COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, S.S. **SUPERIOR COURT**

Civil No. 24-1734-BLS1

JOHN DWYER, & another[1]
Plaintiffs

vs.

ALAN TREFLER, & others[2]
Defendants

CONSOLIDATED WITH
Civil No. 24-3076-BLS1

JAYNE BIRCH, & another[3]
Plaintiffs

vs.

ALAN TREFLER, & others[4]
Defendants

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF DERIVATIVE SETTLEMENT

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[1] Ray Gerber.

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

[3] Robert Garfield.

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

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

I. INTRODUCTION

This stockholder derivative action is predicated on allegations that the Settling Defendants—certain current and former directors, officers, and employees of Pegasystems—took part or were complicit in alleged misappropriation of a competitor's trade secrets underlying the related Virginia Litigation,[7] where a $2 billion verdict against the Company was vacated on appeal, and the case has been remanded to the trial court for retrial.[8] The Settlement of these claims, which resulted from extensive, arm's-length negotiations among experienced and informed counsel, requires the Company to pay a $7 million special cash dividend directly to Pegasystems' public stockholders, excluding Defendants (the "Special Dividend"). Shareholders eligible to receive the special dividend are expected to receive $0.077 per share from the Settlement, which is more than 2.5x the Company's current dividend, which is paid quarterly. This payment sets the Settlement apart from most

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

[6] Unless otherwise noted, all capitalized terms herein have the same meaning as set forth in the Stipulation of Settlement, dated February 6, 2026 ("Stipulation" or "Stip."), *see* Dkt. 56, Ex. 1.

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

[8] The same events also gave rise to a related securities class action, which settled for $35 million. *In re Pegasystems Inc. Securities Litigation*, No. 1:22-cv-11220-WGY (D. Mass. Sept. 25, 2024) (the "Class Action"), Dkt. No. 165 (granting final approval of settlement).

derivative settlements, which typically secure only non-monetary benefits.[9] The Settlement also requires Pegasystems to maintain a series of meaningful corporate governance enhancements for five years, all of which were adopted after the Actions were filed and go to the heart of the alleged wrongdoing (the "Reforms"). The Reforms include the appointment of an independent director, the creation of a Risk Sub-Committee of the Board's Audit Committee, and enhancements to the Management-Level Compliance and Risk Governing Committee.[10] Defendants acknowledge Plaintiffs played a material causal role in the Board's adoption of the Reforms.[11]

While Plaintiffs and their counsel believe the derivative claims have merit, after evaluating the Demand Review Committee ("DRC")'s investigation and the Court's grant of Defendants' motions to dismiss, they concluded that the benefits of the Special Dividend and the Reforms exceed the potential benefits of continuing litigation. Indeed, the Settlement is an excellent result—not only because it confers substantial benefits on the Company and its stockholders, but also because it eliminates the substantial risks of further litigation, including the risk of zero recovery.

On April 16, 2026, the Court preliminarily approved the Settlement and approved the form and manner of notice to Pegasystems stockholders. Dkt. No. 59 (the "Preliminary Approval Order"). Thereafter, Pegasystems disseminated notice in accordance with the Preliminary Approval Order. *See* Declaration of Richard Speirs ("Speirs Decl."), ¶¶3-4. To date, Plaintiffs' counsel are not aware of any objections to the Settlement, *id.* ¶5, a strong indication that the Company's stockholders view

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

[10] Stip., ¶¶2.2-2.5.

[11] *Id.*

the Settlement as fair, reasonable, and adequate.[12] Accordingly, and for the additional reasons below, the Settlement merits final approval.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Factual Background

Pegasystems, a Massachusetts corporation headquartered in Waltham, Massachusetts, operates in the Business Process Management ("BPM") industry, providing customers a platform to build customized workflow-based applications. *See* Consolidated Complaint, Dkt. No. 37 ("Complaint"), ¶1. Plaintiffs alleged that the Officer Defendants resorted to illegal and unethical means to compete with Appian Corporation ("Appian"), which Plaintiffs allege is Pegasystems' primary competitor in the BPM industry, in breach of their fiduciary duties, which the Board failed to detect because it had abdicated its oversight obligations. *Id.*

