

CITY OF PITTSBURGH COMPREHENSIVE MUNICIPAL  
PENSION TRUST FUND, Individually and on Behalf of All  
Others Similarly Situated,

Plaintiff,

v.

BENEFITFOCUS, INC., et al.,

Defendants.

Index No. 651425/2021

IAS Commercial Part 53

Hon. Andrew Borrok

**NOTICE OF PENDENCY OF CLASS ACTION, PROPOSED SETTLEMENT,  
AND MOTION FOR ATTORNEYS' FEES AND EXPENSES**

**If you purchased or otherwise acquired publicly traded common stock pursuant and/or traceable to the Offering Documents issued in connection with Benefitfocus, Inc.'s ("Benefitfocus" or the "Company") March 1, 2019 secondary public offering ("SPO") and/or you subsequently purchased or otherwise acquired Benefitfocus publicly traded common stock from March 1, 2019 through November 5, 2020, inclusive (the "Class Period"), and were damaged thereby, you may be entitled to a payment from a class action settlement.**

*A Court authorized this Notice. This is not a solicitation from a lawyer.*

- The purpose of this Notice is to inform you of the pendency of this securities class action (the "Action"), the proposed settlement of the Action (the "Settlement"),<sup>1</sup> and a hearing to be held by the Court to consider: (i) whether the Settlement should be approved; (ii) whether the proposed plan for allocating the proceeds of the Settlement (the "Plan of Allocation") should be approved; and (iii) Lead Counsel's application for attorneys' fees and expenses. This Notice describes important rights you may have and what steps you must take if you wish to participate in the Settlement, wish to object, or wish to be excluded from the Settlement Class.
- If approved by the Court, the Settlement will create a \$11,000,000 cash fund, plus any earned interest, for the benefit of eligible Settlement Class Members, before the deduction of attorneys' fees and expenses awarded by the Court, Notice and Administration Expenses, and Taxes. This is an average recovery of approximately \$0.14 per allegedly damaged share, before these deductions.
- The Settlement resolves claims by (i) Plaintiff City of Pittsburgh Comprehensive Municipal Pension Trust Fund ("Lead Plaintiff" or "Plaintiff"), on behalf of itself and all other members of the Settlement Class (defined below), on the one hand; and, on the other, (ii) Benefitfocus; (iii) Mason R. Holland, Jr., Raymond A. August, Jonathon E. Dussault, Douglas A. Dennerline, Joseph P. DiSabato, A. Lanham Napier, Francis J. Pelzer V, Stephen M. Swad, and Ana M. White (the "Individual Defendants" and together with Benefitfocus, the "Benefitfocus Defendants"); (iv) The Goldman Sachs Group, Inc., GS Capital Partners VI Parallel, L.P., GS Capital Partners VI Offshore Fund, L.P., GS Capital Partners VI Fund, L.P., and GS Capital Partners VI GMBH & Co. KG (the "Goldman Funds Defendants"); (v) Mercer LLC, Marsh & McLennan Companies, Inc., and Mercer Consulting Group, Inc. (the "Mercer Defendants," and together with the Goldman Funds Defendants, the "Selling Stockholder Defendants"); and (vi) J.P. Morgan Securities LLC, Goldman Sachs & Co. LLC ("GS&Co."), Merrill Lynch, Pierce, Fenner & Smith Incorporated, Piper Jaffray & Co. (n/k/a Piper Sandler & Co.), Raymond James & Associates, Inc., Wedbush Securities Inc., and First Analysis Securities Corporation (the "Underwriter Defendants," and together with the Benefitfocus Defendants, Goldman Funds Defendants, and Mercer Defendants, the "Defendants"). It avoids the costs and risks of continuing the litigation; pays money to eligible investors; and releases the Defendant Releasees (defined below) from liability.

**If you are a Settlement Class Member, your legal rights will be affected by this Settlement whether you act or do not act.  
Please read this Notice carefully.**

<sup>1</sup> The terms of the Settlement are in the Stipulation and Agreement of Settlement, dated as of April 11, 2022 (the "Stipulation"), which can be viewed at [www.BenefitfocusSecuritiesSettlement.com](http://www.BenefitfocusSecuritiesSettlement.com). All capitalized terms not defined in this Notice have the same meanings as defined in the Stipulation.

**YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT**

<b>SUBMIT A CLAIM FORM BY DECEMBER 27, 2022</b>	The <u>only</u> way to be eligible to receive a payment. <i>See</i> Question 8 below for details.
<b>EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS BY NOVEMBER 10, 2022</b>	If you exclude yourself from the Settlement Class, you will receive no payment from the Settlement. This is the only option that will, assuming your claim is timely brought, allow you to seek recovery from the Defendants or the other Defendant Releasees through other litigation, at your own expense. <i>See</i> Question 11 below for details.
<b>OBJECT BY NOVEMBER 10, 2022</b>	Write to the Court and explain why you do not agree with the Settlement, the Plan of Allocation, and/or Lead Counsel’s Fee and Expense Application. If you object, you will still be a member of the Settlement Class. <i>See</i> Question 16 below for details.
<b>PARTICIPATE IN A HEARING ON DECEMBER 1, 2022 AND SUBMIT A NOTICE OF INTENTION TO APPEAR BY NOVEMBER 10, 2022</b>	You may participate at the hearing and speak to the Court about the fairness of the Settlement, the proposed Plan of Allocation, and/or Lead Counsel’s Fee and Expense Application. You cannot object to the Settlement unless you are a member of the Settlement Class and do not validly exclude yourself. <i>See</i> Question 20 below for details.
<b>DO NOTHING</b>	Receive no payment, remain a Settlement Class Member, give up your rights to seek recovery from the Defendants and the other Defendant Releasees through other litigation, and be bound by the Judgment entered by the Court if it approves the Settlement, including the release of Plaintiff’s Released Claims.

- These rights and options—and the deadlines to exercise them—are explained in this Notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. Payments will be made to all Settlement Class Members who timely submit valid Proof of Claim and Release forms (“Claim Forms”) if the Court approves the Settlement and after any appeals are resolved. Please be patient.

**SUMMARY OF THE NOTICE**

**Statement of the Settlement Class’s Recovery**

1. Subject to Court approval, Lead Plaintiff, on behalf of the Settlement Class, has agreed to settle the Action in exchange for a payment of \$11,000,000 in cash (the “Settlement Amount”), which will be deposited into an Escrow Account, which may earn interest (the “Settlement Fund”). Based on Lead Plaintiff’s consulting damages expert’s estimate of the number of shares of Benefitfocus common stock eligible to participate in the Settlement, and assuming that all investors eligible to participate in the Settlement do so, it is estimated that the average recovery, before deduction of any Court-approved fees and expenses, such as attorneys’ fees, litigation expenses, Taxes, and Notice and Administration Expenses, would be approximately \$0.14 per allegedly damaged share. If the Court approves Lead Counsel’s Fee and Expense Application (discussed below), the average recovery would be approximately \$0.09 per allegedly damaged share. **These average recovery amounts are only estimates and Settlement Class Members may recover more or less than these estimated amounts.** A Settlement Class Member’s actual recovery will depend on, for example: (i) the total number of claims submitted; (ii) the amount of the Net Settlement Fund (after deduction of Court-approved fees and expenses); and (iii) whether and when the Settlement Class Member sold Benefitfocus common stock. *See* the Plan of Allocation beginning on page 10 for information on the calculation of your Recognized Claim, as defined in Question 23, below.

