derivative Action.

6. BLB&G has also incurred \$48,789.51 in litigation expenses to date, all of which were necessary to the prosecution of the Action. These expenses break down as follows:

<b>Expense Category</b>	<b>Amount</b>
Court/Filing Fees	\$710.00
On-Line Research	\$43,287.86
Telephone	\$413.36
Express Mail	\$163.61
Local Transportation	\$138.85
Outside Copying	\$222.50
Out of Town Travel	\$3,580.19
Working Meals	\$273.14
<b>TOTAL EXPENSES</b>	<b>\$48,789.51</b>

7. These expenses are reflected in the books and records of the firm. These books and records are prepared from invoices, bills, expense vouchers, and check records kept in the normal course of business and are available for the Court to review *in camera* upon request.

8. I respectfully request that the Court award the attorneys' fees and expense reimbursement requested.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 14th day of May, 2026 in New York, New York.



Mark Lebovitch

# Exhibit B

**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**

**DECLARATION OF RICHARD A. SPEIRS IN SUPPORT OF PLAINTIFFS'  
APPLICATION FOR AWARD OF ATTORNEYS' FEES  
AND EXPENSES AND INCENTIVE AWARDS**

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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.

I, Richard A. Speirs, declare as follows:

1. I am of counsel at Cohen Milstein Sellers & Toll PLLC (“Cohen Milstein”) and a member in good standing of the Bar of New York. My firm serves as counsel to plaintiff Jayne Birch in this action (the “Action”).

2. I respectfully submit this affidavit in support of Plaintiffs’ Motion for an Award of Attorneys’ Fees and Expenses and Incentive Awards to Plaintiffs.

3. Cohen Milstein undertook this Action on an entirely contingent basis. From the inception of this matter through April 16, 2026 (*i.e.*, when the Court granted Plaintiffs’ Motion for Preliminary Approval of the Settlement)), Cohen Milstein attorneys expended a combined total of 975.35 hours on the prosecution of this Action for a total lodestar of \$1,020,399.50 based on Cohen Milstein’s current hourly rates. While Cohen Milstein’s practice is primarily contingent, our firm does represent clients who retain our services on an hourly basis, and these are the same rates charged to those clients. Cohen Milstein attorneys expended additional hours from April 17, 2026 and beyond that are not included here.

4. The chart below reflects Cohen Milstein’s time, hourly rates, and lodestar through April 16, 2026:

<b>Timekeeper</b>	<b>Position</b>	<b>Hourly Rate</b>	<b>Hours through April 16, 2026</b>	<b>Lodestar</b>
Reiser, Julie, G (P)	Partner	1,395	34.25	47,778.75
Speirs, Richard (OC)	Of Counsel	1,505	494.65	744,448.25
Marsden, Claire (A)	Associate	810	28.25	22,882.50
Kim, Jessica (A)	Associate	700	80.25	56,175.00
Weiner, Jaclyn (I)	Investigator	770	26	20,020.00
Lee, JiHoon (PL)	Paralegal	425	212.2	90,312.50
Bloom, Samuel (PL)	Paralegal	425	15	6,375.00
Juca, Bianca (PL)	Paralegal	425	15	6,375.00
Jewler, Kay (PL)	Paralegal	425	14.75	6,268.75
Asim, Rhyma (PL)	Paralegal	380	29.75	11,305.00
Horner, Tanner G (PL)	Paralegal	335	25.25	8,458.75
<b>TOTAL</b>			<b>975.35</b>	<b>\$1,020,399.50</b>

5. In total, Cohen Milstein collectively recorded 975.35 hours, for a total lodestar of \$1,020,399.50 from inception through April 16, 2026.

6. Cohen Milstein's activities during the litigation included: researching and drafting a books-and-records demand, negotiating a confidentiality agreement, reviewing and analyzing a books-and-records production, drafting a demand to institute litigation, reviewing and analyzing pleadings, trial transcripts and exhibits from the litigation *Appian Corp. v. Pegasystems Inc., et al.*, Civ. No. 2020-07216 (Cir. Ct. Fairfax Cnty., Va.) and subsequent appeals, researching and drafting an initial plenary complaint, preparing motion to consolidate and appointment of lead counsel, drafting a consolidated complaint, reviewing and analyzing the Demand Review Committee's report, preparing a mediation statement, settlement demand and attending mediation with Defendants, researching and drafting responses to Defendants' motions to dismiss and preparing motion seeking discovery, researching and drafting motion to intervene in the federal derivative action, negotiating the substantive terms of the settlement, and drafting and negotiating the formal terms of the Stipulation of Settlement.

7. Cohen Milstein has also incurred \$4,815.19 in litigation expenses to date, all of which were necessary to the prosecution of the Action. These expenses break down as follows:

<b>Expense Category</b>	<b>Amount</b>
Court/Filing Fees	785.00
Mailing/Hand Delivery/Service of Process	507.13
Travel/Meals	2509.35
Printing/Photocopying	696.16
Other/Computer Research	317.36
<b>TOTAL EXPENSES</b>	<b>4,815.19</b>

8. These expenses are reflected in the books and records of the firm. These books and records are prepared from invoices, bills, expense vouchers, and check records kept in the normal course of business and are available for the Court to review *in camera* upon request.

9. I respectfully request that the Court award the attorneys' fees and expense reimbursement requested.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 19th day of May, 2026 in New York, New York.



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RICHARD A. SPEIRS

# Exhibit C

**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**

**DECLARATION OF BRETT D. STECKER IN SUPPORT OF PLAINTIFFS’  
APPLICATION FOR AWARD OF ATTORNEYS’ FEES AND EXPENSES AND  
INCENTIVE AWARDS**

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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.

I, Brett D. Stecker, declare as follows:

1. I am a partner of Shuman, Glenn & Stecker (“SGS”) and a member in good standing of the Bars of Pennsylvania and New Jersey. My firm serves as counsel to plaintiff Robert Garfield in this action (the “Action”).

2. I respectfully submit this affidavit in support of Plaintiffs’ Motion for an Award of Attorneys’ Fees and Expenses and Incentive Awards to Plaintiffs.

3. SGS undertook this Action on an entirely contingent basis. From the inception of this matter through April 16, 2026 (*i.e.*, when the Court granted Plaintiffs’ Motion for Preliminary Approval of the Settlement)), SGS attorneys expended a combined total of 516.9 hours on the prosecution of this Action for a total lodestar of \$553,467.50 based on SGS’s current hourly rates. While SGS’s practice is wholly contingent and our firm does not represent clients who pay on an hourly basis, our rates are set by reference to comparable firms and have recently been approved by courts in other matters, including, for example, *In re Becton, Dickinson & Co. S’holder Deriv. Litig.*, C.A. No. 2:20-cv-15474-SRC (D.N.J.), *In re Mohawk Industries, Inc. Deriv. Litig.*, Lead Case No. 4:20-CV-00110-ELR (N.D. Ga.), and *In re Okta, Inc. S’holder Deriv. Litig.*, Lead Case No. 3:22-cv-07480-SI. SGS attorneys expended additional hours from April 17, 2026 and beyond that are not included here.

4. The chart below reflects SGS’s time, hourly rates, and lodestar through April 16, 2026:

<b>Timekeeper</b>	<b>Position</b>	<b>Hourly Rate</b>	<b>Hours through April 16, 2026</b>	<b>Lodestar</b>
Kip B. Shuman	Partner	\$1,100.00	48.6	\$53,460.00
Rusty E. Glenn	Partner	\$1,025.00	160.1	\$164,102.50
Brett D. Stecker	Partner	\$1,025.00	308.2	\$315,905.00
<b>TOTAL</b>			516.9	\$553,467.50

5. In total, SGS collectively recorded 516.9 hours, for a total lodestar of \$553,467.50 from inception through April 16, 2026.

6. SGS's activities during the litigation included: researching and drafting a books-and-records inspection demand pursuant to G. L. ch. 156D, § 16.02 ("§ 16.02"), negotiating a confidentiality agreement in connection therewith, reviewing and analyzing a books-and-records production pursuant to § 16.02, drafting a pre-suit demand to investigate and institute litigation pursuant to G.L. ch. 156D § 7.42, drafting an initial plenary derivative complaint, drafting a consolidated derivative complaint, reviewing and analyzing the Demand Review Committee's report, researching and drafting responses to Defendants' motions to dismiss, negotiating the substantive terms of the settlement, and drafting and negotiating the formal terms of the Stipulation of Settlement.

7. SGS has also incurred \$47.23 in litigation expenses to date, in connection with mailing, all of which were necessary to the prosecution of the Action. These expenses are reflected in the books and records of the firm. These books and records are prepared from invoices, bills, expense vouchers, and check records kept in the normal course of business and are available for the Court to review *in camera* upon request.

8. I respectfully request that the Court award the attorneys' fees and expense reimbursement requested.

I respectfully request that the Court award the attorneys' fees and expense reimbursement requested.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 14th day of May, 2026 in Ardmore, Pennsylvania.

/S/ BRETT D. STECKER  
BRETT D. STECKER

# Exhibit D

**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**

**DECLARATION OF EITAN KIMELMAN IN SUPPORT OF PLAINTIFFS’  
APPLICATION FOR AWARD OF ATTORNEYS’ FEES AND EXPENSES AND  
INCENTIVE AWARDS**

---

<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.

I, Eitan Kimelman, declare as follows:

1. I am a member of Bronstein, Gewirtz & Grossman, LLC (“Bronstein”) and a member in good standing of the Bar of New York. My firm serves as counsel to Jayne Birch in this action (the “Action”).

2. I respectfully submit this affidavit in support of Plaintiffs’ Motion for an Award of Attorneys’ Fees and Expenses and Incentive Awards to Plaintiffs.

3. Bronstein undertook this Action on an entirely contingent basis. From the inception of this matter through April 16, 2026 (*i.e.*, when the Court granted Plaintiffs’ Motion for Preliminary Approval of the Settlement)), Bronstein attorneys expended a combined total of 5.2 hours on the prosecution of this Action for a total lodestar of \$5,820.00 based on Bronstein’s current hourly rates. Our CLASS ACTION rates are set by reference to comparable firms and have recently been approved by courts in other matters.

4. The chart below reflects Bronstein time, hourly rates, and lodestar through April 16, 2026:

<b>Timekeeper</b>	<b>Position</b>	<b>Hourly Rate</b>	<b>Hours through April 16, 2026</b>	<b>Lodestar</b>
Peretz Bronstein	Member	\$1200	1	\$1200.00
Eitan Kimelman	Member	\$1100	4.2	\$4,620.00
<b>TOTAL</b>			5.2	\$5,820.00

5. In total, Bronstein collectively recorded 5.2 hours, for a total lodestar of \$5,820.00 from inception through April 16, 2026.

6. Bronstein’s activities during the litigation included reviewing the 220 Demand, pleadings and briefing in the matter in order to advise our client plaintiff Jayne Birch.

7. I respectfully request that the Court award the attorneys' fees and expense reimbursement requested.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 19thth day of May, 2026 in New York, New York.

/s/ EITAN KIMELMAN  
EITAN KIMELMAN

# Exhibit E

**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**

**DECLARATION OF MICHELE S. CARINO, ESQ. IN SUPPORT OF PLAINTIFFS’  
APPLICATION FOR AWARD OF ATTORNEYS’ FEES AND EXPENSES AND  
INCENTIVE AWARDS**

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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.

I, Michele S. Carino, Esq., declare as follows:

1. I am Of Counsel to the law firm of Greenwich Legal Associates, LLC (“GLA”) and a member in good standing of the Bars of the States of New York and Delaware. My firm serves as counsel to plaintiff Robert Garfield (“Plaintiff”) in this action (the “Action”).

2. I respectfully submit this affidavit in support of Plaintiffs’ Motion for an Award of Attorneys’ Fees and Expenses and Incentive Awards to Plaintiffs.

3. GLA undertook this Action on an entirely contingent basis. From the inception of this matter through April 16, 2026 (*i.e.*, when the Court granted Plaintiffs’ Motion for Preliminary Approval of the Settlement)), GLA attorneys and staff expended a combined total of 57 hours on the prosecution of this Action for a total lodestar of \$38,250.00 based on GLA’s current hourly rates. While GLA’s practice is wholly contingent and our firm does not represent clients who pay on an hourly basis, our rates are set by reference to comparable firms and have recently been approved by courts in other matters. GLA attorneys expended additional hours from April 17, 2026 and beyond that are not included here.

4. The chart below reflects GLA’s time, hourly rates, and lodestar through April 16, 2026:

<b>Timekeeper</b>	<b>Position</b>	<b>Hour Through April 16, 2026</b>	<b>Hourly Rate</b>	<b>Lodestar</b>
Michele Carino	Of Counsel	47.00	\$750/hr	\$35,250.00
Inga Nogueira	Paralegal	10.00	\$300/hr	\$3,000.00
<b>TOTAL</b>		<b>57.00</b>		<b>\$38,250.00</b>

5. GLA’s activities during the litigation included: communicating with plaintiff regarding case analysis and strategy; providing updates to plaintiff regarding case status and litigation developments; reviewing and analyzing all demands, pleadings, and filings in this Action and the related federal action; reviewing and discussing the substantive terms of the settlement and formal terms of the Stipulation of Settlement with the plaintiff.

6. GLA does not seek reimbursement of expenses incurred in the prosecution of the Action.

7. I respectfully request that the Court award the attorneys' fees requested.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 12th day of May, 2026 in Floral Park, New York.

  
MICHELE S. CARINO, ESQ.

# Exhibit F

**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**

**DECLARATION OF LAWRENCE P. EAGEL IN SUPPORT  
OF PLAINTIFFS' APPLICATION FOR AWARD OF  
ATTORNEYS' FEES AND EXPENSES AND INCENTIVE AWARDS**

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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" or the "Company") 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.

I, Lawrence P. Eigel, declare as follows:

1. I am a shareholder and partner at the law firm of Bragar Eigel & Squire, P.C. (“BES”), and a member in good standing of the bars of the States of New York and New Jersey. BES serves as counsel for plaintiffs in the related federal derivative action (“Federal Plaintiffs”)<sup>5</sup> captioned *Larkin et al. v. Trefler et al.*, No. 1:25-cv-10303-WGY (D. Mass.) (the “Federal Action”), which asserts derivative claims on behalf of nominal defendant Pegasystems that are substantially similar to those brought in the above-captioned action (the “State Action” and together with the Federal Action, the “Actions”).

2. I respectfully submit this declaration in support of Plaintiffs’ Application For An Award Of Attorneys’ Fees And Expenses And Incentive Awards.

3. BES undertook the Federal Action on an entirely contingent basis. From the inception of this matter through April 16, 2026 (*i.e.*, when the Court granted Plaintiffs’ Motion for Preliminary Approval of the Settlement), BES attorneys and legal assistants expended (excluding timekeepers who devoted less than five hours to the matter) a combined total of 592.25 hours for a total lodestar of \$551,475.00, based on BES’s current hourly rates. The hourly rates for the BES attorneys included in the chart below are comparable to the rates submitted by our firm and accepted by courts for lodestar cross-checks in similar derivative actions. BES attorneys expended additional hours from April 17, 2026, and beyond that are not included here.

4. The chart below reflects BES’s time, current hourly rates, and lodestar through April 16, 2026:

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<sup>5</sup> As discussed in the accompanying motion, the Federal Plaintiffs support the proposed Settlement and Plaintiffs’ counsel in both actions have agreed to an equitable division of any fee and expense award that the Court may approve.

<b>Timekeeper</b>	<b>Position</b>	<b>Hourly Rate</b>	<b>Hours through April 16, 2026</b>	<b>Lodestar</b>
Brandon Walker	Partner	\$1,200	81.50	\$97,800.00
Lawrence Eigel	Partner	\$1,200	170.50	\$204,600.00
Marion Passmore	Partner	\$1,050	8.00	\$8,400.00
Badge Humphries	Partner	\$975	174.00	\$169,650.00
Jack Sanner	Associate	\$575	7.75	\$4,456.25
Gabriela Cardé	Associate	\$675	14.50	\$9,787.50
Dena Bielasz	Paralegal	\$625	37.75	\$16,043.75
Anthony Bowling	Paralegal	\$400	30.75	\$12,300.00
Daphne Greve	Paralegal	\$425	62.50	\$26,562.50
Anna Hoffman	Paralegal	\$375	5.00	\$1,875.00
<b>TOTAL</b>			<b>592.25</b>	<b>\$551,475.00</b>

5. BES's activities included: (i) investigating the proceedings in the Company's litigation with Appian in Virginia (the "Virginia Litigation"), and the related securities class action pending in the United States District Court for the District of Massachusetts; (ii) researching theories of liability and applicable law; (iii) researching, drafting and arranging for filing initial derivative complaint; (iv) preparing a motion to consolidate the pending derivative actions, and filing a joint motion to consolidate and stay the derivative actions; (v) negotiating with defense counsel for the production of documents, including materials and documents previously produced in discovery in the related securities class action; (vi) reviewing documents produced; (vii) communicating with counsel to the Demand Review Committee ("DRC") of the Company's Board of Directors; (viii) researching, drafting, and revising settlement demands; (ix) drafting and revising Plaintiffs' mediation statement, attending the mediation and follow up negotiations; (x) participating in drafting and filing an opposition to the DRC's motion to dismiss Plaintiffs' initial complaint; (xi) analyzing the DRC's report; (xii) attending Court conference on pending matters, including the State Plaintiffs motion to intervene and stay; (xiii) reviewing and participating in filing consolidated complaint in response to motion to dismiss; (xiv) coordinating with the State Plaintiffs regarding further settlement negotiations and outstanding issues; (xv) reviewing, drafting, and revising portions of the settlement agreement and motion for preliminary approval; and (xvi) reviewing and revising portions of

supplemental briefing concerning the same. We also regularly communicated with our client to update him concerning this matter.

6. BES has also incurred \$25,433.37 in litigation expenses to date, all of which were necessary to the prosecution of the action. These itemized expenses break down as follows:

<b>Expense Category</b>	<b>Amount</b>
Court/Filing Fees	\$405.00
Mailing/Hand Delivery/Service of Process	\$0.00
Travel/Meals	\$606.65
Document Management	\$22,980.62
Legal Research	\$1441.10
<b>TOTAL EXPENSES</b>	<b>\$25,433.37</b>

7. These expenses are reflected in the books and records of the firm. These books and records are prepared from invoices, bills, expense vouchers, and check records kept in the normal course of business and are available for the Court to review *in camera* upon request. None of the attorneys' fees and expenses submitted to the Court have been paid from any source or have been the subject of any prior request or award in litigation or any other proceeding.

8. I respectfully request that the Court award the attorneys' fees and expense reimbursement requested.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 19th day of May, 2026 in Pleasantville, New York.

/s/ LAWRENCE EAGEL  
LAWRENCE EAGEL

# Exhibit G

**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**

**DECLARATION OF BADGE HUMPHRIES**  
**IN SUPPORT OF PLAINTIFFS' APPLICATION FOR AWARD**  
**OF ATTORNEYS' FEES AND EXPENSES AND INCENTIVE AWARDS**

---

<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, Badge Humphries, declare as follows:

1. I am a member of the firm Griffin Humphries LLC (“Griffin Humphries”) and a member in good standing of the Bars of Texas, South Carolina, Kentucky, and Georgia, and an inactive member of the Bar of West Virginia. My firm serves as counsel for plaintiffs in the related federal derivative action (“Federal Plaintiffs”)<sup>5</sup> captioned *Larkin et al. v. Trefler et al.*, No. 1:25-cv-10303-WGY (D. Mass.) (“Federal Action”), which brings derivative claims on behalf of nominal defendant Pegasystems that are substantially similar to those brought in the above-captioned action (“State Action” and together with the Federal Action, the “Actions”).

2. I respectfully submit this declaration in support of Plaintiffs’ Application for Award of Attorneys’ Fees and Expenses and Incentive Awards to Plaintiffs.

3. I was previously a partner at Bragar, Eigel & Squire, P.C. (“BES”). Through BES, I began representing Federal Plaintiff Dag Sagfors in this matter in January 2023, when I undertook the initial review and revision of the draft derivative complaint. I continued to represent Mr. Sagfors through BES through February 28, 2025, when I left BES. Beginning March 1, 2025, I have represented Mr. Sagfors as a member of Griffin Humphries, along with attorneys at BES, who also continued to represent Mr. Sagfors. The time and expenses incurred by BES on this matter prior to March 1, 2025, are included in BES’ lodestar and are not reflected in the lodestar and expense figures for Griffin Humphries set forth below, which reflect only the time and expenses from March 1, 2025, forward.

4. Griffin Humphries undertook the Federal Action solely on a contingent fee basis with the understanding that we would receive no compensation, and our expenses would not be reimbursed, unless our efforts resulted in the recovery of a substantial benefit for the Company.

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<sup>5</sup> As discussed in the accompanying motion, the Federal Plaintiffs support the proposed Settlement and Plaintiffs’ counsel in both actions have agreed to an equitable division of any fee and expense award that the Court may approve.

From March 1, 2025, through April 16, 2026 (i.e., when the Court granted Plaintiffs' Motion for Preliminary Approval of the Settlement), Griffin Humphries attorneys expended a combined total of 482.80 hours for a total lodestar of \$370,300.00 based on Griffin Humphries's current hourly rates. The hourly rates for Griffin Humphries attorneys included in the chart below are comparable to the rates submitted by my firm and accepted by courts for lodestar cross-checks in similar derivative actions. Griffin Humphries attorneys expended additional hours after April 16, 2026, which are not included here.

5. The chart below reflects Griffin Humphries's time, hourly rates, and lodestar through April 16, 2026:

<b>Timekeeper</b>	<b>Position</b>	<b>Hourly Rate</b>	<b>Hours</b>	<b>Lodestar</b>
Badge Humphries	Partner	\$975.00	300.20	\$292,695.00
Daphne Greve	Paralegal	\$425.00	182.60	\$ 77,605.00
<b>TOTAL</b>			<b>482.80</b>	<b>\$370,300.00</b>

6. In total, Griffin Humphries collectively recorded 482.80 hours, for a total lodestar of \$370,300.00 from March 1, 2025, through April 16, 2026.

7. Griffin Humphries's activities during the litigation included (i) investigating the proceedings in the Company's litigation with Appian in Virginia and the related securities class action; (ii) researching theories of liability and Massachusetts law; (iii) negotiating and reviewing the production of documents, including Board-level materials and documents previously produced in discovery in the related securities class action; (iv) communicating with counsel to the Demand Review Committee ("DRC") of the Company's Board of Directors and monitoring the DRC's investigation; (v) reviewing the trial transcripts and exhibits entered in the Appian Litigation;<sup>6</sup> (vi)

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<sup>6</sup> *Appian Corp. v. Pegasystems Inc., et al.*, Civ. No. 2020-07216 (Cir. Ct. Fairfax Cnty., Va.)

reviewing authorizing resolutions of the DRC; (vii) coordinating with the plaintiffs in the State Action and monitoring the same; (viii) drafting and revising portions of a joint mediation statement and settlement demand; (ix) analyzing the DRC's report; (x) drafting and filing the opposition to the DRC's motion to dismiss; (xi) preparing for, travelling to, and participating in hearings before the Honorable William G. Young, United States District Court Judge for the District of Massachusetts; (xii) participating in settlement negotiations; (xiii) reviewing, drafting, and revising portions of the settlement agreement and motion for preliminary approval; and (xiv) drafting and revising portions of supplemental briefing concerning the same.

8. Griffin Humphries has also incurred \$12,510.55 in litigation expenses to date, all of which were necessary to the prosecution of the Actions. These expenses break down as follows:

<b>EXPENSE CATEGORY</b>	<b>AMOUNT</b>
Courier Fees	\$540.47
Court Costs	\$125.00
Litigation Support / Document Database	\$30.96
Itemized Legal Research Databases (Westlaw and Lexis)	\$5,975.76
Travel/Meals	\$5,838.36
<b>Total Expenses</b>	<b>\$12,510.55</b>

9. These expenses are reflected in the books and records of the firm. These books and records are prepared from invoices, bills, expense vouchers, and check records kept in the normal course of business and are available for the Court to review *in camera* upon request.

10. I respectfully request that the Court award the attorneys' fees and expense reimbursement requested.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 15th day of May 2026 in Sullivan's Island, South Carolina.

*s/ Badge Humphries* \_\_\_\_\_

Badge Humphries

GRIFFIN HUMPHRIES LLC

2113 Middle Street, Suite 305

Sullivan's Island, South Carolina 29482

Tel: 843-883-7444

bhumphries@griffinhumphries.com

# Exhibit H

**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**

**DECLARATION OF DARYL ANDREWS IN SUPPORT OF PLAINTIFFS'  
APPLICATION FOR AWARD OF ATTORNEYS' FEES AND EXPENSES AND  
INCENTIVE AWARDS**

---

<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.

I, Daryl Andrews, declare as follows:

1. I am a member of Andrews DeValerio LLP and a member in good standing of the Bar of the Commonwealth of Massachusetts. My firm serves as liaison counsel to Plaintiff Dag Sagfors, (one of the “Federal Plaintiffs”)<sup>5</sup> in *Larkin et al. v. Trefler et al.*, No. 1:25-cv-10303-WGY (D. Mass.), (the “Federal Action”).

2. I respectfully submit this affidavit in support of Plaintiffs’ Motion for an Award of Attorneys’ Fees and Expenses and Incentive Awards to Plaintiffs.

3. Andrews DeValerio undertook this Action on an entirely contingent basis. From the inception of this matter through April 16, 2026 (*i.e.*, when the Court granted Plaintiffs’ Motion for Preliminary Approval of the Settlement)), Andrews DeValerio attorneys expended a combined total of 49.0 hours on the prosecution of this Action for a total lodestar of \$32,800.00 based on Andrews DeValerio’s current hourly rates. While Andrews DeValerio’s practice is wholly contingent and our firm does not represent clients who pay on an hourly basis, our rates are set by reference to comparable firms and have recently been approved by courts in other matters, including, for example, *Miller v. Sonus Networks, Inc. et al.* Case No.: 1:18-cv-12344-GAO. Andrews DeValerio attorneys expended additional hours from April 17, 2026 and beyond that are not included here.

4. The chart below reflects Andrews DeValerio time, hourly rates, and lodestar through April 16, 2026:

<b>Timekeeper</b>	<b>Position</b>	<b>Hourly Rate</b>	<b>Hours through April 16, 2026</b>	<b>Lodestar</b>
Daryl Andrews	Partner	\$650	39.5	\$25,675.00
Glen DeValerio	Partner	\$750	9.5	\$7,125.00
<b>TOTAL</b>				\$32,800.00

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<sup>5</sup> As discussed in the accompanying motion, the Federal Plaintiffs support the proposed Settlement and Plaintiffs’ counsel in both actions have agreed to an equitable division of any fee and expense award that the Court may approve.

5. In total, Andrews DeValerio collectively recorded 49.0 hours, for a total lodestar of \$32,800.00 from inception through April 16, 2026.

6. Andrews DeValerio's activities during the litigation included reviewing and editing initial complaint and consolidated complaint, reviewing, analyzing and editing briefing related to, and attended hearings on, discovery motions, motion to dismiss, motion to intervene, scheduling conferences, and the motion for preliminary approval of the proposed settlement.

7. Andrews DeValerio has also incurred \$221.00 in litigation expenses to date, all of which were necessary to the prosecution of the Action. These expenses break down as follows:

<b>Expense Category</b>	<b>Amount</b>
Court/Filing Fees	\$125.00
Travel/Parking Fees	\$96
<b>TOTAL EXPENSES</b>	<b>\$221.00</b>

8. These expenses are reflected in the books and records of the firm. These books and records are prepared from invoices, bills, expense vouchers, and check records kept in the normal course of business and are available for the Court to review *in camera* upon request.

9. I respectfully request that the Court award the attorneys' fees and expense reimbursement requested.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 27th day of April, 2026 in Brookline, Massachusetts.

/s/ DARYL ANDREWS  
DARYL ANDREWS

# Exhibit I

**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**

**DECLARATION OF VINCENT A. LICATA IN SUPPORT OF PLAINTIFFS’  
APPLICATION FOR AWARD OF ATTORNEYS’ FEES AND EXPENSES AND  
INCENTIVE AWARDS**

---

<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.

I, Vincent A. Licata, declare as follows:

1. I am a Partner of the firm Rigrotsky Law, P.A. (“Rigrotsky Law”) and a member in good standing of the Bar of the State of New York. My firm serves as counsel for plaintiffs in the related federal derivative action (“Federal Plaintiffs”)<sup>5</sup> captioned *Larkin et al. v. Trefler et al.*, No. 1:25-cv-10303-WGY (D. Mass.) (“Federal Action”), which brings derivative claims on behalf of nominal defendant Pegasystems that are substantially similar to those brought in the above captioned action (“State Action” and together with the Federal Action, the “Actions”).

2. I respectfully submit this affidavit in support of Plaintiffs’ Motion for an Award of Attorneys’ Fees and Expenses and Incentive Awards to Plaintiffs.

3. Rigrotsky Law undertook the Federal Action and underlying litigation demand on an entirely contingent basis with the understanding that the firm would receive no compensation, and our expenses would not be reimbursed, unless our efforts resulted in the recovery of a substantial benefit for the Company. From the inception of this matter through April 16, 2026 (*i.e.*, when the Court granted Plaintiffs’ Motion for Preliminary Approval of the Settlement), Rigrotsky Law attorneys expended a combined total of 480.25 hours for a total lodestar of \$381,562.50 based on Rigrotsky Law’s current hourly rates. The hourly rates for the Rigrotsky Law attorneys included in the chart below are comparable to the rates submitted by my firm and accepted by courts for lodestar cross-checks in similar derivative actions. Rigrotsky Law attorneys expended additional hours from April 17, 2026 and beyond that are not included here.

4. The chart below reflects Rigrotsky Law’s time, hourly rates, and lodestar through April 16, 2026:

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<sup>5</sup> As discussed in the accompanying motion, the Federal Plaintiffs support the proposed Settlement and Plaintiffs’ counsel in both actions have agreed to an equitable division of any fee and expense award that the Court may approve.

<b>Timekeeper</b>	<b>Position</b>	<b>Hourly Rate</b>	<b>Hours through April 16, 2026</b>	<b>Lodestar</b>
Seth D. Rigrodsky	Partner	\$1,100	81	\$89,100.00
Gina M. Serra	Partner	\$950	48.25	\$45,837.50
Vincent A. Licata	Partner	\$850	213.5	\$181,475.00
Leah Wihtelin	Associate	\$500	65.5	\$32,750.00
Samir Aougab	Associate	\$450	72	\$32,400.00
<b>TOTAL</b>			480.25	\$381,562.50

5. In total, Rigrodsky Law collectively recorded 480.25 hours, for a total lodestar of \$381,562.50 from inception through April 16, 2026. Not all time expended by professionals at Rigrodsky Law has been included.

6. Rigrodsky Law's activities during the litigation included (i) investigating the proceedings in the Company's litigation with Appian in Virginia and the related securities class action; (ii) researching theories of liability and Massachusetts law; (iii) researching, drafting, and revising my client's litigation demand; (iv) researching, drafting, and revising my client's plenary derivative complaint; (v) negotiating and reviewing the production of documents, including Board level materials and documents previously produced in discovery in the related securities class action; (vi) communicating with counsel to the Demand Review Committee ("DRC") of the Company's Board of Directors and monitoring the DRC's investigation; (vii) reviewing authorizing resolutions of the DRC; (viii) coordinating with the plaintiffs in the State Action and monitoring the same; (ix) drafting and revising portions of a joint mediation statement and settlement demand; (x) analyzing the DRC's report; (xi) drafting and filing the opposition to the DRC's motion to dismiss; (xii) participating in settlement negotiations; (xiii) reviewing, drafting, and revising portions of the settlement agreement and motion for preliminary approval; and (xix) drafting and revising portions of supplemental briefing concerning the same.

7. Rigrodsky Law has also incurred \$841.90 in litigation expenses to date, all of which were necessary to the prosecution of the Actions. These expenses break down as follows:

<b>Expense Category</b>	<b>Amount</b>
Court/Filing Fees	\$819.80
Printing/Photocopying/Transcripts	\$22.10
<b>TOTAL EXPENSES</b>	<b>\$841.90</b>

8. These expenses are reflected in the books and records of the firm. These books and records are prepared from invoices, bills, expense vouchers, and check records kept in the normal course of business and are available for the Court to review *in camera* upon request.

9. I respectfully request that the Court award the attorneys' fees and expense reimbursement requested.

10. The Matorin Law Office, LLC served as local counsel in the Federal Action and will share in the awarded fees. The Matorin Law Office's time is de minimus and they have no additional expenses.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 20th day of May, 2026 in New York, NY.

/s/ Vincent A. Licata  
Vincent A. Licata

# Exhibit J

**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**

**DECLARATION OF DANIEL TEPPER IN SUPPORT OF PLAINTIFFS’  
APPLICATION FOR AWARD OF ATTORNEYS’ FEES AND EXPENSES AND  
INCENTIVE AWARDS**

---

<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” or the “Company”) 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.

I, Daniel Tepper, declare as follows:

1. I am a Partner at the law firm of Levi & Korsinsky, LLP (“L&K”) and a member in good standing of the Bar of the State of New York. My firm serves as counsel to George Fielding Brenner, a holder of Pegasystems common stock who made a litigation demand upon the Company’s Board of Directors on March 24, 2023 (the “Demand”) to bring the claims substantially the same as those in the above captioned action (the “Action”) and the federal action styled *Larkin et al. v. Trefler et al.*, No. 1:25-cv-10303-WGY (D. Mass.), (the “Federal Action,” and together with the Action and the Demand, the “Matter.”)

2. I respectfully submit this affidavit in support of Plaintiffs’ Motion for an Award of Attorneys’ Fees and Expenses and Incentive Awards to Plaintiffs.

3. L&K undertook this Matter on an entirely contingent basis. From the inception of this Matter through April 16, 2026 (*i.e.*, when the Court granted Plaintiffs’ Motion for Preliminary Approval of the Settlement), L&K’s attorneys and employees expended (excluding timekeepers who devoted less than five hours to the Matter, summer associates, and law clerks) a combined total of 259.4 hours on the prosecution of this Matter for a total lodestar of \$279,900 based on L&K’s current hourly rates. While L&K’s practice is primarily contingent, our firm does represent clients who retain our services on an hourly basis, and these are the same rates charged to those clients. L&K attorneys expended additional hours from April 17, 2026 and beyond that are not included here.

4. The chart below reflects L&K’s time, current hourly rates, and lodestar through April 16, 2026, excluding timekeepers who devoted less than five hours to the Matter, summer associates, and law clerks. For personnel who are no longer with L&K, the hourly rate below is their rate at the time of their departure.

<b>Timekeeper</b>	<b>Position</b>	<b>Hourly Rate</b>	<b>Hours thru April 16, 2026</b>	<b>Lodestar</b>
Gregory M. Nespole	Partner	\$1,300	10.8	\$14,040
Daniel Tepper	Partner	\$1,300	175.9	\$228,670

<b>Timekeeper</b>	<b>Position</b>	<b>Hourly Rate</b>	<b>Hours thru April 16, 2026</b>	<b>Lodestar</b>
Correy A. Suk	Sr. Associate	\$750	16.0	\$12,000
Ryan Messina	Associate	\$500	34.3	\$17,150
Zac Gazzard	Paralegal	\$375	15.2	\$5,700
Amaranta Elder	Paralegal	\$325	7.2	\$2,340
<b>TOTAL</b>			259.4	\$279,900

5. L&K's activities during the litigation included investigating the proceedings in the Company's litigation with Appian in Virginia (the "Virginia Litigation"); researching theories of liability and Massachusetts law; preparing and revising our client's books and records demand; preparing a deficiency notice to the Company when our client's books and records demand was not promptly responded to; communicating with the Company's counsel about our client's books and records demand; negotiating a nondisclosure agreement and the scope of the Company's production of books and records; analyzing the books and records produced by the Company; analyzing the docket and filings in the Virginia Litigation; researching, drafting, and revising our client's Demand; communicating with counsel to the Demand Review Committee ("DRC") of the Company's Board of Directors; reviewing authorizing resolutions for the same; reviewing motions to dismiss the Federal Action; monitoring the docket in and attending oral argument on the motion to dismiss the related securities action; coordinating with the plaintiffs in the Federal Action ("Federal Plaintiffs") and monitoring the same; negotiating the production of documents produced in discovery in the related securities class action; coordinating with the Federal Plaintiffs concerning review of the same; drafting and revising portions of a joint mediation statement and settlement demand with the Federal Plaintiffs; attending mediation in Boston on behalf of our client and the Federal Plaintiffs; corresponding with counsel to Plaintiffs in this Action concerning the same and litigation strategy; analyzing the DRC's report; assisting the Federal Plaintiffs in preparation of amended pleadings and opposition to the DRC's motion to dismiss the same; reviewing, drafting, and revising portions of the Federal Plaintiffs' opposition to the motion by the plaintiffs in this Action to intervene therein;

attending oral argument and assisting in preparation for the same; participating in settlement negotiations; reviewing, drafting, and revising portions of the settlement agreement and motion for preliminary approval; and drafting and revising portions of supplemental briefing concerning the same. I also regularly communicated with our client to update him concerning the Matter.


6. L&K has also incurred \$2,623.97 in litigation expenses to date, all of which were necessary to the prosecution of the Action, excluding costs for in-house printing and copying, legal research database subscriptions, telephone calls, and similar expenses of an overhead nature. These itemized expenses break down as follows:

<b>Expense Category</b>	<b>Amount</b>
Travel / Meals	\$1,143.95
Itemized Legal Research Databases	\$1,172.51
Process Server	\$265.00
FedEx	\$42.51
<b>TOTAL EXPENSES</b>	<b>\$2,623.97</b>

7. These expenses are reflected in the books and records of the firm. These books and records are prepared from invoices, bills, expense vouchers, and check records kept in the normal course of business and are available for the Court to review *in camera* upon request. None of the attorneys' fees and expenses submitted to the Court have been paid from any source or have been the subject of any prior request or award in litigation or any other proceeding.

8. I respectfully request that the Court award the attorneys' fees and expense reimbursement requested.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 14th day of May, 2026 in Pleasantville, New York.

  
\_\_\_\_\_  
Daniel Tepper

# Exhibit K

**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**

**DECLARATION OF FRANCIS A. BOTTINI, JR. IN SUPPORT OF PLAINTIFFS’  
APPLICATION FOR AWARD OF ATTORNEYS’ FEES AND EXPENSES AND  
INCENTIVE AWARDS**

---

<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.

I, Francis A. Bottini, Jr., declare as follows:

1. I am a member of Bottini & Bottini, Inc. and a member in good standing of the Bar of California. My firm serves as counsel to the plaintiffs, John Dwyer, Ray Gerber, Jayne Birch, and Robert Garfield (“Plaintiffs”), in this action (the “Action”).<sup>5</sup>

2. I respectfully submit this affidavit in support of Plaintiffs’ Motion for an Award of Attorneys’ Fees and Expenses and Incentive Awards to Plaintiffs.

3. Bottini & Bottini, Inc. undertook this Action on an entirely contingent basis. From the inception of this matter through April 16, 2026 (*i.e.*, when the Court granted Plaintiffs’ Motion for Preliminary Approval of the Settlement), Bottini & Bottini, Inc. has expended a combined total of 54.90 hours on the prosecution of this Action for a total lodestar of \$55,551.00 based on Bottini & Bottini, Inc.’s current hourly rates. While Bottini & Bottini, Inc.’s practice is primarily contingent, our firm does represent clients who retain our services on an hourly basis, and these are the same rates charged to those clients. Additionally, the hourly rates for attorneys and professional support staff in my firm have been accepted by courts throughout the country in other complex litigation actions. *See, e.g., In re Alphabet Inc. Shareholder Derivative Litig.*, No. 19CV341522 (Cal. Super. Ct. Santa Clara Cnty. Feb. 5, 2021); *Hack v. Wright, et al. (In re Conns Inc. Shareholder Derivative Litig.)*, No. 4:14-CV-3442 (KPE), Dkt. No. 199 (S.D. Tex. Mar. 15, 2022); *Wilhoite v. Hou (In re TuSimple Shareholder Derivative Litig.)*, No. 3:23-cv-02333-BEN-MSB, Dkt. No. 331 (S.D. Cal. July 23, 2025); *Overbrook Capital LLC v. Aerogrow International, Inc.*, Lead Case No. A-21-827665-B (Clark Cnty. Nevada District Court May 8, 2026); and *In re Wells Fargo & Company Hiring Practices Derivative Litig.*, No. 3:22-cv-05173-TLT, Dkt. No. 292 (N.D. Cal. May 15, 2026).

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<sup>5</sup> As discussed in the accompanying motion, the plaintiffs in *Larkin et al. v. Trefler et al.*, No. 1:25-cv-10303-WGY (D. Mass.), support the proposed Settlement and Plaintiffs’ counsel in both actions have agreed to an equitable division of any fee and expense award that the Court may approve.

