

SUFFOLK COUNTY, ss.

SUPERIOR COURT

ALAN SANDERSON, DONATO BUCCELLA and :  
MARK SILVERMAN, on behalf of themselves and :  
all others similarly situated, :  
Plaintiffs, :

v. :

VERDASYS, INC.; TORONTO-DOMINION :  
CAPITAL, n/k/a FAIRHAVEN CAPITAL :  
PARTNERS, LLC; SPECIAL SITUATIONS FUND :  
III, L.P.; SPECIAL SITUATIONS TECHNOLOGY :  
FUND, L.P.; SPECIAL SITUATIONS PRIVATE :  
EQUITY FUND, L.P.; SPECIAL SITUATIONS :  
TECHNOLOGY FUND II, L.P.; VERDASYS INC. :  
INVESTMENT TRUST; VERDASYS INC. :  
SERIES B CONVERTIBLE PREFERRED :  
INVESTMENT TRUST; VERDASYS INC. :  
SERIES C CONVERTIBLE PREFERRED :  
INVESTMENT TRUST; DANIEL KESHIAN; :  
ADAM STETTNER; HUGH WARREN; :  
ALLEN MICHELS; and SETH BIRNBAUM, :  
Defendants. :

CIVIL ACTION NO.  
SUCV2012-00621-BLS1

x

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

**A Massachusetts Court Has Authorized This Notice. This is not a solicitation from a lawyer.**

**NOTICE OF PENDENCY OF CLASS ACTION:** Please be advised that your rights may be affected by a class action lawsuit pending in this Court (“Action”) if you owned securities of Verdasys, Inc. (“Verdasys”) as of April 8, 2011, and were damaged thereby.

**NOTICE OF SETTLEMENT:** Please also be advised that Lead Plaintiffs, Donato Buccella, Alan Sanderson and Mark Silverman (“Lead Plaintiffs”), on behalf of the Class (as defined in Paragraph 21 below), have reached a proposed all-cash settlement of the Action with the Defendants (identified in Paragraph 1 below), in the amount of \$1.05 million on behalf of all Class members. The proposed Settlement is discussed below. If the Settlement is approved by the Court, it will resolve all claims in the Action against the Defendants, as identified in Paragraph 1 below, as well as other Released Parties, as identified in Paragraph 32 below.<sup>1</sup>

**This Notice explains important rights you may have, including the possible receipt of cash from the Settlement. Your legal rights will be affected whether or not you act. Please read this Notice carefully!**

1. **Description of the Action and the Class:** This notice relates to a proposed Settlement of claims against the Defendants in the pending class action lawsuit. The Defendants are Toronto Dominion Capital (U.S.A.), Inc. (misnamed in Plaintiffs’ Complaint as “Toronto Dominion Capital n/k/a Fairhaven Capital Partners, LLC”) (“TD”), Special Situations Fund III, L.P., Special Situations Technology Fund, L.P., Special Situations Private Equity Fund, L.P., Special Situations Technology Fund II, L.P. (collectively, “SSF”), Verdasys Inc. Investment Trust, Verdasys Inc. Series B Convertible Preferred Investment Trust, Verdasys Inc. Series C Convertible Preferred Investment Trust (collectively, the “Loring Trusts,” and collectively with SSF and TD, the “Investor Defendants”), Daniel Keshian, Adam Stettner, Hugh Warren, Allen Michels, and Seth Birnbaum (collectively, the “Director Defendants”) and Verdasys, Inc., (“Verdasys” or the “Company,” and collectively with the Director Defendants, the “Company Defendants”) (all of which are referred to collectively as the “Defendants”). The proposed Settlement with the Defendants provides for the release of claims against the Defendants and other Released Parties as specified in the Stipulation. Thus, the proposed Settlement, if approved by the Court, will resolve all claims and potential claims of Class members against the Defendants and the Released Parties, and will provide relief to all persons and entities who owned securities of Verdasys as of April 8, 2011, and who were damaged thereby (“Class”), except for certain persons and entities who are excluded from the Class by definition (*see* Paragraph 21 below).

<sup>1</sup> All capitalized terms that are not defined herein have the meaning ascribed to them in the Stipulation of Settlement (“Stipulation”).

2. **Statement of Class's Recovery:** Subject to Court approval, and as described more fully below, Lead Plaintiffs, on behalf of the Class, have agreed to settle all claims that arise out of or are based upon or relate to the allegations or facts asserted in the Action regarding Class members' ownership of Verdasys securities on April 8, 2011, that were or could have been asserted against the Defendants and the Released Parties in the Action in exchange for a total of \$1,050,000 ("Total Settlement Amount"). The Total Settlement Amount will be deposited into an interest-bearing escrow account ("Settlement Fund"). The Net Settlement Fund (the Fund less Taxes, Notice and Administration Costs, attorneys' fees and Litigation Expenses awarded to counsel representing Lead Plaintiffs and the Class, and any Compensatory Award awarded to Lead Plaintiffs) will be distributed in accordance with a plan of allocation ("Plan of Allocation") that will be approved by the Court and will determine how the Net Settlement Fund shall be allocated to members of the Class. The proposed Plan of Allocation is included in this Notice.