**Statement of Potential Outcome of Case if the Action Continued to Be Litigated**

2. The Parties disagree about both liability and damages and do not agree about the amount of damages that would be recoverable if Lead Plaintiff were to prevail on each claim alleged. The issues on which the Parties disagree include, for example: (i) whether the Offering Documents contained untrue statements of material fact or omitted material facts necessary to make the statements in the documents not misleading; (ii) Lead Plaintiff’s ability to trace its purchases to the Company’s SPO; (iii) whether Lead Plaintiff’s claims were time-barred under the applicable statute of limitations; (iv) whether the Selling Stockholder Defendants were statutory sellers under Section 12(a)(2) of the Securities Act of 1933 (the “Securities Act”) and/or controlled the contents of the Offering Documents; (v) the extent to which external factors, such as general market, economic and industry conditions, influenced the trading prices of Benefitfocus common stock at various times; (vi) the appropriate economic models for measuring damages and causation; and (vii) whether class members suffered any damages.

3. Defendants have denied and continue to deny any wrongdoing or that they have committed any act or omission giving rise to any liability or violation of law, including the U.S. securities laws. Defendants have denied and continue to deny each and every one of the claims that was alleged or could have been alleged by Lead Plaintiff in the Action on behalf of the proposed class, including all claims in the Amended Complaint, as well as any allegations that Lead Plaintiff or any member of the proposed class has suffered damages or were otherwise harmed by the conduct alleged in the Action, and have asserted and continue to assert many defenses thereto. Defendants continue to believe that the claims asserted against them in the Action are without merit and reserve their rights to challenge, among other things, class certification if the Settlement does not become effective as set forth in the Stipulation.

#### **Statement of Attorneys' Fees and Expenses Sought**

4. Lead Counsel Labaton Sucharow LLP will apply to the Court for an award of attorneys' fees from the Settlement Fund in an amount not to exceed 33% of the Settlement Fund, which includes any accrued interest. Lead Counsel will also apply for payment of litigation expenses incurred in prosecuting the Action in an amount not to exceed \$100,000, which will include reimbursement for the hourly legal fees paid to Frank, Gale, Bails & Pocrass, P.C., Lead Plaintiff's outside pension fund counsel in connection with their representation of Lead Plaintiff in fulfilling its fiduciary obligations to the Settlement Class. Lead Counsel may also seek a service award for Lead Plaintiff of no more than \$5,000 related to its representation of the Settlement Class. If the Court approves Lead Counsel's Fee and Expense Application in full, the average amount of such fees and expenses, assuming claims are filed for all shares eligible to participate in the Settlement, will be approximately \$0.05 per allegedly damaged share of Benefitfocus common stock based on Lead Plaintiff's consulting damages expert's estimate of the number of shares of Benefitfocus common stock eligible to participate in the Settlement. A copy of the Fee and Expense Application will be posted on [www.BenefitfocusSecuritiesSettlement.com](http://www.BenefitfocusSecuritiesSettlement.com) after it has been filed with the Court.

#### **Reasons for the Settlement**

5. For Lead Plaintiff, the principal reason for the Settlement is the guaranteed cash benefit to the Settlement Class. This benefit must be compared to the uncertainty of being able to prove the allegations in the Amended Complaint; the risk of Defendants' appeals of the Court's rulings on their motions to dismiss; the risk that the Court may grant some or all of the anticipated summary judgment motions to be filed by Defendants; the uncertainty of having a class certified; the uncertainty inherent in the Parties' various and competing theories of liability, causation and damages; the uncertainty of a greater recovery after a trial and pending or future appeals; the risks of litigation, especially in complex actions like this; as well as the difficulties and delays inherent in such litigation (including any trial and appeals).

6. Defendants are entering into the Settlement solely to eliminate the uncertainty, burden, and expense of further protracted litigation.

#### **Identification of Attorneys' Representatives**

7. Lead Plaintiff and the Settlement Class are represented by Lead Counsel, Alfred L. Fatale III, Labaton Sucharow LLP, 140 Broadway, New York, NY 10005, (888) 219-6877, [www.labaton.com](http://www.labaton.com), [settlementquestions@labaton.com](mailto:settlementquestions@labaton.com).

8. Further information regarding the Action, the Settlement, and this Notice may be obtained by contacting the Claims Administrator: *Benefitfocus Securities Settlement*, c/o A.B. Data, Ltd., P.O. Box 173114, Milwaukee, WI 53217, (877) 869-0224, [www.BenefitfocusSecuritiesSettlement.com](http://www.BenefitfocusSecuritiesSettlement.com); or Lead Counsel.

**Please Do Not Call the Court with Questions About the Settlement.**

### **BASIC INFORMATION**

#### **1. Why did I get this Notice?**

9. You or someone in your family may have purchased or acquired Benefitfocus publicly traded common stock pursuant and/or traceable to the Company's Offering Documents for its March 1, 2019 SPO of common stock and/or purchased or acquired shares thereafter during the Class Period (March 1, 2019 through November 5, 2020, inclusive).<sup>2</sup> **Receipt of this Notice does not mean that you are a Member of the Settlement Class or that you will be entitled to receive a payment. If you wish to be eligible for a payment, you are required to submit the Claim Form that is being distributed with this Notice. See Question 8 below.**

10. The Court directed that this Notice be sent to potential Settlement Class Members because they have a right to know about the proposed Settlement of this class action lawsuit and about all of their options before the Court decides whether to approve the Settlement.

11. The Court in charge of the Action is the Supreme Court of the State of New York, New York County, and the case is known as *City of Pittsburgh Comprehensive Municipal Pension Trust Fund, et al. v. Benefitfocus, Inc. et al.*, No. 651425/2021 (Sup. Ct., N.Y. Cnty.) (the "Action"). The Action is assigned to the Honorable Andrew Borrok.

<sup>2</sup> Given the difficulty of tracing newly issued shares to a secondary offering, solely for purposes of the Settlement, it will be presumed that shares of Benefitfocus common stock purchased or otherwise acquired at the Offering price of \$48.25 per share, or from an Underwriter Defendant, during the period from March 1, 2019 through and including April 1, 2019, were purchased or otherwise acquired in the SPO.

## 2. What is this case about and what has happened so far?

12. The Action arises from the secondary public offering of the common stock of cloud-based benefits management platform and services provider Benefitfocus, commenced on or about March 1, 2019, and alleged misstatements and omissions of material fact made to investors in the Offering Documents issued in connection with the SPO. More specifically, the Action concerns Defendants' alleged failure to disclose that prior to the SPO, non-party Mercer Health & Benefits, LLC ("Mercer Health"), allegedly one of Benefitfocus's most important customers, was purportedly terminating its contract with the Company and would be transitioning off the Benefitfocus platform. (Defendants deny that Lead Plaintiff has asserted any valid claims as to any of them, and expressly deny any and all allegations of fault, liability, wrongdoing, or damages whatsoever.)

13. As a result, Lead Plaintiff alleged that the Offering Documents were false and misleading for several reasons, including: (i) the alleged termination of the agreement with Mercer Health was falsely portrayed as an amendment in the Offering Documents; (ii) purported opportunities arising from the change in relationship with Mercer Health were allegedly non-existent; and (iii) the Company's financial condition was allegedly worse than the Offering Documents portrayed.

14. Following the SPO and throughout 2019, Benefitfocus reported disappointing financial results, yet allegedly reaffirmed that "the renegotiation of the Mercer agreement will have a short-term impact on [its] 2019 revenue," and allegedly attributed any financial strain due to the "amended" Mercer Health Agreement as anticipated "headwinds." On March 3, 2020, Benefitfocus stated that Mercer Health was no longer a leading source of revenue in Benefitfocus's 2020 outlook. In November 2020, investors were told that the Mercer Health Agreement had not been "amended" as allegedly portrayed in the Offering Documents but had instead been terminated in such a way that would negatively impact Benefitfocus's financial condition throughout 2020 and beyond.