4. The chart below reflects Bottini & Bottini, Inc.'s time, hourly rates, and lodestar through April 16, 2026:

<b>Timekeeper</b>	<b>Position</b>	<b>Hourly Rate</b>	<b>Hours through April 16, 2026</b>	<b>Lodestar</b>
Francis A. Bottini, Jr.	Partner	\$1,090	48.30	\$52,647.00
Stephanie M. Ammirati	Paralegal	\$440	6.60	\$2,904.00
<b>TOTAL</b>			54.90	\$55,551.00

5. In total, Bottini & Bottini, Inc. collectively recorded 54.90 hours, for a total lodestar of \$55,551.00 from inception through April 16, 2026.

6. Bottini & Bottini, Inc.'s activities during the litigation included: researching and drafting a books-and-records demand, negotiating a confidentiality agreement, reviewing and analyzing a books-and-records production, drafting an initial plenary complaint, drafting a consolidated complaint, reviewing and analyzing the Demand Review Committee's report, researching and drafting responses to Defendants' motions to dismiss, negotiating the substantive terms of the settlement, and drafting and negotiating the formal terms of the Stipulation of Settlement.

7. Bottini & Bottini, Inc. has also incurred \$1,910.15 in litigation expenses to date, all of which were necessary to the prosecution of the Action. These expenses break down as follows:

<b>Expense Category</b>	<b>Amount</b>
Mailing/Federal Express	\$84.37
Long Distance Telephone	\$42.06
Online Legal Research (Lexis, Bloomberg)	\$1,426.72
Printing/Photocopying	\$357.00
<b>TOTAL EXPENSES</b>	\$1,910.15

8. These expenses are reflected in the books and records of the firm. These books and records are prepared from invoices, bills, expense vouchers, and check records kept in the normal course of business and are available for the Court to review *in camera* upon request.

9. I respectfully request that the Court award the attorneys' fees and expense reimbursement requested.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 19th day of May, 2026 in La Jolla, California.

/s/ Francis A. Bottini, Jr.  
Francis A. Bottini, Jr.

# Exhibit L

**CONFIDENTIAL**

**REPORT OF THE DEMAND REVIEW COMMITTEE  
OF THE PEGASYS SYSTEMS BOARD OF DIRECTORS**

**ON ITS**

**INVESTIGATION OF CONFIDENTIAL DEMAND LETTERS**

**Christopher Lafond  
Dianne Ledingham  
Sharon Rowlands**

**October 7, 2024**

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## **I. Executive Summary**

Since March 2023, the board of directors (the “Board”) of Pegasystems Inc. (“Pegasystems,” “Pega,” or the “Company”) has received seven confidential demands (the “Demands”) from purported Pegasystems shareholders requesting that the Board investigate and potentially initiate legal action against certain directors and officers of the Company for alleged violations of federal and state law. Shortly after receiving the first such demand, and pursuant to longstanding and well-settled Massachusetts law, the Board appointed three independent and disinterested directors (Christopher Lafond, Dianne Ledingham, and Sharon Rowlands) to comprise a demand review committee (the “DRC”) to investigate the allegations set forth in, and the relief sought through, the Demands. The Board delegated to the DRC the full authority of the Board to take any actions that the DRC deemed necessary to develop the relevant facts and to take any steps, including any remedial actions, which the DRC believed to be in the best interests of the Company.

This is the Report of the DRC (the “Report”).

The Demands principally focus on alleged misconduct relating to the claims asserted in, and events arising from, the litigation captioned *Appian Corp. v. Pegasystems Inc.*, No. 2020-07216 (Va. Cir. Ct. Fairfax Cnty.) (the “Appian Litigation”). As alleged in the Demands, beginning in 2012, Pegasystems and certain of its senior executives and employees purportedly created a scheme to profit from trade secrets allegedly misappropriated from Appian Corp. (“Appian”). More specifically, the Demands allege that Pegasystems engaged a third-party consultant, who had access to Appian’s software and documentation and shared Appian’s trade secrets with Pegasystems by, among other things, secretly downloading Appian’s confidential information, recording videos and taking screenshots of Appian’s platform, and showing Pegasystems how to use the platform. The Demands claim that Pegasystems used Appian’s trade

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secrets to improve the Company's own software and competitive position. Separately, the Demands allege that, beginning in 2019, certain Company personnel began using false identities to access Appian's free trial platform and to further access Appian's trade secrets. The Demands allege that both purported schemes were orchestrated by senior management.

In May 2020, Appian commenced the Appian Litigation, alleging that Pegasystems misappropriated Appian's purported trade secrets through its third-party consultant and violated the Virginia Computer Crimes Act when Pegasystems personnel accessed Appian's free trial instances under false pretenses. Appian's original complaint claimed damages of up to \$90 million; but, in February 2022, nearly two years later and just shortly before trial, Appian increased its prayer for damages to more than \$3 billion. The Demands allege, among other things, that Pegasystems improperly delayed disclosing the Appian Litigation. The Company first disclosed the Appian Litigation in its Form 10-K for fiscal year 2021, filed in February 2022 (the "2021 10-K"), after Appian increased its damages sought to \$3 billion. In that and subsequent disclosures, the Company made statements that the Demands allege were misleading, including statements that the Appian Litigation's claims lacked merit, that the Company had strong defenses to those claims, and that the damages Appian sought were not the result of misappropriation or use of the purported trade secrets.

In May 2022, after a seven-week trial, a jury returned a verdict in Appian's favor and awarded damages of \$2.04 billion against the Company.

Pegasystems appealed the verdict (captioned *Pegasystems Inc. v. Appian Corp.*, No. 1399-22-4 (Va. Ct. App.) (the "Appian Appeal")). Oral argument on the Appian Appeal was held on November 15, 2023. On July 30, 2024, a unanimous panel of the Virginia Court of Appeals vacated the judgment and ordered a new trial. *See Pegasystems Inc. v. Appian Corp.*, 81 Va. App.

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433 (Va. Ct. App. 2024) (the “Virginia Appellate Decision”). The Virginia Court of Appeals determined that the “the trial court committed a series of errors” that deprived Pegasystems of a fair trial, including, among other things, wrongly excluding relevant evidence that supported the Company’s arguments that the information at issue did not constitute trade secrets and was, in any event, not used to improve its product, wrongly depriving the Company of the ability to introduce key evidence to disprove damages, and wrongly imposing on the Company (rather than Appian) the burden to prove damages. *Id.* at 448, 476-507. Appian has appealed this decision to the Supreme Court of Virginia. *See Appian Corp. v. Pegasystems Inc.*, No. 240736 (Va.).

The Demands requested that the Board investigate, address, remedy, and commence proceedings against (i) the independent directors of the Board (*i.e.*, Peter Gyenes, Richard Jones, Christopher Lafond, Dianne Ledingham, Sharon Rowlands, and Larry Weber (collectively, the “Independent Directors”)); and (ii) certain officers of the Company, including Kerim Akgonul (Chief Product Officer), Don Schuerman (Chief Technology Officer and Vice President, Marketing and Technology Strategy), Alan Trefler (Chief Executive Officer and a member of the Board) (“Mr. Trefler”), Leon Trefler (Chief of Clients and Markets), and Kenneth Stillwell (Chief Financial Officer) (collectively, and together with the Independent Directors, the “Fiduciaries”)<sup>1</sup>— for allegedly violating (a) certain Massachusetts state laws, including for breach of fiduciary duty, aiding and abetting breaches of fiduciary duty, corporate waste, and unjust enrichment, (b) Section 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”), and Rule 10b-5 thereunder, and/or (c) any other applicable law, rule, or regulation related to the alleged wrongdoing.

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<sup>1</sup> For purposes of this Report, the DRC identified Mr. Akgonul, Mr. Schuerman, Mr. Trefler, Mr. Leon Trefler, and Mr. Stillwell as “officers” of the Company, as defined in Pegasystems’ bylaws, based on their designation as officers by the Board and/or in the Company’s SEC filings, and/or their compensation being set by the Board. Certain of the Demands erroneously allege that Benjamin Baril (Director of the Office of the Chief Technology Officer) is a Pegasystems “officer.” Mr. Baril is not; the Board does not set his compensation and the Company has not otherwise designated him an officer.

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As described throughout this Report, since its formation in April 2023, the DRC has extensively investigated the allegations in the Demands in order to determine whether it is in the Company's best interests to pursue litigation or take other corrective action. The DRC promptly retained independent legal counsel, Fried, Frank, Harris, Shriver & Jacobson LLP ("Fried Frank"), to assist and advise it in its investigation and work. The DRC and its counsel met regularly, collected over 180,000 non-public documents (to which they applied search terms), manually reviewed nearly 35,000 documents (nearly all of which were non-public), interviewed 17 witnesses, and immersed themselves in the relevant law and governing corporate principles. In February 2024, the DRC also engaged in a confidential mediation with the shareholders who had then sent their Demands, which mediation was not successful.

On October 7, 2024, the DRC unanimously determined that it would not be in the Company's best interests to pursue litigation against any of the challenged directors and officers with respect to the matters raised in the Demands and that there are no valid claims against them.

First, the DRC determined that the Fiduciaries did not breach their fiduciary duties in connection with the alleged misappropriation of competitors' trade secrets. As contemplated by the Demands, this cause of action is based on allegations that some or all of the Fiduciaries orchestrated and oversaw a purported "scheme" by which Pegasystems employees engaged consultants and used false identities to access Appian's platform. The DRC's investigation showed that the conduct at issue was initiated and executed by lower-level employees, and, as to the engagement of consultants, was principally overseen by a former Company employee who was terminated for unrelated reasons, later hired by Appian, and later proceeded to report the alleged misconduct to Appian, which then resulted in the Appian Litigation. The DRC did not identify any red flags that should have put the Fiduciaries on notice that employees were engaging in

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potentially unlawful or impermissible behavior. Indeed, none of the Independent Directors were aware of the conduct at issue before the Appian Litigation. The DRC found that the Fiduciaries who *were* aware of the alleged misconduct all genuinely, reasonably, and in good faith believed that the Appian information accessed by the third-party consultant or lower-level Pegasystems employees (*i.e.*, Appian's developer interface and free trial environment) did not constitute trade secrets or otherwise confidential material and, with respect to the consultant, was accessed pursuant to an appropriate agreement that disclaimed any intent by the consultant to disclose confidential material. The DRC concluded that the information obtained did not constitute trade secrets and that, in any event, Pegasystems did not profit from or otherwise change its business practices and strategy based on any such information. Thus, the DRC's investigation did not find adequate support for a claim that the Fiduciaries engaged in intentional misconduct, acted in bad faith, or behaved unreasonably.

Second, the DRC's investigation showed that the Company's disclosure decisions were reasonable and fully compliant with the federal securities laws. The Independent Directors, Mr. Stillwell, and Mr. Trefler sincerely and reasonably believed that, based on the information available at the time, the challenged public disclosures were accurate and complete when they were made. The record evidence revealed that, prior to the Company's initial disclosure of the Appian Litigation in February 2022, based on appropriate consideration of the facts available to them (including the views of those most directly handling the Appian Litigation), the Independent Directors, Mr. Stillwell, and Mr. Trefler reasonably believed the Appian Litigation (which at that point sought \$90 million in damages) was immaterial and that Appian's claims for damages had substantive flaws. The record further revealed that, when Appian increased its damages sought to \$3 billion, the Independent Directors, Mr. Stillwell, and Mr. Trefler promptly agreed that the

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Company should disclose the Appian Litigation, and worked closely with in-house legal counsel, the Appian Litigation trial team, and outside disclosure counsel to ensure appropriate and timely disclosure. The Virginia Court of Appeals has since determined that the multi-billion-dollar verdict resulted from significant legal errors by the trial court and therefore vacated the verdict. And the Securities & Exchange Commission (“SEC”) has since determined that it would not pursue any enforcement action related to the same disclosure decisions. Perhaps most importantly, the DRC did not identify evidence to support any viable claim that the Independent Directors, Mr. Stillwell, or Mr. Trefler acted intentionally or recklessly in drafting or approving the Company’s challenged public disclosures, as required to prove a securities law violation.

Third, the DRC concluded that there is not sufficient evidence that the Fiduciaries caused Pegasystems to incur expenses related to the Appian Litigation or approved repurchases of the Company’s stock in bad faith, irrationally, or antithetically to the Company’s best interests. Legal expenses incurred in connection with defending against Appian’s claims in the Appian Litigation were rational and made in furtherance of the Company’s interest in protecting itself from liability, and the DRC did not identify evidence of bad faith or unreasonable conduct by the Fiduciaries either in approving those expenses or by causing the now-vacated damages award. Additionally, Pegasystems’ stock repurchases have been made pursuant to a consistent and systematic program in place since 2004, and there is no evidence to suggest the Fiduciaries authorized that program knowing or believing the Company’s stock price to be inflated or the repurchase of that stock to not be in the Company’s best interest.

Fourth, the DRC did not identify evidence to support an unjust enrichment claim arising from the Fiduciaries receiving remuneration based on an artificial valuation of Pegasystems’ stock or that was otherwise unjust in light of bad faith conduct. The Demands are premised on

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allegations that the underlying misconduct amounted to bad faith, but the DRC did not identify evidence to support a Section 10(b) claim, breaches of fiduciary duty, or a claim of waste. As such, because the Fiduciaries did not act in bad faith, they could not have known that they were being compensated in exchange for purported misconduct. Any compensation received by the Fiduciaries was ordinary salaries, benefits, and/or bonuses that were reviewed in the normal course and approved by the Compensation Committee of the Board (the “Compensation Committee”), who themselves neither perpetrated nor were aware of the alleged misconduct.

Given the lack of factual support for the Demands’ claimed wrongdoing, the DRC unanimously determined not to initiate legal action against any of the Fiduciaries. In so concluding, the DRC not only considered the evidence developed, but also considered the significant out of pocket expenses such litigation would entail, the strength of defenses likely to be raised, the rights of exculpation under applicable corporate articles and bylaws, the indemnity liability to be incurred, and the cost in diversion of management and employee time and resources. The DRC also considered the remedial and deterrent effects of measures the Company has already undertaken to ensure the Company’s competitive intelligence practices are professional, ethical, and legal. The DRC also identified certain additional enhancements, as set forth and directed herein, which will further strengthen the Company’s compliance and governance framework. For all these reasons, the DRC’s business judgment is to decline to initiate the litigation proposed by the Demands.

The DRC’s work on this Report was nearly complete when the Virginia Court of Appeals decided the Appian Appeal and vacated the \$2.04 billion jury verdict. The analysis set forth in the Virginia Appellate Decision is consistent with and reinforced the DRC’s reasoning and conclusions. The DRC notes that, in light of Appian’s decision to appeal the Virginia Appellate

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Decision to the Supreme Court of Virginia prior to any retrial, final resolution of the Appian Litigation is potentially still years away. It therefore is not practicable for the DRC to wait until the Appian Litigation is completed to issue this Report. However, the DRC has concluded that it will remain in place through the conclusion of the Appian Litigation to consider the impact of potential future factual or legal developments arising from the Appian Appeal and/or further proceedings in the Appian Litigation.

## II. Shareholder Demands on the Board

### A. The Shareholder Demand Letters and Related Derivative Actions

To date, the Board has received seven demands from purported Pegasystems shareholders (collectively, the “Demand Shareholders”), pursuant to Section 7.42 of the Massachusetts Business Corporation Act (the “Act” or “MBCA”), as outlined below. Exs. 1 (Brenner Letter), 2 (Larkin Letter), 3 (Sagfors Letter), 4 (Garfield Letter), 5 (Birch Letter), 6 (Dwyer Letter), and 7 (Gerber Letter).

	<u>Demanding Shareholder</u>	<u>Date of Demand</u>	<u>Related Derivative Action<sup>2</sup></u>
1.	<b>George Fielding Brenner</b> <i>Counsel: Levi &amp; Korsinsky, LLP</i>	March 24, 2023	N/A
2.	<b>Mary Larkin</b> <i>Counsel: Rigrodsky Law, P.A.</i>	March 24, 2023	<i>Larkin v. Gyenes, et al.</i> , No. 22-cv-11985 (D. Mass. Nov. 21, 2022)
3.	<b>Dag Sagfors</b> <i>Counsel: Bragar Eigel &amp; Squire, P.C.</i>	May 5, 2023	<i>Sagfors v. Gyenes, et al.</i> , No. 23-cv-10933 (D. Mass. Apr. 28, 2023)
4.	<b>Robert Garfield</b> <i>Counsel: Shuman, Glenn &amp; Stecker</i>	May 17, 2023	N/A
5.	<b>Jayne Birch</b> <i>Counsel: Cohen Milstein Sellers &amp; Toll PLLC</i>	August 3, 2023	N/A
6.	<b>John Dwyer</b> <i>Counsel: Bernstein Litowitz Berger &amp; Grossmann LLP &amp; Bottini &amp; Bottini, Inc.</i>	March 25, 2024	<i>Dwyer et al. v. Trefler et al.</i> , No. 2484CV01734 (Mass. Super. June 28, 2024).
7.	<b>Ray Gerber</b> <i>Counsel: Bernstein Litowitz Berger &amp; Grossmann LLP &amp; Bottini &amp; Bottini, Inc.</i>	March 26, 2024	<i>Dwyer et al. v. Trefler et al.</i> , No. 2484CV01734 (Mass. Super. June 28, 2024).

<sup>2</sup> Ms. Larkin and Mr. Sagfors filed premature derivative actions in violation of the Act, which “requires that demand be made in *all* derivative suits filed on behalf of Massachusetts corporations,” as discussed *infra*. *Johnston v. Box*, 453 Mass. 569, 578 n.15 (2009) (emphasis in original).

Mr. Dwyer and Mr. Gerber sent their two Demands on March 25 and 26, 2024---i.e., over a year *after* the initial Demands were made on the Board. Counsel to the DRC promptly advised their counsel of all of the pending Demands, the formation of the DRC, the status of the DRC’s work, and that the DRC, at the time, expected to issue this Report on June 30, 2024. Nonetheless, on *June 28, 2024*, Mr. Dwyer and Mr. Gerber jointly filed a derivative action, claiming that the Board had rejected their Demands because the Board had not responded within the default 90 day period set forth in the MBCA. Notably, Mr. Dwyer and Mr. Gerber did not mention in their complaint the existence of the DRC, the DRC’s correspondence with them, or the anticipated timing for the issuance of this Report. Although the MBCA sets 90 days from the date a demand was made as a “reasonable minimum time[ ]” before which a derivative proceeding may be commenced, the MBCA notes that “[i]n some instances a longer period may be required.” G. L. c. 156D, § 7.42(2) & cmt. 3. And Massachusetts courts routinely recognize that that default time period should be extended where, as here, cases involving complicated facts and circumstances. *See infra* at 19.

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The Demands request that the Board investigate potential breaches of fiduciary duties, securities law violations, and/or other wrongdoing relating to purported misconduct by Pegasystems senior employees, officers, and directors and act to remedy harm to the Company.

**1. Factual Allegations Set Forth in the Demands**

The Demands principally focus on alleged misconduct relating to the claims asserted in, and events arising from, the Appian Litigation. Although there are modest variations between and among the Demands, they generally allege the same misconduct and potential legal claims. According to the Demands, in early 2012, Pegasystems and its senior executives and employees allegedly devised a scheme to misappropriate and profit from Appian's confidential information and trade secrets. As alleged, the Company commenced an illicit scheme against Appian called "Project Crush," an operation that involved recruiting an Appian developer who would be willing to misappropriate Appian's trade secrets for the Company. To that end, Pegasystems hired KForce Inc. ("KForce"), a technology, finance, and accounting-solutions firm, to identify candidates, indicating to KForce that the candidate could not be loyal to Appian.

The Demands allege that, in February 2012, KForce introduced the Company to Youyong Zou, who worked for U.S. government contractors using Appian's platform to build software applications. Pegasystems engaged Mr. Zou (indirectly, through K-Force) as a consultant, and he provided Pegasystems with access to Appian's software and information. Between February 2012 and September 2014, Mr. Zou—who had been given the pseudonyms "Matt" and "spy" by Pegasystems' then-Director of Product Marketing—purportedly used his Appian credentials to access Appian's alleged trade secrets and sell them to Pegasystems, with the Company paying Mr. Zou through KForce. According to the Demands, Mr. Zou purportedly secretly downloaded Appian's confidential information, recorded videos of Appian's platform, showed Pegasystems

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how to use Appian's platform, and provided the Company with insight into Appian's software. Additionally, Mr. Zou allegedly met with and collaborated with Pegasystems' officers, senior executives, engineers, and managers.

The Demands further allege that the Company used Appian's trade secrets and confidential information to, among other things, train the Company's sales employees to compete with Appian, develop sales materials, improve the Company's software, and acquire customers and deals. Pegasystems allegedly distributed Appian's confidential information to hundreds of Company employees, stressed its importance, and utilized the information it obtained through Mr. Zou until at least 2020. Separate from the foregoing, beginning in approximately 2019, multiple Pegasystems employees also allegedly began using false names and companies to "infiltrate" Appian's platform through free trial instances and gain further access to Appian's purported trade secrets.

As alleged, in early 2020, two former Pegasystems employees (including the Company's former Director of Product Marketing referenced above) began working for Appian. After joining Appian, they notified Appian of Pegasystems' supposed misconduct and, in May 2020, Appian filed the Appian Litigation. On February 16, 2022, Pegasystems disclosed the existence of the Appian Litigation for the first time in the 2021 10-K. The case proceeded to trial and, according to the Demands, the jury was ultimately presented evidence that (i) the Company paid Mr. Zou to provide copies of Appian's confidential software and documentation in violation of restrictions that barred Mr. Zou from sharing Appian's trade secrets, (ii) Pegasystems disseminated Appian's misappropriated information to hundreds of Company employees, and (iii) the Company's Chief Executive Officer personally directed a "teardown" of Appian's software, which prompted the Company to begin using fake names and entities to gain access to Appian's software. Appian

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presented evidence that it purportedly lost 201 customers because of Pegasystems' acts and Appian's experts estimated the damages to be \$3 billion, a number that reflects all of Pegasystems' revenues from the fourth quarter of 2013 through the third quarter of 2021.

On May 9, 2022, after a seven-week trial, a jury decided in Appian's favor and awarded damages of \$2.04 billion against the Company (which award has now been vacated by the Virginia Court of Appeals). The jury also found that the Company acted willfully and maliciously, which entitled Appian to seek tens of millions of dollars in attorneys' fees and costs. On May 18, 2022, during a call with analysts, Pegasystems' Chief Financial Officer stated that the verdict was "ridiculous," and that there were no "facts of any wrongdoing," and "certainly no damages that would ever suggest a dollar amount." Ex. 2, at 3.

According to the Demands, the Appian Litigation also revealed that Pegasystems had used consultants like Mr. Zou to target the trade secrets of competitors other than Appian. Ex. 1, at 13. The Demands also claim that evidence from the Appian Litigation trial shows that "[m]any of the same Pegasystems employees who utilized (or condoned the use of) fake names and fake companies to access Appian's platform also secretly accessed (or condoned Pegasystems' access to) Salesforce and ServiceNow's platforms." *Id.*

## **2. Alleged Legal Violations Set Forth in the Demands**

Taken together, the Demands direct Pegasystems' Board to investigate, address, remedy, and commence proceedings against certain of the Company's current and former officers and directors for breach of fiduciary duties, aiding and abetting breaches of fiduciary duties, waste of corporate assets, unjust enrichment, and violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and all other applicable laws, rules, and regulations related to the alleged wrongdoing.

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*First*, certain of the Demands allege that the Fiduciaries breached their fiduciary duties under Massachusetts law by (i) causing or permitting the Company to perpetrate a scheme whereby third parties were paid to steal trade secrets from Appian, (ii) causing or permitting the Company to perpetrate a scheme whereby Pegasystems employees created false personas to infiltrate and/or access Appian's platform for the purpose of misappropriating Appian trade secrets, (iii) violating the Company's Code of Conduct by engaging in an illegal scheme to misappropriate Appian's trade secrets, and (iv) failing to ensure that the Company's senior officers, directors, and employees were acting in compliance with the law.

*Second*, according to the Demands, the Independent Directors, Mr. Trefler, and Mr. Stillwell allegedly made false and misleading public statements, as well as omitted material information from such statements, in violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. The Demands focus on the following four categories of alleged misstatements and omissions in Pegasystems' public filings.

- ***Pegasystems' Competitors***. Certain of the Demands allege that (i) statements such as the Company "shows very well competitively" and "competes favorably due to its expertise" failed to disclose that the Company owed its competitive success to its scheme and materials it gathered by misappropriating Appian's confidential information and trade secrets, (ii) statements in Pegasystems' Form 10-Ks filed with the SEC highlighting the Company's competitive advantage in the industry failed to disclose that the Company's "broad range of marketing programs and marketing efforts" included its use of consultants to access competitors' platforms and other dishonest practices to learn Appian's confidential information and trade secrets, and (iii) the Company listed "dozens of competitive factors" and even named some competitors, but the competitor list did not include Appian.
- ***Pegasystems' Sales and Marketing Practices***. Certain of the Demands allege that (i) representations that the Company was "best-in-class" and "credible" failed to disclose that the Company engaged in a malicious and willful scheme to misappropriate Appian's trade secrets, (ii) statements touting the Company's "wins" with public sector agencies, including the U.S. Census Bureau, failed to disclose that the Company engaged in the aforementioned scheme, and (iii) statements touting the Company's success and "credibility" with government agencies were misleading because the Company concealed

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its misconduct from the government and packed its sales team with employees that were involved in the trade secret misappropriation scheme.

- ***Pegasystems' Intellectual Property.*** Certain of the Demands allege that (i) statements that the Company “may be subject to intellectual property rights claims,” “may in the future receive notices that claim [Pegasystems] misappropriated, misused, or infringed other parties’ intellectual property rights,” that “[t]here can be no assurance that third parties...will not claim infringement by [Pegasystems],” and that “software product developers will increasingly be subject to infringement claims” failed to disclose that the Company engaged in the willful and malicious misappropriation of Appian’s confidential information and trade secrets, was involved in the ongoing, costly Appian Litigation, and already faced meritorious claims that Mr. Trefler and other Company officers orchestrated and condoned its scheme, (ii) statements that “intellectual property rights claims...could limit [Pegasystems’] ability to use certain technologies” misleadingly concealed the fact that, up until November 2021, Appian threatened injunctive relief arising from the Company’s undisclosed scheme, which would have prevented the Company from selling tainted software or relying on tainted sales processes, and (iii) the Company failed to disclose that it had engaged in similar misconduct against other companies, including IBM, Salesforce, and ServiceNow.
- ***Appian Litigation.*** The Demands allege that certain of Pegasystems’ public filings were materially false and misleading because they failed to disclose the Company’s misconduct and potential loss exposure as a result of the Appian Litigation. In addition, the Demands claim that when the 2021 10-K disclosed the existence of the Appian Litigation, the Company falsely stated that: Appian’s claims were “without merit,” the Company had “strong defenses to the[] claims,” and “any alleged damages claimed by Appian [were] not supported by the necessary legal standard.” Further, on April 28, 2022, the Company filed a Form 10-Q for the first quarter of 2022 (the “1Q22 10-Q”) that stated, among other things, “The Company continues to believe that its sales of the products at issue were not caused by, or the result of, the alleged misappropriation of trade secrets, and is submitting evidence to the jury to that effect.”

*Third*, certain of the Demands allege Massachusetts state law claims premised on corporate waste and unjust enrichment. The Demands allege that the Fiduciaries “wasted” corporate assets by paying and collecting excessive compensation and bonuses and incurring legal liability and/or legal costs, including the judgment in the Appian Litigation and defending against the related securities class action, *City of Fort Lauderdale Police and Firefighters’ Retirement System v. Pegasystems Inc.*, No. 22-cv-11220 (D. Mass.) (the “Securities Class Action”), and by authorizing the Company to repurchase its common stock at artificially inflated prices. The Demands allege

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that Pegasystems was unjustly enriched through software sales that were boosted by the alleged misappropriation of Appian's trade secrets and, separately, that the Fiduciaries were unjustly enriched by receiving compensation and stock sales despite purportedly knowing misconduct was occurring at the Company.

*Fourth*, certain of the Demands allege that the Independent Directors, Mr. Trefler, Mr. Stillwell, Mr. Kouninis, Mr. Akgonul, Mr. Leon Trefler, Douglas Kra, and Michael Pyle engaged in insider trading during the pendency of the Appian Litigation and/or during the time period in which the alleged misconduct occurred.

**B. Massachusetts Law Concerning Shareholder Demands and Derivative Claims**

**1. Universal Demand Requirement**

The MBCA directs, as a bedrock principal of Massachusetts corporate governance, that “[a]ll corporate power shall be exercised by or under the authority of, and the business and affairs of the corporation shall be managed under the direction of, its board of directors.” G. L. c. 156D, § 8.01(b).<sup>3</sup> A derivative proceeding is a civil suit brought on behalf of the corporation (*i.e.*, where the corporation is the plaintiff) and is an asset belonging to the corporation. *Id.* §§ 7.40 - 7.47. Under Massachusetts law, a corporation's board of directors controls the decision of whether to commence a derivative lawsuit. *See Halebian v. Berv*, 457 Mass. 620, 625 (2010) (citing Mass. G. L. c. 156D, § 7.42).

The MBCA imposes what is commonly referred to as a “universal demand” requirement—namely that “no shareholder may commence a derivative proceeding” without first making a demand on the board of directors and receiving a response to that demand. G. L. c. 156D, § 7.42; *see also Johnston*, 453 Mass. at 578 n.15 (noting requirement that “demand be made in *all*

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<sup>3</sup> Unless otherwise noted, all internal quotation marks and citations are omitted.

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derivative [proceedings] filed on behalf of Massachusetts corporations”) (emphasis in original); *Halebian*, 457 Mass. at 625 (“Before a shareholder may file a derivative proceeding in court, the shareholder first must make a written demand on the corporation to take suitable action.”).

**2. Decisions with Respect to a Demand Must be Made in Good Faith by Independent Directors After Conducting a Reasonable Inquiry**

A Massachusetts board of directors that receives a shareholder demand must decide whether to accept the demand (and initiate legal proceedings) or reject the demand. If a derivative proceeding is commenced by a shareholder (either before or after a demand is rejected), then a corporation can compel dismissal of such action if (1) a majority of a committee of independent directors, (2) after conducting a reasonable inquiry, (3) determined or determines that the maintenance of the derivative proceeding is not in the corporation’s best interests. *See* G. L. c. 156D, §§ 7.44(a) & (b)(2); *see also Houle v. Low*, 407 Mass. 810, 821 (1990) (“[A] [special litigation] committee [has] the ability and expertise to decide whether a given derivative suit is in the corporation’s best interest.”); *Cerundulo v. 222 Friends, Inc.*, 2023 Mass. Super. LEXIS 26, at \*2-3 (Mass. Super. Apr. 21, 2023) (same).

Where, as here, a committee of independent directors determines not to pursue litigation, the decision to reject the demand will be presumed valid on the basis of the business judgment doctrine. G. L. c. 156D, § 7.44, cmt. 2. In general, “the business judgment doctrine protects directors and officers from liability for conduct they have undertaken in good faith, with the care that a person in a like position would reasonably believe appropriate in similar circumstances, and in a manner the director or officer reasonably believes to be in the best interests of the corporation.” *Halebian*, 457 Mass. at 627 n.11. In a derivative proceeding, the business judgment doctrine

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respects a corporation's decision that prosecution of a shareholder's demanded claim is not in the corporation's best interests. *Id.*

The burden thus is on the derivative shareholders to plead and prove that (i) the directors making the determination were not independent and/or (ii) such directors did not act in good faith after reasonable inquiry. *See Averbuch v. Arch*, 2013 Mass. Super. LEXIS 108, at \*11 (Mass. Super. Aug. 27, 2013). Otherwise, a court may not second-guess the judgment of a demand review committee concerning whether to accept or reject a derivative demand.

**Independent Decisionmakers.** Under Massachusetts law, the committee evaluating a shareholder demand must consist of two or more independent directors. *See* G. L. c. 156D, § 7.44(b)(2); *see also Blake v. Friendly Ice Cream Corp.*, 2006 Mass. Super. LEXIS 241, at \*36 (Mass. Super. May 24, 2006), *reconsideration denied*, 2006 Mass. Super. LEXIS 496 (Mass. Super. Aug. 24, 2006). The MBCA makes clear that none of the following factors shall cause a director to be considered not independent: (i) the director's nomination or election by "a defendant in the derivative proceeding or against whom action is demanded," (ii) "the naming of the director as a defendant in the derivative proceeding or as a person against whom action is demanded," and (iii) "the approval by the director of the act being challenged in the derivative proceeding or demand if the act resulted in no personal benefit to the director." G. L. c. 156D, § 7.44(c); *see also Pinchuck v. State St. Corp.*, 2011 Mass. Super. LEXIS 11, at \*32 (Mass. Super. Jan. 19, 2011) ("[M]erely being named as a defendant in the derivative proceeding is insufficient to negate...independence."); *Operative Plasterers' & Cement Masons' Loc. Union Officers' & Emps.' Pension Fund v. Hooley*, 2013 WL 5442366, at \*4 (D. Mass. Sept. 30, 2013) (similar), *appeal dismissed*, 2015 WL 13926885 (1st Cir. 2015). Independence also requires a director to be "disinterested," meaning that the director does not have a personal interest in the conduct being

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challenged. *Pinchuck*, 2011 Mass. Super. LEXIS 11, at \*29; *see also* G. L. c. 156D, § 7.44, cmt. 1; *Friendly*, 2006 Mass. Super. LEXIS 241, at \*42-43.

Courts apply a totality of the circumstances test to determine whether a committee of directors was independent and disinterested. *Friendly*, 2006 Mass. Super. LEXIS 241, at \*46. Relevant factors include: (1) a committee member's status as a defendant and the nature and scope of the potential liability, (2) "whether the [committee] member's participation in or approval of the alleged wrongdoing was substantial or the result of innocent or pro forma involvement or affiliations," (3) a committee "member's past or present business dealings with the corporation," (4) a committee "member's past or present business or social dealings with individual defendants," (5) "the number of directors on the [committee], such that with [more] directors, less weight may be accorded to any disabling interest affecting only one director," and (6) any structural bias of the committee, including assessment of the manner in which the committee was appointed. *Id.*

**Reasonable Inquiry.** The corporation must have conducted a "reasonable inquiry." G. L. c., § 7.44(a). Whether a "reasonable inquiry" was conducted is a fact-specific analysis focused on, among other things, (i) whether independent outside counsel was retained to conduct the investigation; (ii) the materials reviewed during the course of the investigation; (iii) the witnesses interviewed; and (iv) the committee's involvement in the investigation. *See, e.g., Hooley*, 2013 WL 5442366, at \*6 (reasonable inquiry presumed because, in response to "three demands, the committee met twenty-two times," outside "counsel billed nearly 1,000 hours for investigating the demand and advising the committee," and "the committee conducted interviews, reviewed contracts, considered thousands of pages of documents, analyzed the investment portfolio, ...investigated public disclosures[,] and "evaluated the legal theories that could possibly be pursued and the prospects of eventual recovery"); *Halebian v. Berv*, 869 F. Supp. 2d 420, 455

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(S.D.N.Y. 2012) (reasonable inquiry presumed because the committee was “actively involved in the investigation through multiple meetings,” outside counsel “conducted numerous interviews” with the defendant directors and others, and outside counsel “reviewed thousands of pages of relevant documents”), *aff’d*, 548 F. App’x 641 (2d Cir. 2013) (summary order).

As noted above, although the MBCA sets 90 days from the date a demand is made as a “reasonable minimum time[]” before which a derivative proceeding may be commenced, the MBCA notes that “[i]n some instances a longer period may be required.” G. L. c. 156D, § 7.42(2) & cmt. 3. And Massachusetts courts routinely recognize that that default time period should be extended where, as here, cases involve complicated facts and circumstances. *See, e.g., Acuna v. Alsop*, No. SUCV-2007-01937 (Mass. Super.) (staying derivative action for more than a year while special litigation committee conducted demand investigation); *Cutler v. State Street*, No. 1784-CV-2359 (Mass. Super.) (staying derivative action for more than two years during special committee investigation into shareholder demand); *see also Halebian v. Berv*, 631 F. Supp. 2d 284, 295 (S.D.N.Y. 2007) (rejecting plaintiff’s argument that defendants were not entitled to dismissal of derivative lawsuit after they failed to respond to plaintiff’s demand within 90 days of receipt, because Section 7.42 of the MBCA “was worded to accommodate situations in which a board would need more than ninety days to evaluate a shareholder’s demand before determining whether to pursue the litigation”), *aff’d in relevant part by* 644 F.3d 122 (2d. Cir. 2011) (relying on certified question to and answer from the Massachusetts Supreme Judicial Court in *Halebian v. Berv*, 457 Mass. 620 (2010)); *Averbuch*, 2013 Mass. Super. LEXIS 108, at \*5, 8 (upholding report of special committee following 10-month long investigation).

This is unsurprising, as it would be impossible for a committee to satisfy its obligation to undertake a “reasonable inquiry” within 90 calendar days in complicated matters.

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### **III. Formation of the DRC in Response to the Demands**

At the time the first Demand was received, the Board consisted of (and continues to consist of) seven members: Mr. Trefler, Mr. Gyenes, Mr. Jones, Mr. Lafond, Ms. Ledingham, Ms. Rowlands, and Mr. Weber. Mr. Trefler is the only member of the Board who also serves in a management capacity (as the Company's Chief Executive Officer).

#### **A. Appointment of the DRC**

##### **1. Board Resolutions Authorize Creation of a DRC**

Following receipt of Ms. Larkin's and Mr. Brenner's demands, the non-management members of the Board discussed the potential formation of a committee to respond to them. On April 12, 2023, the Board (without Mr. Trefler, who recused himself) held a meeting to discuss the two demands received to date (the "April 12, 2023 BOD Meeting"). Pursuant to Section 8.25 of the MBCA and Article II, Section 17 of the Amended and Restated Bylaws of Pegasystems, the Board adopted resolutions (the "DRC Resolutions") creating the DRC—"a committee that is independent of the Company's current management and employees." Ex. 8 (BOD Resolutions), at 1.

The Resolutions authorized the DRC to, among other things:

[R]eview, analyze and investigate the matters raised in the Demand Letters and the matters set forth therein, and...have the exclusive authority (*with the full authority of the Board*) to determine in good faith what actions (if any) are reasonably believed to be appropriate under similar circumstances and reasonably believed to be in the best interests of the Corporation in response to the Demand Letters.

*Id.* (emphasis added). The Resolutions further provide that the DRC has the authority to (i) "incur expenses on behalf of the [Company] in connection with [its] activities," (ii) "conduct interviews with any employee, officer, director, agent, or advisor of the [Company], or any other person, as the [DRC] may determine to be appropriate," (iii) "have access to all information and documents

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of the Company (including confidential information and documents) that the DRC believes would assist it in its work,” and (iv) “communicate, either directly or through legal counsel, on behalf of the [Company] with each shareholder who sent a demand letter or the shareholder’s respective agents or representatives, or with any other shareholder (or its agents or representatives) who may send a similar demand...to [Pegasystems], from time to time as the [DRC] may deem appropriate.”

*Id.* at 2.

The Resolutions further provide that the DRC, “and each member thereof, is authorized and empowered to do all acts as may be necessary or appropriate in its, his, or her judgement to carry out the duties of the [DRC] contemplated by [the] Resolutions.” *Id.*

## **2. Selection of the DRC Members**

The Board selected Mr. Lafond, Ms. Ledingham, and Ms. Rowlands to serve on the DRC, after determining that each was independent and disinterested. *Id.* at 1. The DRC, in turn, selected Mr. Lafond as its chairperson.

**Christopher Lafond.** Mr. Lafond has served on the Board since April 2019. He currently serves as the Chair of Pegasystems’ Audit Committee of the Board (the “Audit Committee”). Mr. Lafond is also currently the Chief Executive Officer and a board member for Insurity LLC (“Insurity”), a property and casualty insurance technology and services provider. Prior to becoming Chief Executive Officer of Insurity in 2019, Mr. Lafond served as the Chief Financial Officer of Insurity since 2017. He was previously the Executive Vice President and Chief Financial Officer of Intralinks Holdings, Inc., a global leader in secure content collaboration software-as-a-service solutions, from June 2015 to June 2017. Prior to that, he held leadership positions at Gartner, Inc. from March 1995 to June 2014, including Chief Financial Officer. He was previously a board member for SiriusDecisions, Inc. from August 2017 to January 2019. Mr.

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Lafond holds a Bachelor of Arts in Economics from the University of Connecticut and a Master of Business Administration (“MBA”) from the Columbia University Graduate School of Business.

