

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

IN RE SOLARWINDS CORPORATION
SECURITIES LITIGATION

Case No. 1:21-cv-00138-RP

CLASS ACTION

**REPLY MEMORANDUM IN FURTHER SUPPORT OF
(I) LEAD PLAINTIFF'S MOTION FOR FINAL APPROVAL OF
SETTLEMENT AND PLAN OF ALLOCATION; AND (II) LEAD COUNSEL'S
MOTION FOR ATTORNEYS' FEES AND LITIGATION EXPENSES**

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Lead Plaintiff New York City District Council of Carpenters Pension Fund, on behalf of itself and the Settlement Class, and Lead Counsel respectfully submit this reply memorandum of law in further support of (i) Lead Plaintiff's Motion for Final Approval of Settlement and Plan of Allocation (ECF No. 104), and (ii) Lead Counsel's Motion for Attorneys' Fees and Litigation Expenses (ECF No. 105) (the "Motions").¹

I. THE SETTLEMENT CLASS'S POSITIVE REACTION SUPPORTS APPROVAL OF THE MOTIONS

In their opening papers, Lead Plaintiff and Lead Counsel demonstrated why the proposed \$26 million Settlement satisfies the criteria for final approval of a class action settlement and the request for attorneys' fees and Litigation Expenses is fair and reasonable. Since then, the Claims Administrator has completed an extensive notice program undertaken in accordance with the Court's Preliminary Approval Order. In response to this notice program, no Settlement Class Members have objected to any aspect of the Settlement, the Plan of Allocation, or the requested fees and expenses. Additionally, no Settlement Class Members have requested exclusion from the Settlement Class.

As discussed further below, this uniformly positive reaction by the Settlement Class represents a significant endorsement of all aspects of the Motions.

A. The Robust Court-Approved Notice Program

Pursuant to the Court's Preliminary Approval Order, the Court-authorized Claims Administrator, Epiq Class Action & Claims Solutions, Inc. ("Epiq"), conducted an extensive notice program, which included mailing the Notice and Claim Form to 25,054 potential Settlement Class Members and their nominees, publishing a summary notice in *The Wall Street Journal* and

¹ Capitalized terms not defined herein shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement, dated November 28, 2022 (ECF No. 97-1)

over *PR Newswire*, and posting relevant information and documents on a dedicated settlement website, www.SolarWindsSecuritiesLitigation.com. See Supplemental Declaration of Alexander P. Villanova, attached as Ex. 1 (“Suppl. Villanova Decl.”); Declaration of Alexander P. Villanova (ECF No. 106-4) (“Initial Villanova Decl.”).

The Notice to the Settlement Class Members informed them of the terms of the proposed Settlement and Plan of Allocation, and that Lead Counsel would apply for an award of attorneys’ fees in an amount not to exceed 25% of the Settlement Fund and payment of Litigation Expenses in an amount not to exceed \$500,000. See Notice (Initial Villanova Decl. Ex. A), at ¶¶ 5, 54. The Notice also apprised Settlement Class Members of their right to object to the proposed Settlement, the Plan of Allocation, and/or the request for attorneys’ fees and expenses; their right to exclude themselves from the Settlement Class; and the July 7, 2023 deadline for objections and requests for exclusion. See *id.* at p. 2, ¶¶ 55, 62-63.

On June 23, 2023, 14 days prior to the objection and exclusion deadline, Lead Plaintiff and Lead Counsel filed their opening papers in support of the Settlement, Plan of Allocation, and fee and expense request. These papers are available on the public docket (ECF Nos. 104-106) and were promptly posted to the case website, see Suppl. Villanova Decl. ¶ 5, as well as Lead Counsel’s website, blbglaw.com. In addition, notice of the Settlement was also provided by Defendants to appropriate federal and state officials pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715(b). See ECF No. 98.

Following the extensive notice program, not a single Settlement Class Member has objected to the Settlement, the Plan of Allocation, or Lead Counsel’s application for attorneys’ fees and Litigation Expenses. And no Settlement Class Member has submitted a request for exclusion from the Settlement Class. See Suppl. Villanova Decl. ¶ 6.

B. The Settlement Class’s Reaction Supports Approval of the Settlement and the Plan of Allocation

As set forth in Lead Plaintiff’s opening motion, the Settlement was achieved after two years of hard-fought litigation, which included extensive motion practice and discovery. The Settlement is an excellent result for the Settlement Class, providing an immediate and meaningful recovery without the risks and delay of protracted litigation.