According to the Complaint, beginning as early as 2012, the Officer Defendants directed Pegasystems to engage in a scheme to misappropriate and profit from Appian's trade secrets and confidential information in violation of Virginia law (the "Scheme"). *Id.,* ¶2. The Scheme allegedly involved Pega's hiring a third-party to assist in the theft, who was paid for his services through a middleman company. *Id.* Later and through 2021, Pegasystems employees allegedly used false identities to surreptitiously access free trials of Appian's proprietary software to collect nonpublic information that Pegasystems used to compete against Appian. *Id.* Defendants allegedly concealed the Scheme from stockholders for many years as well as the related Virginia Litigation that Appian filed against the Company in May 2020. *Id.* In that case, Appian alleged that Pegasystems had misappropriated its trade secrets, and, initially, obtained a judgment against Pegasystems for over $2

[12] Pursuant to the Court-approved notice, the deadline for any objections to the settlement is June 15, 2026.

billion. That judgment was reversed on appeal. *Id.* The case has since been remanded to the trial court.[13]

The members of the Board allegedly breached their fiduciary duties by failing to implement and monitor a system of corporate controls sufficient to oversee Pegasystems' intellectual property compliance and competitive intelligence activities. *Id.*, ¶4. According to Plaintiffs, the Director Defendants' lack of oversight of Pegasystems' competitive intelligence practices fostered a corporate culture that encouraged and protected illegal activity and unethical conduct in pursuit of profits. *Id.* Plaintiffs further alleged that the Director Defendants breached their fiduciary duties by failing to monitor and oversee the Company's public disclosures and ensure that those statements were accurate with respect to Pega's purported compliance with the law, its internal Code, and litigation risks. *Id.* ¶5. As a result of these alleged breaches of fiduciary duty, Pegasystems investors sued the Company, Defendant Alan Trefler, and Defendant Kenneth Stillwell for violations of the federal securities laws in the Class Action, a case that settled in September 2024 for $35 million. *Id*.

B. PROCEDURAL BACKGROUND

1. The Demands and Demand Review Committee

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

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

On April 12, 2023, the Board (excluding A. Trefler, who recused himself) formed the DRC comprised of Defendants Lafond, Ledingham, and Rowlands to, *inter alia*, review, analyze, and investigate the matters raised in the Demands. The Board delegated its full and exclusive authority to the DRC to determine what, if any, actions were reasonably believed to be appropriate and in the Company's best interests in response to the Demands. The DRC, aided by legal counsel, conducted an investigation of the allegations raised in the Demands. On October 7, 2024, the DRC issued a report (the "DRC Report") explaining that it unanimously determined that it would not be in the Company's best interests to pursue litigation concerning the matters raised in the Demands and that there were no valid claims against Defendants.[14]

2. The Federal Derivative Action

On November 21, 2022, and April 28, 2023, respectively, Plaintiffs Larkin and Sagfors each filed separate, substantially similar shareholder derivative lawsuits in the U.S. District Court for the District of Massachusetts against Defendants Gyenes, Jones, Lafond, Ledingham, Rowlands, A. Trefler, Weber, and Stillwell, on behalf of nominal defendant Pegasystems, alleging breaches of fiduciary duty and other claims relating to the Virginia Litigation. Following consolidation of those actions, Plaintiffs Larkin and Sagfors negotiated for Defendants' production of over 363,000 pages of discovery that included documents from the Class Action and internal Board-level books and records. Following dismissal of their original action without prejudice, Plaintiffs Larkin and Sagfors jointly filed the currently pending Federal Derivative Action. The complaint in the Federal Derivative Action asserts claims for breach of fiduciary duty and unjust enrichment under Massachusetts law and for violations of Section 10(b) of the Exchange Act, relating to, *inter alia*, (i) the Virginia Litigation, (ii) the conduct alleged in the Virginia Litigation, and (iii) the Class Action. The DRC, on

[14] The DRC Report is attached as Exhibit L to the Declaration of Lauren Milgroom, filed herewith.

behalf of the Company, and all defendants in the Federal Derivative Action moved to dismiss on April 28, 2025. On June 6, 2025, the State Plaintiffs moved to intervene and stay the Federal Derivative Action. The Federal Plaintiffs filed an opposition to the motions to dismiss on June 9, 2025 and opposed the intervention motion on June 20, 2025. On August 21, 2025, the Federal Plaintiffs filed a motion for limited additional discovery. Defendants filed an opposition. The court in the Federal Derivative Action has not ruled on the pending motions, and the Action has been administratively closed pending approval of the Settlement, which would resolve both actions. The parties to both the State Derivative Action and Federal Derivative Action notified Judge Young that they had reached a Settlement and would be submitting the Settlement to this Court for approval.[15] There has been no further activity on the docket of the Federal Derivative Action.

