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 ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS

[1] Ray Gerber.

[2] 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.

[3] Robert Garfield.

[4] 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.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Plaintiffs John Dwyer, Ray Gerber, Jayne Birch, and Robert Garfield[1] respectfully submit this memorandum of law in support of their motion for: (i) approval of the negotiated fee and expense award for all Plaintiffs' Counsel[2] in the amount of $2,750,000 to be paid by the Company; and (ii) approval of nominal service awards in the amount of $2,500 to be paid to each of the Plaintiffs out of Plaintiffs' Counsel's award of attorneys' fees and expenses (the "Service Awards").[3]

I. PRELIMINARY STATEMENT

As a direct result of Plaintiffs' Counsel's efforts, Plaintiffs were able to achieve a proposed settlement of the Actions (the "Settlement") that will result in substantial benefits for Pegasystems and its public stockholders. Specifically, pursuant to the Settlement and subject to all conditions of the Settlement being met (including Court approval), Pegasystems' Board of Directors (the "Board") has approved a special cash dividend in the amount of $7 million to be distributed directly to Pegasystems' public stockholders upon Court approval of the Settlement (the "Special

---

[1] "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 (the "State Plaintiffs"); (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 (the "Federal Court"): Mary Larkin and Dag Sagfors (the "Federal Plaintiffs"); and (iii) Pegasystems Inc. ("Pegasystems" or the "Company") stockholder George Fielding Brenner ("Demanding Stockholder"), who made a related litigation demand upon the Company (together with the State Derivative Action and Federal Derivative Action, the "Actions").

[2] "Plaintiffs' Counsel" includes (i) counsel for the State Plaintiffs: Bernstein Litowitz Berger & Grossmann LLP, Cohen Milstein Sellers & Toll PLLC, Equity Litigation Group LLP, Shuman, Glenn & Stecker, Bronstein, Gewirtz & Grossman LLC, Greenwich Legal Associates, LLC, and Bottini & Bottini Inc.; and (ii) counsel for Federal Plaintiffs: Bragar Eagel & Squire, P.C., Griffin Humphries LLC, Andrews Devalerio LLP, Matorin Law Office LLC, and Rigrodsky Law, P.A.; and (iii) counsel for Demanding Stockholder: Levi & Korsinsky, LLP.

[3] All capitalized terms that are not defined in this memorandum of law have the same meanings as set forth in the Stipulation of Settlement dated February 9, 2026 (Dkt. 56, Ex. 1) ("Stipulation"). Unless otherwise noted, all emphasis is added and citations are omitted.

Dividend")—an exceptional result in shareholder derivative litigation, in which monetary recoveries are rare. In addition, the Settlement provides that Pegasystems will maintain a series of meaningful corporate governance enhancements adopted after the Actions were filed that go to the heart of the alleged wrongdoing (the "Reforms").

As compensation for their efforts and for the substantial risk of nonpayment they faced in prosecuting the Actions on a contingent basis—and in light of the significant benefits created for Pegasystems and its stockholders through the Settlement and the prosecution of the claims asserted in the Actions—Plaintiffs now seek Court approval of an award of attorneys' fees and expenses to Plaintiffs' Counsel in the amount of $2,750,000, to be paid separately by the Company apart from the Special Dividend of $7 million.

The requested fee and expense award was negotiated with the Company, which agreed not to oppose the request in exchange for Plaintiffs not seeking a larger award. Those negotiations took place after the Settling Parties agreed in principle to the Special Dividend and Reforms and all other material terms of the Settlement. Ultimately, the Settling Parties agreed that Plaintiffs' Counsel would ask the Court to award fees and expenses not to exceed $2,750,000 (the "Fee and Expense Amount"). The Company agreed not to oppose that request and to pay the fees and expenses ultimately awarded. For avoidance of doubt, any fees and expenses awarded will not reduce the amount of the Special Dividend.