The absence of any objections or requests for exclusion further supports a finding that the Settlement is fair, reasonable, and adequate. *See, e.g., Blackmon v. Zachary Holdings, Inc.*, 2022 WL 3142362, at *4 (W.D. Tex. Aug. 5, 2022) (“the lack of any objections from members of the Settlement Class . . . further support[s] final approval”), *Spegele v. USAA Life Ins. Co.*, 2021 WL 4935978, at *9 (W.D. Tex. Aug. 26, 2021) (“[T]he very small number of class members who have excluded themselves (26) from the Settlement or objected thereto (4), indicates the Settlement is well-received by absent class members, which supports approval of the Settlement.”); *Erica P. John Fund, Inc. v. Halliburton Co.*, 2018 WL 1942227, at *5 (N.D. Tex. Apr. 25, 2018) (“Receipt of few or no objections can be viewed as indicative of the adequacy of the settlement.”); *Schwartz v. TXU Corp.*, 2005 WL 3148350, at *22-23 (N.D. Tex. Nov. 8, 2005) (finding, where there were eight objections, that “the overwhelming response of absent Class Members overall . . . strongly supports approval of the settlement”); *Quintanilla v. A & R Demolition Inc.*, 2008 WL 9410399, at *5 (S.D. Tex. May 7, 2008) (“Here, there were no objections to the settlement. None of the class members elected to opt out of the settlement. This indicates that the class is overwhelmingly in favor of settlement.”).

Likewise, the uniformly positive reaction of the Settlement Class supports approval of the Plan of Allocation, which was set forth in the Notice. *See, e.g., Marcus v. J.C. Penney Co., Inc.*, 2017 WL 6590976, at *5 (E.D. Tex. Dec. 18, 2017) (recommending that the plan of allocation be

approved where “[n]o objections have been filed by any class members”), *report and recommendation adopted*, 2018 WL 307024 (E.D. Tex. Jan. 4, 2018); *Schwartz*, 2005 WL 3148350, at *24 (finding plan of allocation fair and reasonable where, “[m]ost importantly, there has only been one objection to the Plan of Allocation”); *In re Veeco Instruments Inc. Sec. Litig.*, 2007 WL 4115809, at *14 (S.D.N.Y. Nov. 7, 2007) (“[N]ot one class member has objected to the Plan of Allocation which was fully explained in the Notice of Settlement sent to all Class Members. This favorable reaction of the Class supports approval of the Plan of Allocation.”).

C. The Settlement Class’s Reaction Supports Approval of the Fee and Expense Request

As set forth in their opening papers, Lead Counsel requests attorneys’ fees of 25% of the Settlement Fund. The requested fee is consistent with the percentage routinely awarded in comparable cases prosecuted on a contingency-fee basis and is supported by the significant time and effort expended by Plaintiffs’ Counsel in this matter. *See Buettgen v. Harless*, 2013 WL 12303194, at *1 (N.D. Tex. Nov. 13, 2013) (“[c]ourts throughout this Circuit regularly award fees of 25% and more often 30% or more of the total recovery under the percentage-of-the recovery method”).

The absence of any objections to the requested attorneys’ fees and Litigation Expenses further supports a finding that the request is fair and reasonable. *See, e.g., Blackmon*, 2022 WL 3142362, at *5 (approving requested fee and noting that “importantly, there have been no objections to the requested fee award from class members”); *Grigson v. Farmers Grp., Inc.*, 2020 WL 13598801, at *5 (W.D. Tex. May 22, 2020) (finding that the “lack of substantial objections further supports that the fee requested is reasonable” where one objection to attorneys’ fees was filed); *Halliburton*, 2018 WL 1942227, at *12 (“lack of objections” was “relevant in considering the reasonableness and fairness of the [fee] award”); *Bethea v. Sprint Commc’ns Co.*, 2013 WL

228094, at *5 (S.D. Miss. Jan. 18, 2013) (“The absence of objection by class members to Settlement Class Counsel’s fee-and-expense request further supports finding it reasonable.”); *In re Veeco Instruments Inc. Sec. Litig.*, 2007 WL 4115808, at *10 (S.D.N.Y. Nov. 7, 2007) (the reaction of class members to a fee and expense request “is entitled to great weight by the Court” and the absence of any objections “suggests that the fee request is fair and reasonable”).

II. CONCLUSION

For the foregoing reasons, and those set forth in their opening papers, Lead Plaintiff and Lead Counsel respectfully request that the Court approve the Settlement, the Plan of Allocation, and the motion for attorneys’ fees and Litigation Expenses. Copies of the (i) proposed Judgment Approving Class Action Settlement, (ii) proposed Order Approving Plan of Allocation of Net Settlement Fund, and (iii) proposed Order Awarding Attorneys’ Fees and Litigation Expenses are attached hereto as Exhibits 2, 3, and 4.