15. Lead Plaintiff alleges that these undisclosed issues and the impact they had on the Company's business caused the Company's stock price to fall below the SPO price of \$48.25 per share. As provided above, Defendants have denied, and continue to deny, Lead Plaintiff's allegations and that the Offering Documents were materially false or misleading.

16. On March 2, 2021, Lead Plaintiff commenced the Action through the filing of a putative securities class action complaint, in the Supreme Court of the State of New York, New York County, on behalf of a putative class consisting of all persons or entities who purchased or otherwise acquired Benefitfocus common stock pursuant and/or traceable to the Offering Documents issued in connection with the SPO, asserting claims under Sections 11, 12(a)(2), and 15 of the Securities Act for alleged misstatements and omissions in the Offering Documents.

17. On April 23, 2021, Lead Plaintiff filed an Amended Class Action Complaint for Violations of the Securities Act (the "Amended Complaint"). The Amended Complaint alleges violations of Sections 11, 12(a)(2), and 15 of the Securities Act on behalf of a putative class of all persons or entities who purchased or otherwise acquired Benefitfocus common stock pursuant and/or traceable to the Offering Documents, and who were damaged thereby.

18. On June 1, 2021, Lead Plaintiff served Defendant Benefitfocus with its first notice for discovery and inspection of documents. On June 21, 2021, Defendant Benefitfocus filed a motion for the entry of an order staying discovery pending resolution of any motions to dismiss the Action (the "Motion to Stay") and a memorandum of law, affirmation, and exhibits in support thereof, which Lead Plaintiff opposed.

19. On June 22, 2021, the Benefitfocus Defendants, the Goldman Funds Defendants, and the Mercer Defendants each filed a motion to dismiss the Amended Complaint (the "Motions to Dismiss"), and a memorandum of law in support of each of their respective motions. On the same day, the Underwriter Defendants filed a joinder in which the Underwriter Defendants joined the motion to dismiss filed by the Benefitfocus Defendants and Defendant GS&Co. joined portions of the motion to dismiss filed by the Mercer Defendants (the "Motions to Dismiss Joinder").

20. On August 23, 2021, Lead Plaintiff filed an omnibus memorandum of law in opposition to the Motions to Dismiss and the Motions to Dismiss Joinder.

21. On August 25, 2021, the Court held a hearing on the Motion to Stay. At the hearing, the Court orally ruled that discovery would be stayed until the Court ruled on the pending Motions to Dismiss and issued a written order to that effect the same day.

22. On September 23, 2021, the Benefitfocus Defendants, the Goldman Funds Defendants, and the Mercer Defendants each filed a memorandum of law in further support of their respective Motions to Dismiss and the Underwriter Defendants filed a joinder in which the Underwriter Defendants joined the reply memorandum of law filed by the Benefitfocus Defendants and Defendant GS&Co. joined portions of the reply memorandum of law filed by the Mercer Defendants. On September 27, 2021, the Court held a hearing on the Motions to Dismiss and the Motions to Dismiss Joinder.

23. On September 28, 2021, the Court issued three written opinions denying the Benefitfocus Defendants' Motion to Dismiss, the Mercer Defendants' Motion to Dismiss, and the Underwriter Defendants' Motions to Dismiss Joinder, in whole, and granting in part and denying in part the Goldman Funds Defendants' Motion to Dismiss.

24. On October 5, 2021, the Benefitfocus Defendants filed a notice of appeal from the Court's order denying their Motion to Dismiss. On October 15, 2021, the Mercer Defendants filed notices of appeal from the Court's orders denying their Motion to Dismiss and the Benefitfocus Defendants' Motion to Dismiss. On October 19, 2021, the Goldman Funds Defendants filed notices of appeal from the Court's order denying the Benefitfocus Defendants' Motion to Dismiss, the Mercer Defendants' Motion to Dismiss, and the Goldman

Funds Defendants' Motion to Dismiss. On October 25, 2021, the Underwriter Defendants filed a notice of appeal from the Court's order denying the Benefitfocus Defendants' Motion to Dismiss and GS&Co. filed a notice of appeal from the Court's order denying the Mercer Defendants' Motion to Dismiss. Following the filing of the various notices of appeal, briefing commenced and Defendants' appeals were perfected for the January 2022 term in the Appellate Division of the New York Supreme Court for the First Department and oral argument was scheduled for February 15, 2022.

25. On October 12, 2021, the Goldman Funds Defendants filed a motion for leave to reargue their Motion to Dismiss, and a memorandum of law in support thereof, and the Mercer Defendants also filed a motion for leave to reargue their Motion to Dismiss, and a memorandum of law in support thereof. On October 18, 2021, Lead Plaintiff filed an omnibus memorandum of law in opposition to the Goldman Funds Defendants' and the Mercer Defendants' motions for leave to reargue.

26. On October 22, 2021, Defendant GS&Co. filed a motion for leave to reargue the motion to dismiss order which found that Lead Plaintiff had adequately stated a Section 15 claim against it, and a memorandum of law in support thereof. On October 28, 2021, Lead Plaintiff filed a memorandum of law in opposition to Defendant GS&Co.'s motion for leave to reargue.

27. Also on October 28, 2021, each of the Defendants filed answers to the Amended Complaint and asserted numerous affirmative defenses thereto.

28. On November 3, 2021, the Court issued an order denying each of the motions to reargue filed by the Mercer Defendants, Goldman Funds Defendants, and Defendant GS&Co.

29. On November 8, 2021, the Court entered a stipulation and preliminary conference order. Following entry of the preliminary conference order, discovery, including requests for production of documents and interrogatories, commenced.

30. On January 11, 2022, Lead Plaintiff filed a motion for class certification and a memorandum of law in support thereof requesting that the Court: (i) certify a class; (ii) appoint Lead Plaintiff as class representative; (iii) appoint Lead Counsel, Labaton Sucharow, as class counsel; and (iv) grant such other, further, and different relief as the Court deems just and proper.

31. In January 2022, Lead Plaintiff and the Benefitfocus Defendants began discussing the possibility of resolving the claims asserted in the Action through mediation. Lead Plaintiff and the Benefitfocus Defendants engaged Michelle Yoshida, Esq. (the "Mediator"), a well-respected and experienced mediator, to assist them in exploring a potential negotiated resolution of the claims against all Defendants. On February 8, 2022, respective counsel for Lead Plaintiff and the Benefitfocus Defendants met with the Mediator in an attempt to reach a global settlement during an all-day mediation session. The mediation involved an extended effort to settle the claims and was preceded by the exchange of mediation statements and supporting materials, including the Benefitfocus Defendants' production of documents to Lead Plaintiff. On February 9, 2022, an agreement in principle was reached to settle the claims against all Defendants, subject to the negotiation of a mutually acceptable stipulation of settlement.

### **3. Why is this a class action?**

32. In a class action, one or more persons or entities (in this case, Lead Plaintiff), sue on behalf of people and entities who have similar claims. Together, these people and entities are a "class," and each is a "class member." Class actions allow the adjudication of many individuals' similar claims that might be too small economically to bring efficiently as individual actions. One court resolves the issues for all class members at the same time, except for those who exclude themselves, or "opt-out," from the class. In this Action, the Court has appointed Lead Plaintiff City of Pittsburgh Comprehensive Municipal Pension Trust Fund to serve as Class Representative for purposes of the Settlement, and has appointed Labaton Sucharow LLP to serve as Class Counsel for purposes of the Settlement.

