

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION

SUSAN KOZA, Individually and on Behalf of
All Others Similarly Situated,

Plaintiff,

- v -

MUTUAL FUND SERIES TRUST,
ALPHACENTRIC ADVISORS LLC,
NORTHERN LIGHTS DISTRIBUTORS,
LLC, GARRISON POINT CAPITAL, LLC,
JERRY SZILAGYI, BERT PARISER,
TOBIAS CALDWELL, TIBERIU WEISZ,
ERIK NAVILOFF, and
FREDERICK SCHMIDT,

Defendants.

) Index No. 655297/2020

) Hon. Anar R. Patel, A.J.S.C.
) Part 45

) **Motion Sequence No. 008**

**PLAINTIFF’S MEMORANDUM OF LAW IN SUPPORT
OF UNOPPOSED MOTION FOR ORDER PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT AND DIRECTING NOTICE TO THE CLASS**

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INTRODUCTION

Pursuant to CPLR 908, Plaintiff and Class Representative Susan Koza (“Plaintiff”) respectfully submits this Memorandum of Law in support of her motion for preliminary approval of class action settlement and approval of her proposed notice and claims plan for the Class (“Motion”). Specifically, Plaintiff moves the Court for entry of the proposed order filed herewith (“Preliminary Approval Order”), which: (i) preliminarily approves the proposed Settlement¹ with Defendants Mutual Fund Series Trust, AlphaCentric Advisors LLC, Northern Lights Distributors, LLC, Jerry Szilagyi, Frederick Schmidt, Erik Naviloff, Tobias Caldwell, and Tiberiu Weisz (“Defendants,” and together with Plaintiff, the “Parties”)²; (ii) authorizes notice of the Settlement to the Class; and (iii) schedules a hearing for final approval of the proposed Settlement and related matters (“Settlement Hearing”), which will allow for the prompt conclusion of this Action and distribution of the Settlement proceeds while providing sufficient time for Class Members to receive notice and present any objection or opt out.

As further detailed below, the Court should preliminarily approve the \$20 million Settlement because it is a significant recovery for the Class given the risks of continued litigation, the potential range of recovery in this case, and other recently approved securities class action settlements. Further, it was achieved through arm’s-length negotiations with the assistance of an experienced mediator after the Parties and their counsel were thoroughly informed of the merits of

¹ All capitalized terms that are not otherwise defined herein shall have the same meanings provided in the Stipulation of Settlement dated January 20, 2026 (“Stipulation” or “Stip.”), which is attached as Exhibit 1 to the Affirmation of Marc J. Greco (“Greco Affirmation”) filed concurrently herewith.

² Although Bert Pariser was named as a Defendant in this case, he passed away in March 2022. See [NYSCEF No. 120](#).

and defenses to the claims at issue, having completed all fact and expert discovery and engaged in complex motion practice. Accordingly, the Court should grant the Motion in full.

BACKGROUND

A. Overview of the Claims at Issue

This case alleges that Defendants violated §§11, 12, and 15 of the Securities Act of 1933 (“Securities Act”) by making untrue statements and omissions of material fact about the liquidity of the portfolio holdings of the AlphaCentric Income Opportunities Fund (“Fund”). The Fund is an open-end mutual fund that pools investor funds to invest in portfolios of securities. Because open-end mutual funds must allow investors to redeem their shares on any business day, the liquidity of a fund’s portfolio holdings is closely regulated. Funds cannot hold more than 15% of their net assets in illiquid assets and must implement formal “Liquidity Risk Management Programs” under which they perform monthly liquidity classifications of each of their assets to ensure compliance with that limitation. Plaintiff alleges that Defendants’ statements about the Fund’s compliance with those rules and the liquidity of the Fund’s assets were materially misleading because the Fund’s Liquidity Risk Management Program was deficient. Defendants have consistently disputed the facts and claims at issue and denied liability.

