**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF NEW YORK**

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| IN RE NIELSEN HOLDINGS PLC SECURITIES LITIGATION | Civil Action No. 1:18-cv-07143-JMF |

**MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION, AND MOTION FOR AN AWARD OF ATTORNEYS' FEES AND PAYMENT OF EXPENSES**

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Court-appointed Lead Plaintiff Public Employees' Retirement System of Mississippi ("MissPERS" or "Lead Plaintiff") and additionally named plaintiff Monroe County Employees' Retirement System ("Monroe" or "Monroe County" and, together with MissPERS, "Plaintiffs"), on behalf of themselves and the proposed Settlement Class, respectfully submit this memorandum of law in support of their motion for: (i) final approval of the proposed Settlement of the above-captioned action (the "Action"); (ii) approval of the proposed Plan of Allocation for distribution of the Net Settlement Fund; and (iii) final certification of the Settlement Class.[1]

Additionally, Lead Counsel Labaton Sucharow LLP ("Labaton Sucharow" or "Lead Counsel") respectfully submits this memorandum of law in support of its motion, on behalf of itself and additional counsel Robbins Geller Rudman & Dowd LLP ("Robbins Geller") and VanOverbeke Michaud and Timmony (collectively with Lead Counsel, "Plaintiffs' Counsel"), for approval of the Fee and Expense Application. Lead Counsel respectfully requests an award of attorneys' fees in the amount of 25% of the Settlement Fund (after the deduction of litigation expenses), payment of $850,266.93 in litigation expenses incurred by counsel, as well as $17,750 and $5,625 to MissPERS and Monroe, respectively, directly related to their representation of the

[1] Unless otherwise noted, capitalized terms have the meanings ascribed to them in the Stipulation and Agreement of Settlement, dated March 15, 2022 (the "Stipulation") (ECF No. 133-1). Citations to "¶" in this memorandum refer to paragraphs of the Declaration of Christine M. Fox in Support of (I) Final Approval of Class Action Settlement and Plan of Allocation and (II) An Award of Attorneys' Fees and Payment of Expenses (the "Fox Declaration" or "Fox Decl."), filed herewith, unless otherwise noted.

All exhibits are annexed to the Fox Declaration. For clarity, citations to exhibits that themselves have attached exhibits will be referenced as "Ex. ___ - ___." The first numerical reference is to the designation of the entire exhibit attached to the Fox Declaration and the second reference is to the exhibit designation within the exhibit itself.

class, as authorized by the Private Securities Litigation Reform Act of 1995 (the "PSLRA").[2]

## PRELIMINARY STATEMENT

As set forth in the Stipulation, Plaintiffs have agreed to settle all claims asserted, or that could have been asserted, against Defendants in the Action and related claims, in exchange for $73,000,000 (the "Settlement Amount"), for the benefit of the Settlement Class. The terms of the Settlement are detailed in the Stipulation, which was executed on March 15, 2022.

As described below and in the accompanying Fox Declaration, the decision to settle was well-informed by more than three and a half years of contentious and hard-fought litigation that involved a comprehensive investigation before filing the amended complaints; successfully opposing, in part, Defendants' motion to dismiss the Second Amended Complaint; briefing class certification; and extensive fact and expert discovery (involving the analysis of approximately 900,000 pages of discovery documents produced by Defendants and non-parties and participating in 21 remote depositions).

The $73 million recovery represents between 5% and 30% of likely recoverable damages estimated by Plaintiffs' damages expert, assuming the Settlement Class was able to establish Defendants' liability through trial and appeals. *See* ¶¶10, 111-13. If Defendants' arguments prevailed, the Settlement Class would have recovered substantially less than the Settlement Amount, or nothing at all. Lead Counsel, which has extensive experience and expertise in prosecuting securities class actions, believes that the Settlement represents a very favorable resolution of this complex litigation in light of the specific risks of continued litigation, particularly the challenges inherent in surviving Defendants' likely summary judgment motions

[2] As set forth in the Notice, awarded attorneys' fees will also be shared with Robbins Geller and VanOverbeke. The allocations of fees amongst Plaintiffs' Counsel will in no way increase

focused on falsity and loss causation issues. Plaintiffs, public pension funds that were actively involved in the Action, diligently represented the class and have approved the Settlement. *See* Declaration of Tricia Beale on behalf of MissPERS, Ex. 1; Declaration of Michael Grondi on behalf of Monroe County, Ex. 2. Accordingly, Plaintiffs respectfully request that the Court grant final approval of the Settlement. In addition, the Plan of Allocation, which was developed with the assistance of Lead Plaintiff's damages expert, is a fair and reasonable method for distributing the Net Settlement Fund and should also be approved by the Court.

This memorandum also addresses Lead Counsel's motion for approval of the Fee and Expense Application. As detailed below, Plaintiffs' Counsel have not received any compensation for their successful pursuit of this case, which required vigorous advocacy. Lead Counsel respectfully requests: (i) that Plaintiffs' Counsel be awarded an attorneys' fee of 25% of the Settlement Fund, after the deduction of awarded litigation expenses; (ii) litigation expenses in the amount of $850,266.93; and (iii) that Plaintiffs be awarded a combined amount of $23,375, pursuant to the PSLRA in connection with the time they dedicated to the Action. The fee and expense requests are well supported by both case law and the facts of this case.

## ARGUMENT

### I. THE PROPOSED SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE, AND WARRANTS FINAL APPROVAL

#### A. The Law Favors and Encourages Settlement of Class Action Litigation

Public policy favors the settlement of disputed claims among private litigants, particularly in class actions. *See Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 116-17 (2d Cir. 2005) ("We are mindful of the strong judicial policy in favor of settlements, particularly

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the fees that are deducted from the Settlement Fund.

in the class action context.").[3] This policy would be well-served by approval of the Settlement of this complex securities class action, which absent resolution, would consume years of additional resources of this Court.

