

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

PLYMOUTH COUNTY RETIREMENT  
ASSOCIATION, Individually and on Behalf  
of All Others Similarly Situated,

Plaintiff,

v.

CROWDSTRIKE HOLDINGS, INC.,  
GEORGE KURTZ, and BURT W.  
PODBERE,

Defendants.

Case No. 1:24-cv-00857-RP

CLASS ACTION

**MOTION OF THOMAS P. DINAPOLI, COMPTROLLER OF THE STATE OF NEW  
YORK, AS ADMINISTRATIVE HEAD OF THE NEW YORK STATE AND LOCAL  
RETIREMENT SYSTEM, AND AS TRUSTEE OF THE NEW YORK STATE COMMON  
RETIREMENT FUND FOR APPOINTMENT AS LEAD PLAINTIFF AND  
APPROVAL OF ITS SELECTION OF LEAD COUNSEL**

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Thomas P. DiNapoli, Comptroller of the State of New York, as Administrative Head of the New York State and Local Retirement System, and as Trustee of the New York State Common Retirement Fund (“New York State Common Retirement Fund” or “NYSCRF”) respectfully moves this Court, pursuant to Section 21D(a)(3)(B) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. § 78u-4(a)(3)(B), as amended by the Private Securities Litigation Reform Act of 1995 (the “PSLRA”), for entry of an order: (i) appointing NYSCRF as Lead Plaintiff; (ii) approving its selection of Bernstein Litowitz Berger & Grossmann LLP (“Bernstein Litowitz”) to serve as Lead Counsel for the Class; and (iii) granting any further relief as the Court may deem just and proper.

This Motion is made on the grounds that NYSCRF believes that it is the “most adequate plaintiff” under the PSLRA and should therefore be appointed Lead Plaintiff. 15 U.S.C. § 78u-4(a)(3)(B). Specifically, NYSCRF believes that it has the “largest financial interest” in the relief sought by the Class in this action, and that it otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure (“Rule 23”) because its claims are typical of other Class members’ claims and because it will fairly and adequately represent the interests of the Class. 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I). Moreover, NYSCRF is a paradigmatic Lead Plaintiff under the PSLRA because it is a sophisticated institutional investor with a substantial financial interest in the litigation and the ability to supervise and monitor counsel. In addition, NYSCRF has selected and retained Bernstein Litowitz, a law firm with substantial experience in prosecuting securities class actions, to serve as Lead Counsel pursuant to 15 U.S.C. § 78u-4(a)(3)(B)(v).

### **PRELIMINARY STATEMENT**

The above-captioned securities class action alleges that CrowdStrike Holdings, Inc. (“CrowdStrike” or the “Company”) and certain of its senior officers (collectively, “Defendants”)

defrauded investors in violation of Sections 10(b) and 20(a) of the Exchange Act, 15 U.S.C. §§ 78j(b), 78t(a), and U.S. Securities and Exchange Commission Rule 10b-5, 17 C.F.R. § 240.10b-5, promulgated thereunder, during the period from November 29, 2023, through July 29, 2024, inclusive (the “Class Period”). Specifically, the action alleges that, throughout the Class Period, Defendants misled investors regarding CrowdStrike’s internal controls and procedures for updating its Falcon software platform. CrowdStrike investors, including NYSCRF, incurred significant losses when CrowdStrike’s failure to follow appropriate, industry standard testing protocols and procedures caused what has been described as the largest IT outage in history.

Pursuant to the PSLRA, this Court must appoint the “most adequate plaintiff” to serve as Lead Plaintiff. 15 U.S.C. § 78u-4(a)(3)(B)(i). In that regard, the Court must determine which movant has the “largest financial interest” in the relief sought by the Class, and whether that movant has made a *prima facie* showing that it is a typical and adequate Class representative under Rule 23. 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I). For the reasons set forth below, NYSCRF is the “most adequate plaintiff” by virtue of, among other things, the loss of approximately \$16.7 million as calculated on a first-in, first-out (“FIFO”) basis and approximately \$16.4 million as calculated on a last-in, first-out (“LIFO”) basis that it incurred on its Class Period purchases of 139,419 shares of CrowdStrike common stock.<sup>1</sup>