**Dianne Ledingham.** Ms. Ledingham has served on the Board since September 2016. She currently serves on the Compensation Committee. Ms. Ledingham is also currently a director at Bain & Company (“Bain”), a management consulting firm, and a senior partner in Bain’s Telecom, Media and Technology practice. Ms. Ledingham was the founding global leader for Sales and Channel Effectiveness within Bain’s Customer Strategy and Marketing practice and led that group for eight years. In addition, Ms. Ledingham has had several governance roles at Bain including past service on Bain’s Board of Directors and Bain’s Global Compensation and Promotion Committee, including as elected Chair, and current service on Bain’s Global Nominating Committee. Ms. Ledingham earned an MBA from Harvard Business School with distinction. She is a graduate of Brown University, where she received a Bachelor of Science degree in Electrical Engineering with honors.

**Sharon Rowlands.** Ms. Rowlands has served on the Board since April 2016. She currently serves as the Chair of the Compensation Committee. She also currently serves as the Chief Executive Officer of Newfold Digital, a leading web technology company whose portfolio of brands includes Bluehost, CrazyDomains, Network Solutions, Register.com, and Web.com, among others. Ms. Rowlands is a current member of the Board of Directors of Everbridge, Inc., a critical event management and enterprise safety applications company. Previously, Ms. Rowlands was the Chief Executive Officer of ReachLocal, Inc. (“ReachLocal”) a public digital marketing company, leading it through a strategic transformation and the 2016 sale to Gannett Co., Inc. (“Gannett”). At Gannett, Ms. Rowlands served as President of the USA Today Network Marketing Solutions business while continuing to serve as Chief Executive Officer of ReachLocal. Ms.

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Rowlands was previously a member of the Board of Directors of Constant Contact, Inc., Automatic Data Processing, Inc., and Local Search Association. Ms. Rowlands received her Postgraduate Certificate of Education from Goldsmiths, University of London and her Bachelor of Arts in History from the University of Newcastle, Newcastle-Upon-Tyne.

### **3. The DRC's Retention of Independent Counsel**

The DRC retained as its independent counsel Fried Frank, a firm with extensive experience and expertise in connection with internal investigations, demand review committee investigations, securities litigation, and derivative litigation. The DRC concluded that Fried Frank was independent and disinterested and was not involved in any conduct challenged in the Demands.

The Fried Frank team was led by partners Scott B. Luftglass and Ilan T. Graff.

**Scott B. Luftglass.** Mr. Luftglass is the Vice Chairman of Fried Frank. He is a litigation partner and the Co-Head of the Securities and Shareholder Litigation Practice. Mr. Luftglass' practice focuses on representing corporations, boards of directors, special committees, financial advisors, senior management, and private equity funds in connection with securities litigation, shareholder and derivative litigation, corporate governance matters, and crisis management. Mr. Luftglass serves on the Board of Advisors for the NYU Law Institute for Corporate Governance & Finance and on the Board of Advisors for the Penn Law Institute for Law & Economics. Mr. Luftglass is a Fellow of the American College of Governance Counsel. He is a frequent author and speaker at conferences and panels focused on corporate governance. He has also been a guest lecturer at various law schools, including Yale Law School and the University of Pennsylvania Law School.

**Ilan T. Graff.** Mr. Graff is a litigation partner who counsels corporations, financial advisors, and global investment banks, among other entities, in complex commercial litigation, regulatory and internal investigations, and white-collar matters. Prior to joining Fried Frank,

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Mr. Graff served for ten years in the United States Attorney's Office for the Southern District of New York, most recently as the Deputy United States Attorney, overseeing the litigation of all criminal and civil cases brought on behalf of the United States in the Southern District and supervising more than 400 lawyers, paralegals, investigators, and staff members. He clerked for then-Chief Judge Sandra L. Lynch on the First Circuit and has been admitted to practice in Massachusetts for almost fifteen years.

#### **4. Confirming the Independence of the DRC Members**

At the outset of its engagement, Fried Frank met separately with Mr. Lafond, Ms. Ledingham, and Ms. Rowlands to confirm whether, as the Board had previously determined, they were independent and disinterested. During these meetings, the participants discussed the meaning of and need for each individual member's independence and disinterestedness under Massachusetts law and reviewed a checklist of questions to ascertain whether there were any personal or professional relationships that may undermine such independence and disinterestedness. The DRC and its counsel concluded that all three members are independent and disinterested for purposes of investigating and analyzing the matters raised in the Demands.

#### **IV. The DRC's Investigation**

The DRC and its counsel developed and executed a four-step investigative plan: (1) reviewing the trial transcripts and all related filings and exhibits in the Appian Litigation; (2) collecting and reviewing relevant documentary evidence, including non-public documents and communications; (3) conducting confidential witness interviews; and (4) developing the factual record and analyzing potential legal claims based on that record. The DRC members were personally involved in every step of the investigation, closely supervised counsel's activities, and, together with counsel, devoted substantial time to the investigation, keeping open minds as to the outcome.

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**A. DRC Meetings and Communications**

The DRC held meetings with its independent outside counsel throughout the course of the investigation and communicated between meetings to discuss the investigation and issues raised in it. To date, the DRC has formally met twelve times. In addition to formal meetings, the DRC discussed Committee matters with each other and Fried Frank by telephone and videoconference.

Fried Frank attorneys worked over 2,000 lawyer hours on this matter.

**B. Review of the Factual Record**

Over the course of the investigation, the DRC and Fried Frank collected and searched over 180,000 documents (the overwhelming majority of which are non-public) and, with the assistance of targeted search terms, manually reviewed nearly 35,000 documents. The DRC sent multiple rounds of written document requests to the Company and trial counsel, and the DRC's counsel worked with Company counsel to develop appropriate search terms and parameters for electronic searches of communications involving key witnesses.

These materials collected and reviewed include the following categories:

- Evidence relating to the Appian Litigation (including, but not limited to, filings in the Appian Litigation and the Appian Appeal), the Company's parameters for identifying materials during discovery, the Company's document productions to Appian (including video evidence), all documents withheld from production by Pegasystems in discovery on the basis of privilege, and internal Company documents concerning disciplinary action in connection with the alleged misconduct;
- Board materials for the period May 2020 to May 2022 (including, but not limited to, Board packages, minutes, draft filings, and communications with the members of the Board) and any communications with the Board during the period February 2012 through May 2022 relating to the alleged misconduct, actual or purported insider trading, or the Appian Litigation;
- Evidence relating to Pegasystems' public disclosures (including, but not limited to, communications relating to the Company's disclosures, or decision to not disclose, information concerning to the Appian Litigation, communications regarding accounting treatment with respect to the Appian Litigation, and documents produced by the Company in the investigation initiated by the SEC); and

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- Evidence relating to potential insider trading (including, but not limited to, trading plans, trading policies, trade authorization requests, and communications regarding trading in the Company's securities).

The DRC members personally reviewed priority interest documents identified during the course of Fried Frank's review.

**C. Witness Interviews**

The DRC and its counsel interviewed the following 17 witnesses. At least one member of the DRC personally and actively participated in *each* interview.

*Pegasystems Executive Personnel*

- **Kerim Akgonul** (Chief Product Officer, Pegasystems). Mr. Akgonul joined Pegasystems in 1992 and served as Senior Vice President of Engineering from 2014 to 2021. In April 2021, Mr. Akgonul was promoted to Chief Product Officer. Mr. Akgonul has almost 30 years of software development and managerial experience over his tenure at the Company.
- **Matthew Cushing** (Vice President, Chief Commercial Officer & General Counsel, Pegasystems). Mr. Cushing joined Pegasystems in March 2017 with more than 20 years of legal experience in the technology sector. Previous roles include General Counsel at energy management technology firm EnerNOC Inc. and General Counsel at Acme Packet prior to its acquisition by Oracle Corporation. He was previously a partner at Bingham McCutchen LLP, a global, Boston-based law firm where he provided legal and business counsel to publicly traded companies in the technology space.
- **Efstathios Kouninis** (Chief Accounting Officer, Vice President of Finance, and Treasurer, Pegasystems). Mr. Kouninis joined Pegasystems in April 2008 as Vice President of Finance. The Board appointed Mr. Kouninis as the Company's Chief Accounting Officer in May 2008 and Treasurer in January 2014. On April 1, 2024, Mr. Kouninis was promoted to Senior Vice President of Finance in addition to his roles as Chief Accounting Officer and Treasurer. From February 2006 to April 2008, Mr. Kouninis served as Chief Financial Officer and Treasurer of Tasker Products Corporation, a publicly-traded manufacturer of antimicrobial chemicals. From November 2004 to February 2006, Mr. Kouninis served on the Staff of the SEC's Division of Corporation Finance.
- **Don Schuerman** (Chief Technology Officer and Vice President, Marketing and Technology Strategy, Pegasystems). Mr. Schuerman has 20 years of experience at Pegasystems delivering enterprise software solutions for Fortune 500 organizations, with a focus on digital transformation, mobility, analytics, business process management, cloud and customer relationship management. He has led enterprise software implementations and provided technology and architecture consulting to senior business and technology executives from organizations including American Express, Citibank, JP Morgan Chase, and BP.

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- **Kenneth Stillwell** (Chief Operating Officer and Chief Financial Officer, Pegasystems). Mr. Stillwell joined Pegasystems in July 2016 as Senior Vice President, Chief Financial Officer, and Chief Administrative Officer. In April 2021, Mr. Stillwell was promoted to Chief Operating Officer in addition to his role as Chief Financial Officer. Mr. Stillwell previously served as Senior Vice President and Chief Financial Officer of Dynatrace, Inc., a leader in digital performance management solutions, and Executive Vice President and Chief Financial Officer of Sovos Compliance, LLC (“Sovos”), a financial compliance SaaS provider. Prior to Sovos, Mr. Stillwell was at PTC Inc., a publicly-traded software provider, where he served as Division CFO. Mr. Stillwell is a Certified Public Accountant.
- **Alan Trefler** (Chief Executive Officer, and Chairman of the Board, Pegasystems). Mr. Trefler founded Pegasystems and has served as Chairman of the Board of Directors and Chief Executive Officer since the Company was organized in 1983. Prior to 1983, he managed an electronic funds transfer product for TMI Systems Corporation, a software and services company.
- **Leon Trefler** (Chief of Clients and Markets, Pegasystems). Mr. Leon Trefler joined Pegasystems in April 1998 as an Account Executive for Strategic Business Development. Since then, he has held various senior sales management positions across the Company and in Channel Sales. In 2002, he launched the commercialization of the PegaRULES Process Commander, the predecessor to the Pegasystems Platform. From April 2007 to January 2010, Mr. Leon Trefler served as Vice President of Sales, North America, and in January 2010, Mr. Leon Trefler was promoted to Senior Vice President of Sales. In July 2014, the Company re-organized its sales and consulting services functions along geographic regions, and Mr. Leon Trefler served as Senior Vice President of Global Customer Success for the Americas until April 1, 2021, when he was appointed Senior Vice President of Global Customer Success.

Independent Directors

- **Christopher Lafond**. Biography set forth *supra* at 21-22.
- **Dianne Ledingham**. Biography set forth *supra* at 22.
- **Sharon Rowlands**. Biography set forth *supra* at 22-23.
- **Peter Gyenes**. Mr. Gyenes has been a member of the Board since March 2009. He has served as a member of the Audit Committee and of the Nominating and Corporate Governance Committee of the Board (the “Nominating and Corporate Governance Committee”) since July 2009. Mr. Gyenes has over four decades of experience in global technical, sales, marketing, and general management positions within the software and computer systems industries. He previously served as Chairman and Chief Executive Officer of Ascential Software, as well as of its predecessor companies VMark Software, Ardent Software, and Informix, and led its growth into the data integration market leader from 1996 until it was acquired by IBM in 2005. Mr. Gyenes also previously served as President and Chief Executive Officer of Racal InterLan, Inc., and in executive positions at Data General Corporation, Encore Computer Corporation, and Prime Computer, Inc.

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Mr. Gyenes previously served as a board member for RealPage, Inc., Sophos plc, Information Builders, Inc., Carbonite, Inc., IntraLinks, Inc., Epicor, EnerNOC Inc., Applufluent Technologies, and Cimpress NV.

- **Richard Jones.** Mr. Jones joined Pegasystems in October 1999, serving as President and Chief Operating Officer until September 2002. Mr. Jones was a part-time employee of Pegasystems from July 2002 to July 2007. Mr. Jones was elected as a member of the Board in November 2000, and served as Vice Chairman from September 2002 to July 2007. He has served as a member of the Compensation Committee and the Nominating and Corporate Governance Committee since July 2011. Mr. Jones has served on the Board of Directors of Resonantia, Inc. and KaliVir Immunotherapeutics, Inc. (formerly Western Oncolytics Ltd.), a private company developing novel therapies for cancer, and as Chairman of Jones Boys Ventures, a retailer. From 1995 to 1997, Mr. Jones served as a Chief Asset Management Executive and member of the Operating Committee at Barnett Banks, Inc. From 1991 to 1995, he served as Chief Executive Officer of Fleet Investment Services, a brokerage and wealth management organization. His prior experience also includes serving as Executive Vice President with Fidelity Investments, an international provider of financial services and investment resources, and as a principal with the consulting firm of Booz, Allen & Hamilton. Mr. Jones previously served as a board member for Buyers Access, LLC and Colo5, LLC.
- **Larry Weber.** Mr. Weber has been a member of the Board since August 2012. He has served as a member of the Compensation Committee and the Nominating and Corporate Governance Committee since May 2013, and as a member of the Audit Committee since June 2021. Since January 2015, he has also served as the Chair of the Nominating and Corporate Governance Committee. Mr. Weber has served as the Chief Executive Officer and Chairman of the Board of Racepoint Global, Inc., a digital marketing services ecosystem of marketing service companies organized to help chief marketing officers in their role as builders of communities and content aggregators, since he founded the company in September 2004. In 2001, Mr. Weber founded Weber Shandwick, one of the largest public relations agencies in the world. Mr. Weber previously served on the Board of Directors as well as the Nominating and Corporate Governance Committee of RMG Networks Holding Corporation, a digital signage provider for most of the Fortune 100, and was a board member for AVECtra, a provider of web-based association management software and social customer relationship management software. Mr. Weber is also Co-Founder and Chairman of the Board of the Massachusetts Innovation & Technology Exchange, one of the largest interactive advocacy organizations in the world.

*Outside Legal Counsel to Pegasystems*

- **Robert S. Frank, Jr.** (Former Managing Partner and Chairman of Choate, Hall & Stewart LLP (“Choate”)). Mr. Frank was the Company’s lead trial lawyer in the Appian Litigation. He has more than 50 years of experience representing clients through all phases of litigation, as lead trial and appellate counsel. He is nationally recognized for helping technology and life sciences companies handle business disputes, particularly those involving patent infringement and trade secrets. His clients have included Hewlett-

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Packard, General Electric, Cisco Systems, and Eastman Kodak. He is a Fellow of the American College of Trial Lawyers.

- **John Pitfield** (Co-Chair Business & Technology Group, Choate Hall & Stewart LLP). Mr. Pitfield helps private equity and growth equity clients to maximize the value of their transactions and strategic initiatives. He regularly advises public companies on a range of disclosure, governance, and board-level matters. Mr. Pitfield's clients include a range of investors and operating companies—particularly in the health services, life sciences, and technology, media, and telecom sectors—including Bain, Candescent Partners, Summit Partners, Haemonetics, Pegasystems, and Forrester Research. He became the Company's principal outside corporate governance and disclosure counsel in 2018.
- **Monica Monday** (Chairperson, Appeals and Critical Issues, Gentry Locke). Ms. Monday represents the Company in the Appian Appeal, serving as co-counsel with expertise in Virginia appellate practice. Ms. Monday was also present for the duration of the Appian Litigation trial, having been engaged to consider appellate strategy in the event of an unfavorable ruling. Ms. Monday is the Chairperson of Gentry Locke's Executive Board and heads the firm's Appellate practice. Ms. Monday served as Managing Partner of Gentry Locke from 2013-2022. Ms. Monday represents her clients in Virginia's state and federal appellate courts across a wide variety of cases. She is a Fellow of the American Academy of Appellate Lawyers.
- **Joshua Rosenkranz** (Department Head, Supreme Court & Appellate Practice, Orrick, Herrington, Sutcliffe LLP). Mr. Rosenkranz represents the Company in the Appian Appeal, serving as co-counsel with expertise in appeals involving intellectual property claims. Mr. Rosenkranz has argued some of the country's most significant intellectual property appeals, including five before the U.S. Supreme Court. He's successfully represented numerous high-profile clients, including Microsoft, DISH Network, and Facebook, and has secured billions in settlements and verdicts. Mr. Rosenkranz is a former law clerk to U.S. Supreme Court Justice William J. Brennan Jr. and then-Judge Antonin Scalia on the D.C. Circuit. He has personally argued more than 200 appeals in state and federal appellate courts across the nation, including 20 cases before the U.S. Supreme Court.

**D. Communications with Demand Shareholders**

Following receipt of each Demand, the DRC sent a letter, through Fried Frank, (i) notifying each shareholder that the Board had formed a committee comprised of Mr. Lafond, Ms. Ledingham, and Ms. Rowlands to review and analyze the respective demand and take whatever action (if any) they in good faith deem appropriate; (ii) inviting the shareholder to provide any information to the DRC that they believed could help the committee evaluate the demand; and (iii)

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stating that the DRC, through its counsel, would be pleased to meet with the shareholder and their counsel.

In the months following receipt of the Demands, Fried Frank provided verbal status updates on the investigation to counsel who requested such updates. The DRC's investigative work and analysis was substantially complete as of December 2023. However, the DRC waited to complete its work and issue this Report pending (i) potential further developments of the facts in, and the mediation of, the Securities Class Action in late February / early March 2024; and (ii) the parallel mediation of the Demands (received as of that time) and the two pending derivative suits. With respect to (i), the DRC was actively monitoring the Securities Class Action, and, at that time, that litigation was proceeding through discovery and expecting imminent deposition testimony (from many of the same witnesses the DRC had interviewed). The DRC wanted to ensure that any of the testimony given, or evidence developed, was not inconsistent with what it had seen and learned from the same witnesses who had been interviewed by the DRC.

In January 2024, Fried Frank provided written notification to the Demand Shareholders of its understanding that the Securities Class Action plaintiffs and Pegasystems had agreed to have a mediation of that litigation in late February 2024 and invited the Demand Shareholders to attend. On February 27, 2024, mediator John Van Winkle held a mediation with the parties to the Securities Class Action; Fried Frank and counsel for the Demand Shareholders also attended.

Following the mediation, in March 2024, the parties to the Securities Class Action reached an agreement to settle that lawsuit for \$35 million, which settlement was approved by the court on September 19, 2024. The DRC and the Demand Shareholders did not reach an agreement on a potential settlement of the Demands.

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On April 22 and July 1, 2024, the DRC sent letters, through Fried Frank, to the Demand Shareholders updating them on the DRC's work and anticipated timing for the completion of its work and issuance of this Report. Counsel to the DRC also participated in several calls with counsel to the Demand Shareholders updating them on status and timing.

**V. The Factual Record Developed by the DRC**

**A. Background re: Relationship Between Pegasystems and Appian**

Pegasystems is a Cambridge, Massachusetts-based customer relationship management software development company founded by Mr. Trefler in 1983.<sup>4</sup> Pegasystems develops, markets, licenses, hosts, and supports enterprise software applications that help organizations transform how they engage with customers and process work. The Company's cloud-architected portfolio of customer engagement and digital process automation applications leverages artificial intelligence, case management, and robotic automation technology, empowering businesses to quickly design, extend, and scale their enterprise applications to meet strategic business needs. Pegasystems' core product is the "Pega Platform," which allows clients to develop applications in a low-code environment (that is, one which requires little or no coding) to improve employee productivity and deliver rapid, personalized service to customers.

Pegasystems focuses its business primarily in two markets: (i) business process management ("BPM") and case management, and (ii) customer relationship management ("CRM"). Since at least 2012, top industry analysts, including both Gartner and Forrester, have identified Pegasystems as an industry leader within the BPM and case management market.<sup>5</sup>

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<sup>4</sup> As of January 2020, Mr. Trefler beneficially owned 50.11% of Pegasystems' securities. Pegasystems, Schedule 14A Information (filed Apr. 29, 2020). As of January 2024, Mr. Trefler beneficially owns 48.0% of Pegasystems' securities. Pegasystems, Schedule 14A Information (filed Apr. 26, 2024).

<sup>5</sup> See, e.g., Jim Sinur et. al., *Magic Quadrant for Intelligent Business Process Management Suites*, Gartner, September 27, 2012, pp. 3, 7, 13 ("Recent strides in adaptive case management and applying predictive analytics promise to keep Pegasystems a thought and market leader."); Craig Le Clair & Derek Miers, *The Forrester*

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BPM software is aimed at managing and optimizing business processes, which include people, systems, and information. For example, in customer service, BPM can be used to manage customer inquiries and complaints more efficiently, creating a better customer experience.<sup>6</sup> Case management is a software-based approach to help people accomplish daily work and automating work from end-to-end. For example, case management helps streamline operations, such as submitting insurance claims, maintaining patient records, or compiling loan applications, to help employees be more productive and deliver experiences customers demand.

According to Appian's public filings and Appian's court submissions in the Appian Litigation, Appian was founded in 1999 and is a software company that automates business processes and operationalizes artificial intelligence with low-code design. Appian's BPM software platform enables customers to design, automate, and optimize business processes, as well as develop new digital solutions using a low-code approach to create applications and workflows tailored to their business requirements. Per market analyst reports, Appian participates in the BPM and case management software industry with its BPM software application program.

Pegasystems only competes with Appian in the BPM and case management market, as Appian does not have a competing CRM product. At various times, both Pegasystems and Appian have described the other as a competitor in their respective public filings. The Company described Appian as a competitor in its annual report filed during fiscal years 2012 to 2015. For example, in its Form 10-K for fiscal year 2012, the Company noted that the markets it competes in, including

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*Wave*<sup>TM</sup>: *Dynamic Case Management, Q1 2014*, Forrester, March 28, 2014, p. 13 (Pegasystems has "become the dominant DCM [dynamic case management] provider."); Rob Dunie & Janelle B. Hill, *Magic Quadrant for BPM-Platform-Based Case Management Frameworks*, Gartner, October 24, 2016, p. 17 ("Pegasystems is a market leader in iBPMS, and its BPM platform gives it great strength for adaptive case handling."). As early as 2006, Gartner was calling Pegasystems a leader for Intelligent BPM and BPM Suites. *See, e.g.*, Janelle B. Hill & Jim Sinur, *Magic Quadrant for Business Process Management Suites, 2006*, Gartner, June 28, 2006, pp. 4, 16.

<sup>6</sup> Pegasystems, *Business Process Management*, <https://www.pega.com/business-process-management> (Frequently Asked Questions: What are examples of business process management?).

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the BPM market, are “intensely competitive,” “rapidly changing,” and “highly fragmented,” and noted that the Company encounters competition from Appian, among others companies. *See* Pegasystems Form 10-K (filed Feb. 20, 2013), at 7; *see also* Pegasystems Form 10-K (filed Feb. 25, 2014), at 5 (same); Pegasystems Form 10-K (filed Feb. 26, 2015), at 6 (same); Pegasystems Form 10-K (filed Feb. 25, 2016), at 8 (same).<sup>7</sup> In Pegasystems’ Form 10-K for fiscal year 2016 (filed Feb. 24, 2017) (“2016 10-K”), the Company revised its disclosure concerning competition and did not list *any* BPM competitor by name. *See* 2016 10-K, at 9. Instead, the Company more broadly listed a few competitors by name, without delineating the markets in which Pegasystems competed with those businesses; Appian was not included in this list. *Id.* at 9-10. Similar disclosures concerning the Company’s competitors, without specifically identifying Appian, are included in the Company’s annual reports for fiscal years 2017 to 2022.

After Appian went public in May 2017, Appian filed its first annual report for the period ending December 31, 2017, which noted that it competes with “providers of business process management and case management software, such as IBM, OpenText, Oracle Corp. (‘Oracle’), Pegasystems, and SAP.” Appian Form 10-K (filed Feb. 23, 2018), at 13, 18. Appian made similar disclosures including Pegasystems in a list of competitors in its annual reports for years 2018 through 2022. *See* Appian Form 10-K (filed Feb. 21, 2019), at 7, 12; Appian Form 10-K (filed Feb. 20, 2020), at 10, 15; Appian Form 10-K (filed Feb. 18, 2021), at 16, 21; Appian Form 10-K (filed Feb. 17, 2022), at 17, 23; Appian Form 10-K (filed Feb. 16, 2023), at 9, 15.

While aspects of Pegasystems’ and Appian’s markets superficially overlap (*i.e.*, both companies operate in the low code or workflow automation, BPM space), Company witnesses

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<sup>7</sup> The Brenner Demand Letter incorrectly alleges that “[a] keyword search of ‘Appian’ on SEC.gov/edgar... revealed that ‘Appian’ was not included in any of the Company’s filings prior to February 16, 2022.” Ex. 1, at 3.

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expressed to the DRC that they did not consider Appian to be one of Pegasystems' principal competitors. Witnesses noted that Appian only competes against a subset of Pegasystems' business. Mr. Akgonul, for instance, told the DRC that, while Appian was, and continues to be, a part of Pegasystems' competitive landscape, the Company never viewed them as one of their principal competitors, and analysts only tend to compare them because they are two of the only "independents" left in the market (*i.e.*, they have not been acquired by larger, conglomerate software companies). Further, Mr. Schuerman and Mr. Trefler reported that, historically IBM, and more recently Salesforce, ServiceNow, and customers building their own systems from scratch, pose more direct competition to Pegasystems.

**B. Pegasystems' Engagement of Consultants for Competitive Intelligence**

**1. Engagement of Youyong Zou**

Engaging consultants to aid with competitive intelligence is quite common, particularly in the technology space. Between February 2012 and September 2014, Pegasystems periodically worked with Youyong Zou, an independent consultant (engaged indirectly through K-Force), to conduct competitive intelligence on Appian. The Company's relationship with Mr. Zou was initiated and supervised by John Petronio, the Company's then-Director of Product Marketing, who was responsible for, among other things, competitive intelligence. In January 2012, Mr. Petronio used KForce, a consulting staffing agency, to identify a consultant with Appian experience who was not "loyal" to Appian. One of the candidates introduced by KForce was Mr. Zou, who at the time was working for Serco Group Plc ("Serco"), a government contractor, which licensed Appian.

Mr. Petronio, on behalf of the Company, hired Mr. Zou pursuant to the terms of a pre-existing consulting contract that Pegasystems had with KForce (the "KForce Contract"). The KForce Contract warranted that the services KForce was to provide Pegasystems "do not violate

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any applicable law, rule, or regulation; any contracts with third parties; or any third party in any patent, copyright, trade secret or similar intellectual property right.”

Once engaged, Mr. Zou did not work pursuant to a pre-determined or consistent schedule. Instead, Mr. Petronio utilized Mr. Zou’s services on an as-needed basis. In total, Mr. Zou provided around 200 hours of services to Pegasystems over more than 2.5 years. As reflected in contemporaneous documents and videos, Mr. Zou’s work for Pegasystems primarily consisted of (i) identifying the strengths and limitations of Appian’s software environment, and resolving inquiries regarding Appian’s capabilities and user experience; (ii) assisting Mr. Petronio in preparing strategy for sales pitches and sales consultant trainings; (iii) providing demonstrations of and documentation related to Appian’s end-user environment and various functionalities; and (iv) attending public Appian events, including Appian’s annual Appian World event, and sharing his impressions and takeaways.

Though Mr. Petronio was his primary point of contact at Pegasystems, Mr. Zou occasionally, at Mr. Petronio’s direction, met or communicated with others at the Company. For instance, on a few occasions, Mr. Zou participated in live, remote demonstrations or webinars with Pegasystems personnel during which he showed aspects of Appian’s end-user experience or answered questions about its functionalities. As an example, the DRC reviewed email correspondence, which reflected Mr. Petronio’s efforts to persuade Mr. Akgonul to meet with Mr. Zou, and Mr. Akgonul told the DRC that he met Mr. Zou virtually on one occasion in December 2012, during which meeting Mr. Zou demonstrated several aspects of the Appian developer experience.

At times, during videos or webinars with Pegasystems personnel, Mr. Petronio asked Mr. Zou to not share his name and, on other occasions, Mr. Petronio, on his own volition, referred

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to Mr. Zou using aliases, such as “the other Matt” or “Spy,” and blurred his username on screenshots. Many Company witnesses, including Mr. Akgonul, Mr. Schuerman, and Mr. Leon Trefler, told the DRC that they did not understand Mr. Petronio to be seriously engaging in an effort to hide or conceal anything related to Mr. Zou.<sup>8</sup> Rather, consistent with Mr. Petronio’s behavior in other contexts, they understood Mr. Petronio’s use of these terms as an attempt to generate mystique, buzz, and excitement around Mr. Petronio’s work to pique and sustain Pegasystems employees’ interest. Put simply, Mr. Petronio was trying to get his colleagues’ attention.

The DRC identified two occasions during which Mr. Zou met with Pegasystems employees in-person. In January 2013, Mr. Zou visited Pegasystems’ headquarters and, with Mr. Petronio, presented to members of Pegasystems’ Product Management and Product Marketing teams on Appian’s mobile capabilities and the process of building an application in Appian. Mr. Schuerman recounted to the DRC that he briefly met Mr. Zou during this visit. Mr. Akgonul, Mr. Leon Trefler, and Mr. Trefler were invited to attend a demonstration by Mr. Zou, and there is some contemporaneous email traffic that could be read to suggest that Mr. Trefler and Mr. Leon Trefler may have participated in some part of a meeting with him. However, there is no evidence that Mr. Trefler engaged substantively with Mr. Zou, and neither Mr. Trefler nor Mr. Leon Trefler specifically recalled ever interacting with Mr. Zou.<sup>9</sup> Indeed, during the Appian Litigation trial, Mr. Zou was asked explicitly whether he met with Mr. Trefler and testified that he did *not* recall doing so. Mr. Zou visited Pegasystems’ headquarters again in February 2014 and demonstrated

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<sup>8</sup> The DRC did not identify evidence to suggest that Mr. Trefler was ever contemporaneously aware of or involved in efforts to conceal or protect Mr. Zou’s identity.

<sup>9</sup> Mr. Akgonul told the DRC that he had no recollection of ever meeting Mr. Zou in-person, and only recalls interacting with him during the December 2012 virtual demonstration, discussed *supra*.

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the building of an application on the Appian platform to Mr. Petronio and Mr. Baril, then a Pegasystems' Solutions Engineering Manager. The DRC's review of the record, consistent with witness accounts, suggests that Mr. Trefler, Mr. Akgnoul, Mr. Schuerman, and Mr. Leon Trefler (collectively, the "Management Witnesses") were not present for this demonstration.

Aside from these rare meetings, however, the vast majority of Mr. Zou's touchpoints with Pegasystems occurred through Mr. Petronio, primarily via email, and his exposure to the Fiduciaries was very limited or non-existent. Notably, the documentary record and witness testimony reflect that none of the Independent Directors, nor Mr. Stillwell, were contemporaneously aware of Mr. Zou's engagement. Indeed, Mr. Stillwell, Mr. Lafond, Ms. Rowlands, and Ms. Ledingham did not join Pegasystems until after Mr. Zou stopped working with Pegasystems, and thus could not have been contemporaneously aware of his engagement. The Independent Directors and Mr. Stillwell did not learn of Mr. Zou's work for Pegasystems until the Appian Litigation was filed. Witnesses uniformly reported that, aside from general competitive landscape overviews periodically presented to the Board, the Independent Directors generally were not kept abreast of the Company's specific competitive intelligence undertakings.

As to the Management Witnesses, these individuals all acknowledged in interviews that they had some contemporaneous awareness that Mr. Zou was working with Mr. Petronio to gather competitive intelligence on Appian. Their witness accounts, consistent with the documentary record, reflect that Mr. Petronio informed them of Mr. Zou's engagement and periodically shared with them information that was provided by Mr. Zou, asked them to review materials or trainings prepared in consultation with Mr. Zou, or requested that they approve funding for Mr. Zou.<sup>10</sup>

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<sup>10</sup> As reflected in the record, the Management Witnesses also occasionally requested research from the competitive intelligence team without specifying how that research should be conducted, for which Mr. Petronio ultimately chose to solicit Mr. Zou's help. The final product for such requests would sometimes include information that resulted from Mr. Zou's work, even if not apparent on the face of the work product.

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Beyond these limited interactions, however, evidence reflects that the Management Witnesses did not work closely with Mr. Zou, let alone direct him to provide the Company with Appian's proprietary information. Instead, as recounted in witness interviews, they relied on Mr. Petronio, as the leader of Pegasystems' competitive intelligence efforts, to navigate Mr. Zou's engagement, including ensuring he had access to Appian-related information through permissible channels and was acting in compliance with all applicable laws and regulations.

The Management Witnesses also uniformly conveyed to the DRC that, both based on their understanding in real time and what they know now, they strongly believe that nothing Mr. Zou provided Pegasystems constituted Appian trade secrets. They noted that the platform Mr. Zou used could be accessed (and was accessed) by thousands of Appian developers, and that the same information he shared was publicly available online through Appian's website, YouTube, and public webinars, among other sources. The DRC's review of the documentary record and the facts developed during the Appian Litigation substantiates these observations. Moreover, evidence reviewed by the DRC, including video recordings of and made by Mr. Zou, does not suggest, nor has anyone alleged, that Mr. Zou shared Appian's source code or other Appian information that was not generally available to consumers of its product.

The Management Witnesses also conveyed their understanding that nothing provided by Mr. Zou was ultimately used to improve Pegasystems' offerings. In particular, Mr. Akgonul, who, as discussed *supra*, has held various senior engineering and product management positions at Pegasystems, shared his view that no Appian capabilities or functionalities learned from Mr. Zou were incorporated into Pegasystems' own product. As reflected in the Appian Litigation record, the Company had evidence, which it was erroneously precluded from showing to the jury, that some of the allegedly "stolen" features had been part of Pegasystems' software before Mr. Zou's

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engagement.<sup>11</sup> The Management Witnesses generally reported that they did not find Mr. Zou's information to be particularly helpful or interesting and stated that, if anything, it only reinforced their pre-existing views of Appian's product.

In September 2014, Mr. Zou ended his engagement with Pegasystems after informing Mr. Petronio that his role at Serco changed such that he would no longer have access to Appian's user interface.<sup>12</sup> On January 30, 2015, Pegasystems terminated Mr. Petronio, after having first placed him on a performance improvement plan on January 8, 2015. Mr. Trefler, Mr. Akgonul, Mr. Schuerman, and Mr. Leon Trefler reported to the DRC that they had been dissatisfied with Mr. Petronio's performance throughout his tenure. Mr. Petronio began consulting for Appian in February 2016 and, in April 2019, started working for them full time. He ultimately provided information that served as the basis for Appian's complaint in the Appian Litigation.

## **2. Retention of Other Competitive Intelligence Consultants**

Documentary evidence reflects that Pegasystems has at times engaged, or considered engaging, consultants to develop competitive intelligence on competitors other than Appian.<sup>13</sup> A

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<sup>11</sup> At trial, Pegasystems sought to introduce earlier versions of its software "to illustrate that many of the features Appian claimed [Pegasystems] had 'stolen' pre-existed [the Company's] contact with Zou or were developed wholly independently of his demonstrations." Virginia Appellate Decision at 459. However, the trial judge held that this evidence was inadmissible at trial unless Pegasystems "used the exact same laptop on which it transmitted a copy of the software to Appian during discovery." *Id.* at 460. The Virginia Court of Appeals found that this ruling was an abuse of discretion that "significantly hampered [Pegasystems'] liability defense." *Id.* at 501.

<sup>12</sup> The Management Witnesses told the DRC that following Mr. Zou's separation, any efforts to engage a new Appian consultant never advanced beyond preliminary ideas or conversations. The DRC's investigation identified one other instance in which the Company considered engaging a consultant to provide competitive intelligence on Appian. In 2019, the Company participated in discussions with BP3 Global, Inc. ("BP3"), a Pegasystems partner, about conducting a secret shopper exercise, pursuant to which BP3 would (i) take Pegasystems' and Appian's trainings, (ii) purchase access to both Pegasystems' and Appian's platforms, (iii) compare the experiences, and (iv) help Pegasystems update its competitive materials based on what they learned. Pegasystems reviewed a draft statement of work in November 2019, and had an introductory meeting with BP3 representatives in January 2020, but Mr. Leon Trefler and Mr. Schuerman confirmed to the DRC that, beyond these preliminary steps, Pegasystems did not move forward with engaging BP3.

<sup>13</sup> Outside of the consultants discussed in this section, documentary evidence suggests various Company personnel, on a few occasions between 2012 and 2022, contemplated or proposed engaging consultants

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few such consultants (the “Other Consultants”) appear to have been have been engaged by Mr. Petronio through KForce during roughly the same time period that he engaged Mr. Zou. Mr. Petronio seems to have used the Other Consultants less frequently than he used Mr. Zou, and they appear to have had even fewer (if any) interactions with personnel other than Mr. Petronio.

Some Management Witnesses, including Mr. Leon Trefler and Mr. Schuerman, had a general recollection that Pegasystems had engaged consultants besides Mr. Zou. However, none recalled meeting the Other Consultants, knew their identities, or could recall the purpose for which they had been engaged. Their lack of knowledge is consistent with the documentary record, which reflects that none of the Management Witnesses worked closely with or were other than minimally informed about the Other Consultants. Contemporaneous email traffic indicates that, on a handful of occasions, Mr. Petronio mentioned one or more of the Other Consultants in communications sent to the Management Witnesses and, on a single occasion, invited Mr. Akgonul and Mr. Schuerman to a meeting with one.

The Independent Directors and Mr. Stillwell all conveyed to the DRC that they had no contemporaneous knowledge regarding the Company’s use of the Other Consultants for competitive intelligence purposes and that they did not learn about Pegasystems’ engagement of such consultants until at least the midst of the Appian Litigation (and, in many cases, until such conduct was alleged in the Demands).

No witness reported awareness of any inappropriate conduct with or by the Other Consultants and the DRC has not identified documentary evidence to the contrary.

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for other competitors. No witness reported to the DRC, nor did the DRC identify evidence suggesting that, the Company ever ultimately engaged such consultants.

**C. Use of Aliases to Access Appian's Information**

**1. Appian Free Trial Instances**

The DRC's investigation confirmed that, at various times between 2012 and 2021, certain Pegasystems employees, in order to conduct research on Appian's products, personally accessed Appian's user interface by signing up for free trials. These free trials were (and remain) generally available to the public. To access these free trials, the Company employees used their personal (rather than Pegasystems) email addresses and, in some cases, fictitious personas, or used login credentials belonging to others.

Through contemporaneous documentary evidence, witness accounts, and interrogatory responses submitted by Pegasystems in the Appian Litigation, the DRC identified ten full-time Pegasystems employees (collectively, the "Free Trial Users") who accessed some version of Appian's platform from 2012 until March 2022, including Mr. Baril.<sup>14</sup> As reflected in documents and Appian Litigation trial transcripts reviewed by the DRC, the Free Trial Users accessed Appian's platform in order to learn more about Appian's offerings, including strengths and weaknesses. Certain of the Free Trial Users captured screenshots or recorded videos of Appian's free trial environment, which they sometimes shared internally at Pegasystems. The DRC also found that, on a few occasions, certain of the Free Trial Users offered to give live demonstrations of Appian's free trial experience to their colleagues. Using information gleaned from exploring Appian's platform, the Free Trial Users drafted materials for internal use that discussed Appian's capabilities and/or strategy.<sup>15</sup>

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<sup>14</sup> During the Appian Litigation, Pegasystems did not dispute that certain Company employees misrepresented their identities in connection with accessing versions of Appian's platform.

<sup>15</sup> The DRC's review of documentary evidence and trial and deposition testimony from the Appian Litigation indicate that certain of the Free Trial Users also accessed other competitors' free trial environments. None of the witnesses interviewed by the DRC reported being aware of such conduct, and the DRC did not identify

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Both the documentary record and witness accounts reflect that the Fiduciaries were not directly involved in this practice. To the contrary, the Independent Directors, Mr. Stillwell, and Mr. Akgonul<sup>16</sup> all reported to the DRC, and the documentary record supports, that they had no contemporaneous awareness that any of the Free Trial Users had registered for Appian trial instances or otherwise accessed Appian's platform, and they did not learn of such conduct until it later became a focal point in the Appian Litigation. As to the remaining Management Witnesses, the record suggests that, through their relationship with Mr. Baril, these individuals were informed of or made contemporaneously aware that at least one of the Free Trial Users had accessed Appian's platform.

As reflected in the record, Mr. Baril periodically communicated with Mr. Schuerman, Mr. Trefler, and Mr. Leon Trefler regarding research projects that he was working on and, on occasion, these individuals requested specific competitive intelligence work product from him. The DRC determined that, on a few occasions in 2019 and 2020, during the course of conversations with Mr. Schuerman, Mr. Trefler, and/or Mr. Leon Trefler pertaining to his competitive intelligence activities, Mr. Baril acknowledged that he had access to Appian and/or that he had recorded videos within Appian's platform. Further, the DRC identified two references Mr. Baril made to Mr. Schuerman and/or Mr. Trefler during that same timeframe suggesting that access to Appian was difficult to come by. Mr. Schuerman, Mr. Trefler, and Mr. Leon Trefler all reported to the DRC that they did not contemporaneously understand that Mr. Baril had acquired such access through the use of an alias. In fact, all of the Management Witnesses, consistent with the

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evidence to either contradict these witnesses' accounts or suggest that any of the Free Trial Users used fake identities to access other competitors' free trials.