DATED: July 21, 2023

Respectfully submitted,

/s/ Jonathan D. Uslander

**BERNSTEIN LITOWITZ BERGER &
GROSSMANN LLP**

John J. Rizio-Hamilton (*pro hac vice*)

Jonathan D. Uslander (*pro hac vice*)

Benjamin W. Horowitz (*pro hac vice*)

Thomas Z. Sperber (*pro hac vice*)

1251 Avenue of the Americas

New York, New York 10020

Tel: (212) 554-1400

JohnR@blbglaw.com

JonathanU@blbglaw.com

Will.Horowitz@blbglaw.com

Thomas.Sperber@blbglaw.com

*Counsel for Lead Plaintiff and Lead Counsel
for the Settlement Class*

MARTIN & DROUGHT, P.C.

Gerald T. Drought

State Bar No. 06134800

Federal Bar No. 8942

Frank B. Burney

State Bar No. 03438100

Bank of America Plaza, 25th Floor

300 Convent Street

San Antonio, Texas 78205

Telephone: (210) 227-7591

Facsimile: (210) 227-7924

gdrought@mdtlaw.com

fburney@mdtlaw.com

Liaison Counsel for Lead Plaintiff

#3317503

CERTIFICATE OF SERVICE

I certify that on July 21, 2023 a true and correct copy of the foregoing document and its exhibits was filed with the Clerk of Court using the CM/ECF system, which will send electronic notification of such filing to all counsel of record.

By: /s/ Jonathan D. Uslaner
Jonathan D. Uslaner

Exhibit 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

IN RE SOLARWINDS CORPORATION
SECURITIES LITIGATION

Case No. 1:21-cv-00138-RP

CLASS ACTION

**SUPPLEMENTAL DECLARATION OF ALEXANDER P. VILLANOVA
REGARDING (A) MAILING OF THE NOTICE AND CLAIM FORM AND
(B) REPORT ON REQUESTS FOR EXCLUSION AND CLAIMS RECEIVED**

I, Alexander P. Villanova, hereby declare under penalty of perjury as follows:

1. I am a Senior Project Manager employed by Epiq Class Action & Claims Solutions, Inc. (“Epiq”). Pursuant to the Court’s February 8, 2023 Order Preliminarily Approving Settlement and Authorizing Dissemination of Notice of Settlement (ECF No. 103) (“Preliminary Approval Order”), Epiq was authorized to act as the Claims Administrator in connection with the Settlement reached in the above-captioned action (“Action”).¹

2. I submit this declaration as a supplement to my earlier submitted declaration, the Declaration of Alexander P. Villanova Regarding (A) Mailing of Notice and Claim Form; (B) Publication of the Summary Notice; and (C) Report on Requests for Exclusion Received to Date, dated June 23, 2023 (ECF No. 106-4) (“Initial Mailing Declaration”). The following statements are based on my personal knowledge and information provided by other Epiq employees working under my supervision, and if called on to do so, I could and would testify competently thereto.

¹ Unless otherwise defined herein, all capitalized terms have the meanings set forth in the Stipulation and Agreement of Settlement dated November 28, 2022 (ECF No. 97-1).

CONTINUED DISSEMINATION OF THE NOTICE PACKET

3. Since the execution of the Initial Mailing Declaration, Epiq has continued to disseminate copies of the Notice and Claim Form (together, “Notice Packet”) in response to requests from potential Settlement Class Members, brokers, and other nominees. Through July 19, 2023, Epiq disseminated a total of 25,054 Notice Packets to potential Settlement Class Members, brokers, and other nominees. In addition, Epiq re-mailed a total of 19 Notice Packets to persons whose original mailing was returned by the U.S. Postal Service and for whom updated addresses were provided by the Postal Service.

UPDATE ON CALL CENTER SERVICES AND CASE WEBSITE

4. Epiq continues to maintain the toll-free telephone number (1-877-890-0042) and Interactive Voice Recording to accommodate inquiries from potential Settlement Class Members. Since the administration began on March 9, 2023, Epiq has received 70 in-bound calls, which included 10 hours and 18 minutes spent by callers interacting with the IVR and 7 hours and 40 minutes speaking with Epiq’s live operators. Epiq has made 12 out-bound calls to respond to messages left or to follow up on earlier communications. Epiq has also received 599 emails sent to info@SolarWindsSecuritiesLitigation.com and has sent 195 outgoing emails in connection with this case. Epiq has promptly responded to each telephone and email inquiry and will continue to respond to those inquiries.

5. Epiq also continues to maintain the dedicated case website (www.SolarWindsSecuritiesLitigation.com) to assist potential Settlement Class Members. On June 26, 2023, Epiq posted to the website copies of the papers filed in support of Lead Plaintiff’s motion for final approval of the Settlement and Plan of Allocation and Lead Counsel’s motion for attorneys’ fees and Litigation Expenses (ECF Nos. 104-106). Epiq will continue maintaining and,

as appropriate, updating the case website and toll-free telephone number until the conclusion of the administration.