B. Procedural History

1. The Pleadings

Plaintiff initiated this action on October 14, 2020, and filed the operative Amended Complaint (“Complaint”) on February 26, 2021. NYSCEF Nos. [1](#) & [8](#). Defendants and Garrison Point Capital, LLC (“Garrison Point,” the Fund’s sub-advisor) each moved to dismiss the Complaint in full on May 20, 2021, and the motion was fully briefed by September 9, 2021. NYSCEF Nos. [20](#), [30](#), [77–79](#), [80](#), [83–84](#). The Court heard oral argument on the motions to dismiss on August 9, 2022. *See* NYSCEF No. [97](#) at 1. On February 17, 2023, the Court granted

Defendants' motion in part but allowed the Complaint's allegations concerning the liquidity of the Fund's portfolio holdings to move forward against Defendants. NYSCEF No. [98](#). The Court granted Garrison Point's motion to dismiss the §12(a)(2) claim against it, finding Garrison Point was not a statutory seller under the Securities Act. NYSCEF No. [97](#). The Court therefore entered judgment in favor of Garrison Point on May 23, 2023. NYSCEF No. [110](#).

2. Fact Discovery

After the motion to dismiss rulings, the Parties conducted fact discovery for 15 months. Greco Affirmation ¶6. Defendants produced approximately 3,300 documents (nearly 40,000 pages), and Plaintiff obtained roughly 1,150 documents (over 14,000 pages) from two non-parties, Garrison Point and Intercontinental Exchange, Inc. ("ICE," the Fund's vendor for certain pricing and liquidity-classification services). *Id.* Plaintiff produced 3,555 pages of relevant documents. *Id.* Plaintiff deposed seven individuals associated with Defendants and two individuals associated with Garrison Point. *Id.* Fact discovery concluded on July 31, 2024. Plaintiff served contention interrogatories after the close of discovery, which Defendants answered on January 14, 2025. *Id.*

3. Motion for Class Certification

While fact discovery was occurring, Plaintiff moved for class certification on September 1, 2023. NYSCEF No. [112](#). The motion was fully briefed by December 19, 2023. NYSCEF Nos. [112](#), [121](#), [133](#). In connection with the motion, Defendants deposed Plaintiff for a full day on October 11, 2023. Greco Affirmation ¶6. On July 2, 2024, the Court issued a ruling certifying a Class of all persons and entities who purchased or otherwise acquired shares of the Fund during the period from July 27, 2018 to March 22, 2020, inclusive ("Class Period") pursuant to the Fund's July 27, 2018 Registration Statement and/or other offering materials subsequently issued by the Fund during the Class Period (excluding Defendants and various affiliated persons). NYSCEF No. [148](#). The Court appointed Ms. Koza as class representative and Scott+Scott Attorneys at Law

LLP as class counsel (“Class Counsel”). *Id.* at 7. Thus, because the Court has already certified the Class in this case, there is no need for conditional certification proceedings here.

4. Expert Discovery and Note of Issue

Expert discovery began in September 2024 and was conducted for roughly seven months, concluding on March 3, 2025. Greco Affirmation ¶7; *see* NYSCEF No. [153](#) at 2. In total, four experts were designated, submitting opening, rebuttal, and reply reports, and all were deposed. Greco Affirmation ¶¶7, 11. Notably, and as discussed further below, Defendants’ experts spent considerable amounts of their reports on attempting to show that any damages suffered by the Class were caused by market-wide turmoil related to the COVID pandemic, and not Defendants’ alleged misstatements. *Id.* Plaintiff filed her Note of Issue on March 24, 2025. NYSCEF No. [155](#).

5. Mediation and Resolution

In connection with the Commercial Division’s requirement for a mandatory settlement conference after filing a Note of Issue, in March 2025, the Parties agreed to participate in a private mediation session before an independent neutral. NYSCEF No. [159](#). The Parties engaged Robert A. Meyer, Esq. of JAMS—a renowned mediator from a nationally recognized mediation firm—to serve as mediator. Greco Affirmation ¶8. The Parties submitted detailed mediation statements and supporting evidence to Mr. Meyer ahead of the mediation. *Id.* By that time, because the Parties had engaged in significant motion practice and completed all discovery, they had a thorough understanding of the strengths and weaknesses of their respective positions. The Parties convened for a full-day, in-person mediation session on July 24, 2025. *Id.* Although the Parties did not reach an agreement that day, Mr. Meyer continued to facilitate discussions with the Parties in the weeks following the mediation. *Id.*

With Mr. Meyer’s continued assistance, the Parties reached an agreement in principle to settle the Action for \$20 million, and on September 25, 2025, notified the Court about it and

requested a stay of the proceedings to allow the Parties to consummate the Settlement, which the Court granted. NYSCEF Nos. [172](#) & [173](#). The Parties then began working expeditiously to draft a memorandum of understanding, stipulation of settlement, proposed notices and claims forms for the Class, preliminary approval order, and final judgment. Greco Affirmation ¶9. On November 4, 2025, the parties executed a Memorandum of Understanding setting forth the material terms and conditions of the Settlement. NYSCEF No. [176](#). On January 20, 2026, the Parties executed the Stipulation, which sets forth the terms and conditions of the Settlement. Greco Affirmation ¶9.