3. <u>The State Derivative Action</u>

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

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

[15] *Larkin et al. v. Trefler et al.*, No. 1:25-cv-10303-WGY (D. Mass.), Dkt. 76.

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

The DRC, on behalf of the Company, and Defendants moved to dismiss the Complaint in the State Derivative Action, and, after briefing by the parties, Justice Christopher K. Barry-Smith held a hearing in connection with Defendants' motions on September 4, 2025. On October 2, 2025, this Court granted Defendants' motions to dismiss. The judgment in the State Derivative Action was entered on January 13, 2026. On January 23, 2026, the parties filed a joint motion in this Court to reopen the judgment under Rules 59 and 60 so the Court could retain jurisdiction to consider approval of the Settlement discussed herein. The Court set a 30-day deadline for the parties to seek preliminary approval of the Settlement. The Court granted the motion on March 18, setting the judgment aside for the limited purpose of considering the parties' request for approval of a derivative settlement.

4. <u>The Parties' Settlement Efforts</u>

The Settling Parties engaged in months of extensive arm's-length negotiations regarding a possible resolution of the Actions both before and after the Court granted Defendants' motion to dismiss. Ultimately, the Settling Parties reached an agreement-in-principle to settle the Actions whereby the Company agreed to the Special Dividend and to maintain the Reforms set forth in the Stipulation, subject to Court approval. After agreeing on all the material terms of the Settlement, the Settling Parties negotiated Plaintiffs' request for attorneys' fees and expenses, which are the subject of a separate motion filed herewith.

III. THE SETTLEMENT TERMS

The Settlement represents an excellent result, reached after extensive, arm's-length negotiations. If the Settlement is approved, the Board will fund a special cash dividend in an amount of $7 million to be distributed to the Company's shareholders other than the Excluded Holders. Stip., ¶2.2. Defendants agree that the pendency of the Actions and the Settlement were the cause of the Board's consideration and declaration of the Special Dividend. *Id.* The Settlement provides that within 60 days of the Funding Date, the Company shall distribute the Special Dividend to its shareholders other than the Excluded Holders in the same manner in which the Company normally pays dividends to its shareholders. *Id.*, ¶2.3. It further provides that the Company shall distribute the Special Dividend (i) to its shareholders who held one or more shares of common stock of the Company as of the date that is five business days prior to the Funding Date (the "Record Date") and (ii) *pro rata* based on shareholders' relative ownership of the Company's common stock on the Record Date vis-à-vis other shareholders. *Id.*[16]

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

[16] 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.

described on page 113 of the DRC Report, which enhancements, pursuant to the Settlement, will be in place for at least five years from the date of adoption. Stip., ¶2.5.

IV. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE, AND WARRANTS FINAL APPROVAL

A. STANDARD FOR FINAL APPROVAL

Courts have generally adopted a "clear policy in favor of encouraging settlements." *Durrett v. Haus. Auth. of City of Providence,* 896 F.2d 600, 604 (1st Cir. 1990). Settlement and dismissal of a shareholder derivative action requires court approval. *See* Mass. R. Civ. P. 23.1 ("The action shall not be dismissed or compromised without the approval of the court...."); *see also Chin v. Chinese Merchants Ass'n of Massachusetts,* 1999 WL 1318958, at *2 (Mass. Super. Mar. 10, 1999) ("Under Mass. R. Civ. P. 23.1, court approval is a prerequisite to the dismissal or compromise of a derivative action."). "No appellate court in Massachusetts appears to have established the standard for court approval under Rule 23.1." *Id.* Federal cases interpreting the analogous Federal Rule 23.1, and state cases interpreting Rule 23 governing class actions, require that the proponents of a settlement "establish that it is fair and reasonable and in the best interests of those whom it will affect." *See id.* (citing *Greenspun v. Bogan*, 492 F.2d 375, 378 (1st Cir. 1974); *Sniffin v. Prudential Ins. Co. of America*, 395 Mass. 415, 421, 426 (1985); James W. Smith & Hiller B. Zobel, Rules Practice § 23.1.9, at 137 (1975)). These cases require that the court "exercise judgment sufficiently independent and objective to safeguard the interests of shareholders not directly involved in the action." *Bogan*, 492 F.2d at 378-79.