**B. The Standards for Final Approval**

Rule 23(e) of the Federal Rules of Civil Procedure provides that a class action settlement must be presented to the Court for approval. The Settlement should be approved if the Court finds it "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). In ruling on final approval of a class settlement, courts in the Second Circuit have held that a court should examine both the negotiating process leading to the settlement, and the settlement's substantive terms. *See Wal-Mart Stores*, 396 F.3d at 116. Pursuant to the amendments to Rule 23(e)(2), a court may approve a settlement as "fair, reasonable, and adequate" after considering the following four factors:

> (A) whether the class representatives and class counsel have adequately represented the class;
>
> (B) whether the proposal was negotiated at arm's length;
>
> (C) whether the relief provided for the class is adequate, taking into account:
>
> > i. the costs, risks, and delay of trial and appeal;
> >
> > ii. the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
> >
> > iii. the terms of any proposed award of attorneys' fees, including timing of payment; and
> >
> > iv. any agreement required to be identified under Rule 23(e)(3); and
>
> (D) whether the proposal treats class members equitably relative to each other.

The Advisory Committee Notes to the 2018 amendments to the Federal Rules of Civil

[3] All internal quotations and citations are omitted unless otherwise stated.

Procedure indicate that these factors are not intended to "displace" any factor previously adopted by the Court of Appeals, but "rather to focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal." Fed. R. Civ. P. 23 (e)(2) Advisory Committee Notes to 2018 Amendments. Indeed, "[t]he Court understands the new Rule 23(e) factors to add to, rather than displace, the [Second Circuit] factors." *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig*., 330 F.R.D. 11, 29 (E.D.N.Y. 2019). *See also Beach v. JPMorgan Chase Bank, Nat'l Assoc*., 2020 WL 611545, at *2 (Oct. 7, 2020) (J. Furman) (considering both the Rule 23(e)(2) factors and the Second Circuit factors, when considering final approval of the settlement).

In *City of Detroit v. Grinnell Corp*., the Second Circuit held that the following factors should be considered in evaluating a class action settlement:

> (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; [and] (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

495 F.2d 448, 463 (2d Cir. 1974), *abrogated on other grounds by, Goldberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000); *see also In re Bear Stearns, Inc. Sec. Derivative & ERISA Litig.*, 909 F. Supp. 2d 259, 265-66 (S.D.N.Y. 2012).

Accordingly, Plaintiffs will discuss the fairness, reasonableness, and adequacy of the Settlement principally in relation to the Rule 23(e)(2) factors and will also discuss the application of relevant, non-duplicative factors traditionally considered by the Second Circuit.

### C. Plaintiffs and Lead Counsel Have Adequately Represented the Class

In determining whether to approve a class action settlement, the court should consider

whether the "class representatives and class counsel have adequately represented the class." Rule 23(e)(2)(A). There can be little doubt that Plaintiffs and Lead Counsel have adequately represented the Settlement Class. Plaintiffs, like all other members of the Settlement Class, acquired shares of Nielsen common stock during the Class Period, when its value was allegedly artificially inflated by false and misleading statements and omissions. Thus, the claims of the Settlement Class and Plaintiffs would prevail or fail in unison, and the common objective of maximizing recovery from Defendants aligns the interests of Plaintiffs and all members of the Settlement Class. *See, e.g., In re Polaroid ERISA Litig*., 240 F.R.D. 65, 77 (S.D.N.Y. 2006) ("Where plaintiffs and class members share the common goal of maximizing recovery, there is no conflict of interest between the class representatives and other class members.").

Further, Plaintiffs were active and informed participants in the litigation and, among other things: (i) regularly communicated with Plaintiffs' Counsel regarding the posture and progress of the Action; (ii) reviewed and/or discussed significant pleadings and motions filed in the Action; (iii) coordinated and reviewed their production of documents and written discovery responses to Defendants; (iv) remotely participated in four depositions (three for MissPERS and one for Monroe); and (v) participated in settlement discussions and evaluated and approved the proposed Settlement. *See* Ex. 1 at ¶¶4-5; Ex. 2 at ¶¶4-6.

Additionally, throughout the Action, Plaintiffs had the benefit of the advice of knowledgeable counsel well-versed in shareholder class action litigation and securities fraud cases. During the course of the litigation, Plaintiffs' Counsel developed a deep understanding of the facts of the case and the merits of the claims. *See generally* Fox Decl. at §§II-IV. Moreover, Labaton Sucharow and Robbins Geller are highly qualified and experienced in securities litigation, as set forth in their firm resumes (*see* Exs. 5-F & 6-D) and were able to successfully

conduct the litigation against skilled opposing counsel.[4] Accordingly, the Settlement Class has been, and remains, well represented.

**D. The Settlement Was Reached After Robust Arm's-Length Negotiations**

In weighing approval of a class-action settlement, the Court must consider whether the settlement "was negotiated at arm's length." Fed. R. Civ. P. 23(e)(2)(B). A settlement is entitled to a "presumption of fairness, adequacy, and reasonableness" when "reached in arm's-length negotiations between experienced, capable counsel after meaningful discovery." *Wal-Mart Stores*, 396 F.3d at 116; *In re Facebook, Inc. IPO Sec. & Derivative Litig.*, 2015 WL 6971424, at *3 (S.D.N.Y. Nov. 9, 2015), *aff'd*, 674 F. App'x. 37 (2d Cir. 2016).

The Settlement here merits such a presumption of fairness because it was achieved after thorough arm's-length negotiations between well-informed and experienced counsel, under the supervision of an experienced Mediator. As noted above and in the Fox Declaration, the Parties and their counsel had a deep understanding of the strengths and weaknesses of the case before agreeing to settle. The judgment of Plaintiffs' Counsel—law firms that are highly experienced in securities class action litigation—that the Settlement is in the best interests of the Settlement Class is entitled to "great weight." *City of Providence v. Aeropostale Inc. et al.*, 2014 WL 1883494, at *5 (S.D.N.Y. May 9, 2014), *aff'd*, *Arbuthnot v. Pierson*, 607 F. App'x. 73 (2d Cir. 2015). Moreover, Plaintiffs are sophisticated public pension funds that took an active role in supervising the litigation, as envisioned by the PSLRA, and endorse the Settlement. *See* Exs. 1 and 2. A settlement reached "with the endorsement of a sophisticated institutional investor . . . is entitled to an even greater presumption of reasonableness." *In re Veeco Instruments Inc. Sec. Litig.*, 2007 WL 4115809, at *5 (S.D.N.Y. Nov. 7, 2007).