In addition to asserting the largest financial interest, NYSCRF readily satisfies the relevant requirements of Rule 23 because its claims are typical of all members of the Class and it will fairly

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<sup>1</sup> NYSCRF’s PSLRA-required Certification is attached as Exhibit A to the Declaration of Gerald T. Drought in Support of the Motion of Thomas P. DiNapoli, Comptroller of the State of New York, as Administrative Head of the New York State and Local Retirement System, and as Trustee of the New York State Common Retirement Fund for Appointment as Lead Plaintiff and Approval of Its Selection of Lead Counsel (“Drought Decl.”). In addition, charts providing calculations of NYSCRF’s losses are provided as Exhibit B to the Drought Decl.

and adequately represent the interests of the Class. NYSCRF is a paradigmatic Lead Plaintiff under the PSLRA because it is a sophisticated institutional investor with a real financial interest in the litigation and experience supervising the work of outside counsel—including proposed Lead Counsel, Bernstein Litowitz. NYSCRF fully understands the Lead Plaintiff’s obligations to the Class under the PSLRA, and is willing and able to undertake those responsibilities to ensure the vigorous prosecution of this action. As such, NYSCRF has both the incentive and ability to supervise and monitor counsel.

NYSCRF’s familiarity with the PSLRA is informed by its years of experience serving as a lead plaintiff in numerous securities class actions, through which it achieved combined recoveries of more than \$11.8 billion on behalf of investors in several of the most significant securities class actions in history. NYSCRF benefits from having legal staff in the Office of the State Comptroller’s Division of Legal Services experienced in and dedicated to securities litigation and corporate governance, which ensures close oversight of the outside counsel retained by NYSCRF to prosecute this action. As Lead Plaintiff in this action, NYSCRF will bring those resources and experiences to bear on behalf of the Class.

Moreover, NYSCRF has demonstrated its adequacy through its selection of Bernstein Litowitz, a law firm with substantial experience in successfully prosecuting securities class actions, to serve as Lead Counsel for the Class. Bernstein Litowitz is a nationally recognized securities class action litigation firm that has recovered over \$40 billion for the benefit of defrauded investors and is eminently qualified to prosecute this case.

Based on NYSCRF’s financial interest in the relief sought by the Class in this litigation, and its ability to oversee counsel, NYSCRF respectfully requests that the Court appoint it Lead Plaintiff and otherwise grant its Motion.

### **FACTUAL BACKGROUND**

CrowdStrike is a cybersecurity company based in Austin, Texas. CrowdStrike's primary product, the Falcon software platform, is designed to protect customers' systems from cyberattacks, viruses, malware, phishing, and other types of threats.<sup>2</sup> The action alleges that, throughout the Class Period, Defendants falsely touted the effectiveness of CrowdStrike's procedures and protocols for testing updates to its Falcon platform. For example, during the Class Period, Defendants claimed that CrowdStrike's technology was "validated, tested, and certified." As a result of Defendants' misrepresentations and omissions of material facts, shares of CrowdStrike common stock traded at artificially inflated prices throughout the Class Period.

The truth began to emerge publicly on July 19, 2024, when a CrowdStrike update caused outages for millions of Microsoft Windows devices across the world. As a result of this disclosure, the price of CrowdStrike common stock declined by \$38.09 per share, or approximately 11%. Then, on July 22, 2024, several analysts issued downgrades of CrowdStrike stock. In addition, Congress requested that CrowdStrike's Chief Executive Officer, Defendant George Kurtz, testify regarding the worldwide outage. As a result of this disclosure, the price of CrowdStrike common stock declined by \$41.05 per share, or approximately 13.5%. Finally, on July 29, 2024, news outlets reported that Delta Air Lines had retained counsel to seek compensation from CrowdStrike following the outage. As a result of this disclosure, the price of CrowdStrike common stock declined by \$25.16 per share, or approximately 10%.

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<sup>2</sup> The facts are taken from the complaint filed by the Plymouth County Retirement Association. See ECF No. 1.