### **4. What are the reasons for the Settlement?**

33. The Court did not finally decide in favor of Lead Plaintiff or Defendants. Instead, both sides agreed to a settlement. Lead Plaintiff and Lead Counsel believe that the claims asserted in the Action are strong. They recognize, however, the expense and length of continued proceedings needed to pursue the claims through trial and appeals, as well as the difficulties in establishing liability. For example, Defendants have raised a number of arguments and defenses (which they would raise at summary judgment and trial) countering Lead Plaintiff's allegations that the Offering Documents failed to disclose material adverse facts in existence at the time of the SPO. For example, Defendants have argued that the Mercer Health Agreement was never terminated and is still in existence and the Company disclosed prior to the SPO that it was pivoting away from its historical relationship with Mercer Health. Defendants would also continue to argue that many of their purported misstatements were inactionable statements of sincerely held opinions or corporate optimism. Defendants also would continue to seek to have the Court's rulings on Defendants' Motions to Dismiss reversed on appeal, in particular on the grounds that Lead Plaintiff's claims were brought outside of the applicable statute of limitations, and Lead Plaintiff would face substantial risk of further delay and motion and appellate practice.

34. Even assuming Lead Plaintiff could establish liability, the amount of damages that could be attributed to the allegedly false and misleading statements would also be hotly contested. Defendants likely would argue that any drop in Benefitfocus's stock price resulted from factors other than the alleged misstatements or omissions in the Offering Documents. In the absence of a settlement, the Parties would present factual and expert testimony on each of these issues, and there is a risk that the Court or jury would resolve these issues unfavorably against Lead Plaintiff and the Settlement Class. Lead Plaintiff and Lead Counsel believe that the proposed Settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class.

35. As provided above, Defendants have denied and continue to deny any wrongdoing or that they committed any act giving rise to any liability or violation of any law including the U.S. securities laws. Defendants deny each and every one of the claims alleged by Lead Plaintiff in the Action, including all claims in the Amended Complaint.

## WHO IS IN THE SETTLEMENT CLASS

### 5. How do I know if I am part of the Settlement Class?

36. The Court directed, for the purposes of the proposed Settlement, that everyone who fits the following description is a Settlement Class Member and subject to the Settlement, unless they are an excluded person (*see* Question 6 below) or take steps to exclude themselves from the Settlement Class (*see* Question 11 below):

*all persons and entities that purchased or otherwise acquired Benefitfocus publicly traded common stock pursuant and/or traceable to the Offering Documents issued in connection with the March 1, 2019 SPO and/or who subsequently purchased or otherwise acquired Benefitfocus publicly traded common stock during the Class Period, and who were damaged thereby.*

37. You are a Settlement Class Member if you (i) purchased or otherwise acquired Benefitfocus common stock pursuant and/or traceable to the Company's SPO, which occurred on or about March 1, 2019 and/or (ii) subsequently purchased or otherwise acquired Benefitfocus publicly traded common stock from March 1, 2019 through November 5, 2020, inclusive. Given the difficulty of tracing newly issued shares to a secondary offering, for purposes of the Settlement, it will be presumed that shares of Benefitfocus common stock purchased or otherwise acquired at the Offering price of \$48.25 per share, or from an Underwriter Defendant, during the period from March 1, 2019 through and including April 1, 2019 were purchased or otherwise acquired in the SPO. Check your investment records or contact your broker to see if you have any eligible purchases or acquisitions.

### 6. Are there exceptions to being included?

38. Yes. There are some individuals and entities who are excluded from the Settlement Class by definition. Excluded from the Settlement Class are: (i) Defendants; (ii) the Individual Defendants' immediate family members; (iii) the officers, directors, and affiliates of Benefitfocus; (iv) the Selling Stockholder Defendants and the Underwriter Defendants at all relevant times; (v) any entity in which a Defendant has or had a majority ownership interest; (vi) the legal representatives, heirs, successors or assigns of any excluded person or entity; and (vii) any persons or entities who or which exclude themselves by submitting a timely and valid request for exclusion that is accepted by the Court. *See* Question 11 below.

## THE SETTLEMENT BENEFITS

### 7. What does the Settlement provide?

39. In exchange for the Settlement and the release of Plaintiff's Released Claims against the Defendant Releasees (*see* Question 10 below), Benefitfocus (on behalf of itself and all Defendants) has agreed to cause an \$11,000,000 cash payment to be made, which, along with any interest earned, will be distributed to Settlement Class Members who send in valid and timely Claim Forms, after deduction of Court-awarded attorneys' fees and litigation expenses, Notice and Administration Expenses, Taxes, and any other fees or expenses approved by the Court (the "Net Settlement Fund").

### 8. How can I receive a payment?

40. To qualify for a payment from the Net Settlement Fund, you must submit a timely and valid Claim Form. A Claim Form is included with this Notice. You also may obtain one from the website dedicated to the Settlement: [www.BenefitfocusSecuritiesSettlement.com](http://www.BenefitfocusSecuritiesSettlement.com). You also can request that a Claim Form be mailed to you by calling the Claims Administrator toll-free at (877) 869-0224.

41. Please read the instructions contained in the Claim Form carefully. Fill out the Claim Form, include all the documents the form requests, sign it, and either mail it to the Claims Administrator using the address listed in the Claim Form or submit it online at [www.BenefitfocusSecuritiesSettlement.com](http://www.BenefitfocusSecuritiesSettlement.com). Claim Forms must be **postmarked (if mailed) or received no later than December 27, 2022**.

### 9. When will I receive my payment?

42. The Court will hold a Settlement Hearing on **December 1, 2022** to decide, among other things, whether to finally approve the Settlement. Even if the Court approves the Settlement, there may be appeals which can take time to resolve, perhaps more than a year. It also takes a long time for all of the Claim Forms to be accurately reviewed and processed. Please be patient.

### 10. What am I giving up to receive a payment and by staying in the Settlement Class?

43. If you are a Settlement Class Member and do not timely and validly exclude yourself from the Settlement Class, you will remain in the Settlement Class and that means that, upon the "Effective Date" of the Settlement, you will release all "Plaintiff's Released Claims" against the "Defendant Releasees."