3. **Statement of Average Amount of Damages Per Share:** The parties do not agree on the average amount of damages per share that would be recoverable if Lead Plaintiffs were to prevail. Lead Plaintiffs' damages expert estimates that approximately 1.8 million shares of Verdasys common stock and 6.04 million shares of Verdasys preferred stock owned by Class members on April 8, 2011, may have been affected by the conduct at issue in the Action. Based on those figures, if claims are made with respect to all of the estimated affected shares, the average per-share recovery from the Total Settlement Fund is estimated to be approximately \$0.50 per share of common stock and \$0.02 per share for preferred stock, before the deduction of attorneys' fees, costs, and expenses and any Compensatory Award to Lead Plaintiffs, as approved by the Court. Class members should note, however, that these are only estimates based on the overall number of potentially damaged shares in the Class. Defendants deny that any shares of Verdasys securities were damaged as Lead Plaintiffs have alleged. Defendants assert that they were prepared to establish that Verdasys securities were not undervalued as the result of any allegedly unlawful conduct by the Defendants.

4. **Statement of Attorneys' Fees and Expenses Sought:** Lead Plaintiffs' Counsel, the law firms of Berman DeValerio and Casner & Edwards, LLP, will apply to the Court for an award of attorneys' fees in an amount not to exceed 33 1/3% of the Total Settlement Fund. In addition, Lead Plaintiffs' Counsel will apply for the reimbursement of Litigation Expenses paid or incurred in connection with the prosecution and resolution of the claims against the Defendants, in an amount not to exceed \$85,000, and Lead Plaintiffs will apply to the Court for a Compensatory Award in compensation for the time incurred by Lead Plaintiffs in connection with this litigation for the benefit of the Class. Any fees and expenses awarded by the Court will be paid from the Settlement Fund. Class members are not personally liable for any such fees or expenses. If the Court approves Lead Plaintiffs' Counsel's fee and expense application and Lead Plaintiffs' Compensatory Award, the average cost per share will be approximately \$0.19 per share of common stock and \$0.01 per share of preferred stock.

5. **Identification of Attorneys' Representatives:** Lead Plaintiffs and the Class are being represented by the law firms of Berman DeValerio and Casner & Edwards LLP. Any questions regarding the Settlement should be directed to attorney Daryl DeValerio Andrews at Berman DeValerio, One Liberty Square, Boston, MA 02109, 617-542-8300, [www.BermanDeValerio.com](http://www.BermanDeValerio.com).

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:</b>	
<b>SUBMIT A CLAIM FORM</b>	This is the only way to be eligible to get a payment from the applicable Settlement Fund.
<b>OBJECT TO THE SETTLEMENT BY SUBMITTING WRITTEN OBJECTIONS ON OR BEFORE OCTOBER 7, 2014, SO THAT THEY ARE RECEIVED NO LATER THAN OCTOBER 8, 2014.</b>	Write to the Court and explain why you do not like the proposed Settlement, the proposed Plan of Allocation, the request for attorneys' fees and reimbursement of Litigation Expenses, or the request for a Compensatory Award for Lead Plaintiffs. You cannot object to the Settlement unless you are a Class member.
<b>GO TO A HEARING ON OCTOBER 21, 2014, AT 2:00 P.M., AND FILE A NOTICE OF INTENTION TO APPEAR ON OR BEFORE OCTOBER 7, 2014, SO THAT IT IS RECEIVED NO LATER THAN OCTOBER 8, 2014.</b>	Filing a written objection and notice of intention to appear by October 7, 2014, allows you to speak in Court about the fairness of the applicable proposed Settlement, the proposed Plan of Allocation, the request for attorneys' fees and reimbursement of Litigation Expenses, or the request for a Compensatory Award for Lead Plaintiffs.

**YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT (continued):**

**DO NOTHING**

If you are a member of the Class and you do not submit a Proof of Claim Form by October 14, 2014, you will not be eligible to receive any payment from the Settlement. You will, however, remain a member of the Class, which means that you give up your rights to sue about the claims that are resolved by the applicable Settlement and you will be bound by any Judgments or Orders entered by the Court with respect to the Settlement.

**WHAT THIS NOTICE CONTAINS**

Why Did I Get This Notice?	Page 3
What Is The Case About? What Has Happened So Far?	Page 4
How Do I Know If I Am Affected By the Settlement?	Page 5
What Are Lead Plaintiffs' Reasons For The Settlement?	Page 5
What Might Happen If There Were No Settlement?	Page 5
How Much Will My Payment Be?	Page 5
What Rights Am I Giving Up By Virtue of This Settlement?	Page 7
What Payment Are The Attorneys For The Class Seeking? How Will The Lawyers Be Paid?	Page 8
How Do I Participate In The Settlement? What Do I Need To Do?	Page 8
When And Where Will the Court Decide Whether To Approve The Settlement?	
Do I Have To Come To The Hearing? May I Speak At The Hearing	
If I Don't Like The Settlement?	Page 8
Can I See The Court File? Whom Should I Contact If I Have Questions?	Page 10

**WHY DID I GET THIS NOTICE?**

6. This Notice is being sent to you pursuant to an Order of the Superior Court of the Commonwealth of Massachusetts ("Court") because you or someone in your family owned Verdasys securities as of April 8, 2011. The Court has directed us to send you this Notice because, as a potential Class member, you have a right to know about your options before the Court rules on the proposed Settlement with the Defendants. Additionally, you have the right to understand how a class action lawsuit may generally affect your legal rights. If the Court approves the Settlement and the Plan of Allocation (or some other plan of allocation), the claims administrator selected by Lead Plaintiffs and approved by the Court will make payments pursuant to the Settlement and the Court-approved plan of allocation after any objections and appeals are resolved.