## ARGUMENT

### **I. NYSCRF SHOULD BE APPOINTED LEAD PLAINTIFF**

NYSCRF respectfully submits that it should be appointed Lead Plaintiff because it is the movant “most capable of adequately representing the interests of class members.” 15 U.S.C. § 78u-4(a)(3)(B)(i). The PSLRA establishes a presumption that the “most adequate plaintiff” is the movant that “has the largest financial interest in the relief sought by the class” and “otherwise satisfies the requirements of Rule 23.” 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I). As set forth below, NYSCRF believes it is the “most adequate plaintiff” because it has the largest financial interest of any qualified movant, satisfies the typicality and adequacy requirements of Rule 23, and is a sophisticated institutional investor with the experience, skills, and resources to oversee and vigorously prosecute this action. Accordingly, NYSCRF should be appointed as Lead Plaintiff.

#### **A. NYSCRF’s Motion Is Timely**

Under the PSLRA, any Class member may file a motion seeking appointment as Lead Plaintiff within 60 days of the publication of notice that the first action has been filed. *See* 15 U.S.C. § 78u-4(a)(3)(A)(i). On July 30, 2024, Plaintiff Plymouth County Retirement Association filed the above-captioned securities class action in this District, alleging violations of Sections 10(b) and 20(a) of the Exchange Act against Defendants. That same day, counsel for Plymouth County Retirement Association published a notice on *Business Wire* alerting investors to the pendency of the action and informing them of the September 30, 2024, deadline to seek appointment as Lead Plaintiff. *See* Drought Decl., Ex. C. Accordingly, NYSCRF’s motion is timely.

#### **B. NYSCRF Has The Largest Financial Interest**

NYSCRF is entitled to appointment as Lead Plaintiff because it has the “largest financial interest in the relief sought by the class.” 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I)(bb). NYSCRF



incurred a substantial loss of approximately \$16.7 million as calculated on a FIFO basis and approximately \$16.4 million as calculated on a LIFO basis in connection with its Class Period purchases of 139,419 shares of CrowdStrike common stock. *See* Drought Decl., Exs. A & B. NYSCRF is unaware of any other Class member seeking Lead Plaintiff appointment that has a larger financial interest in the outcome of the litigation. Accordingly, as a qualified movant with the largest financial interest, NYSCRF is the presumptive “most adequate plaintiff.” 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I).

**C. NYSCRF Satisfies The Relevant Requirements Of Rule 23**

In addition to possessing the largest financial interest, NYSCRF satisfies the relevant requirements of Rule 23. *See* 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I)(cc). On a motion to serve as Lead Plaintiff under the PSLRA, a movant need only make “a preliminary showing” that it satisfies the typicality and adequacy requirements of Rule 23. *Giovagnoli v. GlobalSCAPE, Inc.*, 2017 WL 11220692, at \*3 (W.D. Tex. Nov. 6, 2017). Here, NYSCRF unquestionably satisfies both requirements.

NYSCRF’s claims are typical of the claims of other Class members. Typicality exists where there are “no differences among the class members that would substantially alter the proof required for one member’s claims versus another’s.” *Id.* (citation and internal quotation omitted). Here, NYSCRF’s and all other Class members’ claims arise from the same course of events, and their legal arguments to prove Defendants’ liability are virtually identical. Like all other Class members, NYSCRF purchased CrowdStrike common stock during the Class Period at prices artificially inflated as a result of Defendants’ materially false and misleading statements and suffered damages thereby. *See id.*

NYSCRF similarly satisfies the adequacy requirement of Rule 23. Under Rule 23(a)(4), a representative party must “fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). The adequacy inquiry examines the “zeal and competence of the representative’s counsel, and [the] willingness and ability of the representative to take an active role in and control the litigation and to protect the interests of absentees.” *GlobalSCAPE*, 2017 WL 11220692, at \*4. NYSCRF satisfies these elements because its substantial financial stake in the litigation provides it with the incentive to vigorously represent the Class’s interests. NYSCRF’s interests are perfectly aligned with those of the other Class members and are not antagonistic in any way. There are no facts to suggest any actual or potential conflict of interest or other antagonism between NYSCRF and other Class members. Further, NYSCRF is well-aware of the duties of the Lead Plaintiff to oversee the litigation separate and apart from counsel, and NYSCRF has submitted a sworn Certification attesting to its willingness and ability to fulfill those duties here. *See Drought Decl.*, Ex. A.