Massachusetts expressly permits the Court to "order the corporation to pay the plaintiff's reasonable expenses, including counsel fees, incurred in the proceeding if it finds that the proceeding has resulted in a substantial benefit to the corporation." Massachusetts General Law 156D, § 7.46(1). Courts have long recognized that when litigation brought by plaintiff shareholders produces a substantial benefit for the corporation – such as governance reforms – the company

pays plaintiff's fees because it is the primary beneficiary. *See Mills v. Electric Auto-Lite* Co., 396 U.S. 375 (1970). As discussed below, the requested Fee and Expense Amount is justified considering the substantial benefits achieved for Pegasystems and its stockholders, Plaintiffs' counsel's time and efforts devoted to the litigation, the standing and ability of Plaintiffs' Counsel, and the contingent nature of the litigation and the risk of non-payment that Plaintiffs' Counsel faced in prosecuting the Actions. The Fee and Expense Amount, which represents a substantial discount to Plaintiffs' Counsel's lodestar (*i.e.*, the hours incurred multiplied by their hourly rate), is also fair and reasonable when compared to attorneys' fees awarded in comparable derivative settlements. *See* Ex. 1, Declaration of Lauren Godles Milgroom in Support of Plaintiffs' Motion for Attorneys' Fees and Litigation Expenses ("Milgroom Decl.").

Plaintiffs also request that the Court approve nominal Service Awards in the amount of $2,500 for each of the Plaintiffs in recognition of the benefits they have helped to create for Pegasystems and its stockholders by initiating, prosecuting, and settling the Actions. Any Service Awards approved by the Court will be funded from the Court-awarded attorneys' fees and expenses.

As set forth in the Memorandum of Law in Support of Plaintiffs' Motion for Final Approval of Derivative Settlement filed concurrently herewith (the "Final Approval Memorandum"), to date no objections to the proposed settlement (including the application for attorneys' fees) have been received. In the event that there are any objections, Plaintiffs will address them in their reply papers, which will be filed on or before June 20, 2026.

II. HISTORY AND BACKGROUND OF THE LITIGATION

To avoid needless repetition, Plaintiffs respectfully refer the Court to the Final Approval Memorandum for a detailed discussion of the factual background and procedural history of the

Actions, the efforts undertaken by Plaintiffs' Counsel during the course of the Actions, the risks of continued litigation, and other factors supporting the fee and expense request.

III. ARGUMENT

A. The Applicable Standards Support An Award of Attorneys' Fees and Expenses

If a court finds that a derivative action results in a substantial benefit to the corporation, it may approve the reimbursement of reasonable expenses, including attorneys' fees, for counsel who obtained the benefit for the corporation. Massachusetts General Law 156D, § 7.46. There is "no set method or fixed formula to assess an application for attorneys[']fees[,]" and courts are directed to "examine the totality of circumstances." *In re Golden State Bancorp Inc. S'holders Litig.*, 2000 WL 62964, at *3 (Del. Ch. Jan. 7, 2000). Courts typically consider the value of the benefits achieved in the action, efforts of counsel, difficulty of the litigation, contingent nature of the fee, and counsel's skill, standing, and ability. *See id.*; *Cohn v. Nelson*, 375 F. Supp. 2d 844, 864 (E.D. Mo. 2005) (citing *Sugarland Indus., Inc. v. Thomas*, 420 A.2d 142 (Del. 1980)). A court may also consider fee awards in comparable cases involving similar benefits in determining a reasonable fee. *Dow Jones & Co. v. Shields*, 1992 WL 44907, at *3 (Del. Ch. Jan. 10, 1992) (reviewing similar fee awards and concluding the award was not excessive by comparison).

B. The Agreed-To Fee and Expense Amount is the Product of Arm's-Length Negotiations

After reaching agreement on the Special Dividend and Reforms, and all other material terms of the Settlement, the Settling Parties engaged in separate arm's-length negotiations concerning an appropriate amount of attorneys' fees and expenses that would be payable to Plaintiffs' Counsel based on the benefits conferred on Pegasystems and its public stockholders. As a result of those negotiations, it was ultimately agreed between the Settling Parties that Plaintiffs'

Counsel would seek and the Company would not oppose a Fee and Expense Amount not to exceed $2,750,000. *See* Stipulation, ¶5.1.