C. Key Terms of the Proposed Settlement

Under the Stipulation, Defendants will pay a sum of \$20 million in cash, to be deposited into the Escrow Account within 21 days of the Court’s entry of the Preliminary Approval Order. Stip. ¶2.2. Interest earned on the Settlement Fund will accrue to the benefit of the Class. *Id.* ¶¶1.28, 2.2. The Settlement is non-recapture (i.e., it is not a “claims-made” settlement). Thus, upon the occurrence of the Effective Date, no Defendant, Released Defendant Party, or other party that paid any portion of the Settlement Amount will have any right to the return of any portion of the Settlement Fund. *Id.* ¶2.12. As this is a class action, the Settlement Fund will be used to pay the costs of notifying potential Class Members of the Settlement, administering the process through which Class Members submit claims and receive a specified portion of the Settlement Fund, the expenses of litigating this case, including attorneys’ fees and costs, any taxes on the interest earned by the Settlement Fund, and a service award for Plaintiff’s representation of the Class. *Id.* ¶2.8.

The balance after those costs, or the “Net Settlement Fund,” will then be distributed to Authorized Claimants under a Plan of Allocation described in further detail below and in the proposed Notice to Class Members. *Id.* ¶¶5.1–5.12. To qualify as Authorized Claimants, potential Class Members must submit information requested in the Proof of Claim form (distributed with

the Notice), which establishes that they are in fact Class Members, and the amount of relevant losses that they allegedly suffered based on their transaction data in Fund shares. *Id.* The Plan of Allocation provides a simple formula, based on the damages formula set forth in the Securities Act for the claims at issue, for translating Authorized Claimants' economic losses into Recognized Claim Amounts, and then allocates the Net Settlement Fund to each Authorized Claimant based on his or her *pro rata* share of the total Recognized Claims for all Authorized Claimants. *See id.*, Ex. A-1 ¶¶17–19. Accordingly, the Plan of Allocation ensures all Authorized Claimants will receive their fair share of the Net Settlement Fund consistent with the damages formula in the Securities Act.

In exchange for the consideration provided by Defendants under the Stipulation, Plaintiff and each Class Member will settle, compromise, and release “all claims . . . that have been or could have been asserted in the Action” against Defendants and Released Defendants' Parties that arise from the same acts and omissions and relate to the purchase or sale of Fund shares. Stip. ¶¶1.20–1.21. Such a release is standard in securities class action settlements and provides finality to the Parties.

D. The Proposed Notice and Claims Program

1. Retention of A.B. Data as Notice and Claims Administrator

Plaintiff proposes that the notice and claims process be administered by A.B. Data, Ltd. (“A.B. Data” or “Claims Administrator”). *See* Preliminary Approval Order ¶7. A.B. Data is an independent settlement and claims administrator with experience handling the administration of securities class actions. Greco Affirmation ¶17. Class Counsel selected A.B. Data after a competitive bidding process in which three firms submitted proposals. *Id.* All the proposals received involved comparable methods of providing notice and claims processing, including the use of first-class mail and identifying potential Class Members through brokers and nominee

owners. *Id.* A.B. Data has provided notice and claims administration in hundreds of securities class actions. *Id.* And the Court previously approved Plaintiff's request to use A.B. Data to administer notice of the pendency of the Action (although the case settled shortly thereafter, rendering dissemination of notice of pendency moot given the impending notice of settlement). NYSCEF No. [171](#).

2. Retention of Huntington National Bank as Escrow Agent

Plaintiff proposes that the Court approve Class Counsel's selection of Huntington National Bank ("HNB") as Escrow Agent. *See* Preliminary Approval Order ¶7. HNB was established in 1866, holds over \$200 billion in assets, and has over 1,000 branches nationwide. Greco Affirmation ¶18. HNB's settlement team has handled over 1,000 settlements for law firms, claims administrators, and regulatory agencies. *Id.*

3. Proposed Notice and Claims Procedures

The Notice provides the key and necessary information regarding the Settlement, how it affects Class Members, and certain steps they may wish to take. *See* Stip., Ex. A-1. Among other things, it contains:

- An explanation of the litigation and claims;
- A description of the material terms of the Settlement;
- An overview of how to submit a claim to participate in the distribution of the Net Settlement Fund;
- Instructions for how and when to object to or opt out of the Settlement if they so choose;
- The date when the Settlement Hearing will occur;
- The effect of taking or not taking any of the foregoing actions; and
- The address of the Settlement website where Class Members can submit a Claim Form and access the Stipulation and other related documents and information.