[4] Defendants were represented by a well-regarded firm, Simpson Thatcher & Bartlett LLP.

### E. The Relief Provided by the Settlement Is Adequate

The Court must also consider whether "the relief provided for the class is adequate, taking into account . . . the costs, risks, and delay of trial and appeal," as well as other relevant factors. Fed. R. Civ. P. 23(e)(2)(C). "This inquiry overlaps significantly with a number of *Grinnell* factors, which help guide the Court's application of Rule 23(e)(2)(C)(i)." *In re GSE Bonds Antitrust Litig.*, 2019 WL 6842332, at *2 (S.D.N.Y. Dec. 16, 2019). Indeed, "[t]his assessment implicates several *Grinnell* factors, including: (i) the complexity, expense and likely duration of the litigation; (ii) the risks of establishing liability; (iii) the risks of establishing damages; and (iv) the risks of maintaining the class through the trial." *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 330 F.R.D. 11, 36 (E.D.N.Y. 2019).

#### 1. The Complexity, Expense, and Likely Duration of the Litigation Support Approval of the Settlement

Securities class actions like this one are by their nature complicated, and district courts have long recognized that "[a]s a general rule, securities class actions are notably difficult and notoriously uncertain to litigate." *In re Facebook,* 2015 WL 6971424, at *3; *Bear Stearns,* 909 F. Supp. 2d at 266; *In re Gilat Satellite Networks*, *Ltd*., 2007 WL 1191048, at *10 (E.D.N.Y. Apr. 19, 2007) ("Securities class actions are generally complex and expensive to prosecute.").

This case was no exception. As discussed in detail in the Fox Declaration, the case involved complicated and intricate issues related to falsity, scienter, and loss causation within Nielsen's varied businesses and nuances with respect to which aspects of the business were struggling and which were performing tolerably, within the context of a shifting data privacy landscape and intricate accounting rules and practices. Additionally, prevailing on summary judgment and then achieving a litigated verdict (and sustaining any such verdict on appeal) would have been a very difficult and uncertain undertaking. *See In re Initial Pub. Offering Sec.*

*Litig.*, 671 F. Supp. 2d 467, 481 (S.D.N.Y. 2009) (finding that the complexity, expense and duration of continued litigation supports final approval where, among other things "motions would be filed raising every possible kind of pre-trial, trial and post-trial issue conceivable").

Indeed, the trial of the claims here would have required extensive expert testimony on issues related to data protection and privacy; fair valuation and accounting regarding Nielsen's goodwill; the efficiency of the market for Nielsen's common stock, and damages under the Exchange Act. Courts routinely observe that these sorts of disputes—requiring dueling testimony from experts—are particularly difficult for plaintiffs to litigate. *See*, *e.g.*, *In re Telik, Inc. Sec. Litig.,* 576 F. Supp. 2d 570, 579-80 (S.D.N.Y. 2008) (in a "battle of experts, it is virtually impossible to predict with any certainty which testimony would be credited…"). Of course, even if Plaintiffs had prevailed at summary judgment and then trial, it is virtually certain that appeals would be taken, which would have, at best, delayed any recovery. *See Strougo ex rel. Brazilian Equity Fund, Inc. v. Bassini*, 258 F. Supp. 2d 254, 261 (S.D.N.Y. 2003) ("[E]ven if a shareholder or class member was willing to assume all the risks of pursuing the actions through further litigation . . . the passage of time would introduce yet more risks . . . and would in light of the time value of money, make future recoveries less valuable than this current recovery."). At worst, there was of course the possibility that the verdict could be reversed by the trial court or on appeal. *See, e.g., Robbins v. Koger Props., Inc.*, 116 F.3d 1441, 1449 (11th Cir. 1997) (reversing $81 million jury verdict and dismissing case with prejudice in securities action); *Anixter v. Home-Stake Prod. Co.*, 77 F.3d 1215 (10th Cir. 1996) (overturning plaintiffs' verdict obtained after two decades of litigation).

**2. The Risks of Establishing Liability and Damages Support Approval of the Settlement**

In assessing the fairness, reasonableness, and adequacy of a settlement, courts should

consider the "risks of establishing liability [and] the risks of establishing damages." *Grinnell*, 495 F.2d at 463. In most cases, this will be the most important factor for a court to consider in its analysis of a proposed settlement. *See Id.* at 455 ("The most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement."). While Plaintiffs and Lead Counsel believe the claims asserted against Defendants are meritorious, they recognize that the Action presented several substantial risks with respect to establishing both liability and damages. Securities class actions present hurdles to proving liability that are difficult for plaintiffs to meet. *See In re AOL Time Warner, Inc.*, *Sec. and ERISA Litig.*, WL 903236, at *11 (S.D.N.Y. Apr. 6, 2006) (noting that "[t]he difficulty of establishing liability is a common risk of securities litigation"). Here, in particular, Defendants would have vigorously challenged Plaintiffs on falsity, scienter and loss causation.

**(a) Risks Related to Proving Liability: Falsity and Scienter**

At summary judgment and trial, Defendants would strenuously maintain that Plaintiffs could not establish that Defendants' statements were false and misleading or that Defendants acted with scienter as required by the Exchange Act.

"Proving a defendant's state of mind is hard in any circumstances." *Telik,* 576 F. Supp. 2d at 579. Indeed here, Plaintiffs must establish that Defendants knew (or believed) or were reckless in not knowing (or reckless in not believing) that their statements were false. As to the claims related to trends Nielsen was facing in its Buy Segment, Defendants would have argued that when placed fully in context, the undisclosed information was not material and instead reflected normal ongoing changes in which products and services customers were buying, which Nielsen was trying to maneuver. Given the complexity of Nielsen's business, Plaintiffs believe that presenting these claims to a jury would have been very difficult. Moreover, arguing that

Defendants acted with fraudulent intent when not explaining these trends to the market would have been especially challenging. ¶¶100-01.