NYSCRF is one of the largest public pension funds in the United States, which holds and invests assets for the benefit of 1.2 million state and local public employees, retirees, and beneficiaries. The Comptroller of the State of New York is the sole Trustee of NYSCRF, and in that capacity, oversees an estimated \$267.7 billion in assets (as of June 30, 2024). Moreover, NYSCRF has the staff resources necessary to oversee the prosecution of this litigation. Specifically, Counsel to the Comptroller oversees the Office of the State Comptroller’s Division of Legal Services, which consists of 69 employees. The Division of Legal Services includes a unit focused exclusively on investment and fiduciary matters, and has experienced attorneys dedicated to handling securities litigation and corporate governance matters.

Further, NYSCRF has extensive experience serving as a lead plaintiff in securities class actions and supervising the work of outside counsel. Based on its experience serving as a lead plaintiff, NYSCRF fully understands the Lead Plaintiff's obligations under the PSLRA to oversee and supervise the litigation separate and apart from counsel. NYSCRF has repeatedly demonstrated its ability and expertise in serving as an extraordinarily qualified and effective advocate on behalf of investors in securities class actions, having successfully prosecuted numerous securities class actions in courts throughout the country, including this Circuit, which have resulted in combined recoveries of more than \$11.8 billion for investors. *See, e.g., In re WorldCom, Inc. Sec. Litig.*, No. 02-cv-3288 (S.D.N.Y.) (recovering more than \$6.19 billion in total settlements—the second largest recovery in securities class action history—with Bernstein Litowitz as lead counsel); *In re Cendant Corp. Sec. Litig.*, No. 98-cv-1664 (D.N.J.) (recovering more than \$3.31 billion in total settlements—the third largest recovery in securities class action history—with Bernstein Litowitz as lead counsel); *In re McKesson HBOC, Inc. Sec. Litig.*, No. 99-cv-20743 (N.D. Cal.) (recovering over \$1.05 billion in total settlements, with Bernstein Litowitz as lead counsel); and *In re BP p.l.c. Sec. Litig.*, No. 10-md-2185 (S.D. Tex.) (recovering \$175 million in total settlements).

In addition, NYSCRF is exactly the type of investor Congress sought to empower, through the enactment of the PSLRA, to lead securities class actions. *See* H.R. Conf. Rep. No. 104-369, at \*34 (1995), *as reprinted in* 1995 U.S.C.C.A.N. 730, 733 (1995) (explaining that “increasing the role of institutional investors in class actions will ultimately benefit shareholders and assist courts by improving the quality of representation in securities class actions”). Further, NYSCRF has already taken action to protect the interests of the class by establishing a framework governing any award of attorneys' fees that will apply in this case and maximize the recovery for all class

members. As such, NYSCRF has the proven experience and staff resources to vigorously litigate the action and supervise Lead Counsel.

NYSCRF also has a history of incorporating corporate governance reforms into settlement agreements to promote good corporate behavior that will protect investors in the long run. This includes two recent settlements: *In re The Boeing Company Derivative Litigation*, No. 2019-0907-MTZ (Del. Ch.) (achieving a \$237.5 million settlement and governance reforms), and *DiNapoli v. Wynn*, No. A-18-770013-B (Nev. Sup. Ct.) (achieving a \$41 million settlement and governance reforms valued at \$49 million). NYSCRF has a staff of eight full-time professionals in its Bureau of Corporate Governance, dedicated to reviewing corporate governance practices and advocating as a shareholder for reform in the companies in which it is invested, when needed, consistent with the Fund's Corporate Governance Program and proxy voting guidelines in order to enhance the long-term value of its investments.

Finally, NYSCRF has demonstrated its adequacy through its selection of Bernstein Litowitz—a highly qualified and experienced securities class action law firm—to serve as Lead Counsel for the Class. Accordingly, NYSCRF satisfies Rule 23's typicality and adequacy requirements.