The Claim Form is attached to the Notice, and also available on the Settlement website or upon request. *Id.*, Ex. A-2. It clearly informs Class Members of the process they must follow to submit a claim, the information they must provide to establish that they are Class Members and their Recognized Loss Amounts, and instructions for how to submit that information. The Claims Administrator will review and process the claims under the supervision of Class Counsel, provide claimants with an opportunity to cure any deficiencies in their claim(s) or request review of the denial of their claim(s) by the Court, and then mail or wire claimants their *pro rata* share of the Net Settlement Fund (as calculated under the Plan of Allocation) upon final approval of the Court and after the Effective Date. Stip. ¶¶5.1–5.7.

The Claims Administrator will mail the Notice and Claim Form (“Notice Packet”) to all identified potential Class Members. The Claims Administrator will identify potential Class Members through brokerage firms and other nominees who purchased eligible Fund shares on behalf of other beneficial owners, and the Claims Administrator may also use records provided by Defendants to assist it in identifying potential Class Members. The brokerage firms and nominees may choose to mail the Notice Packet directly to potential Settlement Class members or to provide their mailing information to the Claims Administrator so that it may do so. *See* Preliminary Approval Order ¶8.

The Claims Administrator will also cause the Summary Notice (attached as Ex. A-3 to the Stipulation) to be published (i) electronically once over *PR Newswire*, and (ii) in print once in the *Wall Street Journal*. *Id.* ¶9. The Summary Notice provides an abbreviated description of the Action, the Settlement, key dates and the effect of submitting a claim, objecting or opting out, and an explanation of how to obtain the more detailed Notice and Claim Form.

In addition, the Claims Administrator will publish the Notice and Claim Form, and all materials relevant to the Settlement, on a website devoted to the Settlement, which will also permit Class Members to submit claims forms electronically. *Id.* ¶10. The Claims Administrator will also create a toll-free number that Class Members may call for information. *Stip.*, Ex. A-1 ¶25. Class Members will be able to file claims both electronically and by mail. *Id.* ¶10. The proposed plan for providing notice is the method customarily used in securities class actions. Further, it is substantially similar to the notice of pendency of the Action that the Court approved shortly before the case settled. NYSCEF No. [171](#).

As set forth in the Preliminary Approval Order, Plaintiff proposes that the Court authorize the following schedule for Notice to the Class and consideration of the proposed Settlement:

Deadline	Event
Preliminary Approval Order (“PAO”) + 10 days	Defendants provide shareholder list to Plaintiff’s Counsel and Claims Administrator [PAO ¶8]
PAO + 21 days	Claims Administrator mails Notice and Proof of Claim to Class Members (“Notice Date”) [PAO ¶8]
Notice Date + 10 days	Claims Administrator publishes Summary Notice over <i>PR Newswire</i> and in the <i>Wall Street Journal</i> [PAO ¶9]
14 days prior to objection deadline	Papers in support of final approval of Settlement, Plan of Allocation, and Fee and Expense Application filed [PAO ¶17]
Notice Date + 60 days	Deadline for Class Members to request exclusion from Class [PAO ¶14]
Notice Date + 60 days	Deadline for objections to Settlement, Plan of Allocation, service award, and/or attorneys’ fees and expenses [PAO ¶15]
Notice Date + 90 days	Deadline for Class Members to submit Proofs of Claim [PAO ¶13(a)]
7 days before Settlement Hearing	Proof of mailing and publication filed with Court [PAO ¶11]

Deadline	Event
7 days before Settlement Hearing	Reply papers in support of Settlement filed [PAO ¶17]
Notice Date + approximately 115 days	Settlement Hearing [PAO ¶4]

ARGUMENT

CPLR 908 requires court approval of class action settlements. Although “[t]here is no explicit requirement under Article 9 of the CPLR for preliminary approval,” this Court “has adopted the practice of entertaining motions for preliminary approval” before providing notice to the class and scheduling a final approval hearing. *Saska v. Metro. Museum of Art*, [2016 WL 6682271](#), at *9 (Sup. Ct., N.Y. Cnty. Nov. 10, 2016). Preliminary approval is thus the first of two stages before final approval of a class action settlement. *See, e.g., Dell v. Sylvia Woods, Inc.*, [2021 WL 4859283](#), at *1 (Sup. Ct., N.Y. Cnty. Oct. 1, 2021).