- (a) **“Plaintiff’s Released Claims”** means any and all claims, demands, rights, liabilities, and causes of action of every nature and description, whether known or Unknown Claims, contingent or absolute, mature or not mature, liquidated or unliquidated, accrued or not accrued, concealed or hidden, whether direct, representative, class, or individual in nature, regardless of legal or equitable theory and whether arising under federal, state, common, or foreign law, that were: (i) asserted in the Action; or (ii) could have been asserted by Plaintiff Releasers in the Action or any other court or forum that arise out of, are based upon, or relate to both: (a) the allegations, transactions, facts, matters or occurrences, or representations or omissions involved, set forth, or referred to in the complaints filed in the Action; and (b) the purchase, acquisition, holding, sale, or disposition of Benefitfocus publicly traded common stock in connection with the SPO or during the Class Period. Plaintiff’s Released Claims shall not include claims relating to the enforcement of the Settlement or any claims against any Person who submits a request for exclusion that is accepted by the Court.
- (b) **“Defendant Releasees”** means: (i) each Defendant, (ii) each of their respective immediate family members (for individuals) and each of their direct or indirect parent entities, subsidiaries, related entities, and affiliates, and any trust of which any Individual Defendant is the settlor or which is for the benefit of any Defendant and/or member(s) of his or her family, and (iii) for any of the entities listed in parts (i) or (ii), their respective past and present general partners, limited partners, principals, shareholders, joint venturers, members, officers, directors, managers, managing directors, employees, contractors, consultants, auditors, accountants, financial advisors, professional advisors, investment bankers, representatives, insurers, trustees, trustors, agents, attorneys, predecessors, successors, assigns, heirs, executors, administrators, and any controlling person thereof, in their capacities as such, and any entity in which a Defendant has a controlling interest.
- (c) **“Unknown Claims”** means any and all of Plaintiff’s Released Claims that any Plaintiff Releaser does not know or suspect to exist in his, her, or its favor at the time of the release of the Defendant Releasees, and any and all Defendants’ Released Claims that any Defendant Releaser does not know or suspect to exist in his, her, or its favor at the time of the release of the Plaintiff Releasees, which if known by him, her, or it might have affected his, her, or its decision(s) with respect to the Settlement, including the decision to object to the terms of the Settlement or to exclude himself, herself, or itself from the Settlement Class. With respect to any and all of Plaintiff’s Released Claims and Defendants’ Released Claims, the Parties stipulate and agree that, upon the Effective Date, Lead Plaintiff and Defendants shall expressly, and each other Plaintiff Releaser and Defendant Releaser shall be deemed to have, and by operation of the Judgment shall have, to the fullest extent permitted by law, expressly waived and relinquished any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or foreign law, or principle of common law, which is similar, comparable, or equivalent to Cal. Civ. Code § 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.**

Lead Plaintiff, other Settlement Class Members, or Defendants may hereafter discover facts, legal theories, or authorities in addition to or different from those which any of them now knows or believes to be true with respect to the subject matter of the Plaintiff’s Released Claims or the Defendants’ Released Claims, but Lead Plaintiff and Defendants shall expressly, fully, finally, and forever settle and release, and each Plaintiff Releaser and Defendant Releaser shall be deemed to have settled and released, and upon the Effective Date and by operation of the Judgment shall have settled and released, fully, finally, and forever, any and all of Plaintiff’s Released Claims and Defendants’ Released Claims, as applicable, without regard to the subsequent discovery or existence of such different or additional facts, legal theories, or authorities. Lead Plaintiff and Defendants acknowledge, and other Plaintiff Releasers and Defendant Releasers by operation of law shall be deemed to have acknowledged, that the inclusion of “Unknown Claims” in the definition of Plaintiff’s Released Claims and Defendants’ Released Claims was separately bargained for and was a material element of the Settlement.

44. The “Effective Date” means the date on which the Settlement has become effective, as set forth in paragraph 41 of the Stipulation. If you remain a member of the Settlement Class, all of the Court’s orders, whether favorable or unfavorable, will apply to you and legally bind you.

45. Upon the “Effective Date,” the Defendant Releasers also will provide a release of any claims against Lead Plaintiff and the Settlement Class arising out of or related to the institution, prosecution, or settlement of the claims in the Action, as described in the Stipulation.

#### **EXCLUDING YOURSELF FROM THE SETTLEMENT CLASS**

46. If you want to keep any right you may have to sue or continue to sue Defendants and/or the other Defendant Releasees on your own concerning the Plaintiff’s Released Claims, then you must take steps to remove yourself from the Settlement Class. This is called excluding yourself or “opting out.” **Please note:** If you decide to exclude yourself, there is a risk that any lawsuit you may file to pursue claims alleged in the Action may be dismissed, including because the suit was not filed within the applicable time periods required for filing suit. Also, Benefitfocus may terminate the Settlement if more than a certain number of exclusion requests are received.

#### **11. How do I exclude myself from the Settlement Class?**

47. To exclude yourself from the Settlement Class, you must mail a signed letter stating that you request to be “excluded from the Settlement Class in *City of Pittsburgh Comprehensive Municipal Pension Trust Fund v. Benefitfocus, Inc. et al.*, No. 651425/2021 (Sup. Ct., N.Y. Cnty.)” You cannot exclude yourself by telephone or email. Each request for exclusion must also: (i) state the name, address, telephone number, and email address of the person or entity requesting exclusion; (ii) state the number of shares of Benefitfocus common stock the person or entity purchased, acquired, and sold from March 1, 2019 through November 5, 2020, as well as the dates and prices of each such purchase, acquisition and sale; and (iii) be signed by the person or entity requesting exclusion or an authorized representative. Only members of the Settlement Class may request exclusion. A request for exclusion must be mailed so that it is **received no later than November 10, 2022** at:

*Benefitfocus Securities Settlement*  
EXCLUSIONS  
c/o A.B Data, Ltd.  
P.O. Box 173001  
Milwaukee, WI 53217

48. The information above is needed to determine whether you are a member of the Settlement Class. Your exclusion request must comply with these requirements in order to be valid. If you ask to be excluded, do not submit a Claim Form because you cannot receive any payment from the Net Settlement Fund. Also, if you ask to be excluded, you cannot object to the Settlement because you will not be a Settlement Class Member. However, if you submit a valid exclusion request, you will not be legally bound by anything that happens in the Action, and you may be able to sue (or continue to sue) Defendants and the other Defendant Releasees in the future.

#### **12. If I do not exclude myself, can I sue Defendants and the other Defendant Releasees for the same thing later?**

49. No. If you are a member of the Settlement Class, unless you properly exclude yourself, you will give up any rights to sue Defendants and the other Defendant Releasees for any and all Plaintiff’s Released Claims. If you have a pending lawsuit against any of the Defendant Releasees, **speak to your lawyer in that case immediately**. You must exclude yourself from this Settlement Class to continue your own lawsuit. Remember, the exclusion deadline is **November 10, 2022**.

#### **13. If I exclude myself, can I get money from the proposed Settlement?**

50. No, only Settlement Class Members are eligible to recover money from the Settlement.

#### **THE LAWYERS REPRESENTING YOU**

#### **14. Do I have a lawyer in this case?**

51. Labaton Sucharow LLP is Lead Counsel in the Action. You will not be separately charged for these lawyers. The Court will determine the amount of attorneys’ fees and expenses, which will be paid from the Settlement Fund. If you want to be represented by your own lawyer, you may hire one at your own expense.

#### **15. How will the lawyers be paid?**

52. Lead Counsel has been prosecuting the Action on a contingent basis and has not been paid for any of its work. Lead Counsel will seek an attorneys’ fee award of no more than 33% of the Settlement Fund, which will include accrued interest. Lead Counsel also will seek payment of expenses incurred in the prosecution of this Action of no more than \$100,000, plus accrued interest, which will include reimbursement for the hourly legal fees paid to Lead Plaintiff’s outside pension fund counsel in connection with their representation of Lead Plaintiff in fulfilling its fiduciary obligations to the Settlement Class. Lead Counsel also may seek a service award for Lead Plaintiff of no more than \$5,000 related to its representation of the Settlement Class. Any attorneys’ fees and expenses awarded by the Court will be paid from the Settlement Fund. Settlement Class Members are not personally liable for any such fees or expenses.

#### **OBJECTING TO THE SETTLEMENT, THE PLAN OF ALLOCATION, OR THE FEE AND EXPENSE APPLICATION**

#### **16. How do I tell the Court that I do not like something about the proposed Settlement?**

53. If you are a Settlement Class Member, you can object to the Settlement or any of its terms, the proposed Plan of Allocation of the Net Settlement Fund, and/or Lead Counsel’s Fee and Expense Application. You may write about why you think the Court should not approve any or all of the Settlement terms or related relief. If you would like the Court to consider your views, you must submit a proper objection within the deadline and according to the following procedures.