7. The Court in charge of this case is the Massachusetts Superior Court, and the case is known as *Sanderson, et al. v. Verdasys, et al.*, Civ. A. No. SUCV2012-00621-BLS1.

8. This case is a class action lawsuit. The persons or entities that are suing are called plaintiffs, and those who are being sued are called defendants. A class action is a type of lawsuit in which the claims of a number of plaintiffs are resolved together, thus providing the class members with both consistency and efficiency. The Court selects one or more people, known as class representatives, to sue on behalf of all people with similar claims, commonly known as the class or the class members. In this Action, Donato Buccella, Alan Sanderson and Mark Silverman serve as "Lead Plaintiffs" under Massachusetts laws governing lawsuits such as this one, and the law firms of Berman DeValerio and Casner Edwards LLP serve as Lead Plaintiffs' Counsel in the Action. Once the class is certified, the Court must resolve all issues on behalf of the class members.

9. The Defendants in this case are Toronto Dominion Capital (U.S.A.), Inc. (misnamed in Plaintiffs' Complaint as "Toronto Dominion Capital n/k/a Fairhaven Capital Partners, LLC") ("TD"), Special Situations Fund III, L.P., Special Situations Technology Fund, L.P., Special Situations Private Equity Fund, L.P., Special Situations Technology Fund II, L.P. (collectively, "SSF"), Verdasys Inc. Investment Trust, Verdasys Inc. Series B Convertible Preferred Investment Trust, Verdasys Inc. Series C Convertible Preferred Investment Trust (collectively, the "Loring Trusts," and collectively with SSF and TD, the "Investor Defendants"), Daniel Keshian, Adam Stettner, Hugh Warren, Allen Michels, and Seth Birnbaum (collectively, the "Director Defendants") and Verdasys, Inc., ("Verdasys" or the "Company," and collectively with the Director Defendants, the "Company Defendants") (all of which are referred to collectively as the "Defendants." The proposed Settlement will resolve all claims against all Defendants and will bring the Action to an end.

10. This Notice explains the lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them. The purpose of this Notice is to inform you of this case, that

it is a class action and how you might be affected. It is also being sent to inform you of the terms of the proposed Settlement, and of a hearing to be held by the Court to consider the fairness, reasonableness, and adequacy of the proposed Settlement, class certification, the proposed Plan of Allocation, the application by Lead Plaintiffs' Counsel for attorneys' fees and reimbursement of Litigation Expenses, and the application by Lead Plaintiffs for a Compensatory Award ("Settlement Hearing").

11. The Settlement Hearing will be held on October 21, 2014, at 2:00 p.m. at the Suffolk County Courthouse, 3 Pemberton Square, Boston, MA 02108, to determine:

- A. whether the proposed Settlement is fair, reasonable, and adequate and should be approved by the Court;
- B. whether the Released Claims against the Defendants and other Released Parties should be dismissed with prejudice as set forth in the Stipulation;
- C. whether the proposed Plan of Allocation is fair and reasonable, and should be approved by the Court; and
- D. whether Lead Plaintiffs' Counsel's request for an award of attorneys' fees and reimbursement of Litigation Expenses and Lead Plaintiffs' request for a Compensatory Award should be approved by the Court.

12. This Notice does not express any opinion by the Court concerning the merits of any claim in the Action and the Court still has to decide whether to approve the Settlement. If the Court approves the Settlement and a Plan of Allocation, payments to Authorized Claimants will be made after any appeals are resolved, and after the completion of all claims processing. Please be patient.

#### WHAT IS THIS CASE ABOUT? WHAT HAS HAPPENED SO FAR?

13. Verdasys is a computer security software company with executive offices in Massachusetts. On or about November, 30, 2011, Lead Plaintiffs filed an action captioned *Sanderson, et al. v. Verdasys, et al.*, Civ. A. No. SUCV2012-00621-BLS1, in the Superior Court of the Commonwealth of Massachusetts, Suffolk County ("Court"), as a putative class action on behalf of holders of the common stock of Verdasys as of April 8, 2011 ("Complaint"). On May 16, 2012, Defendants moved to dismiss the Complaint. Following full briefing and oral argument of the motion, the Court largely denied the motion to dismiss on October 31, 2012.

14. Following the denial of Defendants' motion to dismiss, Lead Plaintiffs and Defendants engaged in extensive discovery. Defendants produced more than 100,000 pages of documents, all of which Lead Plaintiffs' Counsel reviewed and analyzed. Further, Lead Plaintiffs produced documents to Defendants and sat for class certification depositions. In addition, Lead Plaintiffs retained a financial market consulting firm to assist in assessing damages.