As to the claims related to Nielsen's goodwill in the Buy Segment, Defendants would have primarily contested falsity and scienter on the grounds that their goodwill assessment process was reviewed and approved by their auditor. Plaintiffs had identified a number of assumptions and approaches that Nielsen used in assessing its goodwill that Plaintiffs believe were unjustifiable. However, evaluating these issues requires a strong facility with complex accounting practices and their application. While the eventual $1.4 billion write-down of the goodwill was a powerful fact in Plaintiffs' favor, a substantial risk remained that Defendants would be able to succeed in arguing that the Company's goodwill analysis was justifiable, that Plaintiffs were merely presenting a difference in opinion regarding that assessment, and that even if the assessment was wrong, the errors were not the result of any intent to defraud by Nielsen's executives, who themselves relied on the auditor's approval of the process. ¶102.

As to the claims regarding the European Union's General Data Protection Regulation ("GDPR"), Defendants' strongest arguments related to the materiality and subject matter of the statements. Plaintiffs had compelling evidence that Defendants knew the GDPR would pose substantial risks of disruption, and that after its enactment, was actually causing disruption. However, Defendants had compelling arguments that this disruption — while staggering — was relatively isolated to portions of Nielsen's business that were not critical to its short-term revenue. Ultimately, there was significant risk that a jury would have viewed the disruption as immaterial, or would have viewed the allegedly false statements, in the context of the disruption Nielsen anticipated and observed, as not false or misleading on balance. ¶103.

Similarly, even if the jury agreed that the statements were materially false, the jury may

not have found that the statements were intended to mislead, and instead could have found that Nielsen's executives were merely negligent or unreasonably optimistic in believing Nielsen would not be seriously affected by the enactment of the GDPR. ¶104.

In short, it was far from certain that Plaintiffs would be able to prove the falsity of Defendants' statements and Defendants' scienter through summary judgment and at trial, militating in favor of a settlement.

**(b) Risks Related to Proving Loss Causation and Damages**

Another principal challenge in continuing the litigation is the difficulty of proving loss causation and damages, particularly the "disaggregation" of confounding or non-fraud related information, which would have been hotly contested by Defendants, particularly in the context of class certification and summary judgment, and would continue to be challenged in *Daubert* motions, at trial, in post-trial proceedings and appeals. To succeed at trial "a plaintiff [must] prove that the defendant's misrepresentation (or other fraudulent conduct) proximately caused the plaintiff's economic loss." *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 346 (2005).

Plaintiffs alleged that throughout the Class Period, Nielsen was facing undisclosed systemic challenges to its business and decreased demand for its analytic products, thus making it a smaller and less valuable Company. On each of the following alleged disclosure dates: (i) October 25, 2016, (ii) April 25, 2017; (iii) October 25, 2017; (iv) February 8, 2018; (v) April 26, 2018, and (vi) July 26, 2018, Defendants gradually revealed declining Buy Segment performance, allegedly a result of the undisclosed truth regarding the deterioration of Nielsen's Buy business. ¶105.

For example, Plaintiffs allege that on October 25, 2016, the truth was allegedly partially disclosed when Defendants acknowledged a decline in discretionary spending in the U.S. for Nielsen's Buy business and admitted the Company had faced weak demand in that business since

2015, but omitted to disclose the scope and breadth of that downward trend. While this disclosure partially revealed that Nielsen's prior statements about Buy discretionary spending being "stable" were false and misleading, Plaintiffs alleged that Defendants continued to mislead investors about the decline in value of Nielsen's Buy business by artificially inflating its goodwill valuation and delaying taking a necessary impairment to that business. Both the trends and the goodwill frauds continued to hide material information about the prospects for Nielsen's Buy business and the risks that business faced. ¶106.

On each of the following loss causation dates (April 25, 2017, October 25, 2017, February 8, 2018, and April 26, 2018), Nielsen allegedly disclosed continued poor Buy performance, and allegedly the truth about its business gradually came out and artificial inflation was partially removed from its stock price. However, Defendants also repeatedly assured investors that whatever problems Nielsen's Buy Segment was facing, its Watch segment business remained a solid source of growth. Despite these assurances, and despite repeatedly claiming, in 2018, that the GDPR was a "non-event" for Nielsen, it was allegedly clear inside the Company that Nielsen was far behind in preparing for the launch of the GDPR which would be a major threat to a portion of its Watch revenues. Finally, on July 26, 2018, Nielsen allegedly revealed significant underperformance in both its Watch and Buy Segments, further revealing the truth regarding its Buy business, and demonstrating that contrary to its prior representations, the GDPR did, in fact, have a significant negative effect on the Company. ¶¶107-08.

Plaintiffs believed that proving loss causation corresponding to the first allegedly corrective disclosure on October 25, 2016 (i.e., the initial revelation of issues regarding demand for Nielsen's Buy business) was relatively straightforward and posed only minimal disaggregation issues. As a result, Plaintiffs did not view loss causation as a potential bar to *any*

recovery, but did believe there was a substantial risk that challenges to proving loss causation on certain of the other corrective disclosures could have dramatically reduced total class-wide damages. Moreover, proving a cohesive single case theory over the two-year Class Period would be a challenge given the three categories of false statements and omissions. ¶109.

More specifically, proving loss causation over the middle of the Class Period was complex. The four middle disclosure dates (April 25, 2017, October 25, 2017, February 8, 2018, and April 26, 2018) did not directly disclose the allegedly undisclosed truthful information. Rather, Plaintiffs were prepared to argue that on each of these days, Nielsen disclosed poor performance in the Buy Segment and that the market reaction to this poor performance reflected only a partial removal of artificial inflation in Nielsen's stock price. Plaintiffs' theory was complex and if the Court did not agree with the logic of this theory, it could have rejected this damages claim at summary judgment, or a jury may not have credited the logic, finding the disclosures insufficiently connected to the misstatements and omissions. ¶110.