<sup>16</sup> In his interview with the DRC, Mr. Akgonul shared that he did not recall learning any Pegasystems employee was involved in accessing Appian's platform until he was presented with evidence while giving a deposition in connection with the Appian Litigation. The DRC did not identify documentary evidence inconsistent with Mr. Akgonul's recollection.

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Company's legal position in the Appian Litigation and the Appian Appeal, conveyed their understanding that nothing in Appian's free trial environment was non-public, confidential, or trade secret information, because millions of individuals were eligible to access that environment without restriction (and thousands did).<sup>17</sup> Instead, these witnesses opined that Appian's free trials were marketing tools, intended to be used by as many people as possible, and that they understood accessing those trials to be akin to test-driving a car.

Despite their belief that the practice was legal, each of the Management Witnesses recognized that, in hindsight, the Free Trial Users should not have used aliases to access those trials because such behavior can be misleading and risks the appearance of misconduct. The view expressed by the Management Witnesses that the Free Trial Users should not have used aliases is consistent with their conduct, as both witness accounts and the documentary record reflect that, when asked directly by employees whether to provide their Pegasystems or different information in connection with registering for competitors' products and/or events, they counseled in favor of using their Pegasystems information.

Once the Fiduciaries learned through the Appian Litigation that certain Pegasystems' employees had used aliases in connection with accessing Appian's trial environment, they ensured that the Company took a variety of steps to address the issue (as described in greater detail below).

## **2. Appian Marketing Materials**

Mr. Trefler reported that, to keep abreast of what competitors are doing, he has periodically signed up for Appian news alerts. Mr. Trefler told the DRC that, when registering for such materials, he sometimes used his personal email address. The DRC also identified evidence that

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<sup>17</sup> The DRC reviewed documentary evidence depicting users that registered for Appian's free trials, which showed that Appian approved numerous applications for free-trials containing clearly fake or missing information, including names and email addresses.

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confirmed that his personal email address was used to sign up for Appian Insight alerts and an Appian marketing webinar. Although the Demands allege that Mr. Trefler created and employed aliases, including “Albert Skii,” “Paul Foon,” and “A. Ewe” in order to access Appian’s information, Mr. Trefler reported to the DRC that he had no recollection of using, and did not think he would have used, such personas to register for Appian websites or programs. The DRC did not identify evidence to the contrary. When asked about this practice, witnesses, including Mr. Schuerman, Mr. Akgonul, Mr. Cushing, and Mr. Frank, stated that, based on their extensive industry knowledge, experience, and expertise, using one’s personal email address to register for competitors’ marketing materials is not improper competitive intelligence gathering and does not implicate trade secret or otherwise confidential information.<sup>18</sup> Mr. Schuerman and Mr. Akgonul, for instance, conveyed their understanding that a company’s news alerts are marketing materials explicitly designed to be public and reach as large of an audience as possible, and that it is extremely common both in the software industry and in general to use a dedicated email or hide one’s name when accessing those materials in order to avoid sales calls or spam.

### **3. Remedial Efforts Undertaken by the Company to Date**

The DRC identified four primary efforts undertaken by Pegasystems in recent years to support better monitoring and oversight of the Company’s competitive intelligence activities.

First, Pegasystems’ legal team, together with Mr. Trefler and the Independent Directors, considered whether the Free Trial Users should be reprimanded for violating Pegasystems’ Code of Conduct, which requires an employee of the Company “[t]o never use illegal or questionable means to acquire a competitor’s trade secrets or other confidential information, such as trespassing, burglary, wiretapping, bribery, stealing, seeking confidential information from a new employee

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<sup>18</sup> During the Appian Litigation, Appian did not claim its marketing materials contained confidential information or trade secrets, and alleged no cause of action in connection with Mr. Trefler accessing such materials.

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who recently worked for a competitor, or misrepresenting [their] identity in hopes of obtaining confidential information.” Consistent with Pegasystems’ legal position in the Appian Litigation (and later the Appian Appeal), the Management Witnesses’ view, with which the Independent Directors concurred, was that employees that accessed Appian’s platform did not access Appian trade secrets or otherwise confidential information, since the information at issue was broadly accessible to millions of members of the public eligible to access Appian’s free trial environment. As such, the Company determined that such conduct did not technically violate its Code of Conduct. However, in an effort to reinforce that Pegasystems’ employees should always use best practices when researching competitors, the Free Trial Users that still worked for the Company were issued formal reprimand letters in March 2022, which went in the employees’ files for a sunset period.<sup>19</sup> These letters stated, in part, that:

As discussed, it is our understanding that you accessed a free trial of Appian software without identifying yourself as a Pega employee...This should not have happened and must not occur again. If one of our competitors states that Pega employees should not access its free trials or certain of its information, we should honor that competitor’s position regardless of whether Pega is willing to make similar information or free trials available to the competitor’s employees.

In addition to sending these letters, Pegasystems’ Human Resources team spoke with these individuals regarding proper forms of competitive intelligence.

Second, the Company developed a supplemental and extensive training for Pegasystems employees on competitive intelligence and appropriate techniques. In his interview with the DRC, Mr. Trefler stated that he had personally taken this training and that he had found it effective.

Third, the Company instituted quarterly meetings between Pegasystems’ legal team and employees conducting competitive intelligence. Witnesses relayed to the DRC that this provides

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<sup>19</sup> One of the Free Trial Users stopped working for Pegasystems in 2015, for unrelated reasons.

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a forum for open discussion about the Company's competitive intelligence efforts and for these employees to ask questions about best practices, and is reflective of the Company's efforts to shift employees' focus away from what competitors are doing and toward what makes Pegasystems products valuable.

Finally, the Company implemented a hard-technical website block to preclude anyone on Pegasystems' premises or using a Pegasystems laptop from being able to access Appian's login page. If someone at the Company tries to access certain pages within Appian's website, including but not limited to Appian's free trial login page, an alert pops up notifying the individual that such webpage has been blocked by Pegasystems because third parties may claim its contents to be confidential or protected information, and instead the information should be viewed using publicly available resources.

**D. Chronology of Events Concerning the Appian Litigation and Related Public Disclosures**

**1. History of Litigation Between Appian and Pegasystems Prior to the Appian Litigation**

The contentious history between Appian and Pegasystems predates the Appian Litigation. Witnesses reported to the DRC that, since at least 2008, Appian often hired ex-Pegasystems employees, including high-level executives, in what Pegasystems believed to be an effort to access the Company's proprietary information. In response, in 2011 and 2015, Pegasystems brought two lawsuits against Appian, challenging Appian's hiring of certain former Pegasystems employees, alleging that such hiring violated non-competition provisions in these employees' separation agreements with Pegasystems, Appian engaged in tortious interference, and/or false and deceptive practices to obtain Pegasystems' trade secrets and other confidential information. *See Pegasystems Inc. v. Appian Corp. & Bruce Maxwell*, No. SUCV2015-01229 (Mass. Super. Apr. 27, 2015);

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*Pegasystems Inc. v. Appian Corp., Jamie Friedman, & Robert Loren*, No. SUCV2011-04196 (Mass. Super. Nov. 17, 2011). Neither case was ultimately litigated to resolution.

Later, on July 3, 2019, Pegasystems filed a lawsuit in Massachusetts federal court (the “Massachusetts Litigation”) against Appian and Business Process Management, Inc. (“BPM Inc.”) relating to a BPM Inc. report titled “Market Report: Analysis of Process Automation Investments and Total Cost of Ownership” that Appian was using to promote itself against Pegasystems (the “BPM Report”). *See Pegasystems Inc. v. Appian Corp. & BPM Inc.*, 19-cv-11461 (D. Mass. 2019). The complaint alleged that the BPM Report, and Appian’s marketing of it, included false and misleading statements about Pegasystems, and the Company sought damages for false advertising, deceptive business practices, and commercial disparagement, as well as judicial action to stop Appian and BPM Inc. from using the document and compel them to take corrective steps. The complaint alleged in particular that while the BPM Report represented that its analysis was based on market research that BPM Inc. conducted through the use of customer surveys, BPM Inc. in fact manipulated its selection of responses to those surveys in order to create a sample favorable to Appian and detrimental to Pegasystems. Once BPM Inc. published the BPM Report, Appian allegedly publicly distributed it as part of its marketing and advertising materials, despite being aware that its findings were inaccurate. Appian subsequently agreed to stop using the BPM Report.<sup>20</sup>

As the Massachusetts Litigation progressed, on December 17, 2019, Appian asserted counterclaims against the Company seeking unspecified monetary damages and alleging certain of the Company’s past marketing materials included false and misleading statements, one of the

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<sup>20</sup> In December 2019, Appian removed and modified certain language on its website about the BPM Report. Subsequently, according to the Company, Appian agreed to stop using the BPM Report, although no court order required it, and Appian reneged on its promise.

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marketing reports failed to disclose that the report’s author was paid by the Company, and that the Company defamed Appian in a LinkedIn post.

On May 22, 2020—just a week before Appian filed its complaint in the Appian Litigation—the court granted Pegasystems’ motion to dismiss Appian’s counterclaim with respect to certain of the Company’s past marketing materials Appian alleged to be false and misleading.<sup>21</sup>

## **2. Appian Litigation is Filed**

On May 29, 2020, Appian initiated the Appian Litigation by filing an original complaint that named both Pegasystems and Mr. Zou as defendants and asserted the following six causes of action (the “Complaint”). Ex. 9 (the Complaint).

- **Count 1:** Misappropriation of Trade Secrets in Violation of Virginia’s Uniform Trade Secrets Act (Against Pegasystems and Mr. Zou)
- **Count 2:** Computer Fraud in Violation of the Virginia Computer Crimes Act (Against Pegasystems and Mr. Zou)
- **Count 3:** Tortious Interference with Appian’s Serco Contract (Against Pegasystems)
- **Count 4:** Tortious Interference with Appian’s Business Expectancy (Against Pegasystems)
- **Count 5:** Statutory Business Conspiracy (Against Pegasystems and Mr. Zou)
- **Count 6:** Common Law Conspiracy (Against Pegasystems and Mr. Zou)

As described above, the Complaint was primarily premised on allegations that Pegasystems “engaged in an unlawful campaign of corporate espionage against Appian” and is principally focused on Pegasystems’ engagement of Mr. Zou. *Id.* at ¶¶ 1, 3. The Complaint alleged that “[Mr.] Zou...illegally provided copies of Appian’s software and documents,” which the Company then used “to conduct detailed technical analyses of Appian’s product to determine precisely how

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<sup>21</sup> On June 17, 2021, Appian asserted additional counterclaims against the Company seeking unspecified monetary damages and alleging that certain additional marketing materials used by the Company contained false or misleading statements. After proceeding through discovery, Pegasystems and Appian entered into a confidential settlement agreement in November 2022, and the court entered into a stipulation of dismissal with prejudice as to the Massachusetts Litigation.

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it was constructed and how it worked so that they could compare it to Pegasystems' product at a level not possible without the benefit of Appian's stolen trade secrets." *Id.* at ¶ 2. As a result of this alleged misconduct, Appian purportedly suffered "substantial monetary damages" and included an *ad damnum* clause for \$90 million in damages.<sup>22</sup> *Id.* at ¶ 94. The Complaint also requested injunctive relief, including, among other things, that Pegasystems be enjoined from "developing, marketing, selling, licensing, or using any product that, in any respect or to any degree, is based on, derived from, modified in response to, or incorporates any of Appian's confidential information or trade secrets." *Id.* at ¶¶ 101-103.

Management Witnesses consistently testified that, upon an initial reading of the Complaint, they believed that Appian filed the lawsuit as retaliation for Pegasystems having filed the Massachusetts Litigation, and that the Complaint reflected posturing from Appian.

Within a few days of receiving the Complaint, Pegasystems retained Mr. Frank of Choate to defend the Company in the Appian Litigation. Management Witnesses reported that the Company retained Mr. Frank because he was known as one of the country's premiere intellectual property lawyers and Pegasystems has had a relationship with Choate for over 20 years, with Choate primarily serving as the Company's corporate governance counsel and legal advisor on SEC filings.

The Appian Litigation was not on an expedited schedule, and it did not occupy a significant amount of near-term bandwidth for Pegasystems or the Choate team.

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<sup>22</sup> The \$90 million damages claim represented the maximum amount of damages Appian could recover under Virginia law under the initial version of the complaint. *See Powell v. Sears, Roebuck & Co.*, 231 Va. 464, 470 (1986) (In Virginia, "a plaintiff cannot recover more damages than he demands, although he [can recover] less."); *Solentus, Inc. v. Lam*, 2017 WL 9833483, at \*4 (Va. Cir. Ct. May 4, 2017) ("[Th]e *ad damnum* sets a cap on the amount recoverable by the plaintiff.") (quoting *EER Sys. Corp. v. Armfield*, 51 Va. Cir. 84 (1999)); *see generally* Va. R. Sup. Ct. 3:2(c)(ii).

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On July 8, 2020, the Board held its first meeting following the filing of the Appian Litigation and, as part of Mr. Cushing's regular Board litigation update, was informed of the Appian Litigation and the Company's intent to defend the matter. In the normal course, the Board received a written litigation update in advance of Board meetings and, at meetings, Mr. Cushing delivered a verbal update. The Board received written and verbal litigation updates, which included an Appian Litigation update, during at least 10 Board meetings between July 2020 and May 2022.

On July 13, 2020, the Company's independent outside auditor Deloitte & Touche LLP ("Deloitte") was provided with a similar update in an audit response letter from Mr. Cushing. Mr. Cushing included updates and representations concerning the Appian Litigation to Deloitte in audit letters for each quarter during the period July 2020 through July 2022. Pegasystems' openness and transparency with Deloitte belies any suggestion that its management team sought to conceal a material litigation.

During this same time period, senior Pegasystems executives in legal, finance, and accounting began to consider the Appian Litigation's impact on the Company's public disclosures and financial statements. Mr. Stillwell, Mr. Cushing, and Mr. Kouninis reported that, when the Appian Litigation was filed, they had no prior familiarity with factual allegations contained in the Complaint. Management Witnesses consistently reported substantially similar initial reactions, including that: (i) Appian had likely filed the Complaint in retaliation for the Massachusetts Litigation, which several Management Witnesses noted would not be unusual in the context of Appian and Pegasystems' historically contentious relationship; and (ii) Appian's claims for damages lacked supporting evidence and could not plausibly allege material harms.

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Following consultation with in-house and outside counsel, including Mr. Pitfield and Michael Gass (Chair of Choate's Complex Trial and Appellate Group), the Company determined that the Appian Litigation (which, at the time, sought a maximum of \$90 million in damages) did not qualify as a material legal proceeding triggering a required disclosure under Item 103 of Regulation S-K ("Item 103").<sup>23</sup> Mr. Stillwell and Mr. Kouninis reported that, pursuant to similar reasoning, finance and accounting personnel, in consultation with Pegasystems' in-house attorneys, determined that the Appian Litigation did not pose probable or estimable damages within the meaning of Financial Accounting Standards Board Accounting Standards Codification 450 ("ASC 450") and thus, the Company was not required to accrue a litigation contingency for the Appian Litigation.<sup>24</sup> Management reviewed this decision with Deloitte. On July 28, 2020, the Company filed its Form 10-Q for the quarterly period ending June 30, 2020 (the "2Q20 10-Q"), which did not contain express references to or a litigation contingency accrued in connection with the Appian Litigation.<sup>25</sup> The 2Q20 10-Q was reviewed and approved by the Board and Audit Committee prior to filing.

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<sup>23</sup> Item 103 requires a registrant to briefly describe any "material pending legal proceedings," other than ordinary routine litigation incidental to the business, to which the registrant or any of its subsidiaries is a party or of which any of their property is subject. 17 C.F.R. § 229.103(a). A disclosure is not required under Item 103, however, if the claim of damages does not exceed 10% of the Company's and its subsidiaries' current assets on a consolidated basis. *Id.* at § 229.103(b)(2).

<sup>24</sup> For each quarterly period from 2Q20 to 2Q22, accounting personnel, in consultation with finance and legal, considered whether the claims asserted by Appian presented damages that were either probable or estimable and documented their decision not to accrue and the related reasoning. These memoranda were provided to Deloitte and reviewed by the DRC as part of its investigation.

<sup>25</sup> Similarly, for quarterly and annual filings by Pegasystems during the period 2Q20 to 3Q21, the Company did not include express references to the Appian Litigation. However, the Company included disclosures concerning litigation-related risks and uncertainties, such as that the Company "may be subject to intellectual property rights claims," which may be "extremely costly to defend, could require [the Company] to pay significant damages, and could limit [the Company's] ability to use certain technologies" and that [the Company has] received, and may in the future receive, notices that claim [Pegasystems has] misappropriated, misused, or infringed other parties' intellectual property rights." *See, e.g.*, Pegasystems Form 10-K for Fiscal Year 2020 (filed Feb. 17, 2021), at 19. The Company also warned investors that "litigation can have a material adverse effect on [the Company] because of defense and settlement costs, diversion of management resources, and other factors." *Id.* at 22.

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**3. Mediation of Pending Litigations Between Appian and Pegasystems**

On March 4, 2021, Pegasystems and Appian engaged in a joint mediation in connection with the Appian Litigation and the separately pending Massachusetts Litigation. As witnesses recounted and the documentary record reflects, at the time, Pegasystems anticipated that *Pegasystems* (and *not* Appian) would receive net consideration for the settlement of both matters. Witnesses who did not directly participate in the mediation also relayed their expectation that Appian would take a similar position, *i.e.* that it should receive a net financial benefit from the litigations' resolution. The record reflects that ultimately, neither the Appian Litigation nor the Massachusetts Litigation was resolved during the mediation. Witnesses reported that, despite the lack of resolution, Pegasystems continued to believe that both matters could be resolved for no consideration or a payment from Pegasystems to Appian in an amount well below the Appian Litigation's \$90 million damages claim.

Pegasystems filed its answer to the Complaint in February 2021, and the Appian Litigation continued to proceed through fact and expert discovery. Choate provided routine updates on the litigation to Mr. Cushing and Chris Roche (Deputy General Counsel, Pegasystems) in the ordinary course. Outside counsel also shared documents and information, throughout the discovery process, with Mr. Trefler, Mr. Cushing, and Mr. Stillwell to help them assess the strengths and weaknesses of Appian's claims and Pegasystems' defenses. Management Witnesses consistently reported that, during this time, and based on consultation with the Choate trial team and Appian's claimed damages being limited to \$90 million, they continued to believe that the Appian Litigation was not material and remained ordinary course litigation, which the Company was defending on a good faith basis and on which they expected to prevail.

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**4. Appian's First Amended Complaint and Expert Reports Exchanged**

On October 21, 2021, 17 months after initiating the Appian Litigation, Appian filed a motion for leave to amend its complaint to include additional allegations, while retaining its *ad damnum* clause of \$90 million in damages (the "First Amended Complaint"). While the Complaint had focused on the 2012 to 2014 time period, the First Amended Complaint now alleged that Pegasystems' unlawful use of Appian's trade secrets continued for years after 2014, including through at least 2018. Ex. 10 (the First Amended Complaint), at ¶ 40. The First Amended Complaint also added new allegations including that (i) in 2019, Pegasystems employees accessed free Appian product trials under false pretenses and (ii) Pegasystems used Appian's trade secrets to determine how its platform could be "improved" relative to Appian's platform. On November 3, 2021, the court granted Appian's motion for leave to file the First Amended Complaint.

On November 24, 2021, Appian served the report of its damages expert, James E. Malackowski (the "Malackowski Report"), who was retained to determine the measures and amounts of monetary recovery due to Appian in the event the alleged trade secrets were found to have been misappropriated by Pegasystems and Mr. Zou. The Malackowski Report concluded that Pegasystems realized gross profits totaling more than \$5.6 billion between 2013 and 3Q21 in connection with the alleged trade secret misappropriation based on the purported fact that (i) Pegasystems made more than \$1 billion in gross profit from 1Q13 to 3Q21 from sales made to customers for whom Appian and Pegasystems had competed against for a sales opportunity at least once, regardless of whether the revenues were attained through the actual use of Appian's alleged trade secrets, and (ii) Pegasystems made more than \$4.6 billion in gross profit for 4Q13 through 3Q21 derived from the sale of all Pegasystems products to all customers on the theory that

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Pegasystems' products incorporated the purported trade secrets regardless of whether the alleged trade secret had any causal relationship to those sales.<sup>26</sup>

On November 29, 2021, Pegasystems filed an answer to the First Amended Complaint, asserting various affirmative defenses, including laches, failure to mitigate damages, unclean hands, and *in pari delicto*. That same day, Pegasystems also filed demurrer, plea in bar, and various motions, collectively seeking to (i) dismiss Counts 2 through 5 for failure to state a claim, (ii) dismiss Counts 1 through 5, in full or part, as time barred under applicable statutes of limitations, and (iii) compel Appian to file a bill of particulars specifying any non-Pegasystems parties that Pegasystems and Mr. Zou allegedly conspired with and any specific customers in relation to which Pegasystems allegedly interfered with Appian's business expectancies.

On December 13, 2021, the Board received an update from Mr. Cushing on the status of the Appian Litigation, including, among other things, the First Amended Complaint, the Malackowski Report, recent court hearings, the plea in bar hearing, facts identified through discovery, and anticipated defense themes at trial. Mr. Trefler participated in the update and provided his views.<sup>27</sup>

On January 13, 2022, the court granted in part Pegasystems' demurrer and motion for bill of particulars, denying Pegasystems' demurrer as to Counts 2 (violation of the Virginia Computer Crimes Act) and 3 (tortious interference with Appian's business expectancy), ordered Appian to file a bill of particulars as to Count 3 regarding the specific customers with which Pegasystems

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<sup>26</sup> On December 24, 2021, Pegasystems served the report of its damages expert, D.J. Platt, who opined that, assuming liability, Pegasystems was unjustly enriched by approximately \$31.4 million.

<sup>27</sup> Witnesses uniformly reported that Mr. Trefler becomes highly engaged in matters which he believes are important to Pegasystems and/or its business. Witnesses reported that Mr. Trefler's description of relevant facts reflected his own sense that the Appian Litigation was meritless. They also consistently noted that, from their perspective, Mr. Trefler never concealed information of which he was aware or sought to override the judgment of Pegasystems' outside counsel defending the Appian Litigation.

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allegedly interfered, and granted Pegasystems' demurrer as to Counts 4 (statutory business conspiracy) and 5 (common law conspiracy), dismissing those counts with prejudice.

### **5. Second Amended Complaint Filed**

On January 28, 2022, nearly 20 months after commencing the Appian Litigation, Appian filed a motion for leave to amend the *ad damnum* clause in the First Amended Complaint to increase its damages claim from \$90 million to \$3 billion, seeking revenues from all of Pegasystems' products and services in the period from 4Q13 through 3Q21 (the "Second Amended Complaint"). On January 31, 2022, the plea in bar hearing commenced, and on February 10, 2022, the court granted in part Pegasystems' requested relief, thereby dismissing Count 2 (violation of the Virginia Computer Crimes Act) with prejudice as to acts occurring before May 29, 2015. The court declined to dismiss Count 1 (trade secrets misappropriation). On February 11, 2022, the court granted Appian's motion for leave to file the Second Amended Complaint and thereby increase Appian's damages claim from \$90 million to \$3 billion.

Mr. Trefler, Mr. Stillwell, and Mr. Cushing, among others, reported that, as a result of Appian increasing its damages by thirty-fold to \$3 billion, in combination with the previously described, failed settlement attempts,<sup>28</sup> and a looming trial, the Appian Litigation became a more prominent focus among Pegasystems senior leadership and in-house legal counsel. Mr. Trefler reported, and other witness accounts corroborated, that he became more heavily involved in the Company's defense by meeting more frequently with trial counsel, more regularly receiving priority interest documents identified in discovery, participating in strategy discussions, and otherwise contributing to trial preparation. In addition, Mr. Trefler and Mr. Stillwell both signed

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<sup>28</sup> In December 2021, Mr. Cushing reported that he initiated discussions with Appian's General Counsel, Christopher Winters, to explore potential settlement. As the record reflects, Mr. Winters ultimately informed Mr. Cushing that Appian wanted to have their "case heard" and rejected a request from Mr. Trefler for a teleconference with Appian's Chief Executive Officer, Matt Calkins, to try and resolve the Appian Litigation.

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the protective order filed in the Appian Litigation, which allowed them to review confidential filings, including the expert reports.

**6. Appian Litigation Expressly Disclosed in 2021 10-K**

During that same period (throughout January and the first half of February 2022), the Company was preparing to file its 10-K Annual Report for 2021. In the weeks leading up to the filing, at least five formal meetings were held with key Company stakeholders from legal, finance, and accounting, as well as Mr. Pitfield. As reported by witnesses who participated in those meetings and reflected in contemporaneous email correspondence, these stakeholders determined that, in light of Appian's increased damages claim, the court denying portions of Pegasystems' requested relief at the plea in bar hearing, and the case likely proceeding to trial, the Company should now disclose the Appian Litigation as a material pending legal proceeding pursuant to Item 103. Following that determination, in-house and outside counsel evaluated precedent disclosures and worked to draft, review, and revise an Appian Litigation disclosure. The Audit Committee likewise discussed and approved the proposed disclosure.

In addition, Mr. Stillwell and Mr. Kouninis reported that, consistent with the Company's practice in every quarter since May 2020, they also reevaluated whether the Company should accrue a litigation contingency for the Appian Litigation. Mr. Kouninis recounted several discussions with in-house and outside counsel, as well as Deloitte, in which they reflected on the developments in the Appian Litigation. These conversations included repeated consideration of authorities and interpretative accounting guidance (including Deloitte's Roadmap: Contingencies, Loss Recoveries, and Guarantees (the "Deloitte Roadmap")), as well as precedent disclosures from other public companies. Mr. Kouninis recalled Deloitte being actively involved, pressure testing the variables, and consulting with experts on loss contingencies at Deloitte's national office. Mr. Stillwell and Mr. Kouninis reported that, having undertaken an extensive analysis with the

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appropriate stakeholders, the Company concluded that a loss in connection with the Appian Litigation was only “reasonably possible,” as opposed to “probable,” and not “reasonably estimable” under applicable accounting rules (as discussed further *infra*). Pegasystems reasoned in particular that: (i) the likelihood of an adverse verdict in the Appian Litigation was not probable, (ii) the Company continued to believe that Appian’s claims were without merit, and (iii) even if Pegasystems were to be held liable at trial, the Company believed that the alleged damages were not supported by the necessary legal standard of proximate cause.<sup>29</sup> As such, the Company determined that it did not have an obligation to accrue a contingency in connection with the Appian Litigation. The Audit Committee and Deloitte, both of which engaged with management on their accrual assessment and reviewed drafts of the 2021 10-K filing, viewed management’s decision as reasonable.

On February 16, 2022, the Company’s 2021 10-K was filed and included an Appian Litigation disclosure, which provided a factual overview, the alleged violations of law, the procedural history, and the Company’s position on the merits of Appian’s claims and Pegasystems’ defenses, among other things. It reads, in part,

On May 29, 2020, Appian sued the Company and an individual, Youyong Zou, in the Circuit Court of Fairfax County, Virginia in a matter titled Appian Corp. v. Pegasystems Inc. & Youyong Zou, No. 2020-07216 (Fairfax Cty. Ct.). The complaint filed by Appian on May 29, 2020 (the “2020 Complaint”) alleges that Mr. Zou was an employee of an Appian business partner, Serco Inc. (“Serco”); that, as a result, Mr. Zou had access to Appian trade secrets which Mr. Zou was required to keep confidential; and that in approximately 2013, while Mr. Zou was employed by Serco, the Company engaged Mr. Zou through an intermediary to provide the Company with Appian trade secrets and confidential information, which the Company is then claimed to have used to compete against Appian.

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<sup>29</sup> As the Virginia Court of Appeals re-affirmed when vacating the jury’s verdict against the Company, Virginia law requires that the plaintiff establish that any alleged use of purported trade secrets proximately caused their damages. *See* Virginia Appellate Decision at 479-83; *see also* Va. Code. § 59.1-338(A); *Saks Fifth Ave., Inc. v. James, Ltd.*, 272 Va. 177, 190 (2006).

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The 2020 Complaint sets forth claims for misappropriation of trade secrets under the Virginia Uniform Trade Secrets Act, violation of the Virginia Computer Crimes Act, tortious interference with contract and business expectancy, and statutory and common law conspiracy. On July 24, 2020, the Company filed a plea in bar, seeking to have the claims asserted against the Company in the 2020 Complaint barred, in whole or in part, by the applicable statutes of limitations. Before the original plea in bar could be heard, Appian filed an amended complaint which the court allowed on November 4, 2021 (the “2021 Amended Complaint”), alleging that, in the 2019 time frame, employees of the Company accessed free Appian product trials under false pretenses. The 2021 Amended Complaint withdrew the claim for tortious interference with contract. After Appian filed the 2021 Amended Complaint, the Company successfully moved to dismiss Appian’s conspiracy claims, which are no longer a part of the case. The Company also re-filed a plea in bar on November 29, 2021 seeking to have the claims asserted against the Company in the 2021 Amended Complaint barred, in whole or in part, by the applicable statutes of limitations. A jury hearing on the plea in bar commenced on January 31, 2022. On February 9, 2022, the judge determined that he could decide the plea in bar without the jury and, on February 10, 2022, the judge entered a verdict granting the relief sought by the Company’s plea in bar motion with respect to the Virginia Computer Crimes Act, meaning the allegations asserted against the Company in the 2021 Amended Complaint with respect to the Virginia Computer Crimes Act are barred by the applicable statutes of limitations for conduct on or prior to May 29, 2015, while the claims made with respect to misappropriation of trade secrets under the Virginia Uniform Trade Secrets Act are not similarly barred. Appian’s claim for tortious interference with business expectancy was not a subject of the plea in bar. On February 11, 2022, the court allowed Appian’s motion to further amend the 2021 Amended Complaint to assert a damages claim of approximately \$3 billion, seeking all of the Company’s revenues less estimated direct costs from the sale of all of the Company’s products and services in the period from the fourth quarter of 2013 through the third quarter of 2021. Virginia law requires that the plaintiff establish proximate cause between any alleged use of the alleged trade secrets and damages incurred by the plaintiff, and also requires plaintiffs seeking damages to allege a specific damages amount, prohibiting recovery beyond that amount. In addition to disputing the validity of Appian’s claims against the Company, the Company believes that any alleged damages claimed by Appian are not supported by the necessary legal standard of proximate cause.

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In addition, following the February 10, 2022 ruling on the Company's plea in bar, the ongoing claim under the Virginia Computer Crimes Act is time limited to acts occurring after May 29, 2015. A jury trial with respect to the merits of the dispute is scheduled to begin on March 21, 2022. The Company believes the claims brought by Appian against the Company are without merit, that the Company has strong defenses to these claims and that, among other things, even were the jury to find that the Company misappropriated Appian's alleged trade secrets, any alleged damages claimed by Appian are not supported by the necessary legal standard of proximate cause. The Company is unable to reasonably estimate possible damages or a range of possible damages given the Company's belief that the damages claimed by Appian fail to satisfy the required legal standard and due to the uncertainty as to how a jury may rule.

2021 10-K, at 23. It also stated that "[a]s of December 31, 2021, the Company has not accrued a loss with respect to any litigation matter." *Id.* at 63.

#### **7. Further Settlement Exploration and Trial**

In late February 2022, lead trial counsel for both Pegasystems and Appian, Mr. Frank and Adeel Mangi of Patterson Belknap Webb & Tyler LLP, preliminarily explored potential settlement of the Appian Litigation. Mr. Frank reported to the DRC that while Mr. Mangi entertained the concept of potential settlement, his perception was that Appian was not receptive to engaging in serious settlement discussions. After consultation with Mr. Trefler and others, but without Board authorization to settle, Mr. Frank floated the possibility of a modest settlement amount in an effort to test Appian's appetite for pre-trial resolution. Mr. Frank did not expect Appian would agree to such a modest settlement amount, and Mr. Mangi subsequently rejected the proposal and declined to make a counterproposal. On or around March 10, 2022, after consulting with Mr. Trefler, Mr. Frank reported that he approached Mr. Mangi with an exploratory proposal, again without either Board authorization or any expectation it would be accepted but rather in an effort to elicit a counterproposal that might advance settlement conversations. However, Appian terminated

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settlement discussions without the conversation having progressed beyond Mr. Frank's exploratory effort.

On March 21, 2022, the Appian Litigation trial began. Mr. Trefler was present as the corporate representative for the duration of the trial. On the first day, the court ruled that evidence concerning the number of users with access to Appian's platform was not relevant to any issue in the case and could not be presented to the jury, thereby severely undercutting Pegasystems' ability to challenge Appian's characterization of its purported trade secrets and mitigate damages.<sup>30</sup>

During these initial days of the trial, Mr. Frank and Mr. Mangi briefly resumed the exploration of a potential settlement, though the parties remained far apart and the discussions never meaningfully progressed. On March 27, 2022, the Board received an update regarding, among other things, the status of the Appian Litigation, including then-recent exploratory discussions about the prospect of settlement and potential outcomes. The Board witnesses unanimously recounted that no settlement amount was approved by the Board. As reflected in contemporaneous email traffic, the exploratory settlement-related discussions with Appian ended later that day.<sup>31</sup> As documented in a March 31, 2022 memorandum prepared by Pegasystems accounting personnel, no accrual was taken in connection with settlement-related talks because the discussions held between counsel for the Company and Appian were not undertaken by the

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<sup>30</sup> As discussed below, that ruling was one of multiple key trial court decisions that the Virginia Court of Appeals has since deemed erroneous. *See* Virginia Appellate Decision at 507; *see also id.* at 508 (“[T]he trial court also abused its discretion by refusing to permit Pega to attempt to authenticate its software evidence and, as a consequence, by excluding Pega's software—a principal means of demonstrating it did not steal secrets through Zou—on the basis that it was on a different laptop than provided in discovery.”).

<sup>31</sup> In April 2022, Mr. Trefler, Mr. Stillwell, and Mr. Kouninis, in their management representation to Deloitte in connection with its review of certain financial statements for the period ending March 31, 2022, informed Deloitte that (i) discussions between counsel for Pegasystems and Appian regarding settlement exploration were not undertaken by the Company with a reasonable belief that it would lead to a settlement of the Appian Litigation and (ii) any potential settlement would need to be approved by the Board, and no such approval had been given. This management representation letter was reviewed by the Audit Committee. Subsequently, Mr. Kouninis reported that discussion ensued with Deloitte on what constitutes a “settlement offer” for purposes of a required accounting accrual. Deloitte viewed management's decision not to accrue under these circumstances as reasonable.

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Company with a reasonable belief that they would lead to a settlement of the matters, any monetary amounts exchanged were not substantive offers but a conduit to explore Appian's legal strategy, and the Board never approved a settlement amount. In reaching this conclusion, management consulted the Deloitte Roadmap, among other accounting guidance, and discussed the analysis with Deloitte, who viewed management's decision as reasonable.

On April 13, 2022, the court ruled that if the jury were to find that Pegasystems misappropriated Appian information that constituted trade secrets and that Pegasystems incorporated those trade secrets into the Company's products or marketing materials, the burden then would shift to Pegasystems to prove that the sales Appian was seeking as damages were not the result of the alleged misappropriation and use of the alleged trade secrets. Pegasystems believed that this ruling was a significant error of law, as the standard articulated by the trial court was contrary to the plain language of the Virginia Uniform Trade Secrets Act and was unprecedented in Virginia law. The Board met again on April 21 and April 26, 2022 to discuss certain of the court's rulings and potential outcomes of the case, including the strength of Pegasystems' defense.

On May 5, 2022, the court charged the jury. The court's instructions included the following: (1) "The number of users of the Appian Platform and Appian Forum licensees are not relevant to any issue in this case, and any evidence as to those numbers should be disregarded," and (2) "[f]or unjust enrichment, Appian is entitled to recover Pegasystems' net profits[;] Appian has the burden of establishing by the greater weight of the evidence Pegasystems' sales[; and] Pegasystems has the burden of establishing by the greater weight of the evidence any portion of

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the sales not attributable to the trade secret or trade secrets and any expenses to be deducted in determining net profits.”<sup>32</sup> Tr. at 8014-15, Appian Litigation.

The jury reached its verdict on May 9, 2022. With respect to Count 1 (misappropriation of trade secrets), the jury found in favor of Appian against both Pegasystems and Mr. Zou, including that there was willful and malicious misappropriation by Pegasystems, and awarded damages against Pegasystems in the amount of \$2,036,860,045. In regards to Count 2 (computer fraud in violation of the Virginia Computer Crimes Act), the jury found in favor of Appian against Pegasystems and awarded Appian damages in the amount of \$1.

On the day of the verdict, the Board held a meeting during which Mr. Frank, along with Mr. Trefler, provided an update on the trial outcome and next steps. Management Witnesses and the Independent Directors uniformly reported genuine shock and surprise at both the verdict and the damages amount. Although certain Independent Directors reported that they learned some particulars of the trial evidence after the verdict and in hindsight would have preferred more contemporaneous information throughout the Appian Litigation, no witness reported feeling that Choate, Mr. Trefler, or anyone else had ever concealed material information about the Appian Litigation from the Board. The Independent Directors were uniformly of the view that management exercised reasonable and appropriate judgment when determining information that needed to be shared with the Board.

Later that day, the Company filed a Form 8-K disclosing the verdict and the Company’s anticipated next steps. As reported by all witnesses interviewed, and consistent with the

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<sup>32</sup> As discussed *infra* at 66-67, the Virginia Appellate Court has since cited these erroneous instructions among the errors necessitating retrial. See Virginia Appellate Decision at 487-88, 507 (holding that, by instructing the jury that the number of Appian product users is not relevant, “the trial court improperly removed a relevant factor from the jury’s consideration” and that the trial court’s burden-shifting instruction “contravenes Virginia case law, [the Virginia Uniform Trade Secrets Act’s] express language, and the Restatement’s own burden-shifting framework”).

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Company's subsequent public disclosures and briefing in the Appian Appeal, the Company believed that the trial court, among other erroneous rulings, incorrectly (i) permitted the jury to base its misappropriation verdict on features of Appian's product that were not trade secrets, (ii) construed the legal standard for establishing causation and requiring Pegasystems to prove damages, and (iii) excluded highly relevant evidence (including evidence that would show thousands of people had access to Appian's purported trade secrets and that the Company had many of the alleged stolen features embedded in its product prior to Mr. Zou's engagement). Consistent with this view, the Company disclosed, "We strongly disagree with the claims and the verdict, and believe the verdict is not supported by the facts of the case or the law, and is the result of significant error. The Company plans to pursue its post-trial remedies to have the verdict set aside[,],...believes it has meritorious defenses[,], and will vigorously pursue appeal of the trial court's findings...." Pegasystems Form 8-K (filed May 9, 2022), at 2.

In light of the verdict, the Company also again revisited its determination whether to accrue a litigation contingency in its upcoming quarterly filing. Ms. Monday provided a written, privileged and confidential analysis on the strength of Pegasystems' appeal to the Company's accounting team. Mr. Kouninis also worked with the Company's audit partner at Deloitte to review applicable accounting guidelines, including the Deloitte Roadmap, which states, "The rendering of an adverse legal judgment against an entity does not automatically trigger recognition of a liability for a loss contingency since the entity may be successful in overturning all or part of the original judgment on appeal." Internal accounting memoranda reflect that based on accounting precedent and the strength of its appeal, management assessed that it was not probable that a contingent loss had been incurred and was unable to reasonably estimate possible damages. As such, in the Company's Form 10-Q filed on July 27, 2022 (the "2Q22 10-Q"), the Company stated

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that it was “unable to reasonably estimate possible damages” because of, among other things, “uncertainty as to the outcome of post-trial motions, any appellate proceedings, and/or any potential new trial resulting from the post-trial motions or the appellate proceedings.”<sup>33</sup> 2Q22 10-Q, at 18. As with prior quarterly filings, the Board and Audit Committee reviewed and approved the 2Q22 10-Q (and the Audit Committee additionally reviewed accounting’s written analysis on why an accrual was not required). Deloitte viewed management’s determination as reasonable.