“If the proposed settlement agreement falls within the range of reasonableness, it meets the requirements for preliminary approval such that notice to the class members is appropriate.” *Saska*, [2016 WL 6682271](#), at *10 (citation modified). “Second, where preliminary approval is granted, the court must direct the preparation of notice of . . . the proposed settlement and the date of the final fairness hearing.” *Dell*, [2021 WL 4859283](#), at *1 (citation modified). Here, the proposed Settlement meets these requirements. It is the result of five years of hard-fought litigation, was reached after the Parties completed fact and expert discovery, and is informed by counsel’s full views on the strengths and weaknesses of the case. Further, the Parties reached the Settlement through arm’s-length negotiations before an experienced mediator. The \$20 million recovery it secures is an excellent result for the Class given the risks and uncertainties of continued litigation. Under these circumstances, the Settlement “falls within the range of reasonableness”

that warrants preliminary approval, and the Court should enter the Preliminary Approval Order. *Saska*, [2016 WL 6682271](#), at *10.

I. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT

“The purpose of preliminary approval is to simply allow notice to be issued to the class and for class members to either object to or opt-out of the settlement.” *Dell*, [2021 WL 4859283](#), at *1 (citation modified). “Preliminary approval requires only an initial evaluation of the fairness of the proposed settlement on the basis of written submissions and an informal presentation by the settling parties.” *Saska*, [2016 WL 6682271](#), at *10 (citation modified). “Therefore, a trial court should preliminarily approve a proposed settlement which appears to be the product of serious, informed non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class and falls within the reasonable range of approval.” *Dell*, [2021 WL 4859283](#), at *1 (citation modified).

In applying the “range of reasonableness” standard, courts make a preliminary determination of “whether the proposed settlement is fair, adequate, reasonable, and in the best interest of class members.” *In re HSBC Bank U.S.A., N.A., Checking Acct. Overdraft Litig.*, [2015 WL 6698518](#), at *9 (Sup. Ct., N.Y. Cnty. Oct. 27, 2015) (citation modified). In doing so, courts may consider, among other factors, “the likelihood of success on the merits of the underlying case; the extent of support of the settlement by the parties . . . ; counsel’s judgment; and whether good-faith bargaining occurred at arm’s length.” *Id.* Considering all those factors and criteria here shows preliminary approval of the Settlement should be granted.

A. The Settlement Provides Substantial Recovery in Light of Litigation Risks

In this case, the terms and conditions of the Stipulation are fair, reasonable, and adequate, and the Settlement is in the best interests of the Class. Although Plaintiff and Plaintiff’s Counsel believe that the claims asserted against Defendants have merit, they recognize the countervailing

concerns of the expense and uncertainty of continued litigation, including the risks of establishing liability and damages at summary judgment and trial. Greco Affirmation ¶10. And, because the Parties completed all fact and expert discovery, they are fully apprised of the strengths and weaknesses of the case.

1. Threats to Liability and Damages Existed

Defendants have raised, and would continue to raise, factual and legal challenges to establishing liability and damages. To begin with, Defendants continuously asserted that their statements were not, in fact, false and the Fund's assets were liquid. This would inevitably come down to a "battle of the experts" and other competing evidence. *Id.* ¶11.

Then, as they previewed in their motion to dismiss and stated in their answers to Plaintiffs' contention interrogatories, Defendants would have pursued the affirmative defense of due diligence at summary judgment and trial. *Id.* Through that defense, Defendants have argued that they conducted reasonable investigations into the Fund's liquidity classifications and had reasonable grounds to believe the statements in the Offering Materials were true, and thus escape liability. [15 U.S.C. §77k\(b\)\(3\)\(A\)](#) (statutory due diligence defense); *see, e.g., In re WorldCom, Inc. Sec. Litig.*, [346 F. Supp. 2d 628](#), 662 (S.D.N.Y. 2004). Defendants have also argued that the Fund's liquidity classifications were made by ICE, a third-party vendor that is the market's leading provider of liquidity-classification services for investment firms, and that Defendants reasonably relied on those classifications. Greco Affirmation ¶11.