REPORT ON REQUESTS FOR EXCLUSION RECEIVED

6. The Notice informed potential Settlement Class Members that requests for exclusion from the Settlement Class must be addressed to *SolarWinds Securities Litigation, EXCLUSIONS*, c/o Epiq, P.O. Box 3217, Portland, OR 97208-3217, such that they are received no later than July 7, 2023. The Notice also set forth the information that must be included in each request for exclusion. As of the date of this Declaration, Epiq has not received any requests for exclusion.

CLAIMS RECEIVED

7. As set forth in the Notice and Claim Form, to be eligible for a payment from the Settlement, Settlement Class Members were required to submit a Claim Form, with supporting documentation, postmarked, if mailed, or online via the case website by July 7, 2023. As of July 19, 2023, Epiq has received a total of approximately 7,400 Claims. Of the Claims received, approximately 6,975 Claims were filed electronically by or on behalf of institutions and approximately 425 Claims were submitted by or on behalf of individuals.

8. As Claims will likely continue to be received, this Claim count will increase. Lead Counsel have the discretion to accept late Claims for processing provided such acceptance does not delay the distribution of the Net Settlement Fund to the Settlement Class, *see* Preliminary Approval Order ¶ 11, and the Court, in connection with a future motion for authorization to distribute the Net Settlement Fund, will be asked to accept such Claims if eligible.

9. Epiq's complete processing of the Claims will take several months. This process will include steps to confirm the accuracy of the transactions claimed and a review of the Claims

for deficiencies, such as Claims with missing or incomplete documentation, duplicate Claims, and Claims whose transactions do not balance (*i.e.*, where the number of shares purchased during the relevant time period do not match the number of shares sold during the relevant time period plus the number of shares held at the end of the relevant time period). Epiq will continue to provide Claimants with an opportunity to correct any deficiencies in their Claims, conduct thorough quality control and quality assurance processes, and perform fraud prevention reviews as part of its normal claims processing procedures in order to ensure the validity and accuracy of the Claims. As a result of these procedures and the possible acceptance of additional Claims, the total Recognized Claims is subject to change.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Executed on July 21, 2023 in Beaverton, Oregon.

A handwritten signature in black ink, appearing to read 'Alexander Villanova', written over a horizontal line.

Alexander Villanova

Exhibit 2

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

IN RE SOLARWINDS CORPORATION
SECURITIES LITIGATION

Case No. 1:21-cv-00138-RP

CLASS ACTION

[PROPOSED] JUDGMENT APPROVING CLASS ACTION SETTLEMENT

WHEREAS, a consolidated securities class action is pending in this Court entitled *In re SolarWinds Corporation Securities Litigation*, Case No. 1:21-cv-138-RP (the “Action”);

WHEREAS, lead plaintiff New York City District Council of Carpenters Pension Fund (“Lead Plaintiff”), on behalf of itself and the Settlement Class (defined below); and (b) defendants SolarWinds Corporation (“SolarWinds” or the “Company”), Kevin B. Thompson, Timothy Brown, Silver Lake Group L.L.C., Silver Lake Technology Management, L.L.C., and Thoma Bravo, LP (together with SolarWinds, “Defendants”, and with Lead Plaintiff, the “Parties”) have entered into a Stipulation and Agreement of Settlement dated November 28, 2022 (the “Stipulation”), that provides for a complete dismissal with prejudice of the claims asserted against Defendants in the Action on the terms and conditions set forth in the Stipulation, subject to the approval of this Court (the “Settlement”);

WHEREAS, unless otherwise defined in this Judgment, the capitalized terms herein shall have the same meaning as they have in the Stipulation;

WHEREAS, by Order dated February 8, 2023 (the “Preliminary Approval Order”), this Court: (a) found, pursuant to Rule 23(e)(1)(B) of the Federal Rules of Civil Procedure, that it

(i) would likely be able to approve the Settlement as fair, reasonable, and adequate under Rule 23(e)(2) and (ii) would likely be able to certify the Settlement Class for purposes of the Settlement; (b) ordered that notice of the proposed Settlement be provided to potential Settlement Class Members; (c) provided Settlement Class Members with the opportunity either to exclude themselves from the Settlement Class or to object to the proposed Settlement; and (d) scheduled a hearing regarding final approval of the Settlement;

WHEREAS, due and adequate notice has been given to the Settlement Class;

WHEREAS, the Court conducted a hearing on July 28, 2023 (the “Settlement Fairness Hearing”) to consider, among other things, (a) whether the terms and conditions of the Settlement are fair, reasonable, and adequate to the Settlement Class, and should therefore be approved; and (b) whether a judgment should be entered dismissing the Action with prejudice as against the Defendants; and

WHEREAS, the Court having reviewed and considered the Stipulation, all papers filed and proceedings held herein in connection with the Settlement, all oral and written comments received regarding the Settlement, and the record in the Action, and good cause appearing therefor;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. **Jurisdiction** – The Court has jurisdiction over the subject matter of the Action, and all matters relating to the Settlement, as well as personal jurisdiction over all of the Parties and each of the Settlement Class Members.