"Where, as here, the fee is negotiated after the parties have reached an agreement in principle on settlement terms and is paid in addition to the benefit to be realized ... [the Court] will also give weight to the agreement reached by the parties in relation to fees." *In re Prodigy Commc'ns Corp. Shareholders Litig.*, 2002 WL 1767543, at *6 (Del. Ch. July 26, 2002). In that context, "the court must determine that the award falls within a reasonable range. If it does, then a court can defer to the parties' negotiated amount." *In re Activision Blizzard, Inc. Stockholder Litig.*, 124 A.3d 1025, 1075 (Del. Ch. 2015).

Thus, the Court is not being called upon to fashion a fee award as is required in the class action context where absent class members were unable to negotiate the requested amount;[4] rather, it is being asked to determine whether the agreed-to Fee and Expense Amount, negotiated by the Company and its sophisticated counsel who had every incentive to minimize the amount awarded, is fair and reasonable. The separate fee negotiations were conducted at arm's-length, and the Settling Parties negotiated and reached agreement on the Fee and Expense Amount only after they reached an agreement in principle on all material terms of the Settlement. This consensual resolution of an attorneys' fee award derived from adversarial negotiations between parties supports approval of the agreed Fee and Expense Amount. *See Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983) (stating that a request for an award of attorneys' fees "should not result in a second

[4] In a typical class action settlement recovering a common fund, the diverging interests of class counsel and absent class members warrant closer judicial scrutiny of a fee request that is uncontested by defendants because the fees are deducted from the settlement fund that will ultimately be disbursed to the class, which fund comprises the only payment made by defendants. Here, however, the full amount of the Special Dividend will be paid to minority stockholders separate from the Fee and Expense Amount and the Company had every incentive to bargain hard to reduce the amount sought.

major litigation. Ideally, of course, litigants will settle the amount of a fee."); *see also Cohn*, 375 F. Supp. 2d at 861 ("[W]here, as here, the parties have agreed on the amount of attorneys' fees and expenses, courts give the parties' agreement substantial deference.").

C. The Substantial Benefits Conferred on Pegasystems and Its Stockholders

In determining a fee award, courts often give the most weight to the benefits achieved by the litigation. *Sugarland*, 420 A.2d at 149-50; *Garfield v. Boxed, Inc.*, 2022 WL 17959766, at *11 (Del. Ch. Dec. 27, 2022) ("[T]he most important factors in determining a fee award are the size of the benefit achieved, and whether the plaintiff can be credited for the benefit."). As noted above, due to the efforts of Plaintiffs' Counsel, Pegasystems and its public stockholders will receive substantial benefits under the proposed Settlement.

First, the Settlement provides a significant benefit in the form of a Special Dividend payment of $7 million. Under the terms of the proposed Settlement, within 60 days of the Funding Date, the Company shall distribute the Special Dividend to Pegasystems stockholders other than the "Excluded Holders"[5] in the same manner in which the Company normally pays dividends to its shareholders. Stipulation, ¶2.3. The Settlement 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.*[6]

[5] The "Excluded Holders," as defined under the Stipulation, consist of the Individual Defendants, their immediate family members, and affiliated entities except for charitable foundations and non-profits. *See* Stipulation, ¶ 1.12.

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

The recovery of the $7 million Special Dividend is the direct result of the efforts of Plaintiffs' Counsel, who insisted that any settlement would have to include a significant financial component. While Defendants consistently and repeatedly refused to include any financial component in a settlement, resulting in the settlement negotiations reaching impasse on multiple occasions, Plaintiffs' Counsel were ultimately successful in reaching an agreement that secures a significant cash recovery. Indeed, the $7 million Special Dividend sets the Settlement apart from most derivative settlements, which typically secure only non-monetary benefits. *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").