Settlement is a strongly favored method of resolving disputes. Courts here and in all jurisdictions favor the voluntary settlement of contested claims, especially in complex civil cases:

> Last, we should point to the overriding public interest in favor of the voluntary settlement of disputes, particularly where class actions are involved. In these days of crowded court calendars, complex disputes, and tardy results, there can be no doubt but that the voluntary resolution of litigation through settlement, constitutes the best quality of justice, and the

> highest service, that counsel can perform in the interest of his client and the administration of the judicial system.

Lazar v. Pierce, 757 F.2d 435, 440 (1st Cir. 1985) (Torruella, J., concurring) (footnote omitted); *accord United States v. Davis,* 261 F.3d 1, 27 (1st Cir. 2001).

The determination of a "fair" settlement is not susceptible to a mathematical equation yielding a particular sum. *See Republic Nat'l Life Ins. Co. v. Beasley,* 73 F.R.D. 658, 668 (S.D.N.Y. 1977). Rather, "there is a range of reasonableness with respect to settlement[.]" *Newman v. Stein,* 464 F.2d 689, 693 (2d Cir. 1972). It is not the role of the court to "reopen and enter into negotiations with the litigants in the hope of improving the terms of the settlement." *Levin v. Miss. River Corp.,* 59 F.R.D. 353, 361 (S.D.N.Y. 1973), *aff'd sub nom., Wesson v. Miss. River Corp.,* 486 F.2d 1398 (2d Cir. 1973). Instead, the role of the court is limited to determining "whether the settlement, taken as a whole, is so unfair on its face as to preclude judicial approval." *Mathes v. Roberts,* 85 F.R.D. 710, 713 (S.D.N.Y. 1980) (internal quotations and citations omitted); *see also Strougo ex rel. Brazilian Equity Fund, Inc. v. Bassini*, 258 F. Supp. 2d 254, 257 (S.D.N.Y. 2003) (noting a "strong initial presumption" of fairness for a proposed settlement negotiated at arm's-length)*; Shlensky v. Dorsey,* 574 F.2d 131, 147 (3d Cir. 1978) ("The principal factor to be considered in determining the fairness of a settlement . . . is the extent of the benefit to be derived").

B. THE SETTLEMENT CONFERS SUBSTANTIAL BENEFITS

In determining whether the settlement is fair, reasonable, and adequate, the Court must consider the benefits achieved through the settlement. *New England Carpenters Health Benefits Fund v. First DataBank, Inc.,* 602 F. Supp. 2d 277, 281 (D. Mass. 2009); *see also Bell Atl. Corp. v. Bolger,* 2 F.3d 1304, 1311 (3d Cir. 1993) (quoting *Shlensky v. Dorsey,* 574 F.2d 131, 147 (3d Cir. 1978)) (holding that, in determining whether to approve a shareholder derivative settlement, "[t]he principal factor . . . is the extent of the benefit to be derived from the proposed settlement by the corporation, the real party in interest"). The Special Dividend benefits the Company and its stockholders, as

discussed below, and the Reforms confer a substantial benefit upon the Company and its public stockholders by "serv[ing] to prevent and protect" the company from the alleged wrongdoing that materially harmed it, thereby warranting settlement approval. *United Nat'l Ret. Fund v. Watts,* 2005 WL 2877899, at *5 (D.N.J. Oct. 28, 2005). Indeed, the Reforms alone are a substantial corporate benefit sufficient to support a derivative settlement. *See Mills v. Electric Auto-Lite Co.,* 396 U.S. 375, 396 (1970) (explaining that a benefit need not be pecuniary to be substantial).[17]

1. The Special Dividend

Shareholders eligible to receive the special dividend are expected to receive $0.077 per share from the Settlement, which is more than 2.5x the Company's current dividend, which is paid quarterly.[18] The $7 million amount of the special dividend was the result of extensive negotiations among the parties and is not directly tied to the litigation with Appian in Virginia. Rather, it reflects a compromise following lengthy negotiations between sophisticated, experienced counsel. Few derivative settlements include financial relief, but the size of the financial benefit here is consistent with other settlements that have included a pecuniary component.[19] Compared to recent derivative

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[17] *See also Granada Invest., Inc. v. DWG Corp.,* 962 F.2d 1203, 1207 (6th Cir. 1992) (approving the settlement of derivative action where defendants agreed to changes in corporate governance); *Maher v. Zapata Corp.,* 714 F.2d 436, 466 (5th Cir. 1983) ("Parties to the settlement of a shareholders' derivative action are, however, permitted great freedom in shaping the form of the settlement consideration . . . a settlement may fairly, reasonably, and adequately serve the best interest of a corporation, on whose behalf the derivative action is brought, even though no direct monetary benefits are paid by the defendants to the corporation.").