15. On July 17, 2013, the Settling Parties, as well as Defendants' entity and directors' and officers' ("D&O") liability insurance carriers, held a mediation with the Honorable Allan van Gestel, a mediator with extensive experience mediating complex cases like this Litigation. After extensive, arm's-length negotiations during the mediation, the parties were unable to reach an agreement in principle to settle the Litigation.

16. On January 27, 2014, Lead Plaintiffs moved the Court for an order certifying the Litigation as a class action under Massachusetts Rule of Civil Procedure 23. After briefing and oral argument, the Court deferred a ruling on Lead Plaintiffs' class certification motion.

17. On April 4, 2014, Lead Plaintiffs filed a motion to amend the Complaint to add certain claims of pre-recapitalization preferred shareholders of Verdasys and to remove Plaintiffs request to unwind the Company's 2011 recapitalization ("Proposed Amended Complaint").

18. On April 7, 2014, the Settling Parties, as well as Defendants' entity/D&O liability insurance carriers, held a mediation with Brad Honoroff, Esq., a mediator with extensive experience mediating complex cases like this Litigation. After extensive, arm's-length negotiations during the mediation and nearly two months of arm's-length negotiations thereafter, the parties reached an agreement in principle to settle the Litigation for \$1.05 million cash payment to the Class.

19. Before agreeing to the Settlement, Lead Plaintiffs' Counsel conducted an extensive investigation into the events and transactions underlying the claims alleged in the Complaint. They analyzed potential claims and researched the applicable law with respect to the claims asserted and Defendants' potential defenses thereto and also consulted with an expert on damages. At the time the agreement to settle was reached, Lead Plaintiffs' Counsel had conducted an investigation into the facts and the law, and understood the strengths and weaknesses of Lead Plaintiffs' and Defendants' respective positions based on the briefing of the motions to dismiss and the preparation of a detailed mediation statement. Lead Plaintiffs' Counsel and Lead Plaintiffs agree that the proposed Settlement is fair, reasonable, and adequate, and in the best interests of the Class.

20. On August 18, 2014, the Court entered an Order Preliminarily Approving Settlement, which preliminarily approved the Settlement and authorized this Notice to be sent to potential Class members.

#### **HOW DO I KNOW IF I AM AFFECTED BY THE SETTLEMENT?**

21. If you are a member of the Class, you are subject to the Settlement. The Class consists of all pre-Recapitalization (defined below) common and preferred shareholders of Verdasy's as of April 8, 2011, the date of a recapitalization of the Company's equity structure ("Recapitalization"), who suffered damages thereby. Excluded from the Class is anyone named as a Defendant in this action; members of the immediate family of any such Defendant; any entity in which any such Defendant or family member has or had a controlling interest; the former and current officers and directors of Verdasy's; or the legal affiliates, representatives, controlling persons, predecessors-in-interest, heirs, assigns, or any other successors-in-interest of any such excluded party.

**RECEIPT OF THIS NOTICE DOES NOT NECESSARILY MEAN THAT YOU ARE A CLASS MEMBER OR THAT YOU WILL BE ENTITLED TO RECEIVE PROCEEDS FROM THE SETTLEMENT. IF YOU WISH TO PARTICIPATE IN THE DISTRIBUTION OF PROCEEDS FROM THE SETTLEMENT YOU WILL BE REQUIRED TO SUBMIT THE PROOF OF CLAIM FORM THAT IS BEING DISTRIBUTED WITH THIS NOTICE POSTMARKED NO LATER THAN OCTOBER 14, 2014.**

#### **WHAT ARE LEAD PLAINTIFFS' REASONS FOR THE SETTLEMENT?**

22. Lead Plaintiffs and Lead Plaintiffs' Counsel believe that the claims asserted against the Defendants have merit. Lead Plaintiffs and Lead Plaintiffs' Counsel recognize, however, the expense and length of continued proceedings necessary to pursue their claims against these Defendants through trial and appeals, as well as the difficulties in establishing liability for their allegations of unlawful conduct. Lead Plaintiffs and Lead Plaintiffs' Counsel also have taken into account: (1) the possibility that the Class may not remain certified; (2) that the claims asserted in Lead Plaintiffs' Complaint may be dismissed in response to anticipated motions for summary judgment; and (3) issues that would have been decided by a jury in the event of a trial of the Action, including whether certain of the Defendants breached duties to the Class members, whether any or all of the Class members' losses were caused by the alleged misconduct, and the amount of damages. In addition, Lead Plaintiffs and Lead Plaintiffs' Counsel have considered the uncertain outcome and trial risk in complex lawsuits like this one, and that, even if they were successful, after the resolution of the appeals that were certain to be taken (which could take years to resolve), certain of the Defendants may not have been able to pay an amount significantly larger than the Settlement Amount or even as much as the Settlement Amount. The Defendants' ability to pay was a significant factor that Lead Plaintiffs had to take into account, given the fact that the insurance coverage provided by the entity/directors' and officers' policies was a "wasting asset"; it would be seriously depleted, if not exhausted, by the continuing costs of litigation.

23. Lead Plaintiffs and Lead Plaintiffs' Counsel believe that the Settlement achieved with the Defendants is an excellent result and in the best interests of the Class and, therefore, agreed to the terms of the proposed Settlement.