With respect to the final corrective disclosure on July 26, 2018, (i.e., the alleged revelations related to the GDPR), Plaintiffs believed that some of the negative stock reaction was attributable to continued bad news related to Nielsen's poor Buy Segment performance. Plaintiffs would have argued that this poor performance was itself a revelation of the fraud concerning the overstatement of goodwill in the Buy Segment and negative trends in the Buy Segment, just as Plaintiffs would have argued as to the middle four corrective events. As a result, if Plaintiffs ultimately did not prevail on their loss causation theory regarding the negative Buy Segment performance (as discussed above), or if they did not prevail on the merits of the Buy Segment claims for any other reason, Plaintiffs would have faced additional disaggregation issues with respect to the July 26 disclosure, requiring them to quantify the portion of the stock

price reaction attributable only to the GDPR, and upon doing so, Plaintiffs would only have been eligible to recover damages for that portion of the decline. ¶115.

According to analyses prepared by Plaintiffs' damages expert, the aggregate damages the class could have obtained at trial, assuming that liability were proven, ranged from a low of approximately $243.9 million to a high of approximately $1.47 billion. If liability were established with respect to all of the sustained allegedly false statements and omissions in the SAC, then estimated "disaggregated" damages, excluding any losses attributable to the disclosure of non-fraud related information, would be approximately $1.47 billion. In this scenario, a settlement of $73 million represents approximately 5% of the damages. ¶111.

However, the goodwill/trends aspect of the case faced the most significant challenges, especially since, as Defendants would likely argue, Nielsen's auditors signed off on the Company's financial statements during the Class Period. If Plaintiffs only prevailed on the claims alleging false and misleading statements and omissions relating to (i) the BDM business (statements made from July 2016 to October 25, 2016 with estimated damages of $181 million) and (ii) the GDPR (statements from May 31, 2018 to the end of the Class Period with estimated damages of $62.9 million) then estimated damages would be approximately $243.9 million. The settlement represents a recovery of approximately 30%. of these estimated damages. ¶112.

If, however, Plaintiffs only prevailed on the claims alleging false and misleading statements and omissions relating to (i) the BDM business (statements from July 2016 to October 25, 2016 with estimated damages of $181 million) and (ii) the GDPR (statements from February 2, 2018 to the end of the Class Period with estimated damages of $188 million), then estimated damages would be approximately $370 million. A $73 million settlement represents a recovery of approximately 19.7% of these damages. ¶113.

Additionally, if Plaintiffs were unable to prove their overarching damages theory, the case faced unique risks due to the span of the Class Period. The initial corrective disclosure (October 25, 2016) and final corrective disclosure (July 26, 2018) were significantly separated in time. Without a loss causation theory for the middle four corrective disclosures, Plaintiffs may have faced challenges in maintaining the claims and complexities regarding the status of the "middle" of the Class Period would have been difficult to overcome. ¶114.

While Lead Counsel would work extensively with Plaintiffs' damages expert with a view towards presenting compelling arguments to the jury and prevailing at trial, Defendants would have put forth well-qualified experts of their own who were likely to opine that the class suffered little or no damages. As Courts have long recognized, the substantial uncertainty as to which side's experts might be credited by a jury presents a serious litigation risk. *See In re IMAX Sec. Litig.*, 283 F.R.D. 178, 193 (S.D.N.Y. 2012) ("[I]t is well established that damages calculations in securities class actions often descend into a battle of experts."); *Telik,* 576 F. Supp. 2d at 579-80 (in this "battle of experts, it is virtually impossible to predict with any certainty which testimony would be credited, and ultimately, which damages would be found…").

Given all of these risks with respect to liability, loss causation, and damages, Plaintiffs and Lead Counsel respectfully submit that it is in the best interests of the Settlement Class to accept the certain and substantial benefit conferred by the Settlement.

**(c) The Risks of Maintaining Class Certification**

At the time the Parties agreed to settle the Action, briefing on Plaintiffs' motion for class certification had been completed, but the motion had not been argued. In connection with their motion, Plaintiffs' expert submitted two reports and sat for a deposition and representatives of Plaintiffs were deposed. ¶¶65, 81-83, 86, 117.

Defendants' challenges to class certification "could well [have] devolve[d] into yet

another battle of the experts." *Bear Stearns*, 909 F. Supp. 2d at 268. Indeed, as set forth in detail in the Fox Declaration, Defendants argued, among other things, that Plaintiffs' expert, Mr. Coffman, failed to reliably demonstrate that Nielsen's stock traded in an efficient market throughout the proposed Class Period, including because Mr. Coffman's analysis of *Cammer* Factor 5 (i.e., the cause-and-effect relationship between unexpected, material disclosures and changes in Nielsen's stock's price) was flawed. ¶85.

Although Plaintiffs believed Mr. Coffman's opinions were well-supported by the evidence and would have contended that Defendants' arguments should be rejected, there is no way to know how the Court would ultimately rule. Additionally, class certification can be reviewed and modified at any time by a court before final judgment. *See* Fed. R. Civ. P. 23(c)(1)(C) ("An order that grants or denies class certification may be altered or amended before final judgment."). The Settlement avoids any uncertainty with respect to class certification and the risks of maintaining certification of the Settlement Class through trial and on appeal. *See Ebbert v. Nassau Cnty.*, 2011 WL 6826121, at *12 (E.D.N.Y. Dec. 22, 2011) (risk of de-certification of the certified class supported approval of Settlement).[5]

**F. The Effective Process for Distributing Relief to the Settlement Class**

Rule 23(e)(2)(C) instructs courts to consider whether the relief provided to the class is adequate in light of the "effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims." The proceeds of the Settlement will

[5] In the Preliminary Approval Order (ECF No. 140), the Court preliminarily certified the Settlement Class. There have been no developments in the case that would undermine that determination and, for all the reasons stated in the Memorandum of Law in Support of Plaintiffs' Motion for Preliminary Approval of Proposed Class Action Settlement (ECF No. 132), Plaintiffs now request that the Court reiterate its prior certification of the Settlement Class pursuant to Fed.