Moreover, the monetary portion of the Settlement is structured specifically to benefit Pegasystems' public stockholders by expressly carving out the "Excluded Holders" from receiving any portion of the Special Dividend, ensuring that no Individual Defendant benefits from a settlement of claims asserted against them. This feature of the monetary recovery materially enhances the benefits achieved under the Settlement and would alone entitle Plaintiffs' counsel to a fee absent any other Reforms. *See Baker v. Sadiq*, 2016 WL 4375250, at *3 (Del. Ch. Aug. 16, 2016) ("From the investors' standpoint, the prospect of an entity-level recovery leaves the foxes in charge of the henhouse, so having more chickens in the henhouse isn't nearly as attractive as receiving chickens directly.").

Second, under the terms of the proposed Settlement, Defendants and Pegasystems have acknowledged that the Actions and the Demands played a material causal role in the adoption of

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

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

Corporate governance reforms, like the Reforms agreed to in this Settlement, unquestionably bring valuable benefits to corporations and justify approval of the agreed-to Fee and Expense Amount. *See, e.g., San Antonio Fire & Police Pension Fund v. Bradbury*, 2010 WL 4273171, at *13 (Del. Ch. Oct. 28, 2010) (noting that "[a]lthough the Court cannot calculate the benefit achieved as a precise number, that does not detract from the significance of the non-monetary relief produced by [plaintiffs'] efforts[,]" and that the corporate governance reform "may be recognized as having a very real, even if unquantifiable, benefit"); *Ryan v. Gifford*, 2009 WL 18143, at *10 (Del. Ch. Jan. 2, 2009) (recognizing that "governance reforms can provide substantial benefits and are appropriately considered by the Court when evaluating a proposed settlement"). Courts routinely approve attorneys' fees for non-monetary settlements such as the Reforms:

- *In re Atmel Corp. Derivative Litig.*, 2010 U.S. Dist. LEXIS 145551, at *40 (N.D. Cal. Mar. 31, 2010) (awarding fee of $4.94 million for reforms that included a new independent director);

- *In re Terraform Power, Inc. Derivative Litig.*, No. 11898-CB at 20:19-22, 21:12-16 (Del. Ch. Dec. 19, 2016) (TRANSCRIPT) ($3 million fee award for settlement obligating the company to appoint a new independent director, which "certainly is a good thing," among other relief), *see* Speirs Declaration in Support of Plaintiffs' Motion for Final Approval and Motion for Attorneys' Fees, Expenses, and Service Awards ("Speirs Decl."), Ex. D;

- *Nixon-Crenshaw v. Coley*, No. 18-cv-25289-AHS, Order Approving Derivative Settlement and Dismissing Action with Prejudice (S.D. Fla. Sep. 30, 2021) ($2.5 million fee award for settlement obligating the company to appoint a new independent director, among other relief, finding the amount "fair and reasonable in light of the substantial benefit" conferred upon the company), *see* Speirs Decl., Ex. E;

- *In re Clovis Oncology, Inc. Derivative Litig.*, No. 2017-0222-JRS, Order and Final Judgment (Del. Ch. May 4, 2022) ($2.325 million fee award for the addition of a new director and corporate reforms such as enhanced committee charters), *see* Speirs Decl., Ex. F;

- *In re Conduent Inc. Stockholder Derivative Litig.*, No. 1:20-cv-10964 (S.D.N.Y. July 11, 2022) ($2.2 million fee award for reforms that included enhanced employee training, increased oversight duties for committees, and an improved process for identifying and appointing new directors), *see* Speirs Decl., Ex. G;

- *In re Santander Consumer USA Holdings, Inc. Derivative Litig.*, No. 11614-VCG (Del. Ch. Jan. 25, 2021) (approving negotiated fee of $1.5 million for new independent director and other corporate reforms), *see* Speirs Decl., Ex. H;