[18] The number of outstanding shares as of the Company's latest Form 10-K as of January 30, 2026, was approximately 169,043,716. The number of shares to be excluded from the dividend on behalf of the "Excluded Holders" is 78,335,511.66, which includes fractional shares, resulting in an anticipated dividend of $0.077 per share.

[19] 76% of "parallel" derivative settlements from 2019-2021 had no monetary component, and in the 24% that included financial relief, the median monetary component was less than $7.2 million. Laarni T. Bulan, *Parallel Derivative Action Settlement Outcomes*, NATIONAL L. REV. (Sept. 9, 2022). Median securities class action settlements generally ranged from $6 million to $13 million between 2017 and 2020, with an $8.3 million median amount in 2021. Janeen McIntosh & Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2020 Full-Year Review*, NERA (Jan. 25, 2021),

settlements approved by state and federal courts in Massachusetts, a $7 million recovery is a significant result.[20] Moreover, in approving a class settlement, where the defendants agreed to have the corporation make a dividend-like "adjustment payment to a subset of stockholders," the Court of Chancery observed that this type of approach is "beneficial to [the company]" and creates "benefits in terms of the corporate objectives."[21]

The Board of Pegasystems has already approved the Settlement and the Special Dividend as a contingent dividend, and the Board stands ready to formally declare the Special Dividend upon this Court's grant of final approval, consistent with the terms of the Settlement. In addition, the Board is precluded from declaring a record date for a dividend that precedes payment by more than 70 days.[22]

2. <u>The Reforms</u>

Courts have long recognized that "[c]orporate therapeutics . . . furnish a benefit to all shareholders."[23] In particular, corporate governance reforms that serve to prevent and protect a company from the events which allegedly harmed the corporation confer a substantial benefit on the corporation and its shareholders and merit preliminary approval of settlement.[24] Here, the Settlement

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Figures 15 and 16 at 17 and 20, respectively; Laarni T. Bulan & Laura E. Simmons, *Securities Class Action Settlements – 2021 Review and Analysis*, CORNERSTONE RESEARCH (2021), https://securities.stanford.edu/research-reports/1996-2021/Securities-Class-Action-Settlements-2021-Review-and-Analysis.pdf at 4 ("The median [securities class action] settlement amount in 2021 was $8.3 million.").

[20] *See* Appendix A to the Joint Memorandum in Further Support of Preliminary Approval, Dkt. 58.

[21] *In re Google Inc. Class C S'holder Litig.,* C.A. No. 7469-CS (Del. Ch. Oct. 28, 2013) (Transcript) at 104-05 (attached as Ex. 4 to the Joint Memorandum in Further Support of Preliminary Approval, Dkt. 58).

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

[23] *Mills*, 396 U.S. at 395-96.

[24] *See United Nat'l Ret. Fund v. Watts*, 2005 WL 2877899, at *5 (D.N.J. Oct. 28, 2005).

significantly benefits Pegasystems and its shareholders by solidifying concrete corporate governance reforms to be maintained by Pegasystems for a period of five years that have been adopted as a result of the DRC's Report and Settlement. The corporate governance reforms are tailored to enhance the Board's existing oversight of risk and thereby prevent future events of the sort alleged to be actionable in this case.