Finally, Defendants have asserted the affirmative defense of negative causation under §11(e) of the Securities Act, and offered expert opinions on the subject. *Id.* Through negative causation, Securities Act defendants can reduce the amount of recoverable damages by showing that the declines in the security's value were due to factors other than the alleged materially misleading statements and omissions. [15 U.S.C. §77k\(e\)](#) (statutory negative causation defense);

see, e.g., In re Barclays Bank PLC Sec. Litig., [756 F. App'x 41](#), 45 (2d Cir. 2018). Here, Defendants have argued that the Class's losses were caused in substantial part by market-wide factors related to the market turmoil associated with the COVID-19 pandemic in March 2020. Greco Affirmation ¶11. Indeed, Defendants' rebuttal damages expert opined that market-wide factors explained a significant portion of the Fund's decline. *Id.* Although Plaintiff is confident in her expert's response to those opinions, there is no guarantee the Court or a jury would reject Defendants' negative causation arguments entirely, especially given the unprecedented nature of COVID. Were Defendants even partially successful in invoking that defense, the Class's recovery could have been materially reduced. *Id.* ¶12.

In addition to the risk of Defendants being successful on any of their defenses at trial, the risk of lengthy appeals also exists. In order to obtain a recovery for the Class, even if Plaintiff prevailed at summary judgment and trial, Plaintiff would also have to prevail on appeals that would likely follow. Thus, there were significant risks attendant to the continued prosecution of the Action, and there was no guarantee that further litigation would have resulted in any recovery at all, let alone one higher than the Settlement secures. *Id.* ¶13.

2. The Value of the Settlement Is Within the Range of Reasonableness Given the Class's Maximum Potential Recovery

The proposed Settlement amount falls within the range of reasonableness and thus meets the requirements for preliminary approval. First, the Settlement amount (\$20 million) is well above the median value of all securities case settlements over the last few years. Indeed, according to data for 2024 (the last full year for which data is currently available), cases brought exclusively

under the Securities Act have a median settlement amount of \$10.3 million.³ The median settlement value of all securities cases (i.e., including Securities Exchange Act cases) for the first half of 2025 is \$13 million.⁴ Therefore, the \$20 million here is almost double the median settlement amounts in comparable cases. The same data shows that, for 2025, the median settlement recovery as a percentage of maximum estimated damages was 7.9%. Here, the \$20 million represents approximately 5.7% to 7.5% of the Class's maximum possible recovery.⁵ Therefore, the percentage recovery is consistent with the median. Courts routinely approve settlements in this range of recovery. *See Kirkland v. WideOpenWest, Inc.*, No. 653248/2018, [NYSCEF No. 132](#) at 18 (Sup. Ct., N.Y. Cnty. Dec. 15, 2021) (settlement was roughly 4.5% of maximum possible recovery); *In re Douyu Int'l Holdings Ltd. Sec. Litig.*, No. 651703/2020, [NYSCEF No. 172](#) at 8 (Sup. Ct., N.Y. Cnty. Oct. 27, 2022) (settlement was 6–7% of maximum possible recovery); *St. John v. Cloopen Grp. Holding Ltd.*, No. 652617/2021, [NYSCEF No. 119](#) at 10 (Sup. Ct., N.Y. Cnty. Dec. 19, 2023) (settlement was roughly 7% of maximum possible recovery).

The recovery is particularly strong given the possibility that Defendants might have prevailed with their negative causation defense based on COVID. Even if they partially prevailed, the recoverable amount could have shrunk dramatically. Greco Affirmation ¶15. Considering the risks of establishing liability and damages at trial, the certainty of the Settlement's \$20 million

³ See Cornerstone Rsch., *Securities Class Action Settlements—2024 Review and Analysis* 4, 8 (2025), <https://www.cornerstone.com/wp-content/uploads/2025/03/Securities-Class-Action-Settlements-2024-Review-and-Analysis.pdf>.

⁴ See Edward Flores & Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: H1 Update*, NERA Econ. Consulting 16 fig.14 (July 29, 2025) (Greco Affirmation Ex. 2).