- *City of Miami Gen. Emps.' & Sanitation Emps.' Ret. Tr. v. Foley*, No. 2020-0650-KSJM at 45:11-15, 51:8-12 (Del. Ch. June 21, 2022) (TRANSCRIPT) (remarking "it should be obvious to all that [this] is an excellent settlement for the company" in part because "independent directors ... improve the integrity of the board process" such that "I think the appropriate ballpark here is $1 to 2 million for the appointment of independent directors."), *see* Speirs Decl. Ex. B;

- *In re Tile Shop Holdings, Inc. S'holder Derivative Litig.*, No. 10884-VCG at 41:13-21, 42:8-11, 43:5-7 (Del. Ch. Aug. 23, 2018) (TRANSCRIPT) ($1.25 million fee award for settlement obligating the company to appoint a new independent director, among other relief, explaining that "getting an independent director is a substantial benefit to the corporation ... it seemed to me that about a million dollars was a proper plaintiff firm recovery for achieving the independent director alone" because "[t]he effect of having an independent director on a board ... is a very substantial improvement for the corporation"), *see* Speirs Decl. Ex. C;

- *Hollywood Firefighters' Pension Fund v. Malone*, 2021 Del. Ch. LEXIS 264, *25-26 (Del. Ch. Nov. 8, 2021) ("[T]he addition of a single independent director could itself support an award of $1 million in attorneys' fees."); and

- *In re Opko Health, Inc. Derivative Action*, No. 2018-0740-SG at 8:16-21, 20:22-21:14 (Del. Ch. Nov. 2, 2020) (TRANSCRIPT) (approving negotiated fee of $1 million that was "at a somewhat significant discount" compared to the lodestar on settlement that included a new independent director and other reforms), *see* Speirs Decl., Ex. I.

Thus, based on substantial precedent, the appointment of an independent director alone supports a fee award of $1 million - $2 million. Coupled with the additional corporate benefits embodied in the Reforms and payment of the Special Dividend to stockholders, the value of the Settlement strongly supports the agreed-upon fee.

If the Court considered just the $7 million Special Dividend and $2.75 million fee and expense award and ignored the corporate therapeutics, the requested amount would be 28% of the total, which is within the typical range awarded in common fund settlements. *In re Ranbaxy Generic Drug Application Antitrust Litig.*, 630 F. Supp. 3d 241, 245 (D. Mass. 2022) (fees awarded in common-fund cases "range from 20% at the low end to 33% at the high end. Commonly, courts

in [the First] Circuit award fees between 25% (the benchmark) and 30%.") (collecting cases). But attributing $1 million of the fee to the governance benefits means that the remaining $1.75 million fee is just 18% of the total cash benefit, which is well below the typical range.

D. Plaintiffs' Counsel's Efforts and Lodestar Cross-Check

While the benefits brought by a settlement are the primary factor courts look to in awarding an attorneys' fee, the time and effort of counsel can serve as a cross-check on the reasonableness of a fee award. *In re Biopure Corp. Derivative Litig.*, 2009 WL 10692661, at *2 (D. Mass. July 24, 2009) (noting that the "amount of the fee was negotiated between experienced counsel, who were well-versed in the [ ] case[]" and that the "requested award is supported by time records…"); *see also In re Tyco Int'l, Ltd*., 535 F. Supp. 2d 249, 270-71 (D.N.H. 2007) (noting that "[w]hen the lodestar is used [as a cross-check], the focus is not on the 'necessity and reasonableness of every hour' of the lodestar, but on the broader question of whether the fee award appropriately reflects the degree of time and effort expended by the attorneys.").