24. In light of the amount of the Settlement and the immediacy of recovery to the Class, Lead Plaintiffs and Lead Plaintiffs' Counsel believe that the proposed Settlement is fair, reasonable, and adequate, and in the best interest of the Class. The Settlement provides substantial benefits now, namely \$1.05 million (less the various deductions described in this Notice), as compared to the risk that a similar, smaller, or no recovery would be achieved after a trial and appeals, possibly years in the future.

25. Defendants have denied the claims asserted against them in the Action and deny having engaged in any wrongdoing or violation of law of any kind whatsoever. Defendants have agreed to the Settlement solely to eliminate the burden and expense of continued litigation. Defendants vigorously defended the action and raised substantial defenses on the merits. Accordingly, the Settlement may not be construed as an admission of any Defendant's wrongdoing.

#### **WHAT MIGHT HAPPEN IF THERE WERE NO SETTLEMENT?**

26. If there were no Settlement and Lead Plaintiffs failed to establish any essential legal or factual element of its claims against the Defendants, neither they nor the Class would recover anything from the Defendants. Also, if the Defendants were successful in proving any of their defenses, the Class likely might recover substantially less than the amount provided in the Settlement, or nothing at all. Additionally, even if Lead Plaintiffs prevailed, the costs of continued litigation would have seriously depleted, if not exhausted, the insurance coverage of the Defendants. Thus, a victory at trial or on appeal could well have resulted in a smaller recovery from the Defendants.

#### **HOW MUCH WILL MY PAYMENT BE?**

27. At this time, it is not possible to make any determination as to how much a Class member may receive from the Settlement.

28. **The Net Settlement Fund (i.e., the Settlement Fund less (a) all federal, state, and local taxes on any income earned by the Settlement Fund and the reasonable costs incurred in connection with determining the amount of and paying taxes owed by the Settlement Fund (including reasonable expenses of tax attorneys and accountants); (b) the costs and expenses incurred in connection with providing Notice to Class members and administering the Settlement on behalf of Class members; and (c) any attorneys' fees and expenses awarded by the Court to Lead Plaintiffs' Counsel or Compensatory Award awarded by the Court to Lead Plaintiffs) will be distributed to Class members who submit valid Claims that are accepted by the Court ("Authorized Claimants") in accordance with the provisions of the Plan of Allocation.**

### **PROPOSED PLAN OF ALLOCATION OF THE NET SETTLEMENT FUND**

The objective of the Plan of Allocation is to distribute the Net Settlement Fund equitably among Authorized Claimants who suffered economic losses as a result of the allegedly unlawful conduct of Defendants such that each Authorized Claimant is returned, relative to all other Authorized Claimants, to his, her or its equity position prior to the Recapitalization.

#### **I. STEP 1: DETERMINE THE ALLOCATION PERCENTAGE**

Under the Plan of Allocation, the following steps are used to calculate the percentage of the Settlement Fund that shall be used to compensate for losses in each class (common or preferred) of Verdasys security ("Allocation Percentage"):

1. Determine the percentage of the total value of the *pre*-Recapitalization Verdasys securities owned by all potential Class members that is attributable to: (1) Verdasys common shares; and (2) Verdasys preferred shares.
2. Determine the percentage of the total value of the *post*-Recapitalization Verdasys securities owned by all potential Class members that is attributable to: (1) Verdasys common shares; and (2) Verdasys preferred shares.
3. Allocate the Settlement Fund among all potential Class members so that the percentage of the total value of the *post*-Recapitalization Verdasys securities owned by all potential Class members, as calculated pursuant to Paragraph 2 of this Section, equals the percentage of the total value of the *pre*-Recapitalization Verdasys securities owned by all potential Class members, as calculated pursuant to Paragraph 1 of this Section.
4. Pursuant to the formula described in this Section, the Settlement Fund will be allocated as follows:

<b><u>Class of Securities</u></b>	<b><u>Allocation Percentage</u></b>
Common Shareholders	85.8% of Settlement Fund
Preferred Shareholders	14.2% of Settlement Fund

#### **II. STEP 2: DETERMINE EACH AUTHORIZED CLAIMANT'S ALLOCATION AMOUNT**

Each Authorized Claimant's Allocation Amount will be calculated for his, her or its respective ownership share of Verdasys securities as of April 8, 2011, that is listed in the Proof of Claim form or for which adequate documentation is provided. The Allocation Amount will be calculated by the Claims Administrator in consultation with Lead Plaintiffs' Counsel in accordance with the provisions of this Plan of Allocation, which was prepared in consultation with Lead Plaintiffs' damages expert. **As used herein, however, the sole function of the term "Allocation Amount" is to identify an equitable loss figure for purposes of calculating an Authorized Claimant's *pro rata* participation in the Net Settlement Fund. Allocation Amount does not reflect an Authorized Claimant's actual loss or what a Class member might have been able to recover at trial. Moreover, Allocation Amount is not an estimate of the actual amount an Authorized Claimant can expect to recover from the Net Settlement Fund.**

Under the Plan of Allocation, the following steps are used to calculate each Authorized Claimant's "Allocation Amount:"

1. Calculate the per share Allocation Amount for each class of stock (common or preferred) by:
  - (a) **Common Stock:** Dividing the amount of the Settlement Fund that is allocable to compensate Verdasys common shareholders pursuant to Section I of this Plan of Allocation by the number of pre-Recapitalization common shares.
  - (b) **Preferred Stock:** Dividing the amount of the Settlement Fund that is allocable to compensate Verdasys preferred shareholders pursuant to Section I of this Plan of Allocation by the number of pre-Recapitalization preferred shares.