be distributed with the assistance of an experienced claims administrator, Epiq Class Action & Claims Solutions, Inc. ("Epiq"). The Claims Administrator will employ a well-tested protocol for the processing of claims in a securities class action. Namely, a potential class member will submit, either by mail or online using the Settlement website, the Court-approved Claim Form. Based on the trade information provided by claimants, the Claims Administrator will determine each claimant's eligibility to participate by, among other things, calculating their respective "Recognized Claims" based on the Court-approved Plan of Allocation, and ultimately determine each eligible claimant's *pro rata* portion of the Net Settlement Fund. *See* Stipulation at ¶21-22. Plaintiffs' claims will be reviewed in the same manner. Claimants will be notified of any defects or conditions of ineligibility and be given the chance to contest the rejection of their claims. *Id*. at ¶28(d)-(e). Any claim disputes that cannot be resolved will be presented to the Court. *Id*.

After the Settlement reaches its Effective Date (*id*. at ¶37) and the claims process is completed, Authorized Claimants will be issued payments. If there are un-claimed funds after the initial distribution, and it would be feasible and economical to conduct a further distribution, the Claims Administrator will conduct a further distribution of remaining funds (less the estimated expenses for the additional distribution, Taxes, and unpaid Notice and Administration Expenses). Additional distributions will proceed in the same manner until it is no longer economical to conduct further distributions. Thereafter, Plaintiffs recommend that any *de minimis* balance that still remains in the Net Settlement Fund, after payment of any outstanding Notice and Administration Expenses, shall be donated to the Investor Protection Trust ("IPT"), or a non-

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R. Civ. P. 23(a) and (b)(3), for settlement purposes, and the appointment of Plaintiffs as Class Representatives and Labaton Sucharow as Class Counsel.

profit and non-sectarian organization(s) chosen by the Court. *Id*. at ¶25.[6]

### G. The Anticipated Attorneys' Fees and Expenses Are Reasonable

As discussed below, the proposed attorneys' fees of 25% of the Settlement Fund (after deduction of awarded litigation expenses), to be paid when ordered by the Court, are reasonable in light of the efforts of Plaintiffs' Counsel and the risks in the litigation. Most importantly with respect to the Court's consideration of the fairness of the Settlement, is the fact that approval of attorneys' fees is entirely separate from approval of the Settlement, and neither Plaintiffs nor Plaintiffs' Counsel may cancel or terminate the Settlement based on this Court's or any appellate court's ruling with respect to attorneys' fees and/or litigation expenses.

### H. The Relief Provided in the Settlement Is Adequate Taking Into Account All Agreements Related to the Settlement

Rule 23(e)(2)(C)(iv) also requires the disclosure of any agreement between the Parties in connection with the proposed Settlement. On February 21, 2022, the Parties entered into a settlement term sheet and on March 15, 2022, they entered into a confidential Supplemental Agreement Regarding Requests for Exclusion, (the "Supplemental Agreement"). Stipulation at ¶39. The Supplemental Agreement sets forth the conditions under which Defendants have the option to terminate the Settlement in the event that requests for exclusion from the Settlement Class exceed a certain agreed-upon threshold. As is standard in securities class actions, the Supplemental Agreement is being kept confidential in order to avoid incentivizing the formation

[6] The IPT is an investor education organization established in 1993 as part of a multi-state settlement. *See generally*, http://www.investorprotection.org/ipt-activities/?fa=about. Since 1993, the IPT has worked with states and at the national level to provide the independent, objective investor education needed by investors to enable them to make informed investment decisions. *Id*. The IPT has also developed educational materials geared to preventing fraud, such as elder investment fraud and technology scams. http://www.investorprotection.org/protect-yourself/. The IPT operates programs under its own auspices and uses grants to underwrite important investor education and protection initiatives carried out by other organizations. *Id*.

of a group of opt-outs for the sole purpose of leveraging a larger individual settlement, to the detriment of the Settlement Class. The Supplemental Agreement, Stipulation, and term sheet are the only agreements concerning the Settlement entered into by the Parties, and each has been provided to the Court.

## I. Application of the Remaining *Grinnell* Factors Support Approval

### 1. The Ability of Defendants to Withstand a Greater Judgment

The ability of a defendant to pay a judgment greater than the amount offered in settlement is relevant to whether the settlement is fair. *Grinnell*, 495 F.2d at 463. While it is Plaintiffs' understanding that Defendants could withstand a judgment in excess of $73 million, courts generally do not find the ability of a defendant to withstand a greater judgment to be an impediment when the other factors favor the settlement. *See, e.g., Veeco*, 2007 WL 4115809, at *11("this factor alone does not prevent the Court from approving the Settlement where the other *Grinnell* factors are satisfied").

### 2. The Reaction of the Settlement Class

The reaction of the class to a proposed settlement is a significant factor to be weighed in considering its fairness and adequacy. *See, e.g.*, *Bear Stearns*, 909 F. Supp. 2d at 266-67. Pursuant to the Preliminary Approval Order, the Court-appointed Claims Administrator, Epiq, mailed copies of the Notice Packet (consisting of the Notice and Claim Form) to potential Settlement Class Members and their nominees. *See* Declaration of Melissa M. Mejia Regarding: (A) Mailing of the Notice and Claim Form; (B) Publication of the Summary Notice; and (C) Report on Requests for Exclusion ("Mailing Decl."), Ex. 4 at ¶¶2-7. As of June 13, 2022, Epiq has mailed 256,545 copies of the Notice Packet to potential Settlement Class Members. *Id*. at ¶7. In addition, the Summary Notice was published in *The Wall Street Journal* and transmitted over the internet using *PR Newswire* on April 29, 2022. *Id*. at ¶8.