Here, Plaintiffs' Counsel secured significant benefits for Pegasystems and its stockholders. The results speak to their dedicated efforts on behalf of Pegasystems and its stockholders, as well as the quality of their work. Plaintiffs' Counsel's efforts include, *inter alia*: (i) researching and preparing the Demand Letters, negotiating a scope of production in response to the Demand Letters, and demanding additional documents pursuant to the Demand Letters; (ii) reviewing and analyzing Pegasystems press releases, public statements, filings with the SEC, and media and analyst reports about the Company; (iii) conducting a comprehensive investigation of the events underlying the alleged misconduct, which included counsel's review and analysis of voluminous non-public corporate books and records obtained by State Plaintiffs, 363,000 pages of discovery produced in the Federal Derivative Action, the DRC Report, and the extensive trial record from the Virginia Litigation; (iv) researching the applicable law with respect to the claims alleged in the

Actions and the potential defenses thereto; (v) preparing and filing the complaints in the Actions, including the detailed 81-page consolidated amended complaint filed against Defendants in the State Derivative Action; (vi) opposing Defendants' motions to dismiss the Actions; (vii) conducting damages analyses and research into the Company's corporate governance structure in connection with settlement efforts; (viii) preparing comprehensive written settlement demands and modified demands over the course of the Parties' settlement negotiations; (ix) preparing for and participating in mediation; (x) engaging in extensive, contested, arm's-length settlement negotiations spanning several months; (xi) drafting and negotiating the Stipulation and related Settlement documentation; and (xii) preparing the preliminary approval motion and the joint supplemental filing in support thereof.

Plaintiffs' Counsel collectively expended **4,327.90** hours in attorney and professional staff time prosecuting the Actions through April 16, 2026 (*i.e.*, when the Court granted Plaintiffs' Motion for Preliminary Approval of the Settlement) for a total lodestar of $**4,067,251.75**. Milgroom Decl. ¶¶4-8 & Exs. A-K. Plaintiffs' Counsel also incurred **$98,223.28** in total litigation expenses. *Id.* ¶4. 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 lodestar of approximately 0.65 (representing an approximate 35% discount to lodestar). The requested fee amount is eminently reasonable as a positive multiplier is routinely deemed reasonable in derivative actions. *See In re Fab Universal Corp. S'holder Derivative Litig.*, 148 F. Supp. 3d 277, 283 (S.D.N.Y. 2015) ("'In shareholder litigation, courts typically apply a multiplier of 3 to 5 to compensate counsel for the risk of contingent representation.'"); *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 123 (2d Cir. 2005) (affirming multiplier of 3.5); *In re Comverse Tech., Inc. Sec. Litig.*, 2010 WL 2653354, at *5 (E.D.N.Y. June 24, 2010) (approving 2.78 multiplier).

E. Standing and Ability of Counsel

In considering a fee award, a court should also consider the "standing and ability of Plaintiff's Counsel." *Bradbury*, 2010 WL 4273171, at *13. Here, Plaintiffs' Counsel are all well-respected defenders of stockholder rights with a significant track record of success. *See* Declaration of Lauren Godles Milgroom in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Derivative Settlement dated February 9, 2026, Dkt. 56, Exs. 2-9 (firm resumes of Plaintiffs' Counsel). Furthermore, the reputation and skill of opposing counsel may be considered when determining an award of fees. *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 471 (2d Cir. 1974). Defendants are represented by experienced, able counsel from Fried, Frank, Harris, Shriver & Jacobson LLP, Wilmer Cutler Pickering Hale and Dorr LLP, and Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., each a pre-eminent law firm, and Defendants' Counsel have properly defended their clients' interests throughout the litigation and during settlement negotiations. Thus, this factor supports approval of the Fee and Expense Amount.