2. Calculate each Authorized Claimant's Allocation Amount for each class of stock (common or preferred) by:
  - (a) **Common Stock:** multiplying the number of common shares he, she or it owned as of April 8, 2001, by the per share Allocation Amount for Verdasys common stock.
  - (b) **Preferred Stock:** multiplying the number of preferred shares he, she or it owned as of April 8, 2001, by the per share Allocation Amount for Verdasys preferred stock.

### **III. STEP 3: DISTRIBUTE THE NET SETTLEMENT FUND**

The Allocation Amount of all Authorized Claimants entitled to receive payment out of the Net Settlement Fund with respect to a particular class of security (common or preferred) may be greater than the amount remaining in the Net Settlement Fund that was allocated pursuant to Section 1 of this Plan of Allocation to compensate for losses in that class of security. In such event, each Authorized Claimant shall receive his, her, or its *pro rata* share of the Net Settlement Fund, which shall be his, her, or its Allocation Amount with respect to that class of security divided by the total Allocation Amount for all Authorized Claimants with respect to that class of security, multiplied by the total amount remaining in the Net Settlement Fund that was allocated pursuant to Section 1 of this Plan of Allocation to compensate for losses with respect to that class of security.

If the Net Settlement Fund exceeds the sum total amount of the Allocation Amount of Authorized Claimants entitled to receive payment out of the Net Settlement Fund with respect to a particular class of security (common or preferred), the excess amount in the Net Settlement Fund shall be distributed *pro rata* to all Authorized Claimants entitled to receive payment with respect to that class of security.

**A payment to any Class member that would amount to less than \$10.00 in total will not be included in the calculation of the Net Settlement Fund, and no payment to those Class members will be distributed.**

29. **The Plan of Allocation set forth herein is the plan that is being proposed by Lead Plaintiffs and Lead Plaintiffs' Counsel to the Court for approval. The Court may approve this plan as proposed or it may modify the Plan of Allocation without further notice to the Class.**

#### **WHAT RIGHTS AM I GIVING UP BY VIRTUE OF THIS SETTLEMENT?**

30. **You will be bound by any orders issued by the Court. For example, if the Settlement is approved, the Court will enter judgment ("Judgment"). The Judgment will dismiss with prejudice the claims against the Defendants and will provide that Lead Plaintiffs and all other Class members shall be deemed to have – and by operation of the Judgment shall have – fully, finally, and forever released, waived, discharged, and dismissed any and all Released Claims (as defined in Paragraph 31 below), including Unknown Claims against the Released Parties (as identified in paragraph 32 below) and any claims or potential claims that were or could be asserted in connection with the Action or the Released Claims with respect to the Settlement.**

31. **"Released Claims" means any and all claims, debts, demands, rights, causes of action, or liabilities whatsoever (including without limitation any claims for damages, interest, attorneys' fees, expert or consulting fees, and any other costs, expenses, or liability whatsoever), whether based on federal, state, local, statutory, or common law or any other law, rule, or regulation, whether fixed or contingent, accrued or un-accrued, liquidated or un-liquidated, at law or in equity, matured or un-matured, whether class, derivative, or individual in nature, including both known claims and Unknown Claims, (i) that have been asserted in this Action by any Plaintiff or other Class member or any of them against any of the Released Parties, or (ii) that could have been asserted in any forum by any Plaintiff or other Class member or any of them against any of the Released Parties that arise out of or are based upon or relate to the allegations, transactions, facts, matters, occurrences, representations, or omissions involved, set forth, or referred to in the Complaint and the ownership of Verdasys securities as of April 8, 2011. "Unknown Claims" means any of the Released Claims that Lead Plaintiffs or any Class member does not know or suspect to exist in such party's favor at the time of the release of the Released Persons that, if known by such party, might have affected such party's decisions concerning the Settlement.**

32. **"Released Parties" or "Released Party" means, all of the Defendants and various Released Parties, which generally include each of Verdasys's and its affiliates' respective past, present, and future parent companies, subsidiaries, successors, transferees, assigns, affiliates, divisions, joint ventures, past, present, and future officers, directors, employees, members, partners, principals, shareholders, owners, representatives, agents, attorneys, insurers, as well as the immediate family members of the Defendants, and other released parties described therein.<sup>2</sup>**

33. **The Judgment will provide that the Defendants and all of the other respective Released Parties shall by operation of law be deemed to have fully, finally, and forever released, waived, discharged, and dismissed any and all claims, debts, demands, rights, causes of action, or liabilities whatsoever (including without limitation any claims for damages, interest, attorneys' fees, expert or consulting fees, and any other costs, expenses, or liability whatsoever), whether based on federal, state, local, statutory, or common law or**

<sup>2</sup> The definition of Released Parties, as set forth in the Stipulation, is set forth in its entirety in the accompanying Proof of Claim Form.

any other law, rule, or regulation, whether fixed or contingent, accrued or un-accrued, liquidated or un-liquidated, at law or in equity, matured or un-matured, including both known claims and unknown claims, that have been or could have been asserted in the Action or any forum by any of the Defendants or any of the other respective Released Parties or the successors or assigns of any of them against any Lead Plaintiffs, any of their respective attorneys, or any other Class member that arise out of or relate in any way to the institution, prosecution, or settlement of the claims against the Defendants, except for claims relating to the enforcement of the Settlement.