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

As part of the Reforms, Defendants acknowledge Plaintiffs' material causal role in the Board's decision to take the extraordinary action of appointing a new independent director, Rohit Ghai, to the Board, strengthening the Board's overall independence. Following the addition of Mr. Ghai, Pegasystems' Board consists of eight members, of whom seven are independent under applicable NASDAQ standards.[25] The eighth member of the Board is Defendant A. Trefler, who is the Company's founder and CEO. Courts have routinely valued the addition of an independent director at $1 million or more. *See Hollywood Firefighters' Pension Fund v. Malone*, 2021 WL 5179219, at *10 (Del. Ch. Nov. 8, 2021) (collecting cases) (concluding that "the addition of a single independent director could itself support an award of $1 million in attorneys' fees"); *City of Miami Gen. Emps.' & Sanitation Emps.' Ret. Tr. v. Foley*, No. 2020-0650-KSJM, Tr. at 51:8-12 (Del. Ch. June 21, 2022)[26] ("I think the appropriate ballpark here is 1 to $2 million for the appointment of independent directors."); *In re Tile Shop Holdings, Inc. S'holder Derivative Litig.*, No. 10884-VCG, Tr. at 42:9-11 (Del. Ch. Aug. 23, 2018)[27] ("[A]bout a million dollars was a proper plaintiff firm recovery for achieving the independent director alone."); *In re Terraform Power, Inc. Deriv. Litig.*,

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[25] Pegasystems Inc., Definitive Proxy Statement (Schedule 14A), at 18 (Apr. 25, 2025).

[26] Speirs Decl. Ex. B.

[27] Speirs Decl. Ex. C.

No. 11898-CB, Tr. at 20 (Del. Ch. Dec. 19, 2016)[28] (awarding $3 million fee for governance-only settlement including appointment of new independent director, "which is relief that would have been difficult for the Court to judicially order and certainly is a good thing").

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

The Risk Sub-Committee was proposed by the DRC "to further mitigate [] risk moving forward."[29] The Sub-Committee, which is chaired by Rohit Ghai and includes Larry Weber and Christopher Lafond, carries meaningful responsibilities and real oversight authority directly related to the nature of the alleged misconduct, which Defendants continue to deny. It is responsible for: (a) reviewing the Company's risk management policies and procedures; (b) overseeing and monitoring the operation of the Company's risk management framework; and (c) identifying material risks relating to the Company's compliance with all applicable regulations, including those concerning trade secret protection and intellectual property compliance.[30] The Risk Sub-Committee serves as the primary vehicle for Board- and Audit-Committee-level oversight of the Company's Enterprise Risk Management program, and significantly enhances the Board's focus on compliance and risk by codifying and requiring oversight of the same issues that were the basis of the alleged misconduct.[31]

The enhancements to the existing Management-Level Compliance and Risk Governing Committee (the "Compliance Committee") also reflect the DRC's determination—grounded in the same reasoning that prompted the creation of the Risk Sub-Committee—that strengthening

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[28] Speirs Decl. Ex. D.

[29] DRC Report at 112-13.

[30] *Id.*

[31] *Id.*

compliance structures at the management level and avenues of communication would further benefit the Company.[32] These enhancements, like the Risk Sub-Committee itself, must remain in place for at least five years from the date of adoption.[33]

The value of durable corporate governance reforms as settlement consideration in shareholder derivative actions is well established. Courts have long recognized that a corporation receives a "substantial benefit" from a derivative suit whose resolution results in the adoption and maintenance of meaningful governance improvements "regardless of whether the benefit is pecuniary in nature."[34] Indeed, robust governance reforms "make it far less likely [that the corporation will] become subject to long and costly securities litigation [or to] prosecution or investigation by regulators and prosecutors."[35] Empirical research confirms that corporate governance enhancements are by far the most common component of parallel derivative settlements: of 110 parallel derivative action settlements studied between 2019 and 2023, 92% called for some form of corporate therapeutics, while only 26% included a monetary component.[36] Unlike the vast majority of parallel derivative settlements, which provide therapeutics alone, the Settlement here delivers both—pairing the governance reforms with a direct $7 million cash payment to Company shareholders, excluding the Defendants and certain affiliates. Moreover, the reforms directly address the specific oversight deficiencies that Plaintiffs alleged were absent—namely, the alleged absence of adequate Board-

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[32] *Id.*

[33] Stip. ¶ 2.5.

[34] *Mills*, 396 U.S. at 395-96.

[35] *Baker v. Sadiq*, 2016 WL 4375250, at *2 (Del. Ch. Aug. 16, 2016).