## **II. THE COURT SHOULD APPROVE NYSCRF'S SELECTION OF COUNSEL**

The PSLRA expressly provides that “[t]he most adequate plaintiff shall, subject to the approval of the court, select and retain counsel to represent the class.” 15 U.S.C. § 78u-4(a)(3)(B)(v). The Court should not disturb a proposed lead plaintiff's choice of counsel unless it is necessary to do so in order to “protect the interests of the class.” 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II)(aa).

The Court should approve NYSCRF's selection of Bernstein Litowitz to serve as Lead Counsel for the Class. As detailed in its firm résumé, Bernstein Litowitz is among the preeminent

securities class action law firms in the country and has extensive experience serving as lead counsel in securities class actions. *See* Drought Decl., Ex. D (Bernstein Litowitz Firm Résumé). For example, Bernstein Litowitz served as lead counsel, with NYSCRF serving as lead plaintiff, in *In re WorldCom, Inc. Securities Litigation*, No. 02-cv-3288 (S.D.N.Y.), in which recoveries totaling over \$6.19 billion—the second largest recovery in securities class action history—were obtained for the class. Bernstein Litowitz also secured a resolution of \$2.43 billion on behalf of the class in *In re Bank of America Corp. Securities, Derivative & ERISA Litigation*, No. 09-md-2058 (S.D.N.Y.). More recently, Bernstein Litowitz obtained a \$1 billion recovery on behalf of the class in *In re Wells Fargo & Co. Securities Litigation*, No. 20-cv-4484 (S.D.N.Y.).

Other significant examples in which courts in this Circuit, including this District and this Court, have recognized Bernstein Litowitz as adequate and qualified class counsel in securities class actions include: *In re Cobalt International Energy, Inc. Securities Litigation*, No. 14-cv-3428 (S.D. Tex.) (\$335.3 million recovery); *Wyatt v. El Paso Corp.*, No. 02-cv-2717 (S.D. Tex.) (\$285 million recovery); *In re Electronic Data Systems Corp. Securities Litigation*, No. 03-cv-110 (E.D. Tex.) (\$137.5 million recovery as co-lead counsel); *Oklahoma Law Enforcement Retirement System v. Adeptus Health Inc.*, No. 17-cv-449 (E.D. Tex.) (\$44 million recovery); *Logan v. ProPetro Holding Corp.*, No. 19-cv-217 (W.D. Tex.) (\$30 million recovery); and *In re SolarWinds Corporation Securities Litigation*, No. 21-cv-138 (W.D. Tex.) (\$26 million recovery) (Pitman, J.).

Thus, the Court may be assured that that by granting this Motion, the Class will receive the highest caliber of legal representation. Accordingly, the Court should approve NYSCRF's selection of Bernstein Litowitz as Lead Counsel for the Class.

**CONCLUSION**

For the foregoing reasons, NYSCRF respectfully requests that the Court enter an order: (i) appointing NYSCRF as Lead Plaintiff; (ii) approving its selection of Bernstein Litowitz to serve as Lead Counsel for the Class; and (iii) granting any further relief as the Court may deem just and proper.

DATED: September 30, 2024

Respectfully submitted,

**MARTIN & DROUGHT, P.C.**

*/s/ Gerald T. Drought* \_\_\_\_\_

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**COMPLIANCE WITH LOCAL RULE CV-7(g)**

Due to the statutory nature of the PSLRA's Lead Plaintiff application process and deadline, it was not possible for NYSCRF to comply with Local Rule CV-7(g)'s requirement to confer with counsel for opposing movants prior to filing the instant Motion because the identity of any such parties was not known prior to the time of filing. Accordingly, NYSCRF respectfully requests relief from the requirement.

*/s/ Gerald T. Drought*

\_\_\_\_\_  
Gerald T. Drought



**CERTIFICATE OF SERVICE**

I certify that on September 30, 2024, a true and correct copy of the foregoing document 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.

*/s/ Gerald T. Drought* \_\_\_\_\_

Gerald T. Drought