F. The Contingent Nature of the Actions

Stockholder derivative litigation involves significant contingency risks and Plaintiffs' Counsel undertook the Actions on a purely contingent basis. *In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995) (noting that "the odds of winning [a] derivative lawsuit [are] extremely small"). Therefore, public policy supports "reward[ing] this sort of risk taking in determining the amount of a fee award." *In re First Interstate Bancorp Consol. S'holder Litig.*, 756 A.2d 353, 365 (Del. Ch. 1999); *see also Franklin Balance Sheet Inv. Fund v. Crowley*, No. 888-VCP, 2007 WL 2495018, at *12 (Del. Ch. Aug. 30, 2007) ("[f]ee awards should encourage future meritorious lawsuits by compensating the plaintiffs' attorneys for their lost opportunity cost (typically their hourly rate), the risks associated with the litigation, and a premium"); *Gordan v. Mass. Mut. Life*

Ins. Co., 2016 WL 11272044, at *3 (D. Mass. Nov. 3, 2016) ("It is common for a court to apply a multiplier to compensate the attorneys for the risk of nonpayment.").

Plaintiffs' Counsel pursued the Actions on a fully contingent basis knowing that they would likely devote hundreds of hours of hard work to the prosecution of a difficult cause, without any assurance of receiving any fees or reimbursement for their out-of-pocket expenses. From the outset, Plaintiffs faced risks that the Actions might not have withstood challenges at the pleading stage, especially given Rule 23.1's heightened standards for pleading wrongful demand refusal.[7] Indeed, in dismissing the State Derivative Action, the Court held that the DRC members were independent and acted in good faith. Furthermore, even if Plaintiffs succeeded in appealing the pleading-stage dismissal, Defendants would have fiercely defended the Actions through motions for summary judgment and trial(s), and Massachusetts' strong business judgment presumption would have afforded Defendants powerful defenses that would have been very difficult for Plaintiffs to overcome. And even if liability were established, proving recoverable damages would have posed additional significant risks for Plaintiffs. These risks borne to obtain the benefits secured for Pegasystems and its shareholders thus support a finding that the requested Fee and Expense Amount is fair and reasonable and should be approved. *See Cohn*, 375 F. Supp. 2d at 865 ("It is imperative that the filing of contingent class action and derivative lawsuits not be chilled by the failure to award attorneys' fees or by the imposition of fee awards that fail to adequately compensate counsel for the risks of pursuing such litigation … [B]ecause of the complexity and

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

societal importance of stockholder and derivative litigation, the most able counsel should be obtained. The attorney's fees awarded should reflect this goal.").

G. The Service Awards Are Reasonable

Plaintiffs also respectfully request the Court to approve the modest Service Awards of $2,500 for each of the seven Plaintiffs to be paid from the Fee and Expense Amount in recognition of their time and effort expended as representative stockholders in obtaining benefits for Pegasystems and its stockholders. Courts grant monetary awards to representative plaintiffs "to compensate [them] for work done" in prosecuting the representative claims, "to make up for financial or reputational risk undertaken in bringing the action…." *Berry v. Wells Fargo & Co.*, 2020 WL 9311859, at *16 (D.S.C. July 29, 2020); *see also Tharp v. Acacia Comm'ns, Inc. et al.*, No. 1:22-cv-10977-NMG (Sept. 13, 2024), ECF No. 94 at 4 (awarding $2,500 service award to each plaintiff); *Verma v. Costolo*, No. 2018-0509 (Del. Ch. July 27, 2021) (Transcript) at 52-53 (awarding $5,000 service award to each plaintiff); *Nitsche v. Temple*, No. 12636-VCG (Del. Ch. May 26, 2017) (awarding $5,000 to plaintiff "in consideration of his participation in this Action as a derivative representative").

The proposed Service Awards are a small fraction of the benefit secured for Pegasystems and its stockholders. Because they are to be paid from the Fee and Expense Amount, they would not reduce the benefit enjoyed by Pegasystems' stockholders, and therefore "need not be subject to intense scrutiny." *Bredbenner v. Liberty Travel, Inc*., 2011 U.S. Dist. LEXIS 38663, at *64 (D.N.J. Apr. 8, 2011); *see also In re Cendant Corp., Derivative Action Litig.*, 232 F. Supp. 2d 327, 344 (D.N.J. 2002) (explaining that service awards "need not be subject to intensive scrutiny, as the interests of the corporation, the public, and the defendants are not affected"). Nevertheless, each Plaintiff participated meaningfully in the litigation, including by reviewing the complaints or

litigation demands in their respective matters, and conferring with their counsel throughout the litigation and the settlement negotiations. Thus, the modest Service Awards should be approved.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court approve the requested Fee and Expense Amount of $2,750,000, including Service Awards of $2,500 to each of the Plaintiffs to be paid from the Fee and Expense Amount.