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

level structured reporting mechanisms between the Board and management with respect to trade secret protection and intellectual property compliance.[37]

C. THE SETTLEMENT IS THE RESULT OF ARM'S-LENGTH NEGOTIATION BETWEEN EXPERIENCED ADVERSARIES

Where, as here, a settlement is negotiated at arm's-length by well-informed and experienced counsel over several months, *see* Stip. ¶8.2, there is a "strong initial presumption" that the compromise is fair and reasonable and should be approved, *Bussie v. Allmerica Fin. Corp*., 50 F. Supp. 2d 59, 77 (D. Mass. 1999); *Rolland v. Cellucci*, 191 F.R.D. 3, 6 (D. Mass. Jan. 10, 2000) ("The proponents of a class settlement can obtain a strong initial presumption that the compromise is fair and reasonable by establishing that the settlement was reached after arms-length negotiations, that the proponents' attorneys have experience in similar cases, [and] that there has been sufficient discovery to enable counsel to act intelligently"). A settlement enjoys a presumption of fairness if it "is recommended by . . . counsel after arm's-length bargaining." *See Hensley v. Eckerhart,* 461 U.S. 424, 437 (1983); *see also Vinh Du v. Blackford,* 2018 WL 6604484, at *5 (D. Del. Dec. 17, 2018) (recognizing that settlements negotiated at arm's-length are presumed fair). Here, the Settlement was agreed to after extensive arm's-length negotiations among sophisticated parties over many months.

Moreover, courts traditionally give substantial deference to directors' exercise of independent business judgment, including with respect to the settlement of claims. *See Zapata Corp. v. Maldonado,* 430 A.2d 779, 782 (Del. 1981); *see also Brooks v. Am. Exp. Indus., Inc.,* 1977 U.S. Dist. LEXIS 17313, at *10 (S.D.N.Y. Feb. 17, 1977) ("The Court is of the view that in this case, the decision of the[] board to approve this settlement is appropriately afforded certain deference; it is a business judgment with presumptive validity.").

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[37] *See* Compl. ¶¶ 185-189 (alleging absence of Board-level controls and reporting mechanisms for competitive intelligence and trade secret compliance).

D. THE SETTLEMENT AVOIDS NUMEROUS AND SUBSTANTIAL RISKS IN ESTABLISHING LIABILITY

In determining whether the Settlement is fair, reasonable, and adequate, the Court must balance the risks of continued litigation with the benefits afforded to the Company and the immediacy and certainty of a beneficial recovery. *New England Carpenters*, 602 F. Supp. 2d at 281. Here, the balance clearly tips in favor of Settlement approval. But for the Settlement, Plaintiffs faced a considerable risk in pursuing their claims on Pegasystems' behalf. Indeed, derivative actions are fraught with risk, and as such, courts have observed that "the odds of winning [a] derivative lawsuit [are] extremely small." *In re Pac. Enters. Sec. Litig.,* 47 F.3d 373, 378 (9th Cir. 1995); *Cohn v. Nelson,* 375 F. Supp. 2d 844, 852 (E.D. Mo. 2005) ("Settlements of shareholder derivative actions are particularly favored because such litigation 'is notoriously difficult and unpredictable.'").

While Plaintiffs believe that the claims alleged in the Actions are meritorious, continued litigation of the Actions would be complex, costly, and prolonged, and Defendants have at all times denied any wrongdoing. The risks of continued litigation are not theoretical. On October 2, 2025, the Court granted Defendants' motions to dismiss the consolidated amended complaint in the State Derivative Action based on the DRC's decision not to pursue the claims.[38] Although Plaintiffs intended to appeal in the absence of the Settlement, this ruling underscores the substantial hurdles they would face in proceeding further.

Even if Plaintiffs overcame these difficult pleading-stage motions (which in the first instance they did not), substantial discovery would take place, likely followed by summary judgment motions.

[38] Although the dismissal of the State Derivative Action meant that Plaintiffs were unable to obtain formal discovery, the Company produced substantial non-public documents to Plaintiffs, including the DRC Report; the Settling Parties exchanged additional information in connection with the settlement negotiations; and Plaintiffs undertook their own pre-suit factual investigations. As such, Plaintiffs and their counsel have a strong grasp of the underlying facts to support their opinion that the Proposed Settlement is fair, reasonable, and adequate.