2. **Incorporation of Settlement Documents** – This Judgment incorporates and makes a part hereof: (a) the Stipulation filed with the Court on December 8, 2022; and (b) the Notice and the Summary Notice, both of which were filed with the Court on June 23, 2023.

3. **Class Certification for Settlement Purposes** – The Court hereby certifies for the purposes of the Settlement only, the Action as a class action pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure on behalf of the Settlement Class consisting of all persons who purchased or otherwise acquired the common stock of SolarWinds from October 18, 2018 through December 17, 2020, inclusive (the “Class Period”), and who were damaged thereby (the “Settlement Class”). Excluded from the Settlement Class are: (i) Defendants; (ii) any current or former officers or directors of any Defendant who served in such capacities during the Class Period; (iii) members of the immediate family of each of the Individual Defendants or any current or former officer or director of any Defendant who served in such capacities during the Class Period; (iv) any entity that any excluded person owns or controls or owned or controlled during the Class Period; (v) any affiliates, parents, or subsidiaries of any Defendant; and (vi) the legal representatives, heirs, successors, and assigns of any such excluded persons.

4. **Settlement Class Findings** – For purposes of the Settlement only, the Court finds that each element required for certification of the Settlement Class pursuant to Rule 23 of the Federal Rules of Civil Procedure has been met: (a) the members of the Settlement Class are so numerous that their joinder in the Action would be impracticable; (b) there are questions of law and fact common to the Settlement Class which predominate over any individual questions; (c) the claims of Lead Plaintiff in the Action are typical of the claims of the Settlement Class; (d) Lead Plaintiff and Lead Counsel have and will fairly and adequately represent and protect the interests of the Settlement Class; and (e) a class action is superior to other available methods for the fair and efficient adjudication of the Action.

5. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for the purposes of the Settlement only, the Court hereby certifies Lead Plaintiff New York City District Council

of Carpenters Pension Fund as Class Representative for the Settlement Class and appoints Lead Counsel Bernstein Litowitz Berger & Grossmann LLP as Class Counsel for the Settlement Class. The Court finds that Lead Plaintiff and Lead Counsel have fairly and adequately represented the Settlement Class both in terms of litigating the Action and for purposes of entering into and implementing the Settlement and have satisfied the requirements of Federal Rules of Civil Procedure 23(a)(4) and 23(g), respectively.

6. **Notice** – The Court finds that the dissemination of the Notice and the publication of the Summary Notice: (a) were implemented in accordance with the Preliminary Approval Order; (b) constituted the best notice practicable under the circumstances; (c) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of (i) the pendency of the Action; (ii) the effect of the proposed Settlement (including the Releases to be provided thereunder); (iii) Lead Counsel’s motion for an award of attorneys’ fees and Litigation Expenses; (iv) their right to object to any aspect of the Settlement, the Plan of Allocation, and/or Lead Counsel’s motion for attorneys’ fees and Litigation Expenses; (v) their right to exclude themselves from the Settlement Class; and (vi) their right to appear at the Settlement Fairness Hearing; (d) constituted due, adequate, and sufficient notice to all persons and entities entitled to receive notice of the proposed Settlement; and (e) satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4, as amended, and all other applicable law and rules.

7. **Final Settlement Approval and Dismissal of Claims** – Pursuant to, and in accordance with, Rule 23(e)(2) of the Federal Rules of Civil Procedure, this Court hereby fully and finally approves the Settlement set forth in the Stipulation in all respects (including, without

limitation: the amount of the Settlement; the Releases provided for therein; and the dismissal with prejudice of the claims asserted against Defendants in the Action), and finds that the Settlement is, in all respects, fair, reasonable, and adequate to the Settlement Class. Specifically, the Court finds that: (a) Lead Plaintiff and Lead Counsel have adequately represented the Settlement Class; (b) the Settlement was negotiated by the Parties at arm's length; (c) the relief provided for the Settlement Class under the Settlement is adequate taking into account the costs, risks, and delay of trial and appeal; the proposed means of distributing the Settlement Fund to the Settlement Class; and the proposed attorneys' fee award; and (d) the Settlement treats members of the Settlement Class equitably relative to each other. The Parties are directed to implement, perform, and consummate the Settlement in accordance with the terms and provisions contained in the Stipulation.