### **8. Post-Trial Events**

On September 16, 2022, the Company filed a Form 8-K announcing that, on September 15, 2022, the “court took its final step in the trial portion of the case with formal entry of judgment in the amount of \$2,060,479,287 [consisting of the \$2,036,860,045 in damages previously determined by the jury] plus attorney’s fees and costs, and which the court held is subject to post-judgment interest at a rate of 6.0% per annum.” Pegasystems Form 8-K (filed Sept. 16, 2022), at 2. The 8-K further noted that the Company filed the Appian Appeal on September 15, 2022 and reiterated that it “strongly disagree[d]” with the claims and trial outcome, and that it continued to believe it has “strong grounds to overturn [the] results.” *Id.*

On April 26, 2023, the Company disclosed that in March 2023, the SEC requested “certain information relating to, among other things, the accounting treatment of the [Appian Litigation]” and noted that the Company was “fully cooperating” with these requests. Pegasystems Form 10-Q (filed April 26, 2023), at 19. On September 9, 2024, the SEC staff formally notified the

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<sup>33</sup> The 2Q22 10-Q also included disclosures concerning the Appian Litigation similar to those in the May 9, 2022 Form 8-K. In advance of this filing, the Company again assessed the disclosure of the Appian Litigation and what information to include. In the course of this, in-house counsel, Choate, and Ms. Monday, along with Mr. Stillwell, evaluated disclosures of public companies in similar litigation postures, including disclosures made by Oracle in connection with the litigation captioned *Oracle America, Inc. v. Hewlett Packard Enterprise Co.*, 16-cv-01393 (N.D. Cal.).

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Company that they had concluded their investigation and did not intend to recommend an enforcement action against Pegasystems. Pegasystems Form 8-K (filed Sept. 10, 2024).

**9. Securities Class Action**

On May 19, 2022, a shareholder filed the Securities Class Action, on behalf of all persons and entities that purchased Pegasystems stock between May 29, 2020 and May 9, 2022, against the Company, Mr. Trefler, and Mr. Stillwell alleging unspecified damages for violations of Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder, and Section 20(a) of the Exchange Act. The complaint alleged that the defendants made materially false and/or misleading statements and failed to disclose material adverse facts about the Company's competition and intellectual property by not disclosing the underlying conduct in the Appian Litigation and, with respect to the Appian Litigation, failing to disclose the lawsuit prior to February 2022, falsely reassuring investors that the claims were without merit once the lawsuit was disclosed, and failing to accrue a litigation loss contingency. On October 18, 2022, a consolidated amended complaint was filed that revised the class period to June 16, 2020 through May 9, 2022.

The Company moved to dismiss the consolidated amended complaint on December 19, 2022. On May 17, 2023, following a hearing on the Company's motion to dismiss, the district court denied the motion from the bench. On July 24, 2023, the Court issued its written opinion denying the motion to dismiss as to the Company and Mr. Trefler but granting the motion without prejudice as to Mr. Stillwell. *See City of Fort Lauderdale Police & Firefighters' Ret. Sys. v. Pegasystems Inc.*, 683 F.Supp.3d 120, 128-29, 137 (D. Mass. 2023); *see also id.* at 129 (noting that when evaluating a motion to dismiss, the applicable pleading standard requires that "[c]ourts draw every reasonable inference in favor of the plaintiff").

On April 23, 2024, the parties filed a stipulation of settlement notifying the court and seeking approval of a proposed settlement to resolve the Securities Class Action, under which the

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Defendants would pay \$35 million in exchange for the class members' release of certain claims against the Defendants. The court preliminarily approved the settlement on May 15, 2024 and officially approved it in a final settlement conference held on September 19, 2024.

### **10. Virginia Court of Appeals Vacates the Verdict and Orders New Trial**

On July 30, 2024, a unanimous panel of the Virginia Court of Appeals vacated the jury's verdict as to Count 1 and remanded the case for retrial.<sup>34</sup> The Court of Appeals identified three separate, serious errors by the trial judge, each of which independently warranted a new trial:

- ***First***, “[i]n a technical case where a multi-billion-dollar claim turned on whether and how [Pegasystems] copied Appian’s functions, the trial court prevented [Pegasystems] from displaying its software and any demonstrative images taken from it,” which “deprived [Pegasystems] of evidence that could show that functions it was accused of stealing actually pre-dated Zou or differed from Appian’s.” Virginia Appellate Decision at 496.
- ***Second***, the trial judge wrongly “preclud[ed Pegasystems] from presenting evidence, or conducting cross-examination, to demonstrate that much of [Pegasystems’] total sales revenue was attributable to products with which Appian did not compete and that had ‘nothing to do with’ the misappropriation.” *Id.* at 488; *see also id.* at 492 (noting that the erroneous exclusion of this evidence, together with the flawed damages instruction “exponentially increased the likelihood of a runaway damages verdict that had no correlation to proximate cause”).
- ***Third***, regarding causation and damages, the trial judge gave the jury a legal instruction on damages that “was impermissible on multiple levels” and “relieved Appian of its burden of proving that the alleged misappropriation *caused* [Pegasystems] to win any sale.” *Id.* at 477; *see also id.* at 487 n.20 (“[C]haos would ensue in commercial litigation settings if [courts] adopted [the instruction’s] premise that the burden for a plaintiff seeking unjust enrichment for any misappropriation of a trade secret in Virginia is simply showing all sales made by the defendant.”).

The Court of Appeals also identified a fourth error to be corrected at the new trial: namely, that the trial court had wrongly excluded evidence related to the Appian platform’s widespread availability and instructed the jury that the number of users of Appian’s platform was irrelevant, which “denied [Pegasystems] the opportunity to effectively argue that Appian forfeited its trade

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<sup>34</sup> Pegasystems had not appealed the jury’s \$1 damages award on Count 2.

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secret protection by broadly sharing the information with thousands.” *Id.* at 506. The Court ordered that no such instruction be provided on retrial. *Id.*

On August 20, 2024, Appian appealed the Virginia Appellate Decision to the Supreme Court of Virginia. *Appian Corp. v. Pegasystems Inc.*, No. 240736 (Va.).

**E. Trading Activity of Certain Pegasystems Directors and Officers**

The DRC reviewed Pegasystems’ internal controls and procedures, which the Company has implemented to ensure directors, officers, and other personnel trade in compliance with the law when buying or selling Pegasystems’ securities. In 2002, Pegasystems implemented a written policy governing permissible trading in the Company’s securities, which was most recently revised in 2018 and reviewed in 2022 (the “Trading Policy”). This Trading Policy, which applies to all Company directors, officers, employees, and contractors, including certain family members, among others, strictly prohibits (i) trading when aware of material, non-public information (“MNPI”), (ii) trading during blackout periods, (iii) short sales and other hedging activities, (iv) the tipping or misappropriation of MNPI, and (v) improper trading in the securities of other companies based on MNPI learned during the course of work. Under the policy, MNPI means information that is considered “material” if a reasonable investor would consider that information important in deciding to buy, hold, or sell securities. The Trading Policy notes that violations of the policy or securities law is grounds for immediate disciplinary action, up to and including termination of employment, disgorgement of profits, and/or other actions deemed appropriate by the Company.

The Trading Policy imposes specific requirements on Pegasystems’ officers and directors. All directors and officers must obtain pre-clearance on any transaction involving Pegasystems securities and must report the transaction to the SEC in the applicable filing. The policy directs the pre-clearance request to be made to the Chief Compliance Officer, or a designated person, and

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requires the requestor to describe fully any circumstances in which the requestor may be aware of MNPI. The Trading Policy further notes that directors and officers, among others, may enter into stock trading plans complying with SEC Rule 10b-5 and that trading in accordance with such plans is not considered to be a violation of the Trading Policy.

The DRC observed that, throughout the pendency of the Appian Litigation, the Company implemented its normal course trading blackout periods. As a general rule, Pegasystems' regular trading prohibition begins on the 14th day before the end of the last month of the quarter, and it ends once one full trading day has elapsed after a formal earnings announcement has been released. The record reflects that, in addition to these normal course prohibitions, the Company considered whether to institute a special blackout period in connection with the Appian Litigation at multiple points. As reflected in email correspondence, management consulted internal and outside counsel, engaged in robust discussion, and ultimately determined that additional trading prohibitions were not necessary.

The DRC evaluated the trading activity of the Independent Directors, Mr. Trefler, Mr. Stillwell, Mr. Kouninis, Mr. Kra, Mr. Pyle, and Mr. Leon Trefler (the "Stock Traders") focusing on the time period around the Appian Litigation. Based on the DRC's review of the record and witness interviews, the DRC observed that, with respect to the foregoing individuals (other than Mr. Trefler), reported sales of the Company's securities during the pendency of the Appian Litigation were pursuant to approved 10b-5 trading plans, pre-cleared by the Company, and/or executed by individuals who were not privy to Appian Litigation-related MNPI.

Mr. Trefler has not traded in Pegasystems' securities during the pendency of the Appian Litigation.<sup>35</sup>

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<sup>35</sup> As reflected in SEC filings, Mr. Trefler did not personally sell securities of Pegasystems during the period 2012 to 2022. Mr. Trefler reported to the DRC that, while the Trefler Family Foundation has holdings in

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**F. Pegasystems' Stock Repurchase Program**

Since 2004, Pegasystems has had a stock repurchase program. *See, e.g.*, Pegasystems Form 10-K (filed Feb. 26, 2018), at 36 (“Since 2004, our Board of Directors has approved stock repurchase programs that have authorized the repurchase, in the aggregate, of up to \$195M of our common stock.”). The Board has re-authorized this repurchase program on a roughly annual basis, and Pegasystems has consistently disclosed it in its annual and quarterly filings. *See, e.g.*, 2Q20 10-Q, at 22; 1Q22 10-Q, at 28.

Following the Appian Litigation verdict on May 9, 2022, the Board reevaluated whether to continue to authorize Pegasystems’ stock repurchase program in a Board meeting held on May 31, 2022. Prior to this meeting, Mr. Pitfield prepared, and circulated to the Board, a memorandum analyzing considerations in making this determination. Further, the documentary record reflects that Mr. Kouninis presented to the Board regarding whether to re-authorize the stock repurchase program. After discussion, the Board unanimously agreed to extend the program through June 30, 2023 and increased the remaining stock repurchase authority to \$60 million. *See* Pegasystems Form 10-Q (filed Oct. 26, 2022), at 26. Since May 2022, the Board has continued to reassess the share repurchase program every few months at regular Board meetings.

**VI. Legal Analysis on Whether to Bring the Requested Action**

Having reviewed tens of thousands of non-public documents and interviewed 17 witnesses, thereby building the factual record, the DRC, assisted by Fried Frank, then evaluated whether that factual record would support the pursuit of any legal claims against the Fiduciaries. The DRC directed Fried Frank to conduct legal research on the various legal claims and theories set forth in

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Pegasystems’ securities, he personally has no pecuniary interest in shares held by that foundation and is not involved in investment decisions, which are handled by an external financial broker who can only sell shares of Pegasystems outside blackout trading windows.

the Demands, among others, and then analyzed the relative strengths and weaknesses of those claims given the record.

**A. Breach of Fiduciary Duties**

The Demands request that the Board investigate, and bring claims on behalf of Pegasystems for, breaches of fiduciary duties by the Fiduciaries.<sup>36</sup> In assessing whether the Fiduciaries engaged in conduct that could support viable claims against them for breaching their fiduciary duties, the DRC considered the three elements that Massachusetts law requires be met in order to establish such a breach: (i) the existence of a fiduciary relationship, (ii) breach of the duties requisite to that relationship by one party, and (iii) resulting damage to the other party. *See Keros v. Mass. Mut. Life. Ins. Co.*, 958 F. Supp. 2d 306, 310 (D. Mass. 2013).

Massachusetts law makes clear that corporate directors and officers “stand in a fiduciary relationship” with their corporations and “have a duty to protect [the corporation’s] interests above every other obligation.” *Squeri v. Mount Ida Coll.*, 954 F.3d 56, 67 (1st Cir. 2020) (quoting *Est. of Moulton v. Puopolo*, 467 Mass. 478, 492 (2014)); *see also Blackstone v. Cashman*, 448 Mass. 255, 266-67 (2007) (directors are corporate fiduciaries); *Geller v. Allied-Lyons PLC*, 42 Mass. App. Ct. 120, 122 (1997) (senior executives are corporate fiduciaries).

As fiduciaries, there are two primary duties with which corporate directors and officers must act in accordance under Massachusetts law: the duties of care and loyalty.

The fiduciary duty of care generally mandates that corporate directors and officers exercise ordinary care in executing their responsibilities. In Massachusetts, the duty of care is codified in

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<sup>36</sup> Certain of the Demands allege breach of fiduciary duty claims against Mr. Baril. As a non-officer employee, *see supra* n.1, even assuming that Mr. Baril “occupi[es] a position of trust and confidence,” Mr. Baril would only owe Pegasystems a duty of loyalty and not a duty of care. *See Chelsea Indus., Inc. v. Gaffney*, 389 Mass. 1, 11 (1983) (holding that “trusted executives composing virtually all of [a company’s] management” owed the company a duty of loyalty despite not being officers or directors of the company). As discussed *infra* Section VI.A.2, apart from insider trading allegations, the Demands’ allegations do not implicate the duty of loyalty and none of the Demands allege that Mr. Baril engaged in insider trading.

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the MBCA and requires corporate directors and officers to discharge their duties “(1) in good faith; (2) with the care that a person in a like position would reasonably believe appropriate under similar circumstances; and (3) in a manner [they] reasonably believe[] to be in the best interests of the corporation.” G. L. c. 156D, §§ 8.30, 8.42. Decisions by directors and officers should be evaluated on the basis of the information known to them at the time without the benefit of hindsight. G. L. c. 156D, § 8.30 cmt. 1(3); *see also id.* § 8.42 cmt. (“The Comment to § 8.30 is generally applicable to nondirector officers as well as to directors.”). Directors and officers “should not be expected to anticipate the problems which the corporation may face except in those circumstances where something has occurred to make it obvious to the director that the corporation should be addressing a particular problem.”<sup>37</sup> G. L. c. 156D, § 8.30 cmt. 1(3); *see also id.* § 8.42 cmt. Also relevant in evaluating compliance with the standard of care is the special background, qualification, and management responsibilities of a particular director or officer. G. L. c. 156D, § 8.30 cmt. 1(3); *see also id.* § 8.42 cmt. Massachusetts law also recognizes that corporate fiduciaries are “entitled to rely on information, opinions, reports, or statements ... if prepared or presented by[,]” *inter alia*, “one or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent with respect to the information [and] opinions.” G. L. c. 156D, §§ 8.30(b)(1) & § 8.42(b)(1).

Several additional factors heighten the difficulty of establishing that corporate officers or directors breached their duty of care. Most critically, Massachusetts courts embrace the business judgment doctrine, under which corporate fiduciaries are presumed “in making a decision, [to

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<sup>37</sup> Furthermore, the fact that an officer or director’s action, in hindsight, turned out to be an ill-advised business decision does not mean that such action constituted a breach of that officer or director’s fiduciary duties, as long as they acted in good faith, with ordinary care, and in what they believed to be the best interests of the corporation. *See id.* § 8.30 cmt.

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have] acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” *Aronson v. Lewis*, 473 A.2d 805, 812 (Del. 1984), *overruled on other grounds by Brehm v. Eisner*, 746 A.2d 244 (Del. 2000); *Harhen v. Brown*, 431 Mass. 838, 844-45 (2000) (adopting a Delaware-like business judgment rule in Massachusetts), *superseded by statute on other grounds*, G. L. c. 156D, § 7.42. This presumption can only be overcome by “facts that establish bad faith, unreasonableness, or lack of investigation.” *In re PHC, Inc. S’holder Litig.*, 2012 U.S. Dist. LEXIS 44616, at \*8 (D. Mass. Mar. 30, 2012). In addition, Massachusetts law permits corporations to eliminate directors’ personal liability for breaches of the duty of care.<sup>38</sup> G. L. c. 156D, § 2.02(b)(4). And the Company has done just that—Pegasystems’ Articles of Organization provide, in relevant part:

No director of the Corporation shall be liable to the Corporation or its shareholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director’s duty of loyalty to the Corporation or its shareholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law...or (iv) for any transaction in which the director derived an improper personal benefit.

Pegasystems Inc. Restated Articles of Organization, Art. VI (June 2, 2005).<sup>39</sup>

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<sup>38</sup> The MBCA permits Massachusetts corporations to include in their articles of organization “a provision eliminating or limiting the personal liability of a director to the corporation for monetary damages for breach of fiduciary duty as a director notwithstanding any provision of law imposing such liability; but the provision shall not eliminate or limit the liability of a director (i) for any breach of the director’s duty of loyalty to the corporation or its shareholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) for improper distributions under section 6.40, or (iv) for any transaction from which the director derived an improper personal benefit.” G. L. c. 156D, § 2.02(b)(4).

<sup>39</sup> Massachusetts law does not authorize corporations to include a similar provision limiting the liability of officers in their articles of organization. The MBCA does permit corporations to “indemnify and advance expenses...to an officer of the corporation who is a party to a proceeding...except for liability arising out of acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law.” G. L. c. 156D, § 8.56(a)(2). Pegasystems’ bylaws, however, provide indemnification for “[e]ach Director, officer, employee and other agent of the Corporation...against any cost, expense (including attorneys’ fees), judgment, liability and/or amount paid in settlement reasonably incurred by or imposed upon him, in connection with any action, suit or proceeding...by reason of his being, or related to his status as, a Director, officer, employee or other agent of the Corporation...unless such indemnification is prohibited by the MBCA.” Amended and Restated Bylaws of Pegasystems Inc., Art. VII (eff. June 12, 2020).

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In light of the business judgment rule, as well as the protection afforded to directors under Pegasystems' exculpation provision, Pegasystems' directors and officers can *only* be held liable for breaching their duty of *care* for intentional, bad faith conduct. Under Massachusetts law, bad faith "imports a dishonest purpose or some moral obliquity, implying a conscious doing of wrong. It means a breach of a known duty through some motive of interest or ill will, and it partakes the nature of fraud." *Astra USA, Inc. v. Bildman*, 2005 WL 1477747, at \*4 (Mass. Super. May 4, 2005) (confirming finding of bad faith where employee "defrauded the company, converted company funds, wasted company assets...engaged in sexual harassment, violated the company's sexual harassment policy, and retaliated against company employees who complained about the sexual harassment") (citing *Spiegel v. Beacon Participations, Inc.*, 297 Mass. 398, 416-17 (1937)), *aff'd in part, rev'd in part*, 455 Mass. 116 (2009).

The fiduciary duty of loyalty requires corporate fiduciaries to "act with absolute fidelity and...place their duties to the corporation above every other financial or business obligation." *Demoulas v. Demoulas Super Mkts., Inc.*, 424 Mass. 501, 528 (1997).<sup>40</sup> Typically, the duty of loyalty is implicated when corporate fiduciaries are alleged to have prioritized their own interests ahead of their corporation's interests, *e.g.*, by engaging in self-dealing, usurping for themselves a business opportunity that their corporation could reasonably be expected to be interested in, competing with their corporation, or setting their own compensation. *See Blake v. Smith*, Mass. Super. LEXIS 668, at \*20 (Mass. Super. Dec. 11, 2006); *see also* Thomas S. Fitzpatrick et. al., *Organizing, Financing, and Advising a Massachusetts Business*, §§ 3.5.2 - 3.5.5 (Michael A. Mooney ed., 2022). Insider trading also can constitute a breach of the duty of loyalty if it can "be

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<sup>40</sup> The duty of loyalty is primarily derived from common law, and, unlike the duty of care, there is no direct statutory counterpart under Massachusetts law.

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shown that each sale by each individual defendant was entered into and completed on the basis of, and because of, adverse [MNPI].” *In re Polymedica Corp. S’holder Deriv. Litig.*, 2002 Mass. Super. LEXIS 271, at \*42 (Mass. Super. July 16, 2002).

Unlike with the duty of care, the business judgment rule does not apply to the duty of loyalty, and Massachusetts corporations are not permitted to limit director liability for breaches of the duty of loyalty. *See* G. L. c. 156D, § 2.02(b)(4).

Implicit in the duty of loyalty is a duty for corporate directors and officers to act in good faith. *See Smith*, Mass. Super. LEXIS 668, at \*21 (noting that the duty to act in good faith “has been described as just another permutation of the fiduciary’s duty of loyalty”). The implied duty of good faith is breached when a fiduciary’s “conduct is motivated by subjective bad faith, which is an actual intent to do harm, or where the director has engaged in an intentional dereliction of duty or a conscious disregard for his or her responsibilities.” *Id.*

### **1. No Viable Fiduciary Duty of Care Claims**

The Demands ask that the Board investigate and bring breach of fiduciary duty claims against the Fiduciaries. After careful consideration, the DRC concluded that there is no evidence to establish that any of these individuals breached their duty of care under Massachusetts law.

#### **(a) *Purported Misappropriation of Competitor Trade Secrets***

The Demands allege that the Fiduciaries orchestrated or permitted a scheme whereby (i) third-party consultants were paid to steal Appian’s trade secrets, and (ii) Pegasystems personnel created fake personas to infiltrate Appian’s trial environment and access trade secrets and other confidential information contained therein. Certain Demands also claim that the Fiduciaries engaged in efforts to misappropriate other competitors’ trade secrets using similar means.

As discussed in detail *supra*, the DRC’s investigation found that, between 2012 and 2014, at Mr. Petronio’s initiative, Pegasystems periodically worked with a consultant, Mr. Zou, to learn

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about his impressions of Appian’s capabilities, strengths, and weaknesses based on his experience using Appian’s developer interface. Around that same timeframe, and also at Mr. Petronio’s initiative, the Company engaged three other competitive intelligence consultants to learn about other competitors, though the documentary record and witness accounts reflect that these consultants’ work may have been more limited than Mr. Zou’s. Finally, the DRC found that, between 2012 and 2021, ten full-time Pegasystems employees accessed Appian’s free trial platform by misrepresenting their identities and/or purposes, and that Mr. Trefler registered for Appian marketing materials using a personal email address that did not disclose his name.

The DRC has not identified evidence warranting a conclusion that the Fiduciaries engaged in any misconduct that breached their fiduciary duty of care.

With respect to the Independent Directors and Mr. Stillwell, the DRC identified no evidence that these individuals were even aware (or should have been aware) that Pegasystems personnel had engaged Mr. Zou or other third-party competitive intelligence consultants or were accessing Appian’s trial environment until these activities were alleged in the Appian Litigation—much less that they were directing such conduct.

With respect to the Management Witnesses themselves, although they had some contemporaneous knowledge that Pegasystems had engaged consultants to develop competitive intelligence and/or that select Company employees accessed Appian’s free trial platform, the record does not support a finding that they knowingly engaged in misconduct, much less engaged in “conscious doing of wrong” or acted with a “dishonest purpose or some moral obliquity.” *Spiegel*, 297 Mass. at 416-17.

First, as a threshold matter, the Demands assume that the underlying conduct giving rise to purported breach of fiduciary duty claims was necessarily illegal or improper. But every witness

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with whom the DRC discussed this conduct, including Mr. Trefler, Mr. Schuerman, Mr. Akgonul, Mr. Leon Trefler, Mr. Cushing, Mr. Frank, Ms. Monday, and Mr. Rosenkranz, shared their view that nothing contained in Appian’s developer interface utilized by Mr. Zou or in Appian’s free trials accessed by the Free Trial Users constituted trade secrets or was misappropriated by Pegasystems. As the principal basis for their view, witnesses noted that the Appian information purportedly viewed by Mr. Zou and any Company employee could be accessed by thousands or even millions of members of the public—a fact that the Virginia Court of Appeals’ reversal of the verdict recognized typically would undercut a trade secret misappropriation claim. Virginia Appellate Decision at 505 (“[W]hile the number of people with access to information is not, in isolation, determinative of the information’s trade secret status . . . who is given access to such information, and in what numbers, are among the most important factors in assessing both whether the information was generally available and the reasonableness of efforts to maintain its secrecy.”); *see also, e.g., Allstate Ins. Co. v. Fougere*, 79 F.4th 172, 189 (1st Cir. 2023) (“The publicly accessible nature of certain portions of the [material at issue] certainly informs our trade secret analysis.”); *SI Handling Sys., Inc. v. Heisley*, 753 F.2d 1244, 1256 (3d Cir. 1985) (“[T]he extent to which the information is known outside of [one’s] business” is a “factor[] to be considered in determining whether given information is one’s trade secrets.”).

Indeed, evidence identified in the Appian Litigation and reviewed by the DRC showed that thousands of Appian developers, in addition to a number of Appian resellers so large that Appian could not identify all of them, had access to the same user platform Mr. Zou utilized to provide demonstrations of Appian to Pegasystems’ personnel. The Appian platform and its documentation also were available to other audiences. Evidence identified by Pegasystems during the Appian Litigation showed that Appian’s agreements with its business partners, including Serco, authorized

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them to “market, promote and demonstrate the Appian software to prospective customers.” Appian did not require business partners to obtain non-disclosure agreements from potential customers before conducting demonstrations, and those potential customers could then share videos or screenshots of what they had seen. Appian also did not limit the number of people to whom Appian representatives could show product demonstrations or documentation.

Further, Pegasystems offered evidence that, between 2012 and 2014, over 6,000 unidentified users had access to a database of Appian documentation Mr. Zou used in connection with his consulting work with Pegasystems during that period, and that over 44,000 unidentified users had access to the same database between 2012 and 2021, with those numbers potentially being underinclusive because Appian could not estimate, let alone identify, the total number of people who obtained access by all available means. Notably, evidence of this database’s widespread availability was erroneously precluded during the Appian Litigation trial, and the trial judge wrongly instructed the jury that evidence of the number of users of Appian’s platform was not relevant to any issue in the case.<sup>41</sup> The DRC understands that, with limited exceptions, Appian’s free trial platform is also widely accessible to members of the public.<sup>42</sup> Pegasystems offered, but was similarly improperly precluded from presenting to the jury, evidence reflecting that approximately 12,000 users accessed Appian’s free trial instances between 2017 and 2021.

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<sup>41</sup> The Virginia Court of Appeals’ deferential review of the record in the light most favorable to the jury’s verdict allowed for the possibility that the information at issue constituted trade secrets. Virginia Appellate Decision at 476. However, the Court of Appeals held that the trial judge’s exclusion of evidence of Appian’s platform’s widespread availability and failure to correctly instruct the jury on the relevance of such access “denied [Pegasystems] the opportunity to effectively argue that Appian forfeited its trade secret protection by broadly sharing the information with thousands.” *Id.* at 507; *see also id.* at 455-57 (discussing facts supporting the availability and wide dissemination of the material at issue). As reflected above, the DRC’s consideration of the general availability of the information at issue, among other things, contributed to its conclusion that that information did not constitute trade secrets.

<sup>42</sup> In this regard, the DRC further notes that during the Appian Litigation, Appian itself did not assert a cause of action or show that Pegasystems’ employees misappropriated trade secrets through these free trials.

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The Management Witnesses reported that they did not and do not have reason to believe that Mr. Petronio, Mr. Zou, or any Pegasystems employee who accessed an Appian free trial were accessing information that was not otherwise available to a wider audience. The DRC credits that their accounts reflect their genuine, good faith beliefs. Second, the DRC considered but was ultimately unpersuaded by facts to which the Demands point as evidence that the Management Witnesses knew misconduct was occurring but acted in bad faith or unreasonably in failing to prevent it. With respect to Pegasystems' engagement of Mr. Zou, the Demands suggest that the Management Witnesses knew, or should have known, that this conduct was wrong because they participated in or were otherwise made aware of efforts to refer to Mr. Zou as a spy and/or hide his personal information. As discussed *supra*, however, the record reflects that the Management Witnesses did not participate in such efforts. Thus, even if the Company's engagement of Mr. Zou had involved the misappropriation of trade secrets, these individuals' limited visibility into the practices did not raise red flags to put them on notice that the underlying conduct needed to be prevented or otherwise investigated. Even when considered in light of Mr. Petronio's efforts to "conceal" Mr. Zou's identity, at least as understood by the Management Witnesses, the DRC does not believe that these were serious efforts to hide Mr. Zou's identity by Mr. Petronio, but rather were aimed at generating interest in his work product. The DRC finds such understanding to be reasonable in light of Mr. Petronio's reputation and behavior in other contexts. The DRC further notes that, as discussed *supra* at 34-35, the KForce Contract warranted that the services KForce was to provide Pegasystems "do not violate any applicable law, rule, or regulation; any contracts with third parties; or any third party in any patent, copyright, trade secret or similar intellectual property right."

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With respect to Pegasystems personnel accessing Appian free trials, the Demands allege that the Management Witnesses knew, or were at least put on notice, that employees were using aliases to sign up for Appian free trials. The record indicates that Mr. Trefler, Mr. Schuerman, and Mr. Leon Trefler were contemporaneously informed that Mr. Baril had access to Appian's platform in 2019. However, they all credibly reported that they did not realize the means by which Mr. Baril had acquired that access, *i.e.*, using aliases, until the Appian Litigation. In assessing the reasonableness of that understanding, the DRC looked for, but did not identify, any contemporaneous communication in which Mr. Baril or any other Pegasystems employee clearly acknowledged to the Management Witnesses using a fake identity to register for Appian's free trials. The DRC is similarly unaware of any other evidence to suggest that Management Witnesses willfully turned a blind eye or acted with a "dishonest purpose." *Spiegel*, 297 Mass. at 416. Moreover, given that, with limited exception, anyone could sign up for Appian's free trials, the DRC does not believe that the information gleaned from such free trials could constitute trade secrets or could otherwise have caused any cognizable damage to Appian.

Third, the record reflects that the Management Witnesses relied in good faith on those responsible for Pegasystems' competitive intelligence gathering, primarily Mr. Petronio and Mr. Baril, to determine how to best access information about competitors. In so doing, these senior officers reasonably trusted these employees, who, as the leaders of Pegasystems' competitive intelligence function, were expected to apply informed judgment to ensure they were engaging in appropriate competitive intelligence gathering through permissible channels and acting in compliance with all applicable laws and regulations. *See* G. L. c. 156D, § 8.42(b), (c).

Fourth, the record reflects that, after the Management Witnesses were put on notice by the Appian Litigation that certain of Pegasystems' competitive intelligence gathering techniques could

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be perceived as even potentially problematic, they, in coordination with the Independent Directors, promptly implemented several remedial and/or preventative measures to stop any similar conduct from recurring, which provides further evidence that these individuals acted in good faith. In particular, the Company (i) formally reprimanded those employees who used false identities to access Appian's free trials, (ii) developed and implemented a new training program on appropriate means of competitive intelligence gathering, (iii) instituted quarterly meetings to provide space for employees to approach Pegasystems' legal team with questions about conduct with respect to Pegasystems' competitors, and (iv) implemented a hard, technical block on Appian's free trial login page.

Finally, certain of the Management Witnesses candidly acknowledged, both in interviews with the DRC and during the Appian Litigation, that, in hindsight, they wished that they inquired deeper into, and ultimately prevented, the engagement of Mr. Zou and accessing of Appian using false identities by the Free Trial Users. They similarly recognized that, regardless of the legality of this behavior, it was imprudent and had adverse implications for Pegasystems. However, this retrospective view does not support a finding that they breached their duty of care. Under Massachusetts law, business decisions that are unwise in hindsight do not constitute breaches of the duty of care as long as, in making those business decisions, the officers and directors of the corporation acted in good faith, with ordinary care, and in what they "believe[d] to be the best interests of the corporation." *See* G. L. c. 156D § 8.30(a)(3) & cmt.; *see also Spiegel*, 297 Mass. at 416 ("[B]ad judgment" does not amount to bad faith.). Here, for the foregoing reasons, the DRC finds that the Management Witnesses acted in good faith and reasonably believed, based on what they knew in real time, that Company employees were doing nothing illegal. That the conduct at

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issue ultimately exposed the Company to litigation is not enough to support a finding that they breached their duty of care.

Taking the above factors into consideration, coupled with the high burden needed to overcome the business judgment presumption, the DRC did not identify evidence to support any viable claim against the Fiduciaries for breaching their fiduciary duty of care in connection with their purported involvement in efforts to misappropriate competitors' trade secrets.

(b) *Handling of the Appian Litigation*

In addition to the aforementioned allegations, the Demands ask the DRC to explore other ways in which Pegasystems' officers and directors may have breached their fiduciary duties based on facts discovered during the course of the DRC's investigation. As such, the DRC investigated whether the Fiduciaries breached their duty of care in how they responded to Appian's lawsuit. The DRC did not identify evidence that the Fiduciaries acted either in bad faith or unreasonably in connection with the Appian Litigation, which would be required to prove a breach of the duty of care claim in light of the business judgement rule and, with respect to the directors, applicable exculpation provisions.

To the contrary, several factors that emerged in witness testimony and contemporaneous documentation showed that the Fiduciaries were diligent and took appropriate care in responding to Appian's claims.

First, shortly after the Appian Litigation was filed, Pegasystems' legal team engaged Choate to prepare Pegasystems' defense. Choate's team was led by Mr. Frank, who is widely recognized as one of the leading intellectual property litigators in the country and one of Massachusetts' most outstanding and experienced trial lawyers. In interviews with the DRC, witnesses did not report concerns about Choate's conduct, judgment, or litigation strategy that would suggest the firm's engagement was unreasonable or in bad faith.

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Second, the Independent Directors, Mr. Trefler, Mr. Stillwell, and Mr. Cushing, among others, were regularly updated on the Appian Litigation's status, allowing them to appropriately oversee the Company's defense. Mr. Cushing routinely presented on the Company's pending litigation at Board meetings, in addition to circulating written updates in advance. Further, both Mr. Trefler and Mr. Stillwell requested and received updates from Choate on legal strategy and case developments. The nature and frequency with which Pegasystems' directors and certain officers were debriefed on the Appian Litigation changed as the case progressed. For instance, towards the end of 2021 and beginning of 2022, around the time Appian produced the Malackowski Report, which assessed Appian's damages at more than \$4 billion, and amended its complaint to increase the damages it sought from \$90 million to \$3 billion, Pegasystems' directors and certain officers became more substantially involved. For instance, Mr. Trefler and Mr. Stillwell began working closely with Pegasystems' internal lawyers and Choate to assist in the development of trial strategy and help prepare the Company's defense. Around this time, other Pegasystems officers, including Mr. Akgonul, Mr. Schuerman, and Mr. Leon Trefler, were also enlisted to assist with depositions and other trial preparations. Finally, the Board began receiving more substantive and frequent updates from Mr. Cushing on Appian's claims and Pegasystems' defenses, as well as factual and legal developments in the case. The DRC did not identify instances in which information was withheld from the Independent Directors intentionally or in bad faith. Among witnesses interviewed by the DRC, there was a general consensus that, in real time, the Independent Directors did not have concerns about transparency or candor from management or the level of detail provided to them on litigation developments, and the DRC did not identify any documentary evidence to the contrary. The DRC finds it both reasonable and appropriate that the

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extent to which the Fiduciaries were involved in, and informed about, the Appian Litigation changed based on the amount of material risk it was understood to pose to the Company.

Third, the DRC did not uncover evidence to suggest that that the exploratory discussions between the Company and Appian ever progressed to a point at which settlement was remotely possible. As discussed *supra*, there were two primary junctures during which Pegasystems explored settling the Appian Litigation: first, in March 2021, when Pegasystems and Appian engaged in a mediation regarding both the Appian Litigation and the Massachusetts Litigation, and again in February and March 2022, around the beginning of the trial in the Appian Litigation. The Independent Directors were informed about these settlement attempts. However, as both management and Board witnesses clearly and consistently reported, Pegasystems and Appian's settlement expectations were so widely divergent that conversations never advanced beyond preliminary discussions and settlement was never realistic or expected.

Moreover, the Company, in consultation with their legal advisors and in good faith, believed (and continues to believe) that Pegasystems had strong defenses to Appian's claims, thereby providing a reasonable strategic basis to continue litigating the case. *See supra* at 52. As the record establishes that Pegasystems' defenses were not only repeatedly pressure tested by in-house and outside Company lawyers and supported by detailed factual and legal analysis, but also validated in many important respects by the Virginia Court of Appeals' determination that the jury's verdict resulted from several, independently significant legal errors by the trial judge, the DRC finds these views to be reasonable.

In light of all of the above, the DRC did not identify evidence to support any viable claim that the Fiduciaries breached their duty of care in connection with their defense of the Appian Litigation.

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## 2. No Viable Fiduciary Duty of Loyalty Claims

The Brenner and Sagfors Demands also explicitly allege that the Fiduciaries breached their fiduciary duty of loyalty to the Company. Generally speaking, the only conduct alleged by the Demands that could possibly implicate the duty of loyalty is purported insider trading in connection with the Appian Litigation. Aside from that, the Demands contain no allegations that the Fiduciaries engaged in conduct that involved personal benefit at Pegasystems' expense, such as self-dealing, usurping a Pegasystems' business opportunity, or setting their own compensation. With respect to insider trading, the DRC investigated the Stock Traders' trading activities. The DRC concluded that any sales of Pegasystems stock made by these individuals during the course of the Appian Litigation were pursuant to an existing 10b-5 trading plan, received pre-authorization by Pegasystems, and/or were not made on the basis of the individual possessing MNPI. As such, the DRC concludes that there is not sufficient evidence to support a viable insider trading claim, and thus, a claim for breach of the duty of loyalty, against any of the Fiduciaries. *See In re Polymedica*, 2002 Mass. Super. LEXIS at \*41.

### B. Aiding and Abetting Breach of Fiduciary Duties

Ms. Larkin and Mr. Sagfors also allege that the Fiduciaries aided and abetted each other's breaches of fiduciary duties. Under Massachusetts law, a successful claim that someone aided and abetted a breach of fiduciary duty must be substantiated with proof that "(1) there [was] a breach of fiduciary duty, (2) the defendant [knew] of the breach, and (3) the defendant...actively participate[ed] or substantially assist[ed] in or encourage[ed] the breach to the degree that he or she could not reasonably be held to have acted in good faith." *Arcidi v. Nat'l Ass'n Gov't Emps., Inc.*, 447 Mass. 616, 623-24 (2006). Because, as discussed *supra*, the DRC concluded that there is not sufficient evidence to support a breach of fiduciary duty claim against the Fiduciaries, the

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first element of an aiding and abetting claim is not satisfied. Therefore, the DRC finds that this claim is not viable.

**C. Section 10(b) of the Exchange Act and Rule 10b-5**

The Demands allege that the Independent Directors, Mr. Stillwell, and Mr. Trefler violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder by making false and misleading statements about the Appian Litigation and Pegasystems' competitors, sales and marketing practices, and intellectual property, as well as false and misleading financial statements and related disclosures concerning a loss contingency in connection with the Appian Litigation. Section 10(b) of the Exchange Act, in combination with Rule 10b-5, prohibits any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

When assessing whether to bring a Section 10(b) and 10b-5 claim, the DRC must consider whether the Independent Directors, Mr. Stillwell, or Mr. Trefler (i) directly or indirectly, employed a device, scheme, or artifice to defraud, made an untrue statement of material fact or omitted to state a material fact which made what was said, under the circumstances, misleading, or engaged in a fraudulent act, practice, or course of business; (ii) acted with scienter, *i.e.*, a mental state embracing intent to deceive, manipulate, or defraud; (iii) engaged in misconduct in connection with the purchase or sale of a security; and (iv) used, or caused to be used, means and instrumentalities of interstate commerce. *See, e.g., Ponsa-Rabell v. Santander Sec. LLC*, 35 F.4th 26, 32 (1st Cir. 2022); *In re Biogen Inc. Sec. Litig.*, 857 F.3d 34, 41 (1st Cir. 2017). All four elements must be met for a Section 10(b) and 10b-5 claim to prevail.

The DRC has concluded that the record does not support a viable Section 10(b) and 10b-5 claim against the Independent Directors, Mr. Stillwell, or Mr. Trefler. The DRC notes, at the outset, that it considered the fact that, in the above-referenced July 2023 opinion, the court denied,

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in the main, defendants' motions to dismiss the operative complaint in the Securities Class Action, which asserts many (if not all) of the same claims against the same defendants. However, the DRC also notes that this was a pleadings stage decision, prior to discovery, and, in light of the voluminous non-public materials the DRC reviewed as part of its investigation, believes that the factual picture would have looked substantially different had that litigation proceeded to summary judgment or trial. That question, of course, is moot given that, as described above, the Securities Class Action has officially settled.

The potential Section 10(b) and 10b-5 claims are not viable for many reasons, the most significant being that a plaintiff (whether the DRC or shareholders) likely would be unable to establish (a) any material statement or omission or (b) that the Independent Directors, Mr. Stillwell, or Mr. Trefler acted with the requisite scienter.

Materiality assesses the significance of an alleged omitted or misrepresented fact to a reasonable investor. *TSC Indus., Inc. v. Northway*, 426 U.S. 438, 445 (1976); *Milton v. Van Dorn Co.*, 961 F.2d 965, 969 (1st Cir. 1992). Materiality, an objective analysis, evaluates whether there is a "substantial likelihood that a reasonable shareholder would consider [the alleged omitted or misrepresented fact] important" such that it would have "significantly altered the total mix of information made available to current and potential investors." *TSC Indus.*, 426 U.S. at 449; *see also City of Dearborn Heights Act 345 Police & Fire Ret. Sys. v. Waters Corp.*, 632 F.3d 751, 756-57 (1st Cir. 2011) (citing *Basic Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988)). "A statement can be false or incomplete but not actionable if the misrepresented or omitted fact is otherwise insignificant." *Waters Corp.*, 632 F.3d at 756-57. Stated differently, "not every piece of relevant information will be deemed material." *Gay v. Axline*, 1994 U.S. App. LEXIS 8989, at \*16 (1st

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Cir. Apr. 26, 1994); *see also Milton*, 961 F.2d at 969 (“The mere fact that an investor might find information interesting or desirable is not sufficient to satisfy the materiality requirement.”).