Massachusetts' strong business judgment presumption would afford Defendants powerful defenses that would be very difficult to overcome.[39] For such reasons, "derivative lawsuits are rarely successful."[40]

Even if Plaintiffs prevailed at summary judgment, other significant risks would remain, including proving damages, and obtaining a favorable judgment at trial. *See, e.g., Grant v. Bethlehem Steel Corp.,* 823 F.2d 20, 24 (2d Cir. 1987) (affirming settlement where potential defenses presented the "possibility of 'a lesser or no recovery after trial'"); *see also In re Franklin Wireless Corp. Derivative Litig.,* Case No. 3:21-cv-01837-BEN-MSB (S.D. Cal.) (ECF No. 160, jury verdict) (jury awarded $0.99 of $110 million in alleged damages after finding that three director defendants breached their fiduciary duties). Further, there is no guarantee that a verdict would survive a likely subsequent appeal—a particularly salient concern here, as shown by Pegasystems' successful effort to overturn Appian's $2 billion verdict in the Virginia Litigation.

The Settlement agreed upon by the Parties ensures immediate benefits to the Company and its public stockholders without the risk of expensive, protracted litigation and the possibility of no ultimate benefit to the Company. The only insurance potentially available to cover a settlement in this Action was exhausted. The substantial risks faced by Plaintiffs in establishing both liability and damages weigh in favor of approval. *See D'Amato v. Deutsche Bank,* 236 F.3d 78, 86 (2d Cir. 2001) ("In reviewing the risks of proceeding to trial, establishing liability and damages, and the complexity,

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[39] *See, e.g.,* Mem. and Op. Granting Motions to Dismiss, Dkt. 49 at 10-11 (attached as Exhibit M to the Declaration of Lauren Milgroom, filed herewith) ("When the court determines that the directors of a special litigation committee (or DRC) are independent . . . the business judgment rule applies to the board's decision to reject the plaintiffs' demand and the burden falls to the plaintiff to prove that the directors did not make their determination in good faith after a reasonable inquiry") (citing cases) (cleaned up).

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

length and expense of litigation, the District Court concluded that, given the difficulties . . . and the existence of possible defenses, the settlement was fair, reasonable and adequate.”).

E. THE EXPERIENCE AND VIEWS OF COUNSEL FAVOR APPROVAL

Significant weight should also be attributed by the Court to the belief of experienced counsel that the Settlement is in the best interest of Pegasystems and its public stockholders. *In re PaineWebber Ltd. P'ships Litig.,* 171 F.R.D. 104, 125 (S.D.N.Y.), *aff'd sub nom. In re PaineWebber Inc. Ltd. P'ships Litig.,* 117 F.3d 721 (2d Cir. 1997) (“‘[G]reat weight’ is accorded to the recommendations of counsel, who are most closely acquainted with the facts of the underlying litigation.”); *Chatelain v. Prudential-Bache Sec., Inc.,* 805 F. Supp. 209, 212 (S.D.N.Y. 1992); *Cannon v. Tex. Gulf Sulphur Co.,* 55 F.R.D. 308, 316 (S.D.N.Y. 1972). Moreover, as described above, there is an initial presumption of fairness of a proposed settlement that has been negotiated at arm's-length by experienced counsel. *See Wal-Mart Stores Inc. v. Visa U.S.A., Inc.,* 396 F.3d 96, 116 (2d Cir. 2005); *In re Telik, Inc. Sec. Litig.,* 576 F. Supp. 2d 570, 576 (S.D.N.Y. 2008).

Here, Plaintiffs' Counsel are highly experienced in the litigation of shareholder derivative actions. The Settlement was reached only after Plaintiffs' Counsel had conducted substantial investigation and analysis and had engaged in substantive settlement negotiations with Defendants' Counsel. Further, Defendants were represented by highly experienced and sophisticated counsel with every incentive to limit what their clients had to implement and/or pay. Defendants acknowledge that the settlement of the Actions on the terms set forth in the Stipulation would confer a substantial benefit on Pegasystems and its public stockholders. Where, as here, the Parties have thoroughly investigated the factual background of the Action, advanced their respective views of the strengths and weaknesses of the Action, and negotiated at arm's-length to arrive at a Settlement, Plaintiffs respectfully submit that the Settlement warrants final approval.

V. CONCLUSION

The Special Dividend and the Reforms give Pegasystems and its public stockholders immediate and substantial benefits. For the reasons above, Plaintiffs respectfully submit that the Settlement is fair, adequate, and reasonable, and should be granted final approval together with such other and further relief as the Court deems just and proper, substantially in the form of the Proposed Order and Final Judgment filed herewith.

Dated: May 21, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

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