While the deadline set by the Court for Settlement Class Members to object or request exclusion (June 29, 2022) has not yet passed, to date, no objections to the Settlement or Plan of Allocation have been received and only three requests for exclusion have been received. There has been one objection to the Fee and Expense Application, which is discussed below. *See In re Warner Chilcott Ltd. Sec. Litig.*, 2009 WL 2025160, at *2 (S.D.N.Y. July 10, 2009) (no class member objections since preliminary approval supported final approval). As provided in the Preliminary Approval Order, Plaintiffs will file reply papers no later than July 6, 2022 addressing any additional objections and any other requests for exclusion.

**3. The Stage of the Proceedings and the Amount of Information Available to Counsel Support Approval of the Settlement**

Here, as detailed in the Fox Declaration, Plaintiffs' Counsel conducted a robust investigation; prepared comprehensive amended complaints; successfully opposed, in part, Defendants' motion to dismiss the SAC; moved for certification of the class; engaged in extremely thorough discovery efforts that led to obtaining more than approximately 900,000 pages of documents from Defendants and third-parties; participated in 21 remote depositions, and prepared for at least seven others; retained and consulted closely with several experts; and prepared for and participated in a rigorous mediation process, involving two mediation sessions. *See generally* Fox Decl. at §§II-IV.

Armed with this substantial base of knowledge, Plaintiffs were in a position to balance the proposed settlement with a well-educated assessment of the likelihood of overcoming the risks of litigation. Accordingly, Plaintiffs and Lead Counsel respectfully submit that they had "a clear view of the strengths and weaknesses of their case[]" and of the range of possible outcomes at trial. *Teachers Ret. Sys. of La. v. A.C.L.N. Ltd.*, 2004 WL 1087261, at *3 (S.D.N.Y. May 14, 2004). The Court thus should find that this factor also supports approval.

**4. The Range of Reasonableness of the Settlement Amount in Light of the Best Possible Recovery and All the Attendant Risks of Litigation Support Approval of the Settlement**

Courts agree that the determination of a "reasonable" settlement "is not susceptible [to] a mathematical equation yielding a particularized sum." *In re PaineWebber Ltd. P'ships Litig.*, 171 F.R.D. 104, 130 (S.D.N.Y. 1997), *aff'd*, 117 F.3d 721 (2d Cir. 1997). Instead, "in any case there is a range of reasonableness with respect to a settlement…." *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972). Here, as discussed in detail above and in the Fox Declaration (*see* §V.B.), the Settlement recovers between approximately 5% and 30% of Plaintiffs' expert's estimation of likely recoverable damages, depending on the types of alleged misstatements and omissions that were ultimately presented to the jury and the length of the class period presented at trial.

This recovery falls well within the range of reasonableness that courts regularly approve. *See, e.g.*, *In re Merrill Lynch & Co. Research Reports Sec. Litig.*, 2007 WL 313474, at *10 (S.D.N.Y. Feb. 1, 2007) (approving $40.3 million settlement representing approximately 6.25% of estimated damages and noting was at the "higher end of the range of reasonableness of recovery in class actions securities litigations"); *In re Merrill Lynch & Co. Research Reports Sec. Litig.*, 246 F.R.D. 156, 167 (S.D.N.Y. 2007) (approving settlement that was "between approximately 3% and 7% of estimated damages [and] within the range of reasonableness for recovery in the settlement of large securities class actions"); *see also In re Patriot Nat'l, Inc. Sec. Litig.*, 828 F. App'x. 760, 762 (2d Cir. 2020) (affirming district court's approval of $6.5 million settlement representing 6.1% of the class's maximum potentially recoverable damages).

The Settlement is also well above industry trends. The $73 million Settlement Amount is significantly above the median settlement amount of $9.9 million for securities class actions between 2016 and 2020, is higher than the median recovery in 2021 of $8.3 million, and is well above the $9.3 million median recovery for securities class actions prosecuted and settled within

the Second Circuit from 2012 to 2021. It is also well above the average securities settlement in 2021 of $20.5 million and the $51.9 million average from 2016 to 2020. *See* Laarni T. Bulan and Laura E. Simmons, *Securities Class Action Settlements – 2021 Review and Analysis*, at 1 and 19 (Cornerstone Research 2022), Ex. 3.

## II. THE PLAN OF ALLOCATION FOR THE PROCEEDS OF THE SETTLEMENT IS FAIR AND REASONABLE AND SHOULD BE APPROVED

A plan for allocating settlement proceeds, like the settlement itself, should be approved if it is fair, reasonable, and adequate. *See IMAX*, 283 F.R.D. at 192; *Bear Stearns*, 909 F. Supp. 2d at 270. A plan of allocation with a "rational basis" satisfies this requirement. *In re FLAG Telecom Holdings, Ltd. Sec. Litig.*, 2010 WL 4537550, at *21 (S.D.N.Y. 2010); *In re Initial Pub. Offering Sec. Litig.*, 671 F. Supp. 2d at 497. A plan of allocation that reimburses class members based on the relative strength and value of their claims is reasonable. *See IMAX*, 283 F.R.D. at 192. However, a plan of allocation does not need to be tailored to fit each and every class member with "mathematical precision." *PaineWebber*, 171 F.R.D. at 133.

Here, the proposed Plan, which was developed by Lead Counsel in consultation with Plaintiffs' damages expert, provides a fair and reasonable method to allocate the Net Settlement Fund among class members who submit valid claims. The Plan is set forth in full in the Notice. *See* Ex. 4-A at ¶¶61-77. It provides for the distribution of the Net Settlement Fund based upon each Settlement Class Member's "Recognized Claim," as calculated by the formulas in the Plan. In developing the Plan, Plaintiffs' expert considered the amount of artificial inflation in the per share prices of Nielsen common stock that allegedly was proximately caused by Defendants' allegedly false and misleading statements and omissions. *Id*. Plaintiffs' expert calculated the estimated artificial inflation by considering share price changes in reaction to public disclosures.