Scienter “requires specific facts giving rise to a strong inference . . . of intentional or willful conduct designed to deceive or defraud investors” or alternatively, “a high degree of recklessness.” *In re Biogen*, 857 F.3d at 41; *see also Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 n.12 (1976). Recklessness is “not merely simple, or even inexcusable, negligence, but an extreme departure from the standards of ordinary care, and [] presents a danger of misleading buyers and sellers that is either known to the defendant or is so obvious that the actor must have been aware of it.” *Mehta v. Ocular Therapeutix, Inc.*, 955 F.3d 194, 206 (1st Cir. 2020).

Moreover, there must be a “strong inference” of scienter with respect to *each* alleged wrongdoer. *See Toussaint v. Care.com Inc.*, 490 F. Supp. 3d 341, 351-52 (D. Mass. 2020). To qualify as “strong,” an inference of scienter “must be more than merely plausible or reasonable[,] it must be cogent and *at least as compelling as any opposing inference of nonfraudulent intent.*” *ACA Fin. Guar. Corp. v. Advest, Inc.*, 512 F.3d 46, 59 (1st Cir. 2008) (emphasis in original); *Tharp v. Acacia Commc’ns, Inc.*, 321 F. Supp. 3d 206, 227 (D. Mass. 2018) (same). This standard is satisfied only when the preponderance of the evidence shows “clear” allegations of admissions, internal records, or witnessed discussions suggesting that, at the time the statements were made, the defendant “[was] aware that they were withholding vital information or at least were warned by others.” *Tharp*, 321 F. Supp. 3d at 227. Potential evidence relevant to the inquiry includes: (i) “insider trading in conjunction with false or misleading statements;” (ii) “a divergence between internal reports and public statements;” (iii) inconsistent disclosures issued “shortly after a fraudulent statement or omission;” (iv) “bribery by top company officials;” (v) “accounting

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shenanigans;” and (vi) “evidence of actions taken solely out of self-interest.” *See Geffon v. Micrion Corp.*, 249 F.3d 29, 36 (1st Cir. 2001).

The Demands allege Section 10b-5 claims against the Independent Directors, Mr. Stillwell, and Mr. Trefler based on their having signed annual and quarterly reports filed with the SEC that purportedly contained false and/or misleading information. The Demands also attribute certain false and/or misleading statements to Mr. Stillwell and Mr. Trefler. However, the record developed by the DRC did not support evidence of material misrepresentations or omissions. Similarly, the Demands are largely silent on allegations giving rise to scienter, and the DRC’s investigation did not identify evidence to plausibly support any such intentional misconduct. Notably, on September 9, 2024, the SEC informed the Company that it was not recommending that the Commission pursue an enforcement action relating to the disclosures or accounting decisions challenged in the Demands.

**1. Challenged Statements and Alleged Omissions**

(a) *Statements and Omissions Concerning the Appian Litigation*

With respect to the Demands’ challenges to statements and omissions concerning the Appian Litigation, the Demands allege that (i) the Company misleadingly delayed its disclosure of the Appian Litigation, and (ii) when Pegasystems did disclose the Appian Litigation, its statements were false and misleading, because the Company assured the market that Appian’s claims had no merit, the Company had strong defenses, and the alleged damages were not supported by the appropriate legal standard, among other things.<sup>43</sup>

With respect to the non-disclosure of the Appian Litigation prior to the 2021 10-K, as described above, the DRC believes that the Company reached a reasonable and legally sound

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<sup>43</sup> The Sagfors Demand alleges that certain officers and directors violated securities laws by signing false and misleading Sarbanes-Oxley (“SOX”) certifications. The DRC understands that some courts have

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decision that the litigation was, at that time, not material. Following consultation with in-house and outside counsel, the Company determined that the Appian Litigation—which, at the time, sought a maximum of \$90 million in damages, and arose in the context of ongoing litigation between the Company and Appian (*see supra* at 46-48)—did not qualify as a material legal proceeding triggering a required disclosure under Item 103. Item 103 requires a registrant to briefly describe any “material pending legal proceedings,” other than ordinary routine litigation incidental to the business. 17 C.F.R. § 229.103(a). Determining whether to disclose pending litigation pursuant to Item 103 requires “a considered judgment about what disclosures regarding litigation would be material to investors.” *Wright v. Medtronic, Inc.*, 2010 U.S. Dist. LEXIS 24748, \*35 (D. Minn. Mar. 17, 2010). A disclosure is not required under Item 103, however, if the claim of damages does not exceed 10% of a company’s and its subsidiaries’ current assets on a consolidated basis. 17 C.F.R. § 229.103(b)(2).

Up until Appian amended its prayer for relief in February 2022, it had limited itself, in its pleadings, to a prayer for damages of \$90 million. For the period 2Q20 through 2Q21, Pegasystems was not required to disclose the Appian Litigation because Appian’s damages claim did not exceed 10% of the Company’s current assets. *See id.* (exempting from disclosure claims involving less than 10% of current assets). It was only as of 3Q21 that Appian’s damages claim modestly exceeded this threshold—by 0.86%. For this quarter, management assessed whether the Appian Litigation nevertheless qualified as a “material” legal proceeding, which required

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recognized that false SOX certifications can serve as the basis for individual, civil liability in a securities suit (*see Stiegele v. Bailey*, 2007 U.S. Dist. LEXIS 86469, at \*22-23 (D. Mass. Aug. 23, 2007)). However, the DRC concluded that the challenged SOX certifications here are not false or misleading for omitting the Appian Litigation as a material pending legal proceeding because for the period 2Q20 to 3Q21, the Appian Litigation was not understood to be “material” by the certifiers, thereby not requiring disclosure on the SOX certifications, and, with respect to the 2021 10-K, the SOX certifications were required to be filled out no later than February 4, 2022, which was prior to the court approving the Second Amended Complaint and damages being formally increased to \$3 billion. In any event, the Appian Litigation was disclosed in the 2021 10-K.

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disclosure under Item 103. *See id.*; *see also City of Phila. v. Fleming Cos.*, 264 F.3d 1245, 1268 (10th Cir. 2001) (“Because damages claims are often inflated by plaintiffs overestimating their chances of success at trial or hoping to force a settlement, we cannot find [d]efendants liable...for failing to anticipate the full extent of their potential [litigation] exposure.”).

Consistent with the preceding quarters, for the period 3Q21, management continued to conclude that disclosure of the Appian Litigation was not required in light of their view that this was ordinary course litigation, excepted from disclosure under Item 103. *See, e.g., Greenberg v. Sunrun Inc.*, 233 F. Supp. 3d 764, 775 (N.D. Cal. 2017) (finding no plausibly alleged violation of Item 103 where omitted lawsuits were “ordinary routine litigation”). The documentary record and witness accounts all substantiate that the Independent Directors, Mr. Stillwell, and Mr. Trefler perceived the Appian Litigation—from the time the lawsuit was originally filed (just one week after a decision in the Massachusetts Litigation, which was favorable to Pegasystems) until Appian increased its damages claim in February 2022—as a largely retaliatory, normal course litigation, which was consistent with the view of in-house counsel, outside trial counsel, and management. *See Fleming Cos.*, 264 F.3d at 1263-64 (mere fact that the officers held senior positions, knew of the litigation, and were aware of a “general obligation to disclose pending material litigation” was not sufficient to imply knowledge of materiality). The DRC identified no evidence to suggest contrary viewpoints or that the Independent Directors, Mr. Stillwell, or Mr. Trefler prevented the Company from disclosing the Appian Litigation. The record was entirely consistent on these points.

When, in February 2022 and just after Appian amended its damages claim from \$90 million to \$3 billion, the Company promptly disclosed the Appian Litigation in the 2021 10-K (and in the following quarters in which it repeated similar disclosures). There are no allegations—and the

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DRC did not observe any evidence—that the Independent Directors, Mr. Stillwell, or Mr. Trefler were privy to information that would contradict the Company’s public statements concerning the Appian Litigation. To the contrary, and as described *supra* at 56-59, the evidence reflects that the Company followed its robust, ordinary course earnings procedures and controls to ensure the accuracy of its disclosures. Moreover, the Independent Directors, Mr. Stillwell, and Mr. Trefler were actively involved in the earnings process through which those disclosures were vetted and the DRC did not observe any red flags or warning signs putting these individuals on notice that the disclosures were inaccurate or misleading.<sup>44</sup>

More specifically, with respect to Pegasystems’ process for disclosing the Appian Litigation in the 2021 10-K, Mr. Stillwell and/or Mr. Trefler participated in at least five formal meetings with counsel and other relevant stakeholders to draft the Company’s disclosure, which included (i) evaluating public disclosures of similarly situated companies, (ii) the Audit Committee reviewing and discussing with Mr. Stillwell different disclosure possibilities, and (iii) the full Board, including Mr. Trefler, receiving draft iterations of the filing for their review and approval. In addition, the Company sought and received advice from lead trial counsel, who was best positioned to assess the Company’s substantive disclosures on the Appian Litigation, including the merits of Appian’s claims and Pegasystems’ defenses.

Following the 2021 10-K, the Company filed an 8-K announcing the jury verdict, its view of that verdict, and its preliminary perspective on an appeal, and repeated similar disclosures in

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<sup>44</sup> As reflected in the 2021 10-K, the Company’s disclosure concerning the Appian Litigation also expressly noted that there was “uncertainty as to how a jury may rule.” 2021 10-K, at 23, 63. Attempts to provide investors with warnings of risks generally weaken the inference of scienter. *Fire & Police Pension Ass’n of Colo. v. Abiomed, Inc.*, 778 F.3d 228, 243 (1st Cir. 2015) (quoting *City of Dearborn Heights Act 345 Policy & Fire Ret. Sys. v. Waters Corp.*, 632 F.3d 751, 760 (1st Cir. 2011)).

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subsequent quarterly and annual public filings.<sup>45</sup> These disclosures likewise underwent the same rigorous vetting process. They also benefited from additional review by appellate counsel, who were well positioned to analyze the Company's public filings in the context of the anticipated appeal's strengths and weaknesses.

The Virginia Court of Appeals' reversal of the trial judgment on multiple grounds further supports the appropriateness and accuracy of Pegasystems' post-trial disclosures. The litany of relevant evidence that the appellate panel found that the trial court either had wrongly excluded or mischaracterized in its jury instructions also undercuts any argument that earlier assertions of strong defenses were either inaccurate or made in bad faith. Further, the SEC's determination, following its own independent investigation, not to pursue an enforcement action related to Pegasystems' disclosure and accounting decisions concerning the Appian Litigation, lends additional support for the reasonableness of those decisions.

Witness accounts reflect that the Company's attorneys seriously evaluated the strengths of the Company's legal strategy, ensured the Company's position was in good faith and reasonable, and took a hard look the Company's draft disclosures to ensure the Appian Litigation and the Company's position were appropriately described. The DRC did not identify red flags that would plausibly have signaled to the Independent Directors, Mr. Stillwell, or Mr. Trefler that the Company's legal position, and the related disclosures, were not otherwise in good faith or reasonable in light of Virginia law. *See Paraflon Invs., Ltd. v. Fullbridge, Inc.*, 2019 U.S. Dist. LEXIS 134851, at \*23-24 (D. Mass. Aug. 9, 2019) ("Good faith...is a defense to scienter because defendants cannot intend to deceive if they acted in good faith.") (citing *Backman v. Polaroid*

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<sup>45</sup> The Company also publicly filed the Complaint in the Massachusetts Litigation and did not seek to seal such materials, further undercutting any argument that the Company tried to conceal the Appian Litigation from shareholders.

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*Corp.*, 839 F.2d 1405, 1418 (1st Cir. 1990)), *aff'd*, 960 F.3d 17 (1st Cir. 2020). Nor did the DRC identify any evidence whatsoever of the Independent Directors, Mr. Stillwell, or Mr. Trefler having pressured stakeholders to downplay the Appian Litigation's seriousness or distort the Company's view on the strength of its appeal.

(b) *Statements Concerning Competitors*

Certain of the Demands take issue with Pegasystems' failure to list Appian as a competitor in the Company's public disclosures. As a preliminary matter, it is difficult to understand how a decision to list or not list a particular company as a competitor would be material under the securities laws; and a securities claim likely would (and should) fail on that basis alone. But, focusing on scienter, there simply is no support in the record to suggest that the Independent Directors, Mr. Stillwell, or Mr. Trefler purposefully or recklessly withheld material information on how Pegasystems' competes with Appian. The DRC did not identify any evidence from the documentary record or witness accounts to suggest that Pegasystems' transition from explicitly naming its primary BPM competitors, including Appian, in its public filings was intended to downplay competition with Appian or any other competitor. Instead, many witnesses clearly and consistently explained that only a subset of Pegasystems' business competes against Appian's business, which is consistent with both the public and confidential materials the DRC reviewed. Management witnesses, such as Mr. Akgonul and Mr. Schuerman, recounted that while Appian was, and continues to be, part of Pegasystems' competitive landscape, the Company never viewed them as one of their direct competitors. Mr. Trefler reported that, historically, Pegasystems viewed IBM as a more direct, comparable competitor. In light of the forgoing, it is unsurprising that the DRC identified no evidence suggesting the Independent Directors, Mr. Stillwell, or Mr. Trefler had information that would have supported their challenging the Company's decision concerning public disclosures about Pegasystems' competitors. *See* G. L. c. 156D, § 8.30(b)(1) (directors are

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entitled to rely on “officers or employees of the corporation whom the director reasonably believes to be reliable and competent with respect to the information ... presented”); *see id.* § 8.42(b)(1) (same for officers).

(c) *Statements Concerning Sales and Marketing Practices and Intellectual Property*

With respect to the Demands’ challenges to statements concerning Pegasystems’ sales and marketing practices and intellectual property, the Demands allege that those statements were false and/or misleading in light of Pegasystems’ failure to disclose its “illegal” competitive intelligence practices, including the Company’s engagement of Mr. Zou.

As described elsewhere in this Report, the DRC does not believe that the Company misappropriated any of Appian’s trade secrets or that any information gleaned from Appian was used in a material way to change the Company’s approach or to benefit the Company financially. But even setting aside challenges to the legality of the underlying competitive intelligence practices, the DRC identified no evidence reflecting—and the Demands do not suggest—that the Independent Directors or Mr. Stillwell knew of such practices when the Company made the challenged disclosures. Nor is there any evidence that these competitive intelligence practices were raised to the Independent Directors or Mr. Stillwell and disregarded.

With respect to Mr. Trefler, the Demands allege that when the Company made the challenged statements, Mr. Trefler knew, or should have known, that employees engaged in illegal competitive intelligence practices. The DRC concludes otherwise. Although Mr. Trefler was included on limited correspondence and a small subset of meeting invites with or related to Mr. Zou, he does not appear to have met substantively with Mr. Zou, discussed the particulars of his engagement with Mr. Petronio, or been advised by Mr. Petronio or anyone else of the specific contours of Mr. Zou’s consulting work. The DRC also credits Mr. Trefler’s statements in his

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interview that he did not believe the conduct represented in the correspondence he received about Mr. Zou reflected the misappropriation of trade secrets, a view that is consistent with the Company's legal position, as expressed both at trial and in the Appian Appeal, and the DRC's own analysis. *See In re Credit Suisse First Boston Corp. (Agilent Techs., Inc.) Analyst Rep. Sec. Litig.*, 431 F.3d 36, 48 (1st Cir. 2005) (“[T]he scienter element focuses on the speaker's subjective intent.”).

Mr. Trefler recounted that, at all times, he reasonably believed that the Company's disclosures were appropriate, especially in light of the Company's extensive internal controls around the earnings process and involvement of legal counsel, and the DRC did not identify evidence to undercut Mr. Trefler's assertion. For example, the DRC identified no contemporaneous internal Company documents that suggest Mr. Trefler possessed information at odds with the Company's public statements, and there is no evidence of Mr. Trefler acting out of self-interest. *See Geffon*, 249 F.3d at 36. To the contrary, Mr. Trefler is the largest beneficial owner of Pegasystems' securities (with roughly 50% economic ownership) and thus has every incentive to ensure the Company is acting in good faith, taking reasonable legal positions, and appropriately communicating with the market. Mr. Trefler is strongly aligned in interest with the public shareholders.

(d) *Insider Trading Allegations*

The Demands allege that the Independent Directors, Mr. Stillwell, and Mr. Trefler engaged in insider trading. Although “[i]nsider trading cannot establish scienter on its own,” *Mississippi Public Employees' Retirement System v. Boston Scientific Corp.*, 649 F.3d 5, 29 (1st Cir. 2011), contemporaneous insider trading can contribute to a finding of scienter, *see New Jersey Carpenters Pension & Annuity Funds v. Biogen IDEC, Inc.*, 537 F.3d 35, 55 (1st Cir. 2008). For corporate officials' stock sales to support an inference of scienter, the trading must be, “at a minimum, ...

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unusual, well beyond” those individuals’ normal trading patterns. *Abiomed, Inc.*, 778 F.3d at 246. Use of prescheduled 10b5-1 trading plans will negate an inference of scienter. *In re Bos. Sci. Corp. Sec. Litig.*, 646 F. Sup. 3d 249, 286 (D. Mass. 2022).

The Demands allege that the Independent Directors, Mr. Trefler, and Mr. Stillwell traded on the basis of MNPI during the pendency of the Appian Litigation. Mr. Trefler did not trade during the period in question. With respect to the Independent Directors and Mr. Stillwell, the DRC considered all of the trades at issue in the context of three relevant time periods: (i) the May 2020 filing of the Appian Litigation through the November 2021 production of Appian’s expert damages report (that is, the Malackowski Report); (ii) the November 2021 Malackowski Report release through the December 20, 2021 commencement of the Company’s routine trading blackout; and (iii) December 21, 2021 through the May 9, 2022 Appian verdict. With regard to the period between the filing of the Complaint and the Malackowski Report’s production, the DRC found that the Company very reasonably did not view the litigation as material and the Independent Directors and Mr. Stillwell only received high level, routine updates. As such, any challenged trades during this period could not plausibly have been on the basis of Appian Litigation-related MNPI. Between the Malackowski Report’s production in late November 2021 through December 20, 2021, even assuming that the Independent Directors and Mr. Stillwell were privy to Appian’s expert report estimating more than \$4 billion in damages (and the DRC’s investigation reflects that many of them were not), all trades by those individuals were executed pursuant to 10b-5 plans and could not have been on the basis of Appian Litigation-related MNPI. Finally, between December 20, 2021 and the Appian Litigation verdict, only Mr. Stillwell sold Pegasystems securities and those sales were pursuant to a 10b-5 plan. Thus, “[w]hile there were stock trades during th[e]

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[pendency of the Appian Litigation], they [do] not suggest there was trading based on insider information.” *Bos. Sci, Corp.*, 649 F.3d at 29.

## **2. Alleged Failure to Accrue and Disclose a Loss Contingency**

The Demands allege that the Independent Directors, Mr. Stillwell, and Mr. Trefler violated Section 10(b) and Rule 10b-5 because the Company’s publicly filed financial statements for the period May 2020 through the dates of the Demands were false and misleading in that the Company did not accrue and disclose a loss contingency in connection with the Appian Litigation. In determining whether a company needs to accrue and/or disclose a loss contingency, courts generally will look to the Generally Accepted Accounting Principles (“GAAP”). Under GAAP, a loss contingency is “[a]n existing condition, situation, or set of circumstances involving uncertainty as to possible loss to an entity that will ultimately be resolved when one or more future events occur or fail to occur.” ASC 450-20-20. Loss contingencies are taken when they are deemed both “probable” and estimable. *Id.* Courts consistently have held that GAAP rules like ASC 450 “tolerate a range of ‘reasonable’ treatments, leaving the choice among alternatives to management.” *Thor Power Tool Co. v. C.I.R.*, 439 U.S. 522, 544 (1979); *see also Greebel v. FTP Software, Inc.*, 194 F.3d 185, 205 (1st Cir. 1999); *In re Segue Software, Inc. Sec. Litig.*, 106 F. Supp. 2d 161, 170 (D. Mass. 2000). Moreover, courts appreciate that “it is difficult [for management] to predict even the minimum amount for which a company may be liable.” *Salim v. Mobile Telesystems PJSC*, 2021 WL 796088, at \*8 (E.D.N.Y. Mar. 1, 2021), *aff’d*, 2022 WL 966903 (2d Cir. Mar. 31, 2022) (summary order); *Menaldi v. Och-Ziff Cap. Mgmt. Grp. LLC*, 277 F. Supp. 3d 500, 516 (S.D.N.Y. 2017) (“ASC 450 is not a reasonably simple and straightforward accounting rule.... The rule requires many judgment calls in deciding how to respond to contingencies.”). The Virginia Court of Appeals’ reversal of the damages award underscores the

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inherent complexity of contested litigation and further supports the reasonableness of the Company's accrual decision making.

The DRC also noted that the SEC conducted its own investigation of Pegasystems' accounting treatment related to the Appian Litigation and elected not to pursue enforcement action against the Company.

The DRC further considered that to bring a Section 10(b) and 10b-5 claim on the basis of an accounting irregularity, there must also be a strong inference of scienter. Even if the facts and circumstances were to suggest there should have been a different accounting outcome (*e.g.*, an accrual of a litigation contingency)—and here they do not—a derivative plaintiff would still need to plead facts evidencing scienter to adequately prove a securities fraud claim premised on ASC 450. *See Lloyd v. CVB Fin. Corp.*, 811 F.3d 1200, 1207 (9th Cir. 2016) (“[T]he mere publication of inaccurate accounting figures...without more, does not establish scienter.”); *see also Lenartz v. Am. Superconductor Corp.*, 879 F. Supp. 2d 167, 184-85 (D. Mass. 2012). Scienter requires facts showing the alleged wrongdoers “knowingly and recklessly engaged in an improper accounting practice.” *Lloyd*, 811 F.3d at 1207.

In light of the extensive efforts diligently undertaken by the key stakeholders charged with assessing whether a litigation contingency was necessary (as described below), including Mr. Stillwell, Mr. Kouninis, and the Audit Committee, the DRC has not identified any evidence that the Independent Directors, Mr. Stillwell, or Mr. Trefler exhibited “reckless disregard for a known or obvious duty.” *Menaldi*, 277 F. Supp. 3d at 516. For example, there are “no allegations that [the] company's external auditor[] counseled against a[n] [accounting] practice or that the Company's CFO was aware that the [accounting] practice was improper.” *Lloyd*, 811 F.3d at 1207. Nor did the DRC identify that any of the Independent Directors, Mr. Stillwell, or Mr. Trefler

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were aware of accounting inaccuracies and turned a blind eye, failed to investigate suspicious discrepancies, or circumvented internal controls to achieve a desired accounting result.

(a) *Management Reasonably Concluded No Litigation Contingency Required in Connection with Anticipated Damages Arising from the Appian Litigation*

The Demands allege that the Company should have accrued a loss contingency in connection with the Appian Litigation, though they are silent as to when and in what amount the contingency should have been accrued. Generally speaking, a company must accrue a loss contingency when, based on available information, it is both (i) “probable that a liability has been incurred” and (ii) the amount of that liability can be reasonably estimated. *See Godinez v. Alere Inc.*, 272 F. Supp. 3d 201, 215 (D. Mass. 2017) (citing ASC 450-20-25-2). A future event is “probable” when it is “likely to occur.” ASC 450-20-20. In assessing whether a loss is “reasonably estima[ble,]” when it is probable that a liability has been incurred and there is information available that indicates the estimated loss falls within a range of amounts, then “some amount of loss has occurred and can be reasonably estimated.” ASC 450-20-25-5. Additionally, a company must *disclose* a loss contingency if it is “reasonably possibl[e],” meaning “the likelihood that a loss will occur is more than remote but less than likely.” *Godinez*, 272 F. Supp. 3d at 215; *see also* ASC 450-20-50-3. Disclosure of reasonably possible losses must include “the nature of the contingency” and an “estimate of the loss or range of loss.” ASC 450-20-50-4. If a loss cannot be estimated, an entity must state that an “estimate cannot be made.” *Id.* at -3 & -4.

In the context of litigation, accounting guidance specifically directs a company named as a defendant to assess whether it needs to accrue and/or disclose a loss contingency. ASC 450-20-55-10. When determining whether accrual and/or disclosure is required with respect to pending litigation, a company should consider (i) when the cause of action arose, (ii) the degree of probability of an unfavorable outcome, and (iii) the ability to reasonably estimate loss. *See id.*;

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*see also Axar Master Fund, Ltd. v. Bedford*, 308 F. Supp. 3d 743, 758 n.88 (S.D.N.Y. 2018), *aff'd*, 806 F. App'x 35 (2d Cir. 2020) (summary order).

The DRC's review of the applicable evidence reflects that for the period 2Q20 through the date of the Demands, Company management, in consultation with accounting personnel, including Mr. Stillwell and Mr. Kouninis, and Deloitte, with oversight of the Audit Committee, applied reasonable judgment when assessing whether the Company needed to accrue a loss contingency in connection with the Appian Litigation.

During the period 2Q20 to 4Q21 (*i.e.*, when the Appian Litigation was filed through the quarter before the Second Amended Complaint was filed), management's informed perception was that the Appian Litigation was a normal course business litigation and, given the early stage of the litigation, management understood there to be substantive issues around Appian's alleged damages. In light of the inherent uncertainty associated with the litigation, and in appropriate consultation with legal, finance, and accounting, management determined that any potential claim by Appian was neither probable nor estimable.

Following the filing of the Second Amended Complaint, in preparation for the 202110-K, the record reflects that management carefully reevaluated whether the Company needed to accrue a loss contingency in light of Appian increasing its damages to \$3 billion. At that time, despite Appian increasing its damages, Pegasystems, based on inputs that included updates from outside counsel and the trial team, believed that the Company still had strong legal arguments heading into the trial scheduled for that spring. Based on Virginia law, the Company believed that none of the purported secrets at issue amounted to legal trade secrets, which would have been a complete bar to recovery. Moreover, that same month, Pegasystems had successfully achieved certain favorable rulings at the plea in bar, including the dismissal of a claim, which was a further data point in

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support of the strength of the Company's legal position. Accounting and legal personnel also evaluated the approach taken by other companies similarly faced with the uncertainty of litigation.

Factoring in all this information, management determined, in consultation with the relevant stakeholders, that the Company could still not reasonably estimate possible damages or a range of possible damages in light of the uncertainty as to how a jury may rule and any existing grounds for appeal. Accordingly, and since an unfavorable verdict was only "reasonably possible," the conditions of ASC 450 were not met. *See* ASC 450-20-55-31. In theory, given this uncertainty, anticipated damages could range anywhere from \$0 to the \$3 billion Appian claimed. "Such an expansive loss range is unreasonable and requiring that [Pegasystems'] disclose it would render [ASC 450]... meaningless." *In re Bank of Am. AIG Disclosure Sec. Litig.*, 980 F. Supp. 2d 564, 583-84 (S.D.N.Y. 2013), *aff'd*, 566 F. App'x 93 (2d Cir. 2014) (summary order). When assessing the viability of accrual related claims, the DRC observed that Pegasystems' decision not to accrue under these circumstances is not an outlier, as other similarly situated public companies have not accrued losses for ongoing litigation prior to an adverse judgment. *See, e.g.*, Oracle Form 10-Q (filed Sept. 13, 2021), at 21.

Management again reevaluated whether a litigation contingency was necessary following the Appian Litigation verdict in May 2022. Pegasystems had a \$2.04 billion claim rendered against it (which, of course, was a matter of public record). However, the Company believed the trial court committed significant legal errors and that the verdict could be (and likely would be) overturned, in whole or in part, based on the arguments that were thereafter raised in the Appian Appeal. The Company's judgment in that regard proved to be entirely correct. Management was also guided by accounting precedent that advised an adverse legal judgment does not automatically

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trigger the accrual of a loss contingency.<sup>46</sup> *See also, e.g., Luna v. Marvell Tech Grp. Ltd.*, 2016 WL 5930655, at \*5 (N.D. Cal. Oct. 12, 2016) (“[T]he existence of an adverse judgment alone does not imply that a litigation loss is ‘probable.’”). In light of all these factors, management determined that the likelihood that a liability had been incurred was below the “probable” threshold outlined in ASC 450. The DRC observed that management’s decision to forgo an accrual in light of the verdict is in line with that of other similarly situated public companies. For example, following a \$3 billion verdict against Oracle in the *Oracle v. HP* litigation, Oracle made no accrual for a loss while its appeal remained ongoing because Oracle continued to believe it had meritorious defenses against HP’s claims and as such, Oracle could not estimate a reasonable possibility of loss due to the complexities and uncertainty surrounding the process and nature of the claims.<sup>47</sup>

Throughout the pendency of the Appian Litigation and following the verdict, because the Company was unable to reasonably estimate possible damages or a range of possible damages, the Company informed investors in each of its quarterly and annual filings that it was unable to provide an estimate of loss for the Appian Litigation. *See, e.g.,* 2021 10-K, at 63; 2Q22 10-Q, at 18. *See In re Bank of Am. AIG*, 980 F. Supp. 2d at 584 (“[P]laintiffs fail to allege a violation of ASC 450 because [the defendant] adequately disclosed the nature of the contingency at issue...and stated

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<sup>46</sup> *Cf.* ASC 450-20-55-23 (noting that following an unfavorable verdict, accrual is necessary when the party ascertains that the damages amount will be for not less than a certain amount).

<sup>47</sup> Similarly, the DRC observed that despite a \$4.7 billion adverse jury verdict rendered against Johnson & Johnson (“J&J”) in *Ingham v. Johnson & Johnson*, No. 1522-CC10417-01 (Mo. Cir. Ct. Dec. 19, 2018), J&J did not accrue a loss either before the verdict or while the appeals process was ongoing. J&J only recorded a loss in connection with the litigation after the verdict against it was reduced to \$2.1 billion on appeal and the highest state court announced its decision not to hear J&J’s further appeal. *See also* NETGEAR, Inc. Response to SEC Regarding FY 2021 Form 10-K (May 6, 2022), <https://www.sec.gov/Archives/edgar/data/1122904/000156459022018593/filename1.htm> (explaining that in determining whether to accrue a loss contingency, the company considered, among other things, the “uncertainty as to the outcome of pending appeals, motions or settlements”); Dow Chemical Co. Response to SEC Regarding FY 2013 Form 10-K (May 16, 2013), <https://www.sec.gov/Archives/edgar/data/29915/000002991514000022/filename1.htm> (explaining a decision not to accrue a loss for a \$1.06 billion antitrust verdict in light of the company’s position that based on applicable law, the class certification and verdict were likely to be overturned on appeal).

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that it could not estimate losses for the...suit [at issue.]”); *see also Luna*, 2016 WL 5930655, at \*8 (“[A]ny inference that defendants intended to deceive investors is negated by [the company’s] full disclosure of the [litigation] judgment and the company’s decision not [to] accrue a reserve.”).

Of course, each of these investors had *complete information*, as they were well aware of the widely reported and publicly disclosed \$2.04 billion verdict levied against the Company.

The DRC recognizes that many factors contribute to a decision regarding whether or not to accrue, which require complex judgments about future events and projected outcomes. That the Virginia Court of Appeals ultimately vacated the jury’s damages award further illustrates the uncertainty of contested litigation and the accuracy of the Company’s assessment that, even after the verdict was rendered, damages were neither probable nor estimable. The DRC’s review of the record reflects that management was appropriately engaged in evaluating the different factors proffered by the accounting guidance, consulted with the relevant stakeholders, and applied reasonable judgment when determining whether an accrual was required. For example, the record is clear that every quarter, the decision on whether to accrue was the subject of repeated discussion and analysis by Mr. Kouninis and Mr. Stillwell, among others in accounting and finance, in-house and outside counsel, and the company’s outside auditor, with oversight by the Audit Committee. Witnesses told the DRC that the question of whether to accrue was the topic of healthy discussion, but nobody, including Deloitte, viewed management’s decision as anything other than reasonable. The SEC investigated Pegasystems’ accounting treatment related to the Appian Litigation and opted not to pursue enforcement action against the Company. In short, the DRC is not aware of evidence leading it to conclude that management’s decision was outside the range of reasonable alternative disclosures, especially in light of similarly situated public companies not accruing under similar circumstances.

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(b) *Management Reasonably Concluded No Litigation Contingency  
Required in Connection with Exploratory Settlement Discussions*

The DRC also considered whether the Company was obligated to accrue and disclose a loss contingency in connection with Pegasystems' settlement-related discussions with Appian during the pendency of the Appian Litigation. The Company preliminarily explored settlement with Appian during two primary time periods: (i) the March 2021 mediation and (ii) immediately before and during trial.

With respect to the March 2021 mediation, as witnesses consistently reported, the parties' positions were so far apart that management did not believe any settlement amount was probable or estimable. The witnesses' accounts are entirely consistent with and corroborated by the fact that the mediation was terminated quickly in light of, among other things, Pegasystems' view that Appian should pay to resolve both the Appian Litigation and Massachusetts Litigation and Appian's contrary position.

With respect to the informal, settlement-related discussion that occurred in advance of and during the Appian Litigation trial, based on witness accounts and contemporaneous communications, the DRC found that the Company never had a realistic expectation of settlement, because the parties' positions remained too far apart, with no discernible progress toward bridging the gap. While exploratory discussions were underway in early 2022, management consulted accounting literature to assess whether an accrual was necessary. Such accounting literature directs companies to distinguish between a formal offer and exploratory settlement amounts, with only the former requiring an accrual. Deloitte Roadmap, at 2.4.1 (Offer to Settle Litigation). In determining whether a formal offer has been made, such guidance directs the company to consider whether approval from additional members of management or the board of directors is required. *Id.* Email correspondence and witness accounts make clear that management understood that the

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Board had to authorize any concrete settlement offer made by Pegasystems, and at no point throughout the Appian Litigation did the Board authorize any settlement amount. Taking these factors together, management assessed that these exploratory settlement communications between Pegasystems and Appian neither made it probable that a liability had been incurred under ASC 450 nor established a low-end range of any potential settlement for purposes of triggering the accrual of a loss contingency. These settlement-related discussions were timely reported to Deloitte.

In light of the gulf separating the parties' respective potential settlement numbers, the Board never authorizing a settlement amount, and management's transparency with outside auditors, the DRC credits management's determination that the exchanges between Pegasystems and Appian did not amount to formal settlement offers and therefore, an accrual was not required. The DRC observed that management's assessment is consistent with approaches adopted by other public companies who have explored settlement in ongoing litigations but did not accrue a contingency.<sup>48</sup> The DRC also considered the SEC's post-investigation determination not to seek enforcement action against the Company for its accounting treatment relating to the Appian Litigation. Taking the evidence together, the DRC cannot conclude that management's decision was outside the range of reasonable alternative approaches.

**D. Waste of Corporate Assets**

The Larkin, Sagfors, and Birch Demands allege that the Fiduciaries wasted corporate assets (i) in connection with the Appian Litigation and related actions, including the Securities Class

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<sup>48</sup> See, e.g., Marvell Tech. Grp. Ltd., Response to SEC Regarding FY 2013 Form 10-K (May 24, 2013), <https://www.sec.gov/Archives/edgar/data/1058057/000119312513236059/filename1.htm> ("although required mediations have occurred...our positions and those of [the opposing party] are so far apart that we do not believe any settlement amount is probable or estimable at this time"); Autoliv, Inc. Response to SEC regarding FY 2014 Form 10-K (May 12, 2015), <https://www.sec.gov/Archives/edgar/data/1034670/000119312515184136/filename1.htm> (noting no litigation accrual because "there existed a significant difference in the parties' respective positions regarding a potential settlement").

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Action, by causing the Company to incur legal liability, pay excessive legal fees in defending itself, and compromise future financing for the Company, and (ii) by approving the Pegasystems' repurchase of stock at purportedly inflated prices.

In Massachusetts, “[a]n officer o[r] director of a corporation is liable for waste of corporate assets when that person removes or diverts corporate assets for which the corporation receives no benefit.” *Dusel v. Factory Mut. Ins. Co.*, 2021 U.S. Dist. LEXIS 131269, at \*21 (D. Mass July 14, 2021); *see also Henderson v. Axiam*, 1999 Mass. Super. LEXIS 580, at \*53 (Mass. Super. June 22, 1999) (“The essence of a claim of waste of corporate assets is the diversion of corporate assets for improper or unnecessary purposes.”), *aff’d*, 59 Mass. App. Ct. 1107 (2003). Liability for corporate waste requires more than “ordinary inattention and/or inadvertence [that] does not exceed gross negligence.” *Smith*, Mass. Super. LEXIS 668 at \*29. Instead, a successful claimant must prove “the directors’ decision [regarding the use of corporate assets] was so egregious or irrational that it could not have been based on a valid assessment of the corporation’s best interests.” *Id.* at \*28. As such, in determining whether an officer or director wasted corporate assets, Massachusetts courts look for evidence that such person was “motivated by bad faith or...received improper benefits.” *Id.* at \*29.

As requested by the Demands, the DRC diligently investigated whether there is evidence that the Fiduciaries wasted corporate assets in connection with the Company’s expenditures related to the Appian Litigation or stock repurchase program. The DRC concludes that there is not a valid basis to support a claim for waste of corporate assets against the Fiduciaries.

With respect to the costs associated with the Appian Litigation and related actions,<sup>49</sup> any theory of waste is premised on the Fiduciaries engaging in the misconduct set forth in the

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<sup>49</sup> The costs associated with the Appian Litigation include any ultimate damages award, which is subject to the outcome of further appellate litigation and any retrial, as well as associated costs, such as potential

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Demands, which, as discussed *supra*, the DRC has not found evidence to support.<sup>50</sup> Even putting this aside, the DRC has not identified evidence that the Fiduciaries caused the Company to incur expenses related to such litigations in bad faith or such that they “could not have been based on a valid assessment of the corporation’s best interests.” *Smith*, Mass. Super. LEXIS 668 at \*28.

With respect to legal fees incurred in connection with the Appian Litigation, the record reflects that these were not incurred in bad faith or unreasonably. The record evidences that the Fiduciaries acted reasonably in responding to the Appian Litigation, as discussed *supra*, and, given that the Company ultimately faced up to \$3 billion in damages, the DRC believes that it was in the Company’s best interest to secure highly qualified legal counsel to defend against Appian’s claims. Nor does the DRC find evidence to support a viable waste claim based on an alleged failure to settle the Appian Litigation prior to the verdict. Rather, the record reflects that at no point were Appian and Pegasystems sufficiently aligned such that settlement was reasonably possible and witnesses with whom the DRC spoke unanimously believed, and continue to believe, that Pegasystems had strong defenses to Appian’s claims--a belief that was only reinforced by the Virginia Court of Appeals’ determination that the jury’s verdict and damages award resulted from a series of serious legal errors.

With respect to Pegasystems’ stock repurchases, the DRC has not identified evidence that Pegasystems’ directors, who were responsible for approving the Company’s stock repurchase

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impact to Pegasystems’ ability to secure financing. With respect to the latter, the DRC notes that it did not observe any evidence that Pegasystems’ ability to secure financing was affected before the Virginia Court of Appeals vacated the initial damages award, and any future hypothetical impact is necessarily highly speculative.

<sup>50</sup> Moreover, any potential claim for waste would be premature, as the Appian Litigation is still on appeal. *In re Symbol Tech. Sec. Litig.*, 762 F. Supp. 510, 516-17 (E.D.N.Y. 1991) (“Unless plaintiff alleges and proves the[] violations, defendants cannot be held liable for costs of defending a potentially baseless suit...[Where] no judgement has been rendered, nor a settlement reached...no injury has been sustained which [a] plaintiff may sue to recover.”); *see also In re Isolagen Inc. Sec. & Derivative Litig.*, 2007 WL 110127 (E.D. Pa. Apr. 10, 2007) (“Derivative shareholder suits are consistently foreclosed when they merely allege damages based on the potential costs of investigating, defending, or satisfying a judgement or settlement for what might be unlawful conduct.”).

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program, acted in bad faith or against the Company's best interests when causing Pegasystems to repurchase purportedly inflated stock. As a preliminary matter, both the documentary record and witness accounts reflect that Pegasystems' directors genuinely believed that the Company had strong defenses to Appian's claims and, thus, did not believe that the Company's stock was inflated at any point before it disclosed the Appian Litigation to the market. Nor did the DRC identify evidence that any purported inflation in Pegasystems' stock price influenced the Board's decision to authorize stock repurchases. Quite the contrary, the record reflects that Pegasystems, since 2004, has had a systematic and robust stock repurchase program, which the Board has continued to reassess, and reauthorize, on a roughly annual basis. During the course of the Appian Litigation, when the Board in good faith believed that Pegasystems had a strong basis to prevail, the stock repurchase program continued as usual. Shortly after the verdict came down in Appian's favor, the Board reassessed this decision and after considering the impact of the Appian Litigation on Pegasystems' future financial performance, and getting advice from Pegasystems' governance counsel and finance team, the Board, in good faith, resolved to ratify its existing authorization of the share repurchase program. Because the Board diligently considered Pegasystems' best interests in connection with approving the share repurchase program, and the DRC identified no evidence suggesting this decision "could not have been based on a valid assessment of the corporation's best interests," it concludes that the Board did not waste corporate assets in authorizing this program. *Smith*, Mass. Super. LEXIS 668, at \*28.