Dated: May 21, 2026

Respectfully submitted,

EQUITY LITIGATION GROUP LLP

/s/ Lauren Godles Milgroom
Joel Fleming (BBO #685285)
Lauren Godles Milgroom (BBO #698743)
1 Washington Mall #1307
Boston, MA 02108
(617) 468-8602
jfleming@equitylitigation.com
lmilgroom@equitylitigation.com

Daniel Silverman (BBO #704387)
COHEN MILSTEIN SELLERS & TOLL PLLC
769 Centre Street, Suite 207
Boston, MA 02130
(617) 858-1990
dsilverman@cohenmilstein.com

Counsel for Plaintiffs

OF COUNSEL:

Mark Lebovitch
BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP
1251 Avenue of the Americas
New York, NY 10020
(212) 554-1400
MarkL@blbglaw.com

Richard A. Speirs
COHEN MILSTEIN SELLERS & TOLL PLLC
88 Pine Street, 14th Floor
New York, NY 10005
(212) 220-2912
rspeirs@cohenmilstein.com

Rusty E. Glenn
SHUMAN, GLENN & STECKER
600 17th Street, Suite 2800 South
Denver, CO 80202
(303) 861-3003
rusty@shumanlawfirm.com

Brett D. Stecker
SHUMAN, GLENN & STECKER
326 W. Lancaster Avenue
Ardmore, PA 19003
(303) 861-3003
brett@shumanlawfirm.com

CERTIFICATE OF SERVICE

I hereby certify that on May 21, 2026, I caused a true copy of the foregoing to be served by email to counsel of record as follows:

Joel Fleming
Amanda Crawford
Lauren Godles Milgroom
EQUITY LITIGATION GROUP LLP
jfleming@equitylitigation.com
acrawford@equitylitigation.com
lmilgroom@equitylitigation.com

Mark Lebovitch
BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP
MarkL@blbglaw.com

Counsel for Plaintiffs John Dwyer and Ray Gerber

Richard A. Speirs
Daniel Silverman
COHEN MILSTEIN SELLERS & TOLL PLLC
rspeirs@cohenmilstein.com
dsilverman@cohenmilstein.com

Rusty E. Glenn
Brett D. Stecker
SHUMAN, GLENN & STECKER
rusty@shumanlawfirm.com
brett@shumanlawfirm.com

Counsel for Plaintiffs Jayne Birch and Robert Garfield

Daniel W. Halston
Robert Kingsley Smith
Erika M. Schutzman
WILMER CUTLER PICKERING HALE AND DORR LLP
daniel.halston@wilmerhale.com
robert.smith@wilmerhale.com
erika.schutzman@wilmerhale.com

Counsel for Defendants Alan Trefler, Peter Gyenes, Richard Jones, and Larry Weber and Nominal Defendant Pegasystems Inc.

John F. Sylvia
MINTZ, LEVIN, COHN, FERRIS, GLOVSKY AND POPEO, P.C.
jfsylvia@mintz.com

Counsel for Defendants Leon Trefler, Don Schuerman, Kerim Akgonul, Douglas Kim, and Benjamin Baril

Ilan Graff
Scott B. Luftglass
FRIED, FRANK, HARRIS, SHRIVER & JACOBSON LLP
scott.luftglass@friedfrank.com
ilan.graff@friedfrank.com

Counsel for Defendants Christopher Lafond, Dianne Ledingham, and Sharon Rowlands

/s/ Lauren Godles Milgroom
Lauren Godles Milgroom (BBO # 698743)