⁵ Plaintiff's expert calculated maximum class-wide damages of approximately \$268 million to \$352 million. Greco Affirmation ¶14.

recovery is an excellent result for the Class, and supports preliminary approval. *See, e.g., HSBC, 2015 WL 6698518*, at *9 (assessing “the value of the settlement against the present value of the anticipated recovery following a trial on the merits, discounted for the inherent risks of litigation” (citation modified)).

B. The Settlement Is the Product of Arm’s-Length Negotiations

Conducting mediation before an independent neutral is evidence “that the parties engaged in good faith bargaining at arm’s length,” which counsels in favor of preliminary approval. *Id.* at *10 (citation modified). Indeed, some courts even apply “[a] presumption of fairness, adequacy, and reasonableness . . . to a class settlement reached in arm’s-length negotiations between experienced, capable counsel after meaningful discovery.” *Fiala v. Metro. Life Ins. Co.*, 899 N.Y.S.2d 531, 538 (Sup. Ct., N.Y. Cnty. 2010) (citation modified).

That is precisely the case here. As discussed in §B.5, *supra*, after the Parties completed all discovery in this Action, they mediated before a renowned neutral from a nationally recognized dispute-resolution firm. Given the full development of the evidentiary record by then, the Parties were able to submit detailed, evidence-based mediation statements and negotiate with full knowledge of the strengths and weaknesses of the case. That squarely shows that the Settlement was “the product of serious, informed non-collusive negotiations,” which further warrants preliminary approval. *Dell*, 2021 WL 4859283, at *1; *see also Fiala*, 899 N.Y.S.2d at 608 (“[T]he history and length of the litigation speak to the lack of collusion and coercion in negotiating the final settlement.”).

C. Plaintiff and Her Counsel Support the Settlement

Class Counsel is a nationally recognized law firm that specializes in securities class actions and complex commercial litigation. Greco Affirmation ¶16. They and Plaintiff wholeheartedly recommend the Settlement, which weighs in favor of approving it. *Id.*; *see, e.g., Gordon v. Verizon*

Commc'ns, Inc., [148 A.D.3d 146](#), 157 (N.Y. App. Div., 1st Dep't 2017) (where “the parties were represented by counsel who were competent and experienced in the [relevant] field,” counsel’s support of settlement “weigh[ed] in favor of the proposed settlement”). As discussed above, these recommendations came after full development of the record in the case and complex motion practice, among other events, and thus should be afforded appropriate weight. *See supra* §B. And, Plaintiff and Defendants support the Settlement.

D. The Plan of Allocation Treats Class Members Equitably

“To warrant approval, the plan of allocation must also meet the standards by which the settlement was scrutinized—namely, it must be fair and adequate.” *In re WorldCom, Inc. Sec. Litig.*, [388 F. Supp. 2d 319](#), 344 (S.D.N.Y. 2005) (citation modified). “An allocation formula need only have a reasonable, rational basis, particularly if recommended by experienced and competent class counsel.” *Id.* (citation modified). The proposed Plan of Allocation is fair and adequate because it distributes the Net Settlement Fund equitably among Class Members based on their respective alleged economic losses. Stip., Ex. A-1 ¶17 (Notice describing the Plan of Allocation).

The Plan of Allocation has a reasonable, rational basis. It uses a Recognized Loss formula based on the statutory damages formula in §11(e) of the Securities Act, which was developed in consultation with Plaintiff’s damages expert. *Id.* The Plan applies the same methodology uniformly to all Class Members, regardless of whether they purchased Class A, Class C, or Class I Fund shares. For each share class, Recognized Loss Amounts are calculated using the same approach:

- For shares sold before the filing of the Action: the purchase price minus the sale price.
- For shares sold after the filing of the Action: the purchase price minus (i) the sale price, or (ii) the Fund share price on the date the Action was filed (October 14, 2020), whichever is greater.

- For shares retained through the close of trading on January 20, 2026: the purchase price minus the Fund share price on the date the Action was filed (October 14, 2020).

Id. ¶18. The Net Settlement Fund is then distributed *pro rata* based on each Authorized Claimant's Recognized Claim relative to the total Recognized Claims of all Authorized Claimants. *Id.* ¶19.

The Plan does not improperly grant preferential treatment to the Class Representative or any segment of the Class. Ms. Koza will recover under the same formula as all other Class Members and is entitled only to her *pro rata* share of the Net Settlement Fund based on her own purchases and losses. Accordingly, the Plan of Allocation is fair and adequate, and warrants preliminary approval.