**E. Unjust Enrichment**

Certain of the Demands allege that the Fiduciaries were unjustly enriched because they either benefitted financially from the improper conduct, received bonuses, stock options, or similar compensation from Pegasystems that was tied to the performance or artificially inflated valuation of Pegasystems' stock, or received compensation that was unjust in light of their "bad faith"

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conduct. Unjust enrichment is a claim based in equity premised on the principle that a person who has been provided a benefit at the expense of another is required to make restitution to the defrauded party. *See Massachusetts v. Mylan Labs.*, 357 F. Supp. 2d 314, 323 (D. Mass. 2005); *see also Lawton v. Nyman*, 327 F.3d 30, 45-46 (1st Cir. 2003). Restitution means that the defrauded party is restored to the position they formerly occupied either by the return of something they formerly had or by the receipt of its equivalent in money. *Mylan Labs.*, 357 F. Supp. 2d at 323. To obtain restitution on the basis of an unjust enrichment claim, there must be (1) “[a] benefit conferred upon the defendant by the plaintiff;” (2) “[a]n appreciation or knowledge by the defendant of the benefit;” and (3) “[t]he acceptance or retention by the defendant of the benefit under such circumstances as to make it inequitable for the defendant to retain the benefit without payment of its value.” *Patel v. Emerald P’ship, Ltd.*, 2009 WL 1058356, at \*24 (Mass. Super. Apr. 9, 2009). An unjust enrichment theory is often asserted as a corollary to a breach of fiduciary duty claim. *See id.* When there is no evidence of a breach of fiduciary duty claim, courts will typically dismiss an unjust enrichment claim, as ordinary salaries, benefits, and bonuses paid to directors and officers is insufficient to allege an unjust enrichment claim. *See id.*; *see also In re Pfizer Inc. S’holder Deriv. Litig.*, 722 F. Supp. 2d 453, 465-66 (S.D.N.Y. 2010).

The DRC’s investigation did not yield evidence to support a valid claim for unjust enrichment. The Demands’ allegations of unjust enrichment are premised on underlying improper misconduct but, as discussed *supra*, the DRC did not identify violations of Section 10(b), Rule 10b-5, or breaches of fiduciary duties. “[E]ven assuming...that wrongdoing occurred...this is not sufficient to state a claim for unjust enrichment against the [Fiduciaries],” because there is no “relationship between the [purported] enrichment...and impoverishment of [Pegasystems].” *In re Cap. One Deriv. S’holder Litig.*, 952 F. Supp. 2d 770, 783 (E.D. Va. 2013). For example, there is

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no evidence that the “compensation received by each [of them] was paid without justification.” *Taylor v. Kissner*, 893 F. Supp. 2d 659, 674 (D. Del. 2012).

Nor did the DRC identify that the Fiduciaries received any monetary compensation that was not authorized or of “extraordinary magnitude.” See *In re Pfizer*, 722 F. Supp. 2d at 465-66. To the contrary, the Compensation Committee approved the salaries of senior executives, including those challenged in the Demands, through their normal course processes. For example, as reflected in Compensation Committee meeting minutes, on an annual basis, the committee reviewed each executive officer’s elements of compensation together with market data and analysis, and determined the appropriate level of compensation. Specific to Mr. Trefler, in March 2020 and March 2021, the Compensation Committee set his salary, despite his annual base salary continuing to fall below the market standard. Since the Compensation Committee was “[un]aware of wrongful activity,” there are no facts “giving rise to a reasonable doubt that the decision to pay allegedly wrongdoing officers was [anything other than] a valid exercise of business judgment.” *In re Bank of N.Y. Mellon Corp. Forex Transactions Litig.*, 991 F. Supp. 2d 457, 464 (S.D.N.Y. 2013).

In the absence of underlying wrongdoing, the DRC concludes that there is not evidence to support a successful claim that the Fiduciaries were unjustly enriched.

## **VII. Other Factors Relevant as to Whether to Bring an Action**

Although, for all of the reasons set forth in this Report, the DRC unanimously believes that the Company does not have meritorious claims against the Fiduciaries, the DRC also has considered other relevant factors that could weigh for or against pursuing the legal claims discussed herein. The DRC’s consideration of those other factors reinforces its view that it would not be in the best interest of the Company to pursue the claims alleged in the Demands.

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- **Lack of Bad Faith.** The fact that the DRC found no evidence to suggest that any of the Fiduciaries acted in bad faith, received an improper personal benefit at the Company's expense, or were otherwise driven by self-interest, played a significant part in the DRC's analysis and ultimate conclusions. Several witnesses expressed to the DRC that, in hindsight, they might have made different choices or tried to guide or scrutinize certain activity more carefully to avoid even the appearance of misconduct. However, the evidence leaves the DRC confident that the Fiduciaries were acting in what they reasonably believed to be the Company's best interests.
- **Reputational Harm.** The DRC believes that entangling the Company in additional, long-term litigation and further emphasizing actions taken in connection with Appian and Mr. Zou could inflict reputational harm on the Company and, by extension, could damage its shareholders. Rather than pursuing the claims requested by the Demands, which the DRC believes lack factual and legal merit, the DRC concludes that both Pegasystems' and its shareholders' interests would be better served by focusing on Pegasystems' leadership and innovation in the BPM and CRM space.
- **Cost.** The DRC has also considered the potential costs to Pegasystems if the Company were to pursue the causes of action alleged in the Demands. As discussed *supra*, Pegasystems' bylaws contain a provision indemnifying its directors and officers for liability arising out of their employment, to the extent permitted by Massachusetts law. Thus, except for liability arising out of bad faith, intentional misconduct, or a knowing violation of the law, Pegasystems must indemnify its officers and directors "against any cost, expense (including attorneys' fees), judgment, liability and/or amount paid in settlement." Amended and Restated Bylaws of Pegasystems Inc., Art. VII (eff. June 12, 2020); *see also* G. L. c. 156D, § 8.56. Because, as detailed *supra*, the DRC's investigation did not identify evidence that the Fiduciaries acted in bad faith, purposefully engaged in wrong or illegal conduct, or acted in their own self-interest, it is very likely that the Company would indemnify these individuals against any costs associated with the Company bringing claims against them, including their attorney fees, which could be substantial. In light of the DRC's belief that the probability of claims requested by the Demands ultimately being successful is quite low, the DRC believes that the potential costs of bringing claims against the Fiduciaries outweigh the benefits.
- **Distraction to Management.** The DRC considered the time commitment further litigation around the conduct alleged in the Demands would require from Pegasystems' management, and concluded that, if the Company were to pursue the claims requested by the Demands, it would divert management's attention away from their primary obligation, *i.e.*, growing profits and, by extension, increasing shareholder value. Such acute and long-term distraction from Pegasystems' management's core mission is not prudent, particularly in service of claims on which the Company is unlikely to prevail.
- **Remediation and Deterrence.** As detailed *supra*, since the conduct alleged in the Demands was brought to the Fiduciaries' attention during the course of the Appian Litigation, the Company has implemented a series of remedial measures to clarify the Company's competitive intelligence process and procedures in order to ensure there is

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proper oversight and avoid even the appearance of impropriety. Also, as discussed *infra*, the DRC is directing certain additional measures to further enhance the Company's existing compliance and governance procedures and protocols. In light of the proactive efforts already taken and the additional measures the Company will take, the DRC is confident that the type of conduct giving rise to the types of claims made in the Appian Litigation is unlikely to occur again and, thus, bringing the claims requested by the Demands is unlikely to have any substantial additional remedial or deterrent effect.

### **VIII. Enhancements and Other Measures the DRC Directs the Company to Implement**

The DRC recognizes that, as detailed *supra*, since the Appian Litigation was filed, the Company already has undertaken various steps to improve its oversight of the Company's competitive intelligence practices to ensure that such work always is professional and ethical. These steps include having created a new training program on competitive intelligence practices, implemented quarterly meetings between employees and the in-house legal team to review competitive intelligence initiatives, and precluded access to Appian's login page from a Pegasystems premises or laptop to prevent employees from accessing information deemed by Appian to be confidential.

The DRC has concluded that the Company would benefit further from taking the following additional measures to enhance its compliance and risk framework:

- **Creation of a Risk Sub-Committee of the Audit Committee.** The DRC focused on the fact that even activity that participants genuinely understand to be lawful can yield unpredictable and potentially costly corporate liabilities. In order to further mitigate this risk moving forward, the DRC directs the Board to create a two-member sub-committee of the Audit Committee to focus on compliance and risk.
  - The Risk Sub-Committee will be 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.
  - The Risk Sub-Committee will receive and review quarterly reports from the Chief Compliance Officer, or more often as necessary, concerning (a) the Company's risk management framework and policies; (b) the Company's material compliance with applicable laws and regulations, including those

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concerning trade secrets and intellectual property; and (c) any recommendations regarding the foregoing.

- The Risk Sub-Committee will serve as the primary vehicle for Board and Audit Committee oversight of the execution of the Enterprise Risk Management program at the Company.
  - The Risk Sub-Committee will provide an update to the full Board at least once per financial quarter on its work and observations. The Risk Sub-Committee will include in its report its view regarding the contribution of senior management to the Company's culture of ethics and compliance and their effectiveness and dedication to ensuring the Company's material compliance with applicable laws, rules, and regulations.
  - The Risk Sub-Committee will promptly report to the Audit Committee any material compliance issues or risks that may have significant financial implications or that are sufficiently material to trigger a disclosure obligation.
  - The Risk Sub-Committee will have free access to management and Company employees for the purpose of doing its work. The Risk Sub-Committee will have the authority to retain separate and independent advisors or counsel to aid in fulfilling its responsibilities under its charter, which will be at the Company's expense.
  - The Audit Committee will receive and review quarterly reports from the Chief Compliance Officer and the management-level disclosure committee concerning the Company's compliance with public reporting requirements, as well as internal risk assessment and internal reporting, and its oversight of the Company's compliance with applicable laws and regulations, including those relating to public disclosures about the Company's business affairs, financial reporting, and risk exposure.
- **Enhancements to the existing Management-Level Compliance and Risk Governing Committee.** For the same reasons that the DRC believes enhancing Board attention to risk is prudent, the DRC believes certain enhancements to the management-level compliance and risk committee's work are appropriate. As such, the charter of the Management-Level Compliance and Risk Governing Committee will be updated to reflect that such management-level committee will provide written updates to the Risk Sub-Committee and to the full Board on a quarterly basis. The committee's charter will be updated to reflect that such reports will include (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 impact of any material changes to the Company's business and/or its business strategy.

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- **Enhancements to Insider Trading Policy.** The DRC believes that modest amendments to the Company's insider trading policy will facilitate more efficient record-keeping and promote continued compliance. The DRC directs the Company to amend its Trading Policy so it explicitly requires all pre-clearances be documented in writing.
- **Enhancements to Compliance Training.** Since the verdict in the Appian Litigation, the Company has increased the frequency of its compliance training. To ensure that the Company is appropriately systematizing its effort to maintain best practices with respect to competitive intelligence gathering, the DRC directs the Company to ensure the frequency of its compliance training is codified such that it holds at least (a) one annual training on the importance of compliance generally and (b) one annual training on intellectual property and trade secrets.
- **Director Education.** The DRC believes that the Board would benefit from access to additional training to help them navigate future unpredictable risks of the sort presented here. In furtherance of this effort, each director shall receive a budget of \$25,000 to attend or participate in director training and continuing education. At least once every three years, directors must attend a National Association of Corporate Directors certified program or similar program. If a director has attended such a program through their service on another public company board of directors, they shall provide the Chief Compliance Officer with a certification of attendance, which will satisfy this obligation. All directors shall attend a mandatory training, conducted by the Chief Compliance Officer, concerning trade secret protection and the legal implications of misappropriation.

## **IX. Role of the DRC Going Forward in Light of the Appian Appeal**

As noted above, the Virginia Court of Appeals recently vacated the \$2.04 billion verdict in the Appian Litigation and remanded the case for a new trial. Appian has since appealed that decision to the Supreme Court of Virginia. As a result, final resolution of the Appian Litigation (whether through further appeal, retrial, or appeal of a retrial), absent settlement, likely remains years away.

It is therefore impracticable for the DRC to wait until the Appian Litigation is fully and finally resolved to finish its work and issue its Report. It is also unnecessary, in some respects, because the evaluation of potential claims against the Fiduciaries is a distinct exercise from a jury's evaluation of the civil claims by Appian against the Company. Put differently, it would be possible

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for a Virginia jury to find the Company liable to Appian while the DRC (or a court) finds no viable claims against the Fiduciaries. And the converse is true as well—it would be possible for a Virginia jury to find that the Company is not liable to Appian while the DRC (or a court) finds there to be viable claims against the Fiduciaries.

The key, for the DRC, is for the DRC to have developed a complete factual record upon which to make its own independent business judgments. To that end, the greatest importance of the Appian Litigation to the DRC's work is whether any new facts or testimony are developed through the proceedings in that litigation. With that in mind, the DRC has concluded that it will remain constituted, through the completion of the Appian Litigation, to monitor those proceedings and consider any new evidence, facts, or testimony that are developed (even though, at this advanced stage of fact development in the Appian Litigation, that seems highly unlikely).

## **X. Conclusion**

Based on the comprehensive investigation described in this Report, the DRC has concluded that, under the applicable standards and law, no actionable misconduct occurred on the part of the Fiduciaries. The DRC did not identify evidence to support a viable claim that any director, officer, or senior executive of focus breached their fiduciary duties, violated the federal securities laws, caused corporate waste, or were unjustly enriched. Nor did the DRC identify evidence to suggest the Fiduciaries caused harm or damage to the Company in dereliction of their legal obligations. To the contrary, the record establishes that the Fiduciaries undertook and performed their duties in accordance with applicable standards under federal and Massachusetts law. Accordingly, any such claim would be without basis in fact, legally insufficient, and not actionable by Pegasystems. Moreover, in light of the expense, disruption, burden, and distraction that pursuing such claims would cause Pegasystems, its management, and its shareholders, and in light of the DRC's determination that there are not acts or omissions for which there are reasonable grounds to find

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that any of the Fiduciaries would be liable to Pegasystems, it is not in the Company's best interests to bring or pursue any litigation or other actions based on the Demands.

Therefore, the DRC unanimously rejects the Demands that the Company commence legal proceedings against any of the Fiduciaries or undertake different or additional corrective action as set forth in the Demands. Nevertheless, the DRC will ensure that measures outlined in the preceding section are implemented, and the DRC will remain constituted to monitor the proceedings in the Appian Litigation.

Dated: October 7, 2024

/s/ Christopher Lafond  
Christopher Lafond, Chairman

/s/ Dianne Ledingham  
Dianne Ledingham

/s/ Sharon Rowlands  
Sharon Rowlands

# Exhibit M

**NOTICE**

**49**

**COMMONWEALTH OF MASSACHUSETTS**

**SUFFOLK, ss.**

**SUPERIOR COURT  
CIVIL ACTION  
NOS. 2484CV01734-BLS-1  
2484CV03076-BLS-1**

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

**vs.**

**ALAN TREFLER & others<sup>2</sup>  
PEGASYSTEMS, INC., nominal defendant  
(and a consolidated case<sup>3</sup>).**

**MEMORANDUM OF DECISION AND ORDER ON  
DEFENDANTS' MOTIONS TO DISMISS**

The plaintiffs of these consolidated actions are shareholders of nominal defendant Pegasystems, Inc. ("Pegasystems"). They bring derivative actions against several Pegasystems officers and directors, alleging breaches of fiduciary duty in relation to the company's competitive intelligence efforts. They also allege failures related to the disclosure of trade secret litigation filed by competitor Appian Corporation ("Appian"), in which Appian seeks significant damages ("Appian Case"). In October 2024, a Pegasystems demand review committee ("DRC") unanimously rejected Plaintiffs' shareholder demands that Pegasystems commence legal action against the named officers and directors. The matter is before the court on Defendants' motions to dismiss pursuant to G.L. c. 156D, § 7.44, citing the DRC's investigation and report

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<sup>1</sup> Ray Gerber.

<sup>2</sup> Peter Gyenes, Richard Jones, Christopher Lafond, Dianne Ledingham, Sharon Rowlands, Larry Weber, Leon Trefler, Don Shuerman, Kerim Akgonul, and Benjamin Baril.

<sup>3</sup> Jayne Birch and Robert Garfield, derivatively on behalf of Pegasystems, Inc. v. Alan Trefler, Peter Gyenes, Richard Jones, Christopher Lafond, Dianne Ledingham, Sharon Rowlands, Larry Weber, Kerim Akgonul, Don Shuerman, Leon Trefler, Douglas Kim, John Petronio, Benjamin Baril, and Kenneth Stillwell.

(“Report”).<sup>4</sup> After a hearing on September 4, 2025, and consideration of the parties’ submissions, the motion is **allowed**.

### **BACKGROUND**

The Verified Consolidated Stockholder Derivative Complaint (“Complaint”), exhibits filed in connection with the motions to dismiss, including the DRC Report, and matters of public record, set forth the following facts. Further facts are reserved for later discussion.

Pegasystems is a Massachusetts-based software company that specializes in customer relations management software and business process management (“BPM”) software, which it sells to major global companies and government agencies. Defendant Alan Trefler (“Trefler”) founded Pegasystems in 1983, and remains its CEO and controlling shareholder. Appian is a Virginia-based company that also specializes in the BPM software industry, and is a competitor of Pegasystems in that sphere. Both Pegasystems and Appian BPM software is “low-code,” which means that clients can use the product “platform” to develop and customize applications to meet their business needs with little to no computer coding required.<sup>5</sup> The two companies have been competitors since at least 2012.

In 2012, Pegasystems’s director of product marketing, John Petronio (“Petronio”), hired a consultant, Youyong Zou (“Zou”), to conduct competitive intelligence on Appian. Zou was hired through an independent consulting staffing agency with which Pegasystems had a preexisting contract. Zou was familiar with the Appian platform through his work for a government contractor that licensed Appian software.

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<sup>4</sup> Defendants Christopher Lafond, Dianne Ledingham, and Sharon Rowlands, as members of the DRC, move to dismiss on behalf of nominal defendant Pegasystems. The remaining individual officer and director defendants join in the DRC’s motion.

<sup>5</sup> For example, BPM software could be used to manage customer inquiries and complaints, or streamline insurance claim submissions.

Over the next two and a half years, Zou provided Petronio with information and videos identifying the strengths and weaknesses of the Appian platform and demonstrating Appian's product, which were shared within the company. Zou assisted Petronio with sales strategies and answered questions about Appian's capabilities and user experience, in addition to interacting at times with other Pegasystems employees. In 2015, Petronio left Pegasystems's employment. In 2016, Petronio began consulting for Appian; in 2019 he became a full-time Appian employee.

Between 2012 and 2021, certain Pegasystems employees also conducted competitive research on Appian by obtaining free trials of Appian products. These employees obtained the free trials by using their personal email addresses, and, in some cases, by using fictitious names or aliases. Trefler also used aliases to register for an Appian free trial and/or receive Appian marketing materials.

In 2020, based on information it had learned from Petronio and another former Pegasystems employee, Appian filed the Appian Case against Pegasystems in Virginia Circuit Court. Citing Pegasystems's employment of Zou, and its misuse of free trials, Appian alleged that Pegasystems misappropriated its trade secrets, including aspects of its user-friendly customer interface, and sought damages of \$90 million. In January 2022, Appian amended its complaint, and increased the damages claimed to \$3 billion. This amendment prompted the Pegasystems Board to disclose the Appian Case to shareholders for the first time in February 2022. The disclosure occurred through Pegasystems's 2021 10-K Securities and Exchange Commission ("SEC") filing, which stated that Pegasystems disputed the validity of Appian's claims, and that it believed that "any alleged damages claimed by Appian are not supported by the necessary legal standard of proximate cause." The disclosure further provided that, for this

reason, Pegasystems was unable to reasonably estimate possible damages. Efforts to settle the Appian Case in early 2022 were exploratory and not successful.

In March 2022, trial began in the Appian Case. As the case progressed, the trial judge made several evidentiary rulings that were adverse to Pegasystems. On May 9, 2022, the jury reached a verdict in Appian's favor, with damages in the amount of over \$2 billion. Pegasystems appealed the verdict.

In 2023, the Board began to receive confidential demands from shareholders, including Plaintiffs, requesting that the Board investigate the "corporate espionage scheme targeting Appian" that began in 2012, and remedy the harm caused by the verdict in the Appian Case, including the Board's failure to disclose the litigation sooner. Ex. 7 to Report. Thereafter, the Board, absent Trefler who recused himself, appointed directors Christopher Lafond ("Lafond"), Dianne Ledingham ("Ledingham"), and Sharon Rowlands ("Rowlands") to form the DRC, which, in turn, hired legal counsel to assist in its investigation. The DRC was empowered with "exclusive authority . . . to determine in good faith what actions (if any) are reasonably believed to be appropriate under similar circumstances and reasonably believed to be in the best interests of the Corporation in response to the Demand Letters." Def. Ex. P. 216.

In July 2024, while the DRC was conducting its investigation, the Virginia Court of Appeals vacated the verdict in the Appian Case, concluding that several prejudicial evidentiary rulings had been made, and that the jury had been erroneously instructed on the issue of causation in determining damages in a trade secret misappropriation case. See *Pegasystems Inc. v. Appian Corp.*, 81 Va. App. 433 (2024). Appian appealed the Court of Appeals decision, and the case is presently pending before the Virginia Supreme Court.

The DRC's 116-page Report, dated October 7, 2024, concludes that Pegasystems officers and directors engaged in no actionable misconduct—with respect to either Pegasystems's competitive intelligence conduct or disclosure of the litigation, and that legal action against Pegasystems is not in the company's best interest. Based on the facts gathered and relevant legal standards, the Report discusses why Pegasystems officers and directors had a reasonable basis to believe that its competitive intelligence efforts, although perhaps imprudent in hindsight, were not illegal and therefore did not require earlier disclosure of the Appian Case. In the Report, the DRC nevertheless directs Pegasystems to put into place several measures to enhance the Board's monitoring of the company's risk and its competitive intelligence efforts.

Meanwhile, in June and November 2024, Plaintiffs commenced their consolidated derivative actions. The four-count Complaint asserts claims for breach of fiduciary duty against the defendant officers, directors, and the DRC directors. Defendants' motions to dismiss followed in July and August 2025.<sup>6</sup>

### DISCUSSION

“Under the Massachusetts Business Corporations Act (Act), G.L. c. 156D, derivative proceedings are governed by statute.” *Halebian v. Berv*, 457 Mass. 620, 623 (2010), citing G.L. c. 156D, §§ 7.40-7.47. Under the Act, if a shareholder seeks redress of alleged wrongdoing by the corporation's directors and officers, it may commence a derivative action on behalf of the corporation after making a written demand on its board of directors to take suitable action. G.L. c. 156D, § 7.42. The corporation then may move to dismiss the lawsuit if its directors determine

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<sup>6</sup> In 2022, Pegasystems's shareholders also filed a securities class action against Pegasystems, Trefler, and Pegasystems's CFO in the United States District Court for the District of Massachusetts, based largely on the same facts alleged here, and following the entry of the \$2 billion verdict in the Appian Case. See *Fort Lauderdale Police and Firefighters' Retirement System v. Pegasystems, Inc., et al.*, Civil Action No. 22-11220-WGY. That case settled for \$35 million in April 2024, following the denial of Pegasystems's motion to dismiss. 683 F.Supp.3d 120 (2023). The resolution of the securities case at that juncture does not impact the court's analysis under G.L. c. 156D, § 7.44.

that maintenance of the action is not in the corporation's best interest. It does so by way of a written filing with the Court setting forth facts to show that: 1) a majority of independent directors made the determination, and 2) that they acted "in good faith and after conducting a reasonable inquiry." G.L. c. 156D, § 7.44(a) and (d). If the corporation meets this burden, the Court "shall dismiss the suit unless the plaintiff has alleged with particularity facts rebutting the corporation's filing in the plaintiff's own written submission." G.L. c. 156D, § 7.44(d). See *Averbuch v. Arch*, 2013 WL 5531396, at \*3 (Mass. Super. 2013); *Pinchuk v. State Street Corp.*, 28 Mass. L. Repr. 37, 2011 WL 477315, \*11 (Super. Ct. 2011); *Blake v. Friendly Ice Cream Corp.*, 21 Mass. L. Repr. 131, 2006 WL 1579596, at \*10-\*11 (Super. Ct. 2006).

As set forth below, Pegasystems has made the requisite showing, which Plaintiffs have failed to rebut.

### **I. Independence**

"A director is 'independent' within the meaning of § 7.44 if he is 'disinterested' 'in the sense of not having a personal interest in the transaction being challenged' and 'independent' 'in the sense of not being influenced in favor of the defendants by reason of personal or other relationships.'" *Operative Plasterers' & Cement Masons' Local Union Officers' & Employees' Pension Fund v. Hooley*, 2013 WL 5442366, at \*3 (D. Mass. 2013) ("*Hooley*"), quoting G.L. c. 156D, § 7.44 cmt. 1. Relevant to these determinations is the extent to which the director: 1) participated in or approved the alleged wrongdoing; 2) had past or present business dealings with the corporation; and (3) had past or present business or social dealings with individual defendants. See *Blake*, 2006 WL 1579596, at \*13, citing *In re Oracle Securities Litigation*, 852 F. Supp. 1437, 1441 (N.D. Cal. 1994); *Johnson v. Hui*, 811 F. Supp. 479, 486 (N.D. Cal. 1991); *Einhorn v. Culea*, 612 N.W.2d 78, 90 (Wis. 2000). The total number of directors at issue, and

the manner in which they are appointed also may be relevant, as is the role of any independent counsel hired to assist the investigation. See *id.*

However, the Act further provides that a director will not be found to lack independence simply because of “(1) the nomination or election of the director by a person who is a defendant in the derivative proceeding or against whom action is demanded; (2) the naming of the director as defendant in the derivative proceeding or as a person against whom an action is demanded; [or] (3) the approval by the director of the act being challenged in the derivative proceeding or demand if the act resulted in no personal benefit to the director.” G.L. c. 156D, § 7.44(c)(1)-(3).

“A presumption of propriety must be the starting point in the absence of clear allegations to the contrary.” *Hooley*, 2013 WL 5442366 at \*3, quoting *In re Sonus Networks, Inc. Derivative Litigation*, 2004 WL 2341395, at \*4 (Mass. Super. Ct. 2004). Independence is determined based on a “totality of the circumstances” analysis. *Blake v. Friendly Ice Cream Corp.*, 2006 WL 2714976, at \*1 (Mass. Super. 2006) (on reconsideration) (“*Blake IP*”).

The Board, minus Trefler, appointed Lafond, Ledingham, and Rowlands to the DRC. Each have extensive prior executive and board experience. Lafond became a Pegasystems director in 2019, while Ledingham and Rowlands joined the Board in 2016. After their appointment to the DRC, they retained the law firm of Fried Frank as independent counsel, after determining that it had not been involved in any of the alleged failures or wrongdoing. The Fried Frank investigation team was led by two partners in the firm. The Report states that Fried Frank interviewed Lafond, Rowlands, and Ledingham, and, with the aid of a checklist of questions, determined that they were disinterested and independent for purposes of the matters raised in the demands. Although Lafond, Rowlands, and Ledingham are named defendants in this action, and

were nominated to the Board by Trefler, as set forth in § 7.44(c), these facts alone are not disqualifying to their independence.

Plaintiffs raise two primary challenges to the appointing directors' and DRC directors' independence. First, they assert that they were interested in the outcome of the investigation because they face substantial liability as directors that were on the Board during at least some period of time when the alleged failures and conduct occurred. Second, they argue that the DRC directors' substantial compensation from Pegasystems, and Trefler's unilateral ability to remove directors, compromised their independence. Plaintiffs also challenge the Report's failure to adequately explain why Fried Frank believed the DRC directors to be independent, noting that the results of the questionnaire used were not included in the Report. Under § 7.44 and the legal framework set forth *supra*, the arguments are unavailing.

On the first issue, as Plaintiffs acknowledge, for the threat of liability to cause a director to become interested in the outcome of a demand investigation, the threat must be "substantial." *Hooley*, 2013 WL 5442366, at \*4, citing *Caviness v. Evans*, 229 F.R.D. 354, 359 (D. Mass. 2005). Where the DRC and its appointing directors did not participate in any of the alleged competitive intelligence efforts, the only viable theory of liability is from a failure in oversight, which requires proof of bad faith. *Hooley*, 2013 WL 5442366, at \*5, citing *In re Citigroup Inc. Shareholder Derivative Litigation*, 964 A.2d 106, 123 (Del. Ch. 2009). Bad faith in this regard can be established if "the directors knew they were not discharging their fiduciary obligations or that the directors demonstrated a conscious disregard for their responsibilities such as by failing to act in the face of a known duty to act." *In re Citigroup Inc.*, 964 A.2d at 123. The Pegasystems directors are also exculpated from personal liability for breaches of the ordinary duty of care in the Pegasystems Articles of Organization; liability for acts or omissions in the

performance of their duties must be a result of bad faith. Report at 72. The provision mirrors exculpatory language expressly permitted under the Act. See G.L. c. 156D, § 2.02(b)(4); *MAZ Partners LP v. Shear*, 204 F. Supp. 3d 365, 372-373 (D. Mass. 2016).

There is no evidence before the court that the DRC directors, or the directors that appointed them, acted in bad faith in conjunction to their oversight roles so as to expose them to a substantial threat of liability. Nothing in the Plaintiffs' materials alleges or establishes that a corporate board in this industry must have an oversight program specific to the company's competitive intelligence programs, or receive management updates specific to this issue. Thus, that the DRC or its appointing members failed to have such specific programs in place during the relevant time period is not evidence of bad faith. Moreover, nothing in the pleadings or exhibits alleges facts to support a serious argument that Pegasystems directors were generally asleep at the wheel of the company, much less to the degree required to establish bad faith.<sup>7</sup>

Plaintiffs also fail to rebut the reasonable conclusion in the Report that Pegasystems management and its advisors reasonably believed they were not stealing Appian trade secrets, where the versions of the Appian platform Pegasystems accessed were widely available, or free trials that Appian gave away. Report p. 38, 76-78. Litigation strategy in the Appian Case was based on this understanding, along with the reasonable view that the Appian Case was filed in retaliation for other litigation between the parties. *Id.* at 50. Thus, a reasonable view of the evidence is that there was no "red flag" of illegal corporate espionage that these directors failed to discover, consciously turned a blind eye to, or failed to disclose to shareholders in bad faith.<sup>8</sup>

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<sup>7</sup> The case here is unlike *Blake*, where a director was found to lack independence. In that case, the director at issue had blind loyalty to management and *consciously* shirked his duties of investigation, despite multiple red flags warranting his attention. 2006 WL 1579596, at \*17; *Blake II*, 2006 WL 2714976, at \*2-\*5. No analogous facts are present here.

<sup>8</sup> That the DRC had a reasonable basis to reach these conclusions does not mean that Plaintiffs have pleaded *no* evidence of possible wrongdoing in Pegasystems's collecting of competitive intelligence. As the Complaint sets

On the second issue of compensation, corporate directorships are typically paid positions. *City Pension Fund for Firefighters & Police Officers in Miami v. The Trade Desk, Inc.*, 2022 WL 3009959, at \*13 (Del. Ch. 2022). Plaintiffs make no particularized allegation that the compensation the DRC directors received from Pegasystems was outside of the normal range, or was “material” to each of them, which is the relevant standard, particularly given each of their other corporate roles and employment separate from Pegasystems. See *id.* at \*12 (materiality standard requires facts particularized to each director, and stating that “court is hesitant to infer materiality of compensation absent well-pleaded facts”). Finally, that Defendants did not include in its filing all of the evidence relied upon and cited in the Report is not the equivalent of a rebuttal with particularized evidence. Neither is such a record required under the Act.

For all of these reasons, I conclude that the DRC were independent under § 7.44. See *Averbuch*, 2013 WL 5531396, at \*4 (plaintiffs failed to rebut independence of special litigation committee); *Hooley*, 2013 WL 5442366, at \*5 (plaintiff failed to “set forth particularized allegations that support a conclusion that there is a ‘substantial likelihood’ of liability on the part of the directors” based on oversight failures [citation omitted]).<sup>9</sup>

## **II. Good Faith**

When the court determines that the directors of a special litigation committee (or DRC) are independent, as is the case here, “the business judgment rule applies to the board’s decision

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forth, based on evidence admitted in the Appian Case, Appian guarded its trade secrets and made it difficult to obtain free trials, Pegasystems had no license to use its software, and Pegasystems referred to its competitive intelligence program in terms of “spying.” Rather, where the matter is reasonably disputed, no “substantial likelihood of liability” exists. *Hooley*, 2013 WL 5442366, at \*4 (citation omitted). See *Pegasystems Inc.*, 81 Va. App. at 469 (question whether Appian took reasonable steps to protect its trade secrets is jury issue).

<sup>9</sup> Plaintiffs’ argument that there was a structural bias among the appointing and DRC members fails where it relies on nothing more than the existence of parallel litigation in the Appian Case and speculation that the DRC was results-driven. That a different Fried Frank partner represented Rowlands in an unrelated matter involving a different company, without more, is also insufficient to demonstrate a lack of independence.

to reject the plaintiff's 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." *Hooley*, WL 5442366 at \*6, citing G.L. c. 156D, § 7.44 Cmt. 2; *Pinchuck*, 2011 WL 477315 at \*14. "The business judgment rule affords protection to the business decisions of directors, including the decision to institute litigation, because directors are presumed to act in the best interests of the corporation." *Harhen v. Brown*, 431 Mass. 838, 845 (2000).

Here, Plaintiffs have failed to rebut the presumption that the DRC's decision to reject the shareholders' demands was made in good faith, after a reasonable inquiry. The Report is logical, detailed, and based on an extensive review of documents and witness interviews. Its conclusion is based on a reasonable view of the facts and legal standards — *i.e.*: 1) that Pegasystems had valid defenses to the Appian Case, which supported the chronology of the disclosure decisions, and 2) that where the competitive intelligence against Appian was effectively within industry norms and did not include trade secret thefts or misappropriation, Pegasystems officers, management, and directors did not engage in a bad faith breach of their fiduciary duties in either permitting such conduct, or failing to properly surveil it or discover it. That the DRC directed Pegasystems to enhance its surveillance and training related to competitive intelligence is not evidence of the DRC's lack of good faith.

Plaintiffs' filings rely heavily on the Appian Case, the testimony presented therein, and its \$2 billion verdict, to support their premise that an illegal "corporate espionage scheme" occurred. However, the verdict has little persuasive or rebuttal value following the Appeals Court decision vacating it. In light of the court's extensive discussion about key evidence Pegasystems was wrongly prevented from introducing, and the erroneous jury instruction given on causation, there is valid reason to doubt that Appian will recover anything close to the

magnitude of damages in the vacated jury verdict, if it prevails upon any retrial. See Report at 66, citing *Pegasystems Inc.*, 81 Va. App. at 477, 487-488, 492, 496-497. That the case is presently pending before the Virginia Supreme Court adds additional uncertainty. Also, in 2024, the SEC chose not to recommend an enforcement action against Pegasystems, after having gathered information about how it handled its accounting for the Appian Case. In this posture, the facts Plaintiffs draw from the Appian case highlight only that a legal dispute exists — they do not overcome the presumption that the DRC acted in good faith on their reasonable view of the law and facts. See note 8.

The arguments Plaintiffs raise can be addressed summarily. The DRC's choice not to interview Petronio, or another individual involved in the gathering of the competitive intelligence, was reasonable given the trial testimony available from the Appian Case. Plaintiffs also fail to explain how this additional testimony would have changed the results of the investigation so as to serve as a rebuttal to the DRC's good faith demand refusal. The same is true as to the DRC's citation to unsworn testimony.

In sum, where the DRC reasonably viewed the underlying facts about the competitive intelligence gathered as not establishing misconduct or oversight failures, particularly to the degree required 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. The motion to dismiss therefore must be allowed.<sup>10</sup>


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<sup>10</sup> The standard of review for a motion under § 7.44 is unusual for a judge, and no doubt frustrating for plaintiffs, because the typical adversary process is displaced by a different process—namely: a subset of defendants evaluates the plaintiffs' claims to determine whether bringing the claims is in the corporation's best interests, and *their* determination is reviewed by the court, not *de novo* or on "the merits," but through the lens of whether the decision-makers were independent and acted in good faith. Unusual or not, the Legislature's decision is rooted in the derivative nature of the claims that plaintiff shareholders seek to bring—claims on behalf of the corporation. Although it may be rare (or unimaginable) for a special committee of directors to recommend derivative litigation brought by outsiders, the court's review of independence and good faith safeguards against a corporation's unbridled ability to avoid derivative litigation.

**ORDER**

For the foregoing reasons, Defendants' motions to dismiss are **ALLOWED**.

**So ordered.**



Christopher K. Barry-Smith  
Associate Justice, Superior Court

DATE: September 30, 2025

# Exhibit N

**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**

**STIPULATION OF SETTLEMENT**

\_\_\_\_\_  
<sup>1</sup> Ray Gerber.

<sup>2</sup> Peter Gyenes, Richard Jones, Christopher Lafond, Dianne Ledingham, Sharon Rowlands, Larry Weber, Leon Trefler, Don Schuerman, Kerim Akgonul, and Benjamin Baril. Pegasystems Inc. is named as a nominal defendant.

<sup>3</sup> Robert Garfield.

<sup>4</sup> Peter Gyenes, Richard Jones, Christopher Lafond, Dianne Ledingham, Sharon Rowlands, Larry Weber, Leon Trefler, Don Schuerman, Kerim Akgonul, Benjamin Baril, and Kenneth Stillwell. Pegasystems Inc. is named as a nominal defendant.

## **I. INTRODUCTION**

This Stipulation of Settlement, dated February 9, 2026 (the “Stipulation”), sets forth the terms and conditions of the settlement of the shareholder derivative actions captioned *Dwyer et al. v. Trefler et al.*, Civ. No. 24-1734-BLS1, pending in Suffolk County Superior Court (the “State Court”), and any appeals thereof; and *Larkin et al. v. Trefler et al.*, No. 1:25-cv-10303-WGY, pending in the U.S. District Court for the District of Massachusetts (together, the “Actions”). This Stipulation is intended to fully, finally, and forever resolve, discharge, and settle the Actions and the Released Claims (defined below), subject to the approval of the Court and the terms and conditions set forth in this Stipulation.

## **II. BACKGROUND**

### **1. The Demand Review Committee**

Beginning in March 2023, the Board of Directors (the “Board”) of Pegasystems Inc. (“Pegasystems” or the “Company”) received demand letters from shareholders of Pegasystems, pursuant to Section 7.42 of the Massachusetts Business Corporation Act, requesting that the Board investigate (and potentially initiate litigation on behalf of Pegasystems concerning) potential breaches of fiduciary duties, securities law violations, and/or other alleged wrongdoing related to purported misconduct by Pegasystems senior employees, officers, and directors in relation to the claims asserted in, and the events arising from, the Virginia Litigation (defined below) (collectively, the “Demand Letters”). On April 12, 2023, the Board (other than Defendant Alan Trefler (“A. Trefler”), who recused himself), formed a Demand Review Committee (defined below and sometimes referred to herein as the “DRC”), comprised of Pegasystems directors Christopher Lafond (“Lafond”), Dianne Ledingham (“Ledingham”), and Sharon Rowlands (“Rowlands”) to, among other things, review, analyze, and investigate the matters raised in the Demand Letters and

delegated to the Demand Review Committee the full and exclusive authority of the Board to determine in good faith what actions (if any) were reasonably believed to be appropriate under similar circumstances and reasonably believed to be in the best interests of the Company in response to the Demand Letters.

The Demand Review Committee, with the assistance of independent legal counsel, conducted an investigation of the allegations raised in the Demand Letters. On October 7, 2024, the Demand Review Committee 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 against any of the challenged directors and officers with respect to the matters raised in the Demand Letters and that there are no valid claims against them.