**WHAT PAYMENT ARE THE ATTORNEYS FOR THE CLASS SEEKING?  
HOW WILL THE LAWYERS BE PAID?**

34. Lead Plaintiffs' Counsel have not received any payment for their services in pursuing claims against the Defendants on behalf of the Class; nor have they been reimbursed for their out-of-pocket expenses. Before final approval of the Settlement, Lead Plaintiffs' Counsel intend to apply to the Court for an award of attorneys' fees not to exceed 33 $\frac{1}{3}$ % of the Total Settlement Fund. At the same time, Lead Plaintiffs' Counsel also intend to apply for reimbursement of Litigation Expenses in an amount not to exceed \$85,000.

**HOW DO I PARTICIPATE IN THE SETTLEMENT? WHAT DO I NEED TO DO?**

35. If you owned Verdasys securities on April 8, 2011, and were damaged thereby, and you are not excluded by the definition of the Class, you will be bound by the proposed applicable Settlement if the Court approves it and by any Judgment or determination of the Court affecting the Class. Only Class members are eligible to participate in the distribution of the Net Settlement Fund created by the Settlement. If you are a Class member, you will be required to submit a Proof of Claim Form and supporting documentation to establish your entitlement to share in the Net Settlement Fund. A Proof of Claim Form is included with this Notice. The Proof of Claim Form can be downloaded from the Claims Administrator's website at [www.BermanDeValerio.com](http://www.BermanDeValerio.com). Those who do not submit timely and valid Proof of Claim Forms with adequate supporting documentation will not be entitled to share in the Net Settlement Fund. Please retain all records of your ownership of Verdasys securities, as they may be needed to document your Claim.

36. As a Class member you are represented by Lead Plaintiffs and Lead Plaintiffs' Counsel, unless you enter an appearance through counsel of your own choice at your own expense. You are not required to retain your own counsel, but if you choose to do so, such counsel must file a notice of appearance on your behalf and must serve copies of his or her appearance on the attorneys listed in the section entitled, "When and Where Will the Court Decide Whether to Approve the Settlement," below.

37. If you are a Class member and wish to object to the Settlement or any of its terms, to the proposed Plan of Allocation or to Lead Plaintiffs' Counsel's application for attorneys' fees and reimbursement of Litigation Expenses, you may present your objections by following the instructions in the section entitled, "When and Where Will the Court Decide Whether to Approve the Settlement," below.

**WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT?  
DO I HAVE TO COME TO THE HEARING?  
MAY I SPEAK AT THE HEARING IF I DON'T LIKE THE SETTLEMENT?**

38. If you do not wish to object to the proposed Settlement, the proposed Plan of Allocation, the application for attorneys' fees and reimbursement of Litigation Expenses, and/or the application for a Compensatory Award for Lead Plaintiffs, you do not need to attend the Settlement Hearing. Also, you can object to or participate in the Settlement without attending the Settlement Hearing.

39. The Settlement Hearing will be held on October 21, 2014, at 2:00 p.m. at the Suffolk County Courthouse, 3 Pemberton Square, Boston, MA 02108. The Court reserves the right to approve the Settlement at or after the Settlement Hearing without further notice to the members of the Class.

40. Any Class member may object to the Settlement, to the proposed Plan of Allocation, to Lead Plaintiffs' Counsel's request for an award of attorneys' fees and reimbursement of Litigation Expenses, or to Lead Plaintiffs' request for a Compensatory Award. Objections or oppositions must be in writing. You must file any written objection or opposition, together with copies of all other papers (including proof of ownership of Verdasys securities establishing your membership in the Class) and briefs with the Clerk's Office of the Massachusetts Superior Court at the address set forth below on or before October 7, 2014. You also must serve the papers on Lead Plaintiffs' Counsel for the Class and counsel for the Defendants at the addresses set forth below so that the papers are *received* on or before October 8, 2014.

### Clerk's Office

Clerk of the Court  
MASSACHUSETTS SUPERIOR COURT  
3 Pemberton Square  
Boston, MA 02108

### Lead Plaintiffs' Counsel

#### **BERMAN DEVALERIO**

Bryan A. Wood  
[bwood@bermandevalerio.com](mailto:bwood@bermandevalerio.com)  
Daryl DeValerio Andrews  
[dandrews@bermandevalerio.com](mailto:dandrews@bermandevalerio.com)  
One Liberty Square  
Boston, MA 02109  
Tel: 617-542-8300  
Fax: 617-542-1194