54. To object, you must send a signed letter stating that you object to the proposed Settlement, the Plan of Allocation, and/or the Fee and Expense Application in “*City of Pittsburgh Comprehensive Municipal Pension Trust Fund v. Benefitfocus, Inc. et al.*, No. 651425/2021 (Sup. Ct., N.Y. Cnty.)” The objection must also include: (i) your name, address, telephone number, email address and signature; (ii) your objection(s) and the specific reasons for each objection, including any legal and evidentiary support, and copies of any papers, briefs or other documents upon which the objection is based and/or witnesses you wish to bring to the Court’s attention; and

(iii) documents sufficient to prove your membership in the Settlement Class, such as brokerage trade confirmation receipts or other competent documentary evidence, showing the number of shares of Benefitfocus common stock that you purchased, acquired, and sold during the Class Period, as well as the dates, quantities and prices of each such purchase, acquisition, and sale. Unless otherwise ordered by the Court, any Settlement Class Member who does not object in the manner described in this Notice will be deemed to have waived any objection and will be forever foreclosed from making any objection to any aspect of the Settlement, the Plan of Allocation, and/or the application by Lead Counsel for an award of attorneys' fees and expenses, but nevertheless shall be bound by all the terms of the Stipulation, and by all proceedings, orders and judgments in the Action, including the Judgment to be entered and the releases to be given. Your objection must be mailed or delivered to each of the following addresses so that it is **received no later than November 10, 2022**:

<u>The Court</u>	<u>Lead Counsel for Lead Plaintiff</u>	<u>Defendants' Counsel Representative</u>
<b>Clerk of the Court</b> Supreme Court of the State of New York County of New York Commercial Division, 60 Centre Street New York, NY 10007	<b>Labaton Sucharow LLP</b> Alfred L. Fatale III, Esq. 140 Broadway New York, NY 10005	<b>Wilson Sonsini Goodrich &amp; Rosati, P.C.</b> Sheryl Shapiro Bassin, Esq. 1301 Ave. of the Americas, 40th Floor New York, New York 10019

55. You do not need to participate in the Settlement Hearing to have your written objection considered by the Court. However, any Settlement Class Member who has complied with the procedures described in this Question 16 and below in Question 20 may participate at the Settlement Hearing and be heard, to the extent allowed by the Court. An objector may appear themselves or arrange, at his, her, or its own expense, for a lawyer to represent him, her, or it at the Settlement Hearing.

**17. What is the difference between objecting and seeking exclusion?**

56. Objecting is telling the Court that you do not like something about the proposed Settlement, Plan of Allocation, or Lead Counsel's Fee and Expense Application. You can still recover money from the Settlement. You can object only if you stay in the Settlement Class. In contrast, excluding yourself is telling the Court that you do not want to be part of the Settlement Class. If you exclude yourself from the Settlement Class, you have no basis to object because the Settlement and the Action no longer affect you.

**THE SETTLEMENT HEARING**

**18. When and where will the Court decide whether to approve the proposed Settlement?**

57. The Settlement Hearing will be held on **December 1, 2022 at 11:30 a.m. EST**, before the Court, either in person at the Supreme Court, New York County, Courtroom 238, 60 Centre Street, New York, NY 10007, or remotely using directions that will be posted in advance on the Settlement website, in the Court's discretion.

58. At this hearing, the Honorable Andrew Borrok will (i) consider whether the Court should grant final certification of the Action as a class action for purposes of the Settlement and confirm the appointment of Lead Plaintiff and Lead Counsel as Class Representative and Class Counsel, respectively; (ii) consider whether the Settlement should be approved as fair, reasonable, adequate, and in the best interests of the Settlement Class; (iii) consider whether a Judgment, substantially in the form attached as Exhibit B to the Stipulation, should be entered dismissing and releasing the Plaintiff's Released Claims and Defendants' Released Claims (as those terms are defined in the Stipulation) with prejudice; (iv) consider whether the Plan of Allocation for the distribution of the Net Settlement Fund is reasonable and should be approved; (v) consider Lead Counsel's application for an award of attorneys' fees and payment of litigation expenses (which may include a service award for Lead Plaintiff in connection with its representation of the Settlement Class); (vi) consider any objections or requests for exclusion received by the Court; and (vii) consider any other matters that may properly be brought before the Court in connection with the Settlement, as the Court may deem appropriate.

59. You should be aware that the Court may change the date and time of the Settlement Hearing, or hold the hearing remotely, without another notice being sent to Settlement Class Members. If you want to attend the hearing, you should check with Lead Counsel or visit the Settlement website, [www.BenefitfocusSecuritiesSettlement.com](http://www.BenefitfocusSecuritiesSettlement.com), beforehand to be sure that the hearing date and/or time has not changed.

**19. Do I have to come to the Settlement Hearing?**

60. No. Lead Counsel will answer any questions the Court may have. But you are welcome to attend at your own expense. If you submit a valid and timely objection, the Court will consider it and you do not have to participate in the Settlement Hearing to discuss it. You may have your own lawyer attend (at your own expense), but it is not required. If you do hire your own lawyer, he or she must submit and serve a Notice of Appearance in the manner described in the answer to Question 20 below **no later than November 10, 2022**.

## 20. May I speak at the Settlement Hearing?

61. If you are a member of the Settlement Class, you may ask the Court for permission to speak at the Settlement Hearing. To do so, you must, **no later than November 10, 2022**, submit a statement to Lead Counsel and Defendants' Counsel that you, or your attorney, intend to appear in "*City of Pittsburgh Comprehensive Municipal Pension Trust Fund v. Benefitfocus, Inc. et al.*, No. 651425/2021 (Sup. Ct., N.Y. Cnty.)." Persons who intend to present evidence at the Settlement Hearing must also include in their objections (prepared and submitted in accordance with the answer to Question 16 above), the identities of any witnesses they may wish to call to testify and any exhibits they intend to introduce into evidence at the Settlement Hearing. You may not speak at the Settlement Hearing if you exclude yourself from the Settlement Class or if you have not provided written notice of your intention to speak at the Settlement Hearing in accordance with the procedures described in this Question 20 and Question 16 above.

### IF YOU DO NOTHING

## 21. What happens if I do nothing at all?

62. If you do nothing and you are a member of the Settlement Class, you will receive no money from this Settlement and you will be precluded from starting a lawsuit, continuing with a lawsuit, or being part of any other lawsuit against Defendants and/or the other Defendant Releasees concerning the Plaintiff's Released Claims. To share in the Net Settlement Fund, you must submit a Claim Form (see Question 8 above). To start, continue, or be a part of any other lawsuit against Defendants and/or the other Defendant Releasees concerning the Plaintiff's Released Claims, you must exclude yourself from the Settlement Class (see Question 11 above).

### GETTING MORE INFORMATION

## 22. Are there more details about the Settlement?

63. This Notice summarizes the proposed Settlement. More details are contained in the Stipulation. You may review the Stipulation filed with the Court or other documents in the case by visiting [www.BenefitfocusSecuritiesSettlement.com](http://www.BenefitfocusSecuritiesSettlement.com) or the Court's website at <https://iapps.courts.state.ny.us/nyscef/Login>.