8. The Action and all of the claims asserted against Defendants in the Action by Lead Plaintiff and the other Settlement Class Members are hereby dismissed with prejudice. The Parties shall bear their own costs and expenses, except as otherwise expressly provided in the Stipulation.

9. **Binding Effect** – The terms of the Stipulation and of this Judgment shall be forever binding on Defendants, Lead Plaintiff, and all other Settlement Class Members (regardless of whether or not any individual Settlement Class Member submits a Claim Form or seeks or obtains a distribution from the Net Settlement Fund), as well as their respective successors and assigns.

10. **Releases** – The Releases set forth in paragraphs 5 and 6 of the Stipulation, together with the definitions contained in paragraph 1 of the Stipulation relating thereto, are expressly incorporated herein in all respects. The Releases are effective as of the Effective Date. Accordingly, this Court orders that:

(a) Without further action by anyone, and subject to paragraph 11 below, upon the Effective Date of the Settlement, Lead Plaintiff and each of the other Settlement Class

Members, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such only, and any other person or entity purporting to claim through or on behalf of them directly or indirectly in such capacity only, shall be deemed to have, and by operation of law and of this Judgment shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged any or all of the Released Plaintiff's Claims against Defendants and the other Defendants' Releasees, and shall forever be barred and enjoined from prosecuting or otherwise pursuing whether directly or in any other capacity, any or all of the Released Plaintiff's Claims against any of the Defendants' Releasees. This Release shall not apply to any of the Excluded Plaintiff's Claims (as that term is defined in paragraph 1(t) of the Stipulation).

(b) Without further action by anyone, and subject to paragraph 11 below, upon the Effective Date of the Settlement, Defendants, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such only, and any other person or entity purporting to claim through or on behalf of them directly or indirectly in such capacity only, shall be deemed to have, and by operation of law and of this Judgment shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged any or all of the Released Defendants' Claims against Lead Plaintiff and the other Plaintiff's Releasees, and shall forever be barred and enjoined from prosecuting or otherwise pursuing whether directly or in any other capacity, any or all of the Released Defendants' Claims against any of the Plaintiff's Releasees. This Release shall not apply to any of the Excluded Defendants' Claims (as that term is defined in paragraph 1(s) of the Stipulation).

11. Notwithstanding paragraphs 10(a) – (b) above, nothing in this Judgment shall bar any action by any of the Parties to enforce or effectuate the terms of the Stipulation or this Judgment.

12. **Rule 11 Findings** – The Court finds and concludes that the Parties and their respective counsel have complied in all respects with the requirements of Rule 11 of the Federal Rules of Civil Procedure in connection with the institution, prosecution, defense, and settlement of the Action.

13. **No Admissions** – Neither this Judgment, the Term Sheet, the Stipulation (whether or not consummated), including the exhibits thereto and the Plan of Allocation contained therein (or any other plan of allocation that may be approved by the Court), the negotiations leading to the execution of the Term Sheet and the Stipulation, nor any proceedings taken pursuant to or in connection with the Term Sheet, the Stipulation, and/or approval of the Settlement (including any arguments proffered in connection therewith):

(a) shall be offered against any of the Defendants' Releasees as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Defendants' Releasees with respect to the truth of any fact alleged by Lead Plaintiff or the validity of any claim that was or could have been asserted or the deficiency of any defense that has been or could have been asserted in this Action or in any other litigation, or of any liability, negligence, fault, or other wrongdoing of any kind of any of the Defendants' Releasees, or in any way referred to for any other reason as against any of the Defendants' Releasees, in any arbitration proceeding or other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Stipulation;

(b) shall be offered against any of the Plaintiff's Releasees as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Plaintiff's Releasees that any of their claims are without merit, that any of the Defendants' Releasees had meritorious defenses, or that damages recoverable under the Complaint would not have exceeded the Settlement Amount, or with respect to any liability, negligence, fault, or wrongdoing of any kind, or in any way referred to for any other reason as against any of the Plaintiff's Releasees, in any arbitration proceeding or other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Stipulation;

(c) shall be offered as evidence of, or construed as evidence of, any presumption, concession, or admission that class certification is appropriate in this Action, except for purposes of this Settlement; or

(d) shall be construed against any of the Releasees as an admission, concession, or presumption that the consideration to be given under the Settlement represents the amount which could be or would have been recovered after trial;

provided, however, that the Parties and the Releasees and their respective counsel may refer to this Judgment and the Stipulation to effectuate the protections from liability granted hereunder and thereunder or otherwise to enforce the terms of the Settlement.

14. **Retention of Jurisdiction** – Without affecting the finality of this Judgment in any way, this Court retains continuing and exclusive jurisdiction over: (a) the Parties for purposes of the administration, interpretation, implementation, and enforcement of the Settlement; (b) the disposition of the Settlement Fund; (c) any motion for an award of attorneys' fees and/or Litigation Expenses by Lead Counsel in the Action that will be paid from the Settlement Fund; (d) any motion

to approve the Plan of Allocation; (e) any motion to approve the Class Distribution Order; and (f) the Settlement Class Members for all matters relating to the Action.