#### **CASNER & EDWARDS LLP**

George W. Price  
[price@casneredwards.com](mailto:price@casneredwards.com)  
Matthew T. Murphy  
[mmurphy@casneredwards.com](mailto:mmurphy@casneredwards.com)  
Julie R. Bryan  
[bryan@casneredwards.com](mailto:bryan@casneredwards.com)  
303 Congress Street  
Boston, MA 02210  
Tel: 617-426-5900  
Fax: 617-426-8810

*Counsel for Lead Plaintiffs Donato Buccella,  
Alan Sanderson and Mark Silverman*

### Defendants' Counsel

#### **DECHERT LLP**

Timothy C. Blank  
[timothy.blank@dechert.com](mailto:timothy.blank@dechert.com)  
100 Oliver Street, 40<sup>th</sup> Floor  
Boston, MA 02110  
Tel: 617-728-7100  
Fax: 617-426-6567

*Counsel for Verdasys, Inc., Daniel Keshian,  
Adam Stettner, Hugh Warren, Allen Michels  
and Seth Birnbaum*

#### **LOWENSTEIN SANDLER LLP**

Steven M. Hecht  
[shecht@lowenstein.com](mailto:shecht@lowenstein.com)  
Michael J. Hampson  
[mhampson@lowenstein.com](mailto:mhampson@lowenstein.com)  
65 Livingston Avenue  
Roseland, New Jersey 07068  
Tel: 973-597-2500  
Fax: 973-597-2400

*Counsel for Toronto Dominion Capital (USA), Inc.;  
Special Situations Fund III, L.P.;  
Special Situations Technology Fund, L.P.;  
Special Situations Private Equity Fund, L.P.;  
Special Situations Technology Fund II, L.P.;  
Verdasys Inc. Investment Trust;  
Verdasys Inc. Series B Convertible Preferred  
Investment Trust; and  
Verdasys Inc. Series C Convertible Preferred  
Investment Trust*

41. The filing must demonstrate your membership in the Class, including the number and type of Verdasys Securities owned on April 8, 2011. You may not object to the Settlement or any aspect of it if you are not a member of the Class.

42. You may file a written objection without having to appear at the Settlement Hearing. You may not, however, appear at the Settlement Hearing to present your objection unless you first filed and served a written objection in accordance with the procedures described above, unless the Court orders otherwise.

43. If you wish to be heard orally at the hearing in opposition to the approval of any of the Settlement, the proposed Plan of Allocation, Lead Plaintiffs' Counsel's request for an award of attorneys' fees and reimbursement of expenses, or Lead Plaintiffs' request for a Compensatory Award, and if you file and serve a timely written objection as described above, you also must notify the applicable above counsel on or before October 7, 2014, concerning your intention to appear. Persons or entities who intend to object and desire to present evidence at the Settlement Hearing must include in their written objections the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the hearing.

44. You are not required to hire an attorney to represent you in making written objections or in appearing at the Settlement Hearing. If you decide to hire an attorney, which will be at your own expense, however, he or she must file a notice of appearance with the Court and serve it on Lead Plaintiffs' Counsel and the Defendants' Counsel so that the notice is *received* on or before October 7, 2014.

45. The Settlement Hearing may be adjourned by the Court without further written notice to the Class. If you intend to attend the Settlement Hearing, you should confirm the date and time with Lead Plaintiffs' Counsel. Unless the Court orders otherwise, any Class member who does not object in the manner described above will be deemed to have waived any objection and shall be forever foreclosed from making any objection to the proposed Settlement, the proposed Plan of Allocation, Lead Plaintiffs' Counsel's request for an award of attorneys' fees and reimbursement of Litigation Expenses, or Lead Plaintiffs' request for a Compensatory Award. Class members do not need to appear at the hearing or take any other action to indicate their approval.

**CAN I SEE THE COURT FILE? WHOM SHOULD I CONTACT IF I HAVE QUESTIONS?**

46. This Notice contains only a summary of the terms of the proposed Settlement. For more detailed information about the matters involved in this Action, you are referred to the papers on file in the Action, including the Stipulation, which may be inspected during regular office hours at the Office of the Clerk, Massachusetts Superior Court, Suffolk County, 3 Pemberton Square, Boston, MA 02108. Additionally, the Stipulation and any related orders entered by the Court will be posted on the Claims Administrator's website.

All inquiries concerning this Notice should be directed to:

*Sanderson, et al. v. Verdsays, et al. Litigation*  
c/o Daryl DeValerio Andrews  
Berman DeValerio  
One Liberty Square  
Boston, MA 02109  
617-542-8300  
www.bermandevalerio.com

**DO NOT CALL OR WRITE THE COURT OR THE OFFICE OF THE CLERK OF THE COURT REGARDING THIS NOTICE.**

Dated: \_\_\_\_\_

By Order of the Clerk of the Court  
Massachusetts Superior Court

(This page intentionally left blank)

(This page intentionally left blank)

(This page intentionally left blank)

(This page intentionally left blank)

(This page intentionally left blank)

(Back Cover)

Notice Of Pendency Of Class Action And Proposed  
Settlement, Settlement Fairness Hearing, And Motion For  
Attorneys' Fees And Reimbursement Of Litigation Expenses

*Re:*

*Alan Sanderson, et al v. Verdasys, Inc., et al*  
Commonwealth of Massachusetts  
Suffolk Superior Court  
Civil Action No. SUCV2012-00621-BLS1