64. You can also get a copy of documents related to the Settlement, as well as additional information, by visiting the website dedicated to the Settlement, [www.BenefitfocusSecuritiesSettlement.com](http://www.BenefitfocusSecuritiesSettlement.com). You may also call the Claims Administrator toll free at (877) 869-0224 or write to the Claims Administrator at *Benefitfocus Securities Settlement, c/o A.B. Data, Ltd., P.O. Box 173114, Milwaukee, WI 53217*. **Please do not call or write the Court with questions about the Settlement.**

### PLAN OF ALLOCATION OF THE NET SETTLEMENT FUND

## 23. How will my claim be calculated?

65. The Plan of Allocation (the "Plan of Allocation" or "Plan") set forth below is the plan that is being proposed by Lead Plaintiff and Lead Counsel to the Court for approval. The Court may approve this Plan of Allocation or modify it without additional notice to the Settlement Class. Any order modifying the Plan of Allocation will be posted on the Settlement website at: [www.BenefitfocusSecuritiesSettlement.com](http://www.BenefitfocusSecuritiesSettlement.com).

66. The Settlement Amount and the interest it earns is the "Settlement Fund." The Settlement Fund, after deduction of (i) Court-approved attorneys' fees and expenses; (ii) Notice and Administration Expenses; (iii) Taxes; and (iv) any other fees or expenses approved by the Court is the "Net Settlement Fund." The Net Settlement Fund will be distributed to members of the Settlement Class who timely submit valid Claim Forms that show a Recognized Claim according to the Plan of Allocation approved by the Court.

67. The objective of this Plan of Allocation is to equitably distribute the Net Settlement Fund among Authorized Claimants who allegedly suffered economic losses as a result of the misstatements and omissions allegedly made by Defendants in violation of the federal securities laws with respect to shares of Benefitfocus common stock purchased or otherwise acquired during the Class Period, March 1, 2019 (the date of the Company's SPO) through November 5, 2020, inclusive. The Plan of Allocation, however, is not a formal damages analysis and the calculations made pursuant to the Plan are not intended to be estimates of, nor indicative of, the amounts that Settlement Class Members might have been able to recover after a trial. An individual Settlement Class Member's recovery will depend on, for example: (i) the total number and value of claims submitted; and (ii) whether and when the Claimant sold his, her, or its shares of Benefitfocus common stock. The computations under the Plan of Allocation are only a method to weigh the claims of Authorized Claimants against one another for the purposes of making *pro rata* allocations of the Net Settlement Fund.

68. An Authorized Claimant's "Recognized Claim" shall be the amount used to calculate the Authorized Claimant's *pro rata* share of the Net Settlement Fund. The *pro rata* share shall be the Authorized Claimant's Recognized Claim divided by the total of the Recognized Claims of all Authorized Claimants, multiplied by the total amount in the Net Settlement Fund.

69. The Action's claims asserted under Section 11 of the Securities Act serve as the basis for the calculation of each "Recognized Loss Amount" under the Plan of Allocation. Section 11 of the Securities Act provides a statutory formula for the calculation of damages under that provision. The formulas stated below, which were developed by Lead Plaintiff's damages expert, generally track the statutory formula.

## CALCULATION OF RECOGNIZED LOSS AMOUNTS

70. For purposes of determining whether a Claimant has a “Recognized Claim,” purchases, acquisitions, and sales of Benefitfocus common stock will first be matched on a First In/First Out (“FIFO”) basis. Class Period sales will be matched first against any holdings at the beginning of the Class Period and then against purchases/acquisitions in chronological order, beginning with the earliest purchase/acquisition made during the Class Period.

71. A “Recognized Loss Amount” will be calculated as set forth below for each share of Benefitfocus common stock purchased or otherwise acquired from March 1, 2019 through November 5, 2020, inclusive, that is listed in the Claim Form and for which adequate documentation is provided. To the extent that the calculation of a Claimant’s Recognized Loss Amount results in a negative number, that number shall be set to zero. The sum of a Claimant’s Recognized Loss Amounts will be his, her, or its “Recognized Claim.”

72. Generally, the Action asserted claims on behalf of investors who purchased or otherwise acquired Benefitfocus common stock pursuant and/or traceable to the SPO, *e.g.*, those who purchased newly issued shares “in” the SPO and not historical Benefitfocus shares on the open market. Given the difficulty of tracing newly issued shares to a secondary offering, the Plan of Allocation presumes that shares of Benefitfocus common stock purchased or otherwise acquired at the Offering price of \$48.25 per share, or from an Underwriter Defendant, during the period from March 1, 2019 through and including April 1, 2019, were purchased or otherwise acquired in the SPO. Claimants who meet these conditions are being allocated a greater proportion of the Net Settlement Fund than purchases or acquisitions during the Class Period that do not meet either of these conditions and would have faced great difficulty in “tracing” their shares to the SPO. Claimants must provide adequate documentation of these conditions.

**73. For each share of Benefitfocus common stock purchased or otherwise acquired in the SPO,<sup>3</sup> and:**

- A. Sold before March 2, 2021,<sup>4</sup> the Recognized Loss Amount for each such share shall be the purchase/acquisition price per share (not to exceed the issue price at the Offering of \$48.25 per share) *minus* the sale price per share.
- B. Sold from March 2, 2021 through the close of trading on June 2, 2021,<sup>5</sup> the Recognized Loss Amount for each such share shall be the purchase/acquisition price per share (not to exceed the issue price at the Offering of \$48.25 per share) *minus* the sale price per share (not to be less than \$14.90 per share, the closing price on March 2, 2021).
- C. Retained after the close of trading on June 2, 2021, the Recognized Loss Amount for each such share shall be the purchase/acquisition price per share (not to exceed the issue price at the Offering of \$48.25 per share) *minus* \$14.90 per share, the closing price on March 2, 2021.

**74. For each share of Benefitfocus common stock purchased or otherwise acquired from March 1, 2019 through and including November 5, 2020, both dates inclusive, but not purchased or otherwise acquired in the SPO,<sup>6</sup> and:**

- A. Sold before March 2, 2021,<sup>7</sup> the Recognized Loss Amount for each such share shall be (i) the purchase/acquisition price per share (not to exceed the issue price at the Offering of \$48.25 per share) *minus* the sale price per share, (ii) multiplied by 0.25.<sup>8</sup>
- B. Sold from March 2, 2021 through the close of trading on June 2, 2021,<sup>9</sup> the Recognized Loss Amount for each such share shall be (i) the purchase/acquisition price per share (not to exceed the issue price at the Offering of \$48.25 per share) *minus* the sale price per share (not to be less than \$14.90 per share, the closing price on March 2, 2021), (ii) multiplied by 0.25.

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<sup>3</sup> As stated above, the Plan of Allocation presumes that shares of Benefitfocus common stock purchased or otherwise acquired at the Offering price of \$48.25 per share or from an Underwriter Defendant from March 1, 2019 through and including April 1, 2019, were purchased or otherwise acquired in the SPO. Claimants must provide adequate documentation of these conditions.

<sup>4</sup> For purposes of the statutory calculations, March 2, 2021, the date the initial complaint in the Action was filed, is the date of suit.

<sup>5</sup> For purposes of the statutory calculations, June 2, 2021 is being treated as the date of judgment because, as of the date of this Notice, there has been no recorded trading price for Benefitfocus common stock after June 2, 2021 that is greater than the \$14.90 per share closing price on the date of suit.

<sup>6</sup> As discussed above, shares are presumed to have been purchased or otherwise acquired in the SPO if they were purchased at the Offering price of \$48.25 per share or from an Underwriter Defendant from March 1, 2019 through and including April 1, 2019.

<sup>7</sup> For purposes of the statutory calculations, March 2, 2021, the date the initial complaint in the Action was filed, is the date of suit.