15. Separate orders shall be entered regarding approval of a plan of allocation and the motion of Lead Counsel for an award of attorneys' fees and Litigation Expenses. Such orders shall in no way affect or delay the finality of this Judgment and shall not affect or delay the Effective Date of the Settlement.

16. **Modification of the Agreement of Settlement** – Without further approval from the Court, Lead Plaintiff and Defendants are hereby authorized to agree to and adopt such amendments or modifications of the Stipulation or any exhibits attached thereto to effectuate the Settlement that: (a) are not materially inconsistent with this Judgment; and (b) do not materially limit the rights of Settlement Class Members in connection with the Settlement. Without further order of the Court, Lead Plaintiff and Defendants may agree to reasonable extensions of time to carry out any provisions of the Settlement.

17. **Termination of Settlement** – If the Settlement is terminated as provided in the Stipulation or the Effective Date of the Settlement otherwise fails to occur, this Judgment shall be vacated and rendered null and void, and shall be of no further force and effect, except as otherwise provided by the Stipulation, and this Judgment shall be without prejudice to the rights of Lead Plaintiff, the other Settlement Class Members, and Defendants, and Lead Plaintiff and Defendants shall revert to their respective positions in the Action as of immediately prior to the Parties' agreement in principle on October 26, 2022, as provided in the Stipulation.

18. **Entry of Final Judgment** – There is no just reason to delay the entry of this Judgment as a final judgment in this Action. Accordingly, the Clerk of the Court is expressly directed to immediately enter this final judgment in this Action.

SO ORDERED this _____ day of _____, 2023.

The Honorable Robert Pitman
United States District Judge

Exhibit 3

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

IN RE SOLARWINDS CORPORATION
SECURITIES LITIGATION

Case No. 1:21-cv-00138-RP

CLASS ACTION

**[PROPOSED] ORDER APPROVING
PLAN OF ALLOCATION OF NET SETTLEMENT FUND**

This matter came on for hearing on July 28, 2023 (the “Settlement Fairness Hearing”) on Lead Plaintiff’s motion to approve the proposed plan of allocation (“Plan of Allocation”) of the Net Settlement Fund created under the Settlement in the above-captioned class action (the “Action”). The Court having considered all matters submitted to it at the Settlement Fairness Hearing and otherwise; it appearing that: (i) the Notice of the Settlement Fairness Hearing (which included a summary of the Settlement as well as the full text of the proposed Plan of Allocation) (the “Notice”) was mailed to all Settlement Class Members who or which could be identified with reasonable effort substantially in the form approved by the Court and (ii) a summary notice of the hearing substantially in the form approved by the Court was published in *The Wall Street Journal* and released over *PR Newswire* pursuant to the specifications of the Court; and the Court having considered and determined the fairness and reasonableness of the proposed Plan of Allocation,

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. This Order approving the proposed Plan of Allocation incorporates by reference the definitions in the Stipulation and Agreement of Settlement dated November 28, 2022 (Doc. 97-1)

(the “Stipulation”) and all terms not otherwise defined herein shall have the same meanings as set forth in the Stipulation.

2. The Court has jurisdiction to enter this Order approving the proposed Plan of Allocation, and over the subject matter of the Action and all Parties to the Action, including all Settlement Class Members.

3. Notice of Lead Plaintiff’s motion for approval of the proposed Plan of Allocation was given to all Settlement Class Members who or which could be identified with reasonable effort. The form and method of notifying the Settlement Class of the motion for approval of the proposed Plan of Allocation satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4, as amended, and all other applicable laws and rules, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

4. Copies of the Notice, which included the Plan of Allocation, were mailed to over 25,000 potential Settlement Class Members and nominees, and no objections to the Plan of Allocation have been received.

5. The Court hereby finds and concludes that the formula for the calculation of the claims of Claimants as set forth in the Plan of Allocation mailed to Settlement Class Members provides a fair and reasonable basis upon which to allocate the proceeds of the Net Settlement Fund among Settlement Class Members with due consideration having been given to administrative convenience and necessity.

6. The Court hereby finds and concludes that the Plan of Allocation is, in all respects, fair and reasonable to the Settlement Class. Accordingly, the Court hereby approves the Plan of Allocation proposed by Lead Plaintiff.

7. Any appeal or any challenge affecting this Order approving the Plan of Allocation shall in no way disturb or affect the finality of the Judgment.

8. There is no just reason for delay in the entry of this Order, and immediate entry by the Clerk of the Court is expressly directed.

SO ORDERED this _____ day of _____ 2023.

