

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,	)	Index No. 655297/2020
	)	
Plaintiff,	)	Hon. Anar R. Patel, A.J.S.C.
	)	Part 45
- v -	)	<b>Motion Sequence No. 008</b>
	)	
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.	)	

**AFFIRMATION OF MARC J. GRECO IN SUPPORT OF PLAINTIFF’S  
UNOPPOSED MOTION FOR ORDER PRELIMINARILY APPROVING  
CLASS ACTION SETTLEMENT AND DIRECTING NOTICE TO THE CLASS**

Marc J. Greco, an attorney admitted to practice before the courts of the State of New York and not a party to this action, hereby affirms the following to be true under penalties of perjury:

1. I am an attorney with the law firm of Scott+Scott Attorneys at Law LLP, counsel for Plaintiff and Susan Koza and the certified class (“Class”) in the above-captioned action (“Action”). I respectfully submit this affirmation in support of Plaintiffs’ Unopposed Motion for Order Preliminarily Approving Class Action Settlement and Directing Notice to the Class.

**DESCRIPTION OF EXHIBITS**

2. Attached as **Exhibit 1** hereto is a true and correct copy of the Stipulation of Settlement, dated January 20, 2026 (“Stipulation”), including all exhibits thereto, entered into by the Parties in this Action. The exhibits to the Stipulation are as follows:

(i) Attached as **Exhibit A** to the Stipulation is a true and correct copy of the Proposed Order Granting Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement and Directing Notice to the Class.

(ii) Attached as **Exhibit A-1** to the Stipulation is a true and correct copy of the Notice of Proposed Class Action Settlement.

(iii) Attached as **Exhibit A-2** to the Stipulation is a true and correct copy of the Proof of Claim and Release Form.

(iv) Attached as **Exhibit A-3** to the Stipulation is a true and correct copy of the Summary Notice.

3. Attached as **Exhibit B** to the Stipulation is a true and correct copy of the Proposed Judgment and Order Granting Final Approval of Class Action Settlement.

4. Attached as **Exhibit 2** hereto is a true and correct copy of Edward Flores & Svetlana Starykh, NERA Economic Consulting, *Recent Trends in Securities Class Action Litigation: H1 2025 Update* (July 29, 2025).

5. For the Court's convenience, the following table identifies the foregoing exhibits:

<b>Exhibit</b>	<b>Document</b>
Exhibit 1	Stipulation of Settlement
Exhibit A	Proposed Order Granting Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement and Directing Notice to the Class
Exhibit A-1	Notice of Proposed Class Action Settlement
Exhibit A-2	Proof of Claim and Release Form
Exhibit A-3	Summary Notice of Proposed Settlement of Class Action
Exhibit B	Proposed Judgment and Order Granting Final Approval of Class Action Settlement
Exhibit 2	Edward Flores & Svetlana Starykh, NERA Economic Consulting, <i>Recent Trends in Securities Class Action Litigation: H1 2025 Update</i> (July 29, 2025)

## BACKGROUND OF THE LITIGATION AND MEDIATION

6. Fact discovery in this Action commenced in April 2023, and lasted for roughly 15 months. Defendants produced approximately 3,300 documents (nearly 40,000 pages) in fact discovery. Plaintiff obtained roughly 1,150 documents (over 14,000 pages) from two non-parties, Garrison Point and Intercontinental Exchange, Inc. (“ICE,” the AlphaCentric Income Opportunities Fund’s vendor for certain pricing and liquidity-classification services). Plaintiff produced 3,555 pages of relevant documents. Plaintiff deposed seven individuals associated with Defendants and two individuals associated with Garrison Point during fact discovery. In addition, Defendants deposed Plaintiff for a full day on October 11, 2023. Fact discovery concluded on July 31, 2024. Plaintiff served contention interrogatories after the close of discovery, which Defendants answered on January 14, 2025.

7. Expert discovery began in September 2024 and was conducted for roughly seven months, concluding on March 3, 2025. In total, four experts were designated, submitting opening, rebuttal, and reply reports, and all were deposed. 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.

8. 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. The Parties engaged Robert A. Meyer, Esq. of JAMS—a renowned mediator from a nationally recognized mediation firm—to serve as mediator. The Parties submitted detailed mediation statements and supporting evidence to Mr. Meyer ahead of the mediation. The Parties convened for a full-day, in-person mediation session on July 24, 2025. 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.

9. 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 the agreement. The Parties then began working expeditiously to draft a memorandum of understanding, stipulation of settlement, and proposed notices and claims forms for the Class, as well as a proposed preliminary approval order and final judgment. On November 4, 2025, the parties executed a Memorandum of Understanding setting forth the material terms and conditions of the Settlement. On January 20, 2026, the Parties executed the Stipulation, which sets forth the terms and conditions of the Settlement.

### **LITIGATION RISKS**

10. 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.

11. In this Action, Defendants have raised, and would continue to raise, factual and legal challenges to establishing liability and damages. Defendants continuously asserted that their statements were not, in fact, false and the Fund's assets were liquid. Resolving that dispute at summary judgment or trial likely would have come down to a "battle of the experts" and other competing evidence. Defendants have also asserted, as previewed in their motion to dismiss and stated in their answers to Plaintiff's contention interrogatories, the affirmative defense of due diligence at summary judgment and trial. 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. 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. Finally, Defendants have asserted the affirmative defense

of negative causation under §11(e) of the Securities Act of 1933, and offered expert opinions on the subject. 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. Indeed, Defendants' rebuttal damages expert opined that market-wide factors explained a significant portion of the Fund's share decline.

12. 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.

13. In addition to the risk of Defendants being successful on any of their defenses at trial, the risk of lengthy appeals also threatened establishing liability and damages in this Action. 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.

### **THE SETTLEMENT RECOVERY**

14. Plaintiff's expert calculated maximum class-wide damages of approximately \$268 million to \$352 million in this Action.

15. In the undersigned's judgment, the Settlement recovery of \$20 million 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. Considering the risks of establishing liability and damages at trial, the undersigned respectfully submits that the certainty of the Settlement's \$20 million recovery is an excellent result for the Class.

**PLAINTIFF AND COUNSEL'S SUPPORT FOR THE SETTLEMENT**

16. Plaintiff's counsel is a nationally recognized law firm that specializes in securities class actions and complex commercial litigation. They recommend the Settlement, as does Plaintiff.

**SELECTION OF CLAIMS ADMINISTRATOR AND ESCROW AGENT**

17. A.B. Data, Ltd. ("A.B. Data"), which Plaintiff proposes to serve as notice and claims administrator, is an independent settlement and claims administrator with experience handling the administration of securities class action settlements. The undersigned selected A.B. Data after a competitive bidding process in which three firms submitted proposals. 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. A.B. Data has provided notice and claims administration in hundreds of securities class actions.

18. Huntington National Bank ("HNB"), which Plaintiff proposes to serve as Escrow Agent, was established in 1866, holds over \$200 billion in assets, and has over 1,000 branches nationwide. HNB's settlement team has handled over 1,000 settlements for law firms, claims administrators, and regulatory agencies.

Dated: January 21, 2026  
New York, NY

/s/ Marc J. Greco  
Marc J. Greco

**CERTIFICATE OF COMPLIANCE WITH WORD LIMIT**

In accordance with Commercial Division Rule 17, I, Marc J. Greco, certify that the foregoing Affirmation complies with the 7,000-word limit set by Commercial Division Rule 17. Excluding the caption and signature blocks, the document contains 1,498 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