<sup>8</sup> The Plan of Allocation applies a seventy-five percent (75%) discount to the claims of Settlement Class Members that purchased or otherwise acquired Benefitfocus common stock on the open market from March 1, 2019 through November 5, 2020, inclusive, rather than in the SPO. The discount reflects the difficulty that Settlement Class Members would have in “tracing” their shares to the SPO, but nevertheless allocates a portion of the Net Settlement Fund for these claims given the release of Securities Exchange Act of 1934 claims that were not asserted in the Action.

<sup>9</sup> For purposes of the statutory calculations, June 2, 2021 is being treated as the date of judgment because, as of the date of this Notice, there has been no recorded trading price for Benefitfocus common stock after June 2, 2021 that is greater than the \$14.90 per share closing price on the date of suit.

- C. Retained after the close of trading on June 2, 2021, the Recognized Loss Amount for each such share shall be (i) the purchase/acquisition price per share (not to exceed the issue price at the Offering of \$48.25 per share) *minus* \$14.90 per share, the closing price on March 2, 2021, (ii) multiplied by 0.25.

#### ADDITIONAL PROVISIONS

75. Purchases or acquisitions and sales of Benefitfocus publicly traded common stock shall be deemed to have occurred on the “contract” or “trade” date as opposed to the “settlement,” “payment,” or “sale” date. The receipt or grant by gift, inheritance or operation of law of Benefitfocus common stock purchased or acquired during the Class Period shall not be deemed a purchase, acquisition, or sale of such shares for the calculation of a Claimant’s Recognized Claim, nor shall the receipt or grant be deemed an assignment of any claim relating to the purchase/acquisition of such shares unless: (i) the donor or decedent purchased or otherwise acquired such shares during the Class Period; (ii) no Claim Form was submitted by or on behalf of the donor, on behalf of the decedent, or by anyone else with respect to such shares; and (iii) it is specifically so provided in the instrument of gift or assignment.

76. The Recognized Loss Amount on a “short sale” that is not covered by a purchase or acquisition is zero.

77. In the event that a Claimant has an opening short position in Benefitfocus common stock at the start of the Class Period, the earliest Class Period purchase or acquisition shall be matched against such opening short position in accordance with the FIFO matching described above, and any portion of such purchase or acquisition that covers such short sales will not be entitled to recovery. In the event that a Claimant newly establishes a short position during the Class Period, the earliest subsequent Class Period purchase or acquisition shall be matched against such short position on a FIFO basis and will not be entitled to a recovery.

78. Benefitfocus common stock is the only security eligible for recovery under the Plan of Allocation. With respect to Benefitfocus common stock purchased or sold through the exercise of an option, the purchase/sale date of the Benefitfocus common stock is the exercise date of the option and the purchase/sale price is the exercise price of the option.

79. The Net Settlement Fund will be allocated among all Authorized Claimants whose prorated payment is \$10.00 or greater. If the prorated payment to any Authorized Claimant calculates to less than \$10.00, it will not be included in the calculation and a distribution will not be made to that Authorized Claimant.

80. Payment according to this Plan of Allocation will be deemed conclusive against all Authorized Claimants. Recognized Claims will be calculated as defined herein by the Claims Administrator and cannot be less than zero.

81. Distributions will be made to eligible Authorized Claimants after all claims have been processed and after the Court has finally approved the Settlement. If there is any balance remaining in the Net Settlement Fund (whether by reason of tax refunds, uncashed checks or otherwise) after at least six (6) months from the date of initial distribution of the Net Settlement Fund, the Claims Administrator shall, if feasible and economical, after payment of Notice and Administration Expenses, Taxes, and attorneys’ fees and expenses, if any, redistribute such balance in an equitable and economic fashion among Authorized Claimants who have received distributions from the Net Settlement Fund. Redistributions, after payment of Notice and Administration Expenses, Taxes, and attorneys’ fees and expenses, if any, shall continue to Authorized Claimants who have received distributions from the Net Settlement Fund until it is no longer feasible or economical to do so. Once it is no longer feasible or economical to make further distributions, any balance that still remains in the Net Settlement Fund after re-distribution(s) and after payment of outstanding Notice and Administration Expenses, Taxes, and attorneys’ fees and expenses, if any, shall be donated to the Consumer Federation of America, a private, non-profit, non-sectarian 501(c)(3) organization, or shall be distributed as otherwise approved by the Court.

82. Payment pursuant to the Plan of Allocation or such other plan as may be approved by the Court shall be conclusive against all Claimants. No Person shall have any claim against the Defendant Releasees, the Plaintiff Releasees, or the Claims Administrator based on determinations or distributions made substantially in accordance with the Stipulation, the Settlement, the Plan of Allocation approved by the Court, or further order(s) of the Court.

83. Defendants, Defendants’ Counsel, and Defendant Releasees shall have no responsibility for, interest in, or liability whatsoever with respect to the selection of the Claims Administrator, the administration of the Settlement, or the actions or decisions of the Claims Administrator and shall have no liability whatsoever to the Plaintiff Releasees in connection with such administration, including, but not limited to: (i) any act, omission, or determination by Lead Counsel or the Claims Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement, Escrow Account, or otherwise; (ii) the management, investment, or distribution of the Settlement Fund; (iii) the Plan of Allocation; (iv) the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund; (v) any loss suffered by, or fluctuation in value of, the Settlement Fund; or (vi) the payment or withholding of any Taxes, expenses, and/or costs incurred in connection with the taxation of the Settlement Fund, distributions or other payments from the Escrow Account, or the filing of any Tax Returns (as defined in paragraph 11(a) of the Stipulation). No Person, including Lead Plaintiff, Settlement Class Members, and Lead Counsel, shall have any claim of any kind against Defendants, Defendants’ Counsel, or Defendant Releasees with respect to the matters set forth in this paragraph.

84. Each Claimant is deemed to have submitted to the jurisdiction of the Court with respect to his, her, or its claim.

**SPECIAL NOTICE TO SECURITIES BROKERS AND NOMINEES**

85. If you purchased or acquired Benefitfocus common stock during the period from March 1, 2019 through November 5, 2020, inclusive, (the Class Period) for the beneficial interest of a person or entity other than yourself, the Court has directed that WITHIN TEN (10) CALENDAR DAYS of your receipt of this Notice, you must either: (a) request from the Claims Administrator sufficient copies of the Notice to forward to all beneficial owners for whom or which you purchased or otherwise acquired Benefitfocus common stock during the Class Period and WITHIN TEN (10) CALENDAR DAYS of receipt of those Notices from the Claims Administrator forward them to all those beneficial owners; or (b) provide a list of the names and addresses of all those beneficial owners to the Claims Administrator, who shall send the Notice promptly to the identified beneficial owners. If you choose to follow procedure (a), the Court has also directed that you shall also send a statement to the Claims Administrator confirming that the mailing was made and shall retain your mailing records for use in connection with any further notices that may be provided in the Action. Upon full and timely compliance with these directions, you may seek reimbursement from the Settlement Fund of your reasonable expenses actually incurred by providing the Claims Administrator with proper documentation supporting the expenses for which reimbursement is sought. Those expenses will be paid upon request and submission of appropriate supporting documentation and timely compliance with the above directives. All communications concerning the foregoing should be addressed to the Claims Administrator:

*Benefitfocus Securities Settlement*  
c/o A.B. Data, Ltd.  
P.O. Box 173114  
Milwaukee, WI 53217

Dated: August 29, 2022

BY ORDER OF THE SUPREME COURT OF THE  
STATE OF NEW YORK, NEW YORK COUNTY