## **2. The Federal Derivative Litigation**

On November 21, 2022, and April 28, 2023, respectively, Plaintiffs Mary Larkin (“Larkin”) and Dag Sagfors (“Sagfors”) each filed separate, substantially similar shareholder derivative lawsuits in the United States District Court for the District of Massachusetts (the “Federal Court”) against Defendants Peter Gyenes (“Gyenes”), Richard Jones (“Jones”), Lafond, Ledingham, Rowlands, A. Trefler, Larry Weber (“Weber”), and Kenneth Stillwell (“Stillwell”), on behalf of nominal defendant Pegasystems under the captions *Larkin v. Gyenes et al.*, No. 22-cv-11985-WGY (D. Mass.) (the “Original *Larkin* Action”) and *Sagfors v. Gyenes et al.*, No. 23-cv-10933-WGY (D. Mass.) (the “*Sagfors* Action”), alleging breach of fiduciary duty and other claims relating to the claims asserted in, and the events arising from, the Virginia Litigation. On March 24, 2023, Larkin sent a written litigation demand to the Board pursuant to Section 7.42 of the Act. Sagfors sent a substantially similar demand letter shortly thereafter. The Federal Court consolidated the Original *Larkin* Action and the *Sagfors* Action on May 17, 2023. Thereafter, 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 the DRC's issuance of the DRC Report in October 2024, the defendants in the consolidated action moved to dismiss the Original *Larkin* Action and the *Sagfors* Action, arguing that the actions were prematurely filed because neither plaintiff made a pre-suit demand on Pegasystems's Board until after filing their respective actions, among other bases for dismissal. Pursuant to an assented-to motion for voluntary dismissal, the Federal Court dismissed the consolidated action on December 18, 2024.

On February 7, 2025, plaintiffs Larkin and Sagfors jointly filed a shareholder derivative lawsuit in Federal Court against Defendants (defined below) under the caption *Larkin et al. v. Trefler et al.*, No. 25-cv-10303-WGY (D. Mass.) (the "Federal Derivative Action"). The complaint in the Federal Derivative Action asserts claims for breach of fiduciary duty and unjust enrichment under Massachusetts law, and violations of Section 10(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), relating to, among other things, (i) the approximately \$2 billion verdict in the Virginia Litigation, which has since been vacated by the Virginia Court of Appeals and Virginia Supreme Court; (ii) the conduct alleged in the Virginia Litigation; and (iii) the settlement of the securities class action entitled *In re Pegasystems Inc. Securities Litigation*, No. 22-cv-11220-WGY (D. Mass.) (the "Class Action").

The DRC, on behalf of the Company, and all defendants in the Federal Derivative Action moved to dismiss the complaint on April 28, 2025. On June 6, 2025, Plaintiffs John Dwyer ("Dwyer"), Ray Gerber ("Gerber"), Jayne Birch ("Birch"), and Robert Garfield ("Garfield") moved to intervene in and to stay the Federal Derivative Action pending the resolution of State Derivative Action (defined below). Plaintiffs Larkin and Sagfors filed an opposition to the motions

to dismiss on June 9, 2025, and to the intervention motion on June 20, 2025. United States District Judge William G. Young (“Judge Young”) held a hearing on July 21, 2025, to address the intervention motion and the motions to dismiss. Following argument, Judge Young took the motions under advisement. On August 21, 2025, Plaintiffs Larkin and Sagfors filed a motion for limited additional discovery. Defendants filed an opposition to that motion on September 4, 2025.

### **3. State Derivative Litigation**

By letter dated February 6, 2023, Plaintiff Birch sent an inspection demand to Pegasystems pursuant to Mass. Gen. L. ch. 156D, § 16.02 (“Section 16.02”), demanding the right to inspect certain corporate books and records related to the facts giving rise to the Virginia Litigation. By letter dated April 18, 2023, Plaintiff Garfield sent a substantially similar books and records inspection demand to Pegasystems pursuant to Section 16.02. 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 the State Court against Defendants Gyenes, Jones, Lafond, Ledingham, Rowlands, A. Trefler, Weber, and nominal defendant Pegasystems, under the caption *Dwyer et al. v. Trefler et al.*, No. 2484CV01734-BLS-1 (Mass. Sup. Ct.) (the “*Dwyer* Action”). The complaint in the *Dwyer* Action alleges that Defendants breached their fiduciary duties under Massachusetts law in connection with the claims asserted in, and the events arising from, the Virginia Litigation. It alleges damages arising from, among other things, (i) the approximately \$2 billion verdict in the Virginia Litigation, which has since been vacated; (ii) the settlement of the Class Action; and (iii) litigation costs from various other proceedings. On November 22, 2024, Plaintiffs Birch and Garfield filed a shareholder derivative lawsuit in the State Court against Defendants, Douglas Kim (“Kim”), and

John Petronio (“Petronio”) under the caption *Birch et al v. Trefler et al.*, No. 2484CV03076-BLS-1 (Mass. Sup. Ct.) (the “*Birch* Action”), asserting substantially similar claims to those in the *Dwyer* Action.

On February 12, 2025, the *Dwyer* Action and *Birch* Action were consolidated by stipulation of the parties (the “State Derivative Action”). On March 14, 2025, Plaintiffs Dwyer, Gerber, Birch, and Garfield jointly filed a consolidated amended complaint against Defendants in the State Derivative Action.<sup>5</sup> The consolidated amended complaint in the State Derivative Action alleges that Defendants breached their fiduciary duties in connection with, among other things, (i) the approximately \$2 billion verdict in the Virginia Litigation, which has since been vacated; (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 consolidated amended complaint in the State Derivative Action, and, after briefing by the parties, Associate Justice Christopher K. Barry-Smith held a hearing on Defendants’ motions on September 4, 2025.

On October 2, 2025, the State Court granted Defendants’ motions to dismiss.

#### **4. The Status of Proceedings**

Plaintiffs, the DRC, and Defendants in the Federal Derivative Action jointly notified the Federal Court on October 14, 2025 that the DRC’s and Defendants’ motions to dismiss in the State Derivative Action had been granted. The parties to the Federal Derivative Action further proposed that the Federal Court refrain from issuing a decision on the motions to dismiss pending a joint submission by the parties of their respective positions on the impact of the dismissal of the State

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<sup>5</sup> Kim and Petronio were not named as defendants in the consolidated amended complaint in the State Derivative Litigation.

Derivative Action on the Federal Derivative Action within thirty (30) days of the entry of a final judgment of dismissal in the State Derivative Action. On December 17, 2025, Judge Young entered an order for closure in the Federal Derivative Action. On January 13, 2026, a final judgment of dismissal was entered in the State Derivative Action and was docketed on January 14, 2026.

### **III. DENIALS OF WRONGDOING & LIABILITY**

Throughout the course of the Actions and in this Stipulation, Defendants expressly have denied, and continue to deny, any and all of the claims alleged in the Actions, including any and all allegations of fault, negligence, liability, wrongdoing, or damages whatsoever. Without limiting the foregoing in any way, Defendants expressly have denied, and continue to deny, each and all of the claims and allegations by Plaintiffs in the Actions, including claims that Defendants have made any misstatements or materially misleading omissions or committed any breach of fiduciary duty, violation of law, or other wrongdoing. Defendants expressly have denied, and continue to deny, that they have committed any wrongdoing or violations of law or statutory duty as alleged in any complaint in the Actions or that could have been alleged in the Actions, and Defendants maintain that their conduct was at all times proper and in compliance with applicable provisions of law. Defendants also expressly have denied, and continue to deny, that any Defendant breached their fiduciary duties, was unjustly enriched, or misappropriated trade secrets. Defendants maintain that each member of the DRC was an independent and disinterested director who was appointed to the DRC by a majority vote of independent directors present at a meeting of the Board, that the DRC's investigation was reasonable and was conducted in good faith, and that the DRC reached in good faith its conclusion that the maintenance of a derivative proceeding is not in the best interests of Pegasystems. Defendants maintain that they have meritorious defenses to all claims alleged in the Actions.

As set forth below, neither the Settlement nor any of the terms of this Stipulation shall be construed or deemed to be evidence of or constitute an admission, concession, or finding of any fault, negligence, liability, wrongdoing, or damage whatsoever, or any infirmity in the defenses that Defendants have, or could have, asserted. Defendants and Pegasystems are entering into this Stipulation solely to eliminate the distraction, burden, and expense of continued litigation of the Actions. Defendants have determined that it is desirable and beneficial to them that the Actions be settled in the manner and upon the terms and conditions set forth in this Stipulation.

#### **IV. PLAINTIFFS' CLAIMS AND THE BENEFITS OF SETTLEMENT**

Plaintiffs and Plaintiffs' Counsel believe that the claims asserted in their respective Actions have merit. However, Plaintiffs and Plaintiffs' Counsel recognize and acknowledge the expense and length of continued proceedings necessary to prosecute their respective Actions past motions to dismiss, through discovery, summary judgment, and trial, as well as through appeals. Plaintiffs and Plaintiffs' Counsel also have taken into account the uncertain outcome and the risks of any litigation, especially in complex actions such as the Actions, as well as the difficulties and delays inherent in the Actions. Plaintiffs and Plaintiffs' Counsel also are mindful of the inherent problems of proof under, and possible defenses to, the breaches of fiduciary duty and violations of law asserted in the Actions. Plaintiffs and Plaintiffs' Counsel believe that the Settlement set forth in this Stipulation confers substantial value and benefits upon the Company and its non-insider shareholders. Based on their own investigation and evaluation, Plaintiffs and Plaintiffs' Counsel have determined that the Settlement set forth in this Stipulation is in the best interests of Plaintiffs, Pegasystems, and its non-insider shareholders.

## V. TERMS OF THE STIPULATION AND AGREEMENT OF SETTLEMENT

NOW, THEREFORE, without any concession by Plaintiffs or Plaintiffs' Counsel that the Actions lack merit, and without any concession by Defendants of any liability, wrongdoing, fault, damages, or lack of merit in the defenses asserted, IT IS HEREBY STIPULATED AND AGREED by and among Plaintiffs (on behalf of themselves and derivatively on behalf of Pegasystems) and Defendants, by and through their respective counsel, that, subject to the approval of the Court pursuant to Rule 23.1 of the Massachusetts Rules of Civil Procedure, in consideration of the benefits flowing to the Settling Parties from the Settlement, the Actions and the Released Claims shall be finally, fully, and forever compromised, settled, and released, and the Actions shall be dismissed with prejudice upon and subject to the terms and conditions of this Stipulation, as follows:

### 1. Definitions

1.1 "Actions" means the actions captioned *Larkin et al. v. Trefler et al.*, No. 1:25-cv-10303-WGY (D. Mass.) and *Dwyer et al. v. Trefler et al.*, Civ. No. 24-1734-BLS1 (Mass. Sup. Ct.) and any appeals thereof.

1.2 "Beneficial Owner" means "beneficial owner" as defined in Rule 16a-1(a)(2) promulgated under the Securities Exchange Act of 1934, as amended.

1.3 "Claims" means claims and causes of action of every nature and description, whether known claims or Unknown Claims, whether arising under state, federal, common, or foreign law.

1.4 "Complaints" means the operative complaints in the Actions.

1.5 "Court" means the Suffolk County Superior Court.

1.6 "Current Pegasystems Shareholders" means all record and Beneficial Owners of Pegasystems common stock as of the Record Date (as defined in ¶ 2.3 of this Stipulation).

1.7 “Defendants” means the Individual Defendants and nominal defendant Pegasystems.

1.8 “Defendants’ Counsel” means any counsel who have appeared on behalf of Defendants in the Actions or are otherwise listed as signatories to this Stipulation.

1.9 “Demand Review Committee” or “DRC” means the committee created by the Pegasystems Board of Directors on April 12, 2023.

1.10 “DRC Report” means the Report the Demand Review Committee of the Pegasystems Board of Directors on its Investigation of Confidential Demand Letters, issued on October 7, 2024.

1.11 “Effective Date,” or the date upon which this Settlement becomes “Effective,” means the first date by which all of the events and conditions specified in ¶ 6.1 of this Stipulation have been met and have occurred or have been waived.

1.12 “Excluded Holder” means the Individual Defendants, their Immediate Family Members, and any entity of which the Individual Defendants or their Immediate Family Members is the Beneficial Owner, except for charitable foundations and non-profit organizations.

1.13 “Fee and Expense Application” means an omnibus application before this Court, on behalf of all Plaintiffs’ Counsel, for a Fee and Expense Award.

1.14 “Fee and Expense Award” means attorneys’ fees and expenses to be paid to Plaintiffs’ Counsel, as approved by the Court in connection with the Settlement.

1.15 “Final,” with respect to the Court’s Judgment or any other Court order, means the later of: (i) the expiration of the time for the filing or noticing of an appeal or motion for re-argument or rehearing from the Judgment or Court order without such appeal or motion having been made; (ii) the date of final affirmance of the Judgment or Court order on any appeal, re-

argument, or rehearing; or (iii) the final dismissal of any appeal from the Judgment or Court order and the time for any reconsideration or further appellate review has passed. Any appeal or proceeding seeking subsequent judicial review of any order regarding attorneys' fees, costs, or expenses shall not delay, affect, or preclude the time set forth above for the Judgment to become Final, or otherwise preclude the Judgment from becoming Final.

1.16 "Immediate Family Members" means family members of an Individual Defendant who reside in the Individual Defendant's household or who are financially dependent upon the Individual Defendant.

1.17 "Individual Defendants" means Alan Trefler, Peter Gyenes, Richard Jones, Christopher Lafond, Dianne Ledingham, Sharon Rowlands, Larry Weber, Kenneth Stillwell, Leon Trefler, Don Schuerman, Kerim Akgonul, and Benjamin Baril.

1.18 "Judgment" means the Final Judgment and Order of Dismissal with Prejudice to be rendered by the Court, substantially in the form attached hereto as Exhibit D, as well as any form of Final Judgment that may be entered by the Court in a form other than the form attached hereto as Exhibit D and where none of the Settling Parties elects to terminate this Settlement by reason of such variance, consistent with the terms of this Stipulation.

1.19 "Pegasystems" or the "Company" means nominal defendant Pegasystems Inc.

1.20 "Plaintiffs" means Mary Larkin, Dag Sagfors, John Dwyer, Ray Gerber, Jayne Birch, Robert Garfield, and George Fielding Brenner.

1.21 "Plaintiffs' Counsel" means Bernstein Litowitz Berger & Grossmann LLP, Equity Litigation Group LLP, Cohen Milstein Sellers & Toll PLLC, Bronstein, Gewirtz & Grossman LLC, Shuman, Glenn & Stecker, Greenwich Legal Associates, LLC, Bragar Eigel & Squire, P.C., Griffin

Humphries LLC, Andrews Devalerio LLP, Rigrotsky Law, P.A., Matorin Law Office LLC, Levi & Korsinsky, LLP, and Bottini & Bottini, Inc.

1.22 “Released Claims” means, collectively, the Released Defendants Claims and the Released Plaintiffs Claims.

1.23 “Released Defendants Claims” means any and all Claims that arise out of or relate in any way to the institution, prosecution, or settlement of the Actions, except for claims relating to the enforcement of the Settlement.

1.24 “Released Defendants Persons” means Defendants in the Complaints, Pegasystems, and any entity in which Pegasystems has a controlling interest, as well as their respective current and former parents, affiliates, subsidiaries, officers, directors, agents, successors, predecessors, assigns, assignees, partnerships, partners, committees, joint ventures, trustees, trusts, employees, immediate family members, heirs, insurers and reinsurers (in their capacities as such), consultants, experts, and attorneys (in their capacities as such). Notwithstanding the foregoing, excluded from “Released Defendants Persons” are any former Pegasystems employees who, between their departure from Pegasystems and the Effective Date, were employed by, consulted for, or otherwise performed services for Appian Corporation.

1.25 “Released Plaintiffs Claims” means (i) any and all derivative Claims that Plaintiffs asserted in the Demand Letters or the Complaints and (ii) any and all Claims that Plaintiffs could have asserted derivatively on behalf of the Company in the Demand Letters or the Complaints or in any other forum that are based on, arise out of, or relate to the allegations or circumstances set forth in the Demand Letters or the Complaints, except for claims relating to the enforcement of the Settlement. For the avoidance of doubt, the Released Plaintiffs Claims do not cover, include, or release any direct Claims of any current or former shareholder of Pegasystems (other than

Plaintiffs), including without limitation any claims asserted under the federal securities laws, including without limitation the claims asserted in *In re Pegasystems Inc. Securities Litigation*, No. 22-cv-11220-WGY (D. Mass.), *PS Lit Recovery, LLC v. Pegasystems Inc. et al.*, 1:24-cv-12996 (D. Mass.), or *Eminence Fund Long Master, Ltd. et al v. Pegasystems Inc. et al.*, 1:24-cv-12999 (D. Mass.).

1.26 “Released Plaintiffs Persons” means Plaintiffs, and any entity in which any Plaintiff has a controlling interest, as well as their respective current and former parents, affiliates, subsidiaries, officers, directors, agents, successors, predecessors, assigns, assignees, partnerships, partners, committees, joint ventures, trustees, trusts, employees, immediate family members, heirs, insurers and reinsurers (in their capacities as such), consultants, experts, and attorneys (in their capacities as such).

1.27 “Settlement” means the resolution of the Actions in accordance with the terms and provisions of this Stipulation.

1.28 “Settlement Hearing” means the hearing set by the Court to consider final approval of the Settlement.

1.29 “Settling Parties” means, collectively, Defendants and Plaintiffs (on behalf of themselves and derivatively on behalf of Pegasystems).

1.30 “Service Award” means an award to each Plaintiff for initiating, prosecuting, and settling the Actions.

1.31 “Unknown Claims” means (i) any Released Plaintiffs Claim which Pegasystems or any of the Plaintiffs or Current Pegasystems Shareholders does not know or suspect to exist in his, her, or its favor at the time of the release of the Released Defendants Persons, including claims which, if known by him, her, or it, might have affected his, her, or its settlement with and release

of the Released Defendants Persons, or might have affected his, her, or its decision not to object to this Settlement; and (ii) any Released Defendants Claim which Pegasystems or any of the Individual Defendants does not know or suspect to exist in his, her, or its favor at the time of the release of the Released Plaintiffs Persons, including claims which, if known by him, her, or it, might have affected his, her, or its settlement with and release of the Released Plaintiffs Persons, or might have affected his, her, or its decision not to object to this Settlement. With respect to any and all Released Claims, the Settling Parties stipulate and agree that, upon the Effective Date, Plaintiffs, Pegasystems, and the Individual Defendants shall expressly waive and each of the Current Pegasystems Shareholders shall be deemed to have, and by operation of the Judgment shall have, expressly waived, the provisions, rights, and benefits of California Civil Code section 1542, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Upon the Effective Date, Plaintiffs, Pegasystems, and the Individual Defendants shall expressly waive, and each of the Current Pegasystems Shareholders shall be deemed to have, and by operation of the Judgment shall have, expressly waived any and all provisions, rights and benefits conferred by any law of any jurisdiction or any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to California Civil Code section 1542. Each of Plaintiffs, Pegasystems, the Individual Defendants, and Current Pegasystems Shareholders may hereafter discover facts in addition to or different from those which he, she, or it now knows or believes to be true with respect to the subject matter of the Released Claims, but, upon the Effective Date, (i) each Plaintiff and Pegasystems shall expressly settle and release, and each Current Pegasystems Shareholder, shall be deemed to have, and by operation of the Judgment shall

have, fully, finally, and forever settled and released, any and all Released Plaintiffs Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future, without regard to the subsequent discovery or existence of such different or additional facts; and (ii) each Defendant and Pegasystems shall expressly settle and release any and all Released Defendants Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future, without regard to the subsequent discovery or existence of such different or additional facts. The Settling Parties acknowledge, and the Current Pegasystems Shareholders shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver was separately bargained for and is a key element of the Settlement of which this release is a part.

1.32 “Virginia Litigation” refers to the action entitled *Appian Corp. v. Pegasystems Inc., et al.*, Civ. No. 2020-07216 (Cir. Ct. Fairfax Cnty., Va.) and the appellate actions *Pegasystems Inc. v. Appian Corp.*, No. 1399-22-4 (Va. Ct. App.) and *Appian Corporation v. Pegasystems Inc., et al.*, No. 240736 (Va.).

## **2. The Settlement Consideration**

2.1 The obligations incurred pursuant to the Stipulation are: (a) subject to approval by the Court and entry of the Judgment, reflecting such approval, becoming Final; and (b) in full and final disposition of the Actions, and any and all Released Claims upon and subject to the terms and conditions set forth herein.

### **a. The Special Dividend**

2.2 In full and final settlement of the claims asserted in the Actions and in consideration of the releases specified in ¶¶ 4.1-4.2 below, the Board will declare a special cash dividend in an

amount of \$7 million to be funded by the Company within 30 days after the Judgment becomes Final (the “Funding Date”) and distributed to the Company’s shareholders other than the Excluded Holders in accordance with the terms specified in ¶ 2.3 below (the “Special Dividend”). Defendants agree that the Demand Letters, pendency of the Actions, and the Settlement were the cause of the Board’s consideration and declaration of the Special Dividend.

2.3 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. For the avoidance of doubt, 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 the shareholders’ relative ownership of the Company’s common stock on the Record Date vis-à-vis other shareholders. 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.

2.4 The Company shall assume all administrative responsibility for and will pay any and all costs and expenses associated with the issuance and delivery of the Special Dividend, regardless of whether the Court approves the Settlement or the Effective Date fails to occur. If the Court does not approve the Settlement or the Effective Date fails to occur, the costs and expenses paid by the Company associated with the issuance and delivery of the Special Dividend will be limited to costs and expenses incurred in connection with administrative preparations to issue a dividend that is ultimately not paid. Neither Plaintiffs nor Plaintiffs’ Counsel shall be responsible for any costs or expenses associated with the issuance or delivery of the Special Dividend.

## **b. Corporate Governance Reforms**

2.5 Defendants and Pegasystems acknowledge that the Actions and the Demand Letters played a material causal role in the adoption of certain governance reforms (the “Reforms”) by the Board and Pegasystems, including:

- the decision to appoint a new independent director to the Board (who ultimately was appointed in January 2025);
- the creation of a Risk Sub-Committee of the Board’s Audit Committee, as described on pages 112-13 of the DRC Report, which will be in place for at least five (5) years from the date of its inception; and
- enhancements to the Management-Level Compliance and Risk Governing Committee, as described on page 113 of the DRC Report, which committee and enhancements will be in place for at least five (5) years from the date of adoption.

For the avoidance of doubt, if, in the exercise of its good faith business judgment, following consultation with outside legal counsel, the Board determines that a change to any provision or provisions of the Reforms is required by law or regulation (“Applicable Law”), or that the maintenance of any provision of the Reforms would be inconsistent with the Board’s fiduciary duties under Massachusetts law, the Board may modify or repeal such provisions as necessary and appropriate to conform to Applicable Law or the Board’s fiduciary duties under Massachusetts law.

## **3. Preliminary Approval Order and Settlement**

3.1 Promptly after execution of this Stipulation, Plaintiffs’ Counsel shall submit this Stipulation together with its Exhibits to the Court and shall apply for entry of the Preliminary Approval Order, substantially in the form of Exhibit A attached hereto, requesting, *inter alia*, the preliminary approval of the Settlement set forth in this Stipulation and approval for (i) publication of the Summary Notice, substantially in the form of Exhibit B attached hereto, on two separate occasions in the national edition of *The Wall Street Journal* and on one occasion via BusinessWire,

both containing a link to the “Investor Relations” section of Pegasystems’ website, <https://www.pegasystems.com/about/investors>; and (ii) posting of the long-form Notice, substantially in the form of Exhibit C attached hereto, and this Stipulation on the “Investor Relations” section of Pegasystems’ website, <https://www.pegasystems.com/about/investors>.

3.2 Pegasystems shall be responsible for providing notice of the Settlement, regardless of the form or manner of notice ordered by the Court. Pegasystems shall assume all administrative responsibility for and will pay any and all costs and expenses associated with provided notice of the Settlement, regardless of whether the Court approves the Settlement or the Effective Date fails to occur. Neither Plaintiffs nor Plaintiffs’ Counsel shall be responsible for any costs and expenses associated with providing notice of the Settlement.

3.3 Plaintiffs’ Counsel shall request the Court hold the Settlement Hearing and approve the Settlement as set forth herein. At the Settlement Hearing, Plaintiffs’ Counsel also will request that the Court approve the Fee and Expense Application. The Settlement is expressly conditioned upon, among other things, the entry of a Judgment, substantially in the form attached hereto as Exhibit D.

3.4 The Settling Parties shall notify the Federal Court of the Settlement before Plaintiffs’ Counsel submits this Stipulation together with its Exhibits to the Court and applies for entry of the Preliminary Approval Order, requesting, *inter alia*, the preliminary approval of the Settlement set forth in this Stipulation.

#### **4. Releases**

4.1 Upon the Effective Date, Plaintiffs (acting on their own behalf and derivatively on behalf of Pegasystems), Pegasystems, and each of the Current Pegasystems Shareholders shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged the Released Plaintiffs Claims against the Released Defendants

Persons, and shall forever and permanently be barred and enjoined from filing, commencing, instituting, prosecuting, continuing, asserting, intervening in, maintaining, or enforcing any action or other proceeding in any forum (including, but not limited to, any foreign, federal, state or local court of law or equity, arbitration tribunal, or administrative forum), asserting any of the Released Plaintiffs Claims against any and all of the Released Defendants Persons. Nothing herein shall in any way impair or restrict the rights of any Settling Party to enforce the terms of this Stipulation.

4.2 Upon the Effective Date, Pegasystems and the Individual Defendants shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged the Released Defendants Claims against the Released Plaintiffs Persons, and shall forever and permanently be barred and enjoined from filing, commencing, instituting, prosecuting, continuing, asserting, intervening in, maintaining, or enforcing any action or other proceeding in any forum (including, but not limited to, any foreign, federal, state or local court of law or equity, arbitration tribunal, or administrative forum), asserting any of the Released Defendants Claims against any and all of the Released Plaintiffs Persons. Nothing herein shall in any way impair or restrict the rights of any Settling Party to enforce the terms of this Stipulation.

## **5. Plaintiffs' Counsel's Attorneys' Fees and Expenses**

5.1 Subsequent to the negotiation of the settlement consideration described herein, Plaintiffs' Counsel and Defendants' Counsel negotiated the attorneys' fees and expenses that Pegasystems would pay to Plaintiffs' Counsel. Defendants acknowledge and agree that Plaintiffs' Counsel is entitled to a fee and expense award, and Pegasystems agrees to pay two million seven hundred fifty thousand dollars (\$2,750,000) in attorneys' fees and expenses, inclusive of a Service Award to each Plaintiff, as negotiated in good faith based on the material benefit conferred on Pegasystems and its public shareholders, which amount shall be subject to the Court's approval.

5.2 The amount of attorneys' fees and expenses awarded by the Court is within the sole discretion of the Court. The Fee and Expense Award shall be paid to an account designated by Bernstein Litowitz Berger & Grossmann LLP ("BLB&G") and Bragar Eigel & Squire, P.C. ("BES") within twenty (20) business days after (i) the Court executes the Judgment and an order awarding such fees and expenses and (ii) Pegasystems receives an executed IRS Form W-9 and wire transfer instructions, notwithstanding the existence of any timely filed objections thereto or to the Settlement, or potential for appeal therefrom, or collateral attack on the Settlement or any part thereof. BLB&G and BES shall thereafter be solely responsible for allocating the attorneys' fees among Plaintiffs' Counsel and allocating any court-approved Service Awards to Plaintiffs.

5.3 In the event that the Effective Date does not occur, or the Judgment or the order making the Fee and Expense Award is reversed or modified, or this Stipulation is canceled or terminated for any other reason, and such reversal, modification, cancellation, or termination becomes Final and not subject to review, and in the event that the Fee and Expense Award has been paid to any extent, then BLB&G and BES, including its partners, and such other Plaintiffs' Counsel, including their law firms, partners, and stockholders, and Plaintiffs who have received any portion of the Fee and Expense Award shall, within twenty (20) business days from receiving notice from Defendants' Counsel or a Final judgment from a court of appropriate jurisdiction reversing or modifying the Judgment or Fee and Expense Award, refund to Pegasystems all such fees and expenses previously paid to them, plus interest thereon paid at the prevailing effective federal funds rate ("EFFR"), in an amount consistent with such reversal, modification, cancellation, or termination.

5.4 Any Fee and Expense Award awarded by the Court shall be paid solely by Pegasystems. The payment of the Fee and Expense Award pursuant to ¶ 5.1 and ¶ 5.2 hereof by

Pegasystems shall constitute final and complete payment for Plaintiffs' Counsel's attorneys' fees and for the reimbursement of expenses and costs that have been incurred, or will be incurred, in connection with the Actions. Except for Pegasystems, the Released Defendants Persons shall have no role in, responsibility for, and no obligation or liability whatsoever with respect to, any payment of attorneys' fees and expenses to Plaintiffs' Counsel or any other counsel or person who receives payment of a Special Dividend pursuant to the terms of this Settlement.

5.5 The Released Defendants Persons shall have no role in, responsibility for, and no obligation or liability whatsoever with respect to, the allocation among Plaintiffs' Counsel and any other person who may assert some claim thereto, of any Fee and Expense Award that the Court may make.

5.6 The Fee and Expense Award, as well as any Service Awards, are subject to the approval of the Court. Any order or proceeding relating solely to the Fee and Expense Award, or any appeal from any order relating thereto or reversal or modification thereof, shall have no effect on the Settlement and shall not operate to terminate or cancel this Stipulation or to affect or delay the Judgment approving this Stipulation becoming Final.

## **6. Conditions of Settlement, Effect of Disapproval, Cancellation, or Termination**

6.1 The Effective Date of this Stipulation shall be conditioned on the occurrence of all of the following events:

(a) the Court has entered the Preliminary Approval Order, substantially in the form of Exhibit A attached hereto;

(b) the Court has approved the Settlement, following notice and hearing;

(c) the Court has entered the Judgment, substantially in the form of Exhibit D attached hereto;

(d) the Actions have been dismissed with prejudice, which dismissals have become Final;

(e) the Judgment has become Final; and

(f) the Board has declared the Special Dividend in accordance with the terms specified in ¶ 2.2 above and the Company has distributed the Special Dividend to Pegasystems shareholders in accordance with the terms specified in ¶ 2.3 above.

6.2 If any of the conditions specified in ¶ 6.1 above are not met, this Stipulation shall be canceled and terminated, subject to the obligations of the Plaintiffs in ¶ 6.3 below, unless Plaintiffs' Counsel and Defendants' Counsel mutually agree in writing to proceed with this Stipulation as modified.

6.3 Plaintiffs and Defendants shall have the right to terminate the Settlement and this Stipulation by providing written notice of their election to do so ("Termination Notice") to all other Settling Parties within thirty (30) calendar days of: (a) the Court's denial of preliminary approval of the Settlement and subsequent denial of preliminary approval after resubmission of documents addressing the Court's concerns; (b) the Court's refusal to approve this Stipulation in any material respect; (c) the Court's refusal to enter the Judgment in any material respect; (d) the entry of an order by the State Court refusing to dismiss the State Derivative Action with prejudice or an order by the Federal Court refusing to dismiss the Federal Derivative Action with prejudice; (e) the date upon which the Judgment is reversed or vacated or altered in any material respect following any appeal taken therefrom, or is successfully collaterally attacked in any material respect; or (f) the failure of the Effective Date to occur for any reason. For avoidance of doubt, no order of the Court or modification or reversal on appeal of any order of the Court concerning the amount of any Fee and Expense Award by the Court to Plaintiffs' Counsel or Service Award to Plaintiffs shall operate

to terminate or cancel this Stipulation or constitute grounds for cancellation or termination of the Stipulation.

6.4 If this Stipulation is terminated or canceled in accordance with its terms, the Judgment does not become Final, or the Effective Date otherwise fails to occur for any reason: (i) all Settling Parties shall be restored to their respective positions in the Actions that existed immediately prior to the date of execution of this Stipulation; (ii) all releases delivered in connection with this Stipulation shall be null and void, except as otherwise provided for in this Stipulation; (iii) any Fee and Expense Award paid to Plaintiffs' Counsel shall be repaid to Pegasystems within twenty (20) business days following notice that the Settlement has failed to become Effective; (iv) the terms and provisions of this Stipulation (other than those set forth in ¶¶ 1.1-1.32, 2.4, 3.2, 5.3, 6.2, 6.4, and 7.1 hereof) shall have no further force or effect with respect to the Settling Parties and shall not be used in the Actions or in any other proceeding for any purpose; and (v) all negotiations, proceedings, documents prepared, and statements made in connection herewith shall be without prejudice to the Settling Parties, shall not be deemed or construed to be an admission by one of the Settling Parties of any act, matter, or proposition, and shall not be used in any manner for any purpose (other than to enforce the terms remaining in effect) in the Action, or in any other action or proceeding.

6.5 No order of the Court, modification, or reversal on appeal of any order of the Court concerning the Fee and Expense Award to Plaintiffs' Counsel or any Service Awards awarded by the Court to Plaintiffs shall constitute grounds for cancellation or termination of the Stipulation, affect the enforceability of the Stipulation, or delay or preclude the Judgment from becoming Final.

## **7. No Admission of Wrongdoing**

7.1 Neither the Settlement, this Stipulation (whether or not consummated), including the Exhibits hereto, the negotiations resulting in this Stipulation and the Settlement, nor any

proceedings, communications, drafts, documents, or agreements pursuant concerning this Stipulation or the Settlement (including any arguments proffered in connection therewith):

(a) shall be offered or received against or to the prejudice of any Released Defendants Persons as evidence of or construed as or deemed to be evidence of any presumption, concession, finding, or admission by any Released Defendants Persons of the truth of any allegations by Plaintiffs or the validity of any claim that has been or could have been asserted in the Demand Letters, the Actions, and/or the Complaints, or the deficiency of any defense that has been or could have been asserted in the Actions or in any other litigation, including, but not limited to, litigation of the Released Plaintiffs Claims, or of any liability, damages, negligence, fault, omission, or wrongdoing of any kind of any of the Released Defendants Persons or in any way referred to for any other reason as against any of the Released Defendants Persons, in any civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation;

(b) shall be offered or received against or to the prejudice of the Released Plaintiffs Persons as evidence that Plaintiffs' claims in any way lack merit or the validity of any affirmative defense that has been or could have been asserted in the Actions, including, but not limited to, litigation of the Released Plaintiffs Claims;

(c) shall be offered or received against or to the prejudice of any Released Defendants Persons as evidence of a presumption, concession, or admission of any fault, misrepresentation, scheme, or omission with respect to any statement or written document approved or made by any Released Defendants Persons, or against the Released Plaintiffs Persons as evidence of any infirmity in the claims of Plaintiffs;

(d) shall be offered or received against or to the prejudice of any Released Defendants Persons as evidence of a presumption, concession, or admission of any liability, damages, negligence, fault, omission, or wrongdoing, or shall be in any way referred to for any other reason as against any of the parties to this Stipulation, in any other civil, criminal, or administrative action or proceeding in any court, administrative agency, or other tribunal; provided, however, that if this Stipulation is approved by the Court, Defendants and the Released Defendants Persons may refer to it to effectuate the release granted them hereunder; or

(e) shall be construed against the Released Defendants Persons or the Released Plaintiffs Persons as evidence of a presumption, concession, or admission that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial or in any proceeding other than this Settlement.

## **8. Miscellaneous Provisions**

8.1 The Settling Parties: (a) acknowledge that it is their intent to consummate this Settlement; and (b) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Stipulation and to exercise their best efforts to accomplish the foregoing terms and conditions of this Stipulation.

8.2 The Settling Parties intend this Settlement to be a final and complete resolution of all disputes between them with respect to the Demand Letters and the Actions. The Settlement compromises all claims that were or are contested and shall not be deemed an admission by any Settling Party as to the merits of any claim or defense. The Settling Parties agree that the terms of the Settlement were negotiated in good faith by the Settling Parties and reflect a settlement that was reached voluntarily after consultation with competent legal counsel. The Settling Parties reserve their right to rebut, in a manner such Party determines appropriate, any contention made

in any public forum that the Actions were brought or defended in bad faith or without a reasonable basis.

8.3 Plaintiffs and Plaintiffs' Counsel, and the attorneys, staff, experts, and consultants assisting them in the Actions, agree that: (a) they will not intentionally assist or cooperate with any Person in the pursuit of private legal actions related to the subject matter of the Actions against Defendants and the other Released Defendants Persons; and (b) they will not intentionally assist or cooperate with any non-governmental person seeking to publicly disparage or economically harm Defendants and the other Released Defendants Persons with respect to any matter relating to the subject matter or the resolution of the Actions. Defendants and Defendants' Counsel, and the attorneys, staff, experts, and consultants assisting them in the Actions agree that they will not publicly disparage or economically harm any Plaintiff or Plaintiffs' Counsel with respect to any matter relating to the subject matter or resolution of the Actions.

8.4 Defendants may file this Stipulation and the Judgment in any other action that has been or may be brought against them in order to support injunctive relief, or a defense or counterclaim based on principles of res judicata, collateral estoppel, release, statute of limitations, statute of repose, good faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim, or to effectuate any liability protection under any applicable insurance policy. The Settling Parties may file this Stipulation and the Judgment in any action that may be brought to enforce the terms of this Stipulation and the Judgment.

8.5 The Settling Parties submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement, and the Court shall retain jurisdiction with respect to

implementation and enforcement of the terms of this Stipulation and matters related to the Settlement.

8.6 All agreements made and orders entered during the course of the Actions relating to the confidentiality of information shall survive this Stipulation.

8.7 All of the Exhibits to this Stipulation are material and integral parts hereof and are fully incorporated herein by this reference.

8.8 This Stipulation, along with its Exhibits, may be amended or modified only by a written instrument signed by or on behalf of the Settling Parties or their respective successors-in-interest.

8.9 This Stipulation and the Exhibits attached hereto constitute the entire agreement among the Settling Parties as to the subject matter hereof and supersede any prior or contemporaneous written or oral agreements or understandings between the Settling Parties. No representations, warranties, or inducements have been made to any party concerning this Stipulation or its Exhibits, other than the representations, warranties, and covenants contained and memorialized in such documents.

8.10 Except as otherwise provided herein, each party shall bear his, her, or its own fees and costs.

8.11 Each counsel or other person executing this Stipulation, its Exhibits, or any related Settlement document, on behalf of any Settling Party hereby warrants that such person has the full authority to do so, and that they have the authority to take appropriate action required or permitted to be taken pursuant to this Stipulation to effectuate its terms, without requiring additional consent, approval, or authorization of any other person, board, entity, tribunal, or other regulatory or governmental authority.

8.12 This Stipulation may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. A complete set of executed counterparts shall be filed with the Court. Signatures sent by facsimile or .pdf via e-mail shall be deemed originals.

8.13 All notices, requests, demands, claims, and other communications hereunder shall be in writing and shall be deemed duly given (i) when delivered personally to the recipient at the recipient's address of record as set forth below; (ii) one business day after being sent to the recipient by reputable overnight courier service (charges prepaid) at the recipient's address of record as set forth below; or (iii) when delivered to the recipient's email address of record as set forth below:

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8.14 Plaintiffs represent and warrant that none of Plaintiffs' claims or causes of action referred to in the Actions or this Stipulation has been assigned, encumbered, or in any manner transferred in whole or in part.

8.15 This Stipulation shall be binding upon, and inure to the benefit of, the successors, heirs, and assigns of the Settling Parties.

8.16 Any waiver of any of the terms of this Stipulation must be in writing, signed by the party against whom the waiver is sought to be enforced. The waiver by one Settling Party of any breach of this Stipulation by any other party shall not be deemed a waiver by any other Settling Party or a waiver of any other prior or subsequent breach of this Stipulation.

8.17 Pending the Court's approval of this Stipulation and its Exhibits, all proceedings in the Actions shall be stayed, except as may be necessary to implement the Settlement or comply with the terms of the Stipulation or other agreement of the Settling Parties. Plaintiffs shall be barred and enjoined from commencing or prosecuting any of the Released Plaintiffs Claims against any of the Defendants or the other Released Defendants Persons in any action or proceeding in any court or tribunal.

8.18 This Stipulation and its Exhibits shall be considered to have been negotiated, executed and delivered, and to be wholly performed, in the Commonwealth of Massachusetts and the rights and obligations of the parties to the Stipulation shall be construed and enforced in

accordance with, and governed by, the internal, substantive laws of the Commonwealth of Massachusetts without giving effect to its choice-of-law principles, except to the extent that federal law requires that federal law govern.

8.19 The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

8.20 This Stipulation shall not be construed more strictly against one party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the Settling Parties, it being recognized that it is the result of arm's-length negotiations between the Settling Parties and the Settling Parties have contributed substantially and materially to the preparation of this Stipulation.

8.21 Nothing in the Stipulation, or the negotiations relating thereto, is intended to or shall be deemed to constitute a waiver of any applicable privilege or immunity, including, without limitation, attorney-client privilege, joint defense privilege, or work product protection.

8.22 Unless otherwise provided, the Settling Parties may agree to reasonable extensions of time to carry out any of the provisions of this Stipulation without further order of the Court.

IN WITNESS WHEREOF, the parties hereto have caused the Stipulation to be executed, by their duly authorized attorneys, dated February 9, 2026.

/s/ Scott B. Luftglass

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