II. THE COURT SHOULD APPROVE THE PROPOSED NOTICE PLAN

A. The Form and Content of the Proposed Notice Meet the Court's Requirements

"Notice of the proposed dismissal, discontinuance, or compromise" of a class action "shall be given to all members of the class in such manner as the court directs." [CPLR 908](#). Such notice must "inform[] all class members of the pending class action, the composition of the class, the issues between the parties, the terms of the proposed settlement, how a class member may object, the time period within which such objection, if any, must be made, and the date on which the trial court will hold a hearing, at which same will consider the fairness of the proposed settlement." *In re Colt Indus. S'holder Litig.*, [155 A.D.2d 154](#), 160 (N.Y. App. Div., 1st Dep't 1990), *aff'd as modified*, 566 N.E.2d 1160 (N.Y. 1991); *see, e.g., HSBC*, [2015 WL 6698518](#), at *12 (same).

Here, the proposed Notice contains all that information and thus satisfies the applicable requirements. As detailed above, the Notice will advise Class Members of all material information about the Action, the Settlement, their rights to opt out and object (and how to do so), how to participate in the distribution of the Net Settlement Fund, the effects of those actions, and the

Settlement Hearing (among other information). *See supra* §D.3; Stip., Ex. A-1 (Notice). It should therefore be approved.

The proposed procedures for disseminating such notice should also be approved. The Notice will be disseminated through a combination of the following methods: (i) delivering the full Notice Packet by email or first-class mail to Class Members; (ii) publishing the Summary Notice in the *Wall Street Journal* and over *PR Newswire*; and (iii) posting the full Notice, Summary Notice, and all other relevant information to the website set up specifically for Settlement. *See supra* §D.3. Courts routinely approve notice programs with those features. *See, e.g., HSBC, 2015 WL 6698518*, at *12 (combination of direct mailing, publication of summary notice in print media, and establishment of website “not only adequate, but comprehensive”). Further, the Court previously approved Plaintiff’s request to disseminate notice of the pendency of the Action using substantially the same means. *See* NYSCEF No. [171](#). Thus, the Court should approve the Notice procedures here.

B. The Proposed Schedule of Events Will Expeditiously Resolve the Action

The Court should approve the schedule of remaining events that Plaintiff proposes, set forth in the Preliminary Approval Order and summarized above. *See supra* §D.3. It appropriately balances the interest relevant stakeholders have in expeditiously resolving the Action, while giving potential Class Members sufficient time to determine whether they are Class Members, and if so, whether they wish to participate in the Settlement or opt out. In relevant part, it contemplates the following timing of certain key events:

- Within 10 days of entry of the Preliminary Approval Order, Defendants will provide a list of Fund shareholders who are potential Class Members.
- Within 21 days of entry of the Preliminary Approval Order, the Claims Administrator will mail the Notice Packet to the potential Class Members.

- Within 10 days of mailing the Notice Packet, the Summary Notice will be published in the *Wall Street Journal* and transmitted over *PR Newswire*.
- The Claims Administrator, subject to the supervision of Plaintiff's Counsel, will establish and maintain a website devoted to the Settlement, which will contain copies of all Settlement-related documents as well as important other case documents.
- At least seven days before the Settlement Hearing, Plaintiff's Counsel will file with the Court proof of mailing of the Notice Packet and proof of publication of the Summary Notice.

Because notice of the Settlement is given "in such manner as the court directs," the Court should approve the proposed schedule of events contained in the Preliminary Approval Order.

[CPLR 908](#).

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court enter the Preliminary Approval Order, which: (i) preliminarily approves the proposed Settlement; (ii) authorizes notice of the Settlement to the Class as proposed; and (iii) schedules a Settlement Hearing to consider final approval of the Settlement, the Plan of Allocation, Plaintiff's Counsel's application for an award of attorneys' fees and reimbursement of litigation expenses, and Plaintiff's request for a service award.

DATED: January 21, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH WORD LIMIT

In accordance with Commercial Division Rule 17, I, Marc J. Greco, certify that the foregoing Memorandum of Law complies with the 7,000-word limit set by Commercial Division Rule 17. Excluding the caption, table of contents, table of authorities, and signature block, the document contains 5,709 words, as measured by Microsoft Word, the word-processing system that was used to prepare the document.

Dated: January 21, 2026
New York, NY

/s/ Marc J. Greco

Marc J. Greco