The Honorable Robert Pitman
United States District Judge

Exhibit 4

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

IN RE SOLARWINDS CORPORATION
SECURITIES LITIGATION

Case No. 1:21-cv-00138-RP

CLASS ACTION

**[PROPOSED] ORDER AWARDING
ATTORNEYS' FEES AND LITIGATION EXPENSES**

This matter came on for hearing on July 28, 2023 (the “Settlement Fairness Hearing”) on Lead Counsel’s motion for attorneys’ fees and Litigation Expenses. The Court having considered all matters submitted to it at the Settlement Fairness Hearing and otherwise; it appearing that: (i) the Notice of the Settlement Fairness Hearing was mailed to all Settlement Class Members who or which could be identified with reasonable effort substantially in the form approved by the Court and (ii) a summary notice of the hearing substantially in the form approved by the Court was published in *The Wall Street Journal* and released over *PR Newswire* pursuant to the specifications of the Court; and the Court having considered and determined the fairness and reasonableness of the award of attorneys’ fees and Litigation Expenses requested,

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. This Order incorporates by reference the definitions in the Stipulation and Agreement of Settlement dated November 28, 2022 (ECF No. 97-1) (the “Stipulation”) and all terms not otherwise defined herein shall have the same meanings as set forth in the Stipulation.
2. The Court has jurisdiction to enter this Order and over the subject matter of the Action and all parties to the Action, including all Settlement Class Members.

3. Notice of Lead Counsel's motion for attorneys' fees and Litigation Expenses was given to all Settlement Class Members who could be identified with reasonable effort. The form and method of notifying the Settlement Class of the motion for attorneys' fees and expenses satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4(a)(7), due process, and all other applicable law and rules, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

4. Plaintiffs' Counsel are hereby awarded attorneys' fees in the amount of 25% of the Settlement Fund, net of Litigation Expenses awarded, or \$6,426,697 (plus interest earned at the same rate as the Settlement Fund). Plaintiffs' Counsel are also hereby awarded \$270,449.02 for payment of their litigation expenses. These attorneys' fees and expenses shall be paid from the Settlement Fund and the Court finds these sums to be fair and reasonable. Lead Counsel shall allocate the attorneys' fees awarded among Plaintiffs' Counsel in a manner in which it, in good faith, believes reflects the contributions of such counsel to the institution, prosecution, and settlement of the Action.

5. In making this award of attorneys' fees and payment of litigation expenses from the Settlement Fund, the Court has considered and found that:

a. The Settlement has created a fund of \$26,000,000 in cash that has been funded into escrow pursuant to the terms of the Stipulation, and that numerous Settlement Class Members who submit acceptable Claim Forms will benefit from the Settlement that occurred because of the efforts of Plaintiffs' Counsel;

b. The requested fee has been reviewed and approved as reasonable by Lead Plaintiff, an institutional investor that actively supervised the Action;

c. Copies of the Notice were mailed to over 25,000 potential Settlement Class Members and nominees stating that Lead Counsel would apply for attorneys' fees in an amount not to exceed 25% of the Settlement Fund and payment of Litigation Expenses in an amount not to exceed \$500,000 and no objections to the requested award of attorneys' fees or Litigation Expenses were submitted;

d. Lead Counsel conducted the litigation and achieved the Settlement with skill, perseverance and diligent advocacy;

e. The Action raised a number of complex issues;

f. Had Lead Counsel not achieved the Settlement there would remain a significant risk that Lead Plaintiff and the other members of the Settlement Class may have recovered less or nothing from Defendants;

g. Plaintiffs' Counsel devoted over 6,200 hours, with a lodestar value of approximately \$3.4 million, to achieve the Settlement; and

h. The amount of attorneys' fees awarded and expenses to be paid from the Settlement Fund are fair and reasonable and consistent with awards in similar cases.

6. Lead Plaintiff New York City District Council of Carpenters Pension Fund is hereby awarded \$22,760.30 from the Settlement Fund as reimbursement for its reasonable costs and expenses directly related to its representation of the Settlement Class.

7. Any appeal or any challenge affecting this Court's approval regarding any attorneys' fees and expense application shall in no way disturb or affect the finality of the Judgment.

8. Exclusive jurisdiction is hereby retained over the Parties and the Settlement Class Members for all matters relating to this Action, including the administration, interpretation, effectuation or enforcement of the Stipulation and this Order.

9. In the event that the Settlement is terminated or the Effective Date of the Settlement otherwise fails to occur, this Order shall be rendered null and void to the extent provided by the Stipulation.

10. There is no just reason for delay in the entry of this Order, and immediate entry by the Clerk of the Court is expressly directed.

SO ORDERED this _____ day of _____ 2023.

The Honorable Robert Pitman
United States District Judge