Epiq, as the Court-approved Claims Administrator, will determine each Authorized

Claimant's *pro rata* share of the Net Settlement Fund based upon each Authorized Claimant's total Recognized Claim compared to the aggregate Recognized Claims of all Authorized Claimants, as calculated according to the Plan of Allocation. A claimant's total Recognized Claim will depend on, among other things, when their shares were purchased and/or sold during the Class Period in relation to the disclosure dates alleged in the Action, whether the shares were held through or sold during the statutory 90-day look-back period, *see* 15 U.S.C. § 78u-4(e) (providing methodology for limiting damages in securities fraud actions), and the value of the shares when they were sold or held. Accordingly, the proposed Plan of Allocation is designed to fairly and rationally allocate the proceeds of this Settlement among the Settlement Class.

For these reasons, Plaintiffs' Counsel believe that the Plan of Allocation provides a fair and reasonable method to equitably allocate the Net Settlement Fund. *See In re Giant Interactive Grp., Inc. Sec. Litig.*, 279 F.R.D. 151, 163 (S.D.N.Y. 2011) ("[i]n determining whether a plan of allocation is fair, courts look primarily to the opinion of counsel"). Moreover, as noted above, to date, no objections to the proposed plan have been received.

## III. NOTICE SATISFIED RULE 23 AND DUE PROCESS

Plaintiffs have provided the Settlement Class with notice of the proposed Settlement that satisfied all the requirements of Rule 23(e) and due process, which require that notice of a settlement be "reasonable"—*i.e.*, it must "fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings." *Wal-Mart Stores*, 396 F.3d at 114. Both the substance of the Notice and the method of its dissemination satisfied these standards.

The Notice provided all of the necessary information for Settlement Class Members to make an informed decision regarding the Settlement, the Fee and Expense Application, and the Plan of Allocation. The Notice informed Settlement Class Members of, among other things: (i)

the amount of the Settlement; (ii) the reasons why the Parties are proposing the Settlement; (iii) the estimated average recovery per affected share of Nielsen common stock; (iv) the maximum amount of attorneys' fees and expenses that will be sought; (v) the right of Settlement Class Members to object to the Settlement or seek exclusion; and (vi) the binding effect of a judgment on Settlement Class Members. *See* 15 U.S.C. § 78u-4(a)(7). The Notice also contained the Plan of Allocation and provided information about how to submit a Claim Form.

In addition, Epiq caused the Summary Settlement Notice to be published in *The Wall Street Journal* and to be released over the internet using *PR Newswire.* Ex. 4 at ¶8. Epiq also created a website for the Settlement, www.NielsenSecuritiesSettlement.com, to provide information about the Settlement, as well as access to copies of the Notice, the Claim Form, Stipulation, and the Preliminary Approval Order (*id*. at ¶12), and Lead Counsel posted copies of the Notice and Claim Form on its website, Fox Decl. at ¶122.

This combination of individual mail to those who could be identified with reasonable effort, supplemented by publication and internet notice, was "the best notice . . . practicable under the circumstances." Fed. R. Civ. P. 23(c)(2)(B); *see, e.g.*, *In re Marsh & McLennan Cos. Sec. Litig.*, 2009 WL 5178546, at *12-13 (S.D.N.Y. Dec. 23, 2009).

## IV. THE FEE AND EXPENSE APPLICATION SHOULD BE APPROVED

### A. A Reasonable Percentage of the Fund Recovered Is the Appropriate Method for Awarding Attorneys' Fees in Common Fund Cases

Attorneys who achieve a benefit for class members in the form of a "common fund" are entitled to be compensated for their services from that settlement fund. *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) ("a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole"); *see also Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 47 (2d Cir.

2000). The purpose of the common fund doctrine is to fairly and adequately compensate counsel for services rendered and to ensure that all class members contribute equally towards the costs associated with litigation on their behalf. *See Id.* at 47.

Courts have recognized that, in addition to providing just compensation, "awards of fair attorneys' fees from a common fund should also serve to encourage skilled counsel to represent those who seek redress for damages inflicted on entire classes of persons, and to discourage future alleged misconduct of a similar nature." *City of Providence*, 2014 WL 1883494, at *11.

The Second Circuit has authorized district courts to employ the percentage-of-the-fund method when awarding fees in common fund cases. *See Goldberger,* 209 F.3d at 47 (holding that the percentage-of-the-fund method may be used to determine appropriate attorneys' fees, although the lodestar method may also be used). *See also Alaska Electrical Pension Fund v. Bank of America Corp*., 2018 WL 6250657, at *1 (S.D.N.Y. Nov. 29, 2018) (J. Furman) ("In a common fund case such as this, the Court may award class counsel a percentage of the settlement as a reasonable attorneys' fee."). In expressly approving the percentage method, the Second Circuit recognized that "the lodestar method proved vexing" and resulted in "an inevitable waste of judicial resources." *Goldberger,* 209 F.3d at 48, 49.

Indeed, "[t]he trend in this Circuit is toward the percentage method, which directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation." *Wal-Mart Stores,* 396 F.3d at 121; *see also In re Blech Sec. Litig*., 2000 WL 661680, at *5 (S.D.N.Y. May 19, 2002) ("This Court … continues to find that the percentage of the fund method is more appropriate than the lodestar method for determining attorney's fees in common fund cases."); *In re IMAX Sec. Litig.,* 2012 WL 3133476, at *5 (S.D.N.Y. Aug. 1, 2012) ("the percentage method continues to be the trend of district

courts in the [Second] Circuit"). In sum, the weight of authority suggests that the Court should use the percentage-of-recovery method in determining a reasonable attorneys' fee here.

**B. Fees Awarded in Comparable Cases Within This District**

This Court explained in *Alaska Electrical*, that "to determine what an appropriate range of fees in relation to [a] settlement might be, the Court begins not with lead counsel's proposal, but by assessing the percentages awarded to class counsel in comparable cases in this market." 2018 WL 6250657, at *2. In *Alaska Electrical*, which involved antitrust settlements totaling $504.5 million, the Court found that a reasonable fee would fall "somewhere between 15% and 25% of the settlement fund" and awarded 26% net of litigation expenses. *Id*. at *3. Following the decision in *Alaska Electrical*, the Court in *Pirnik v. Fiat Chrysler Automobiles N.V., et al*., No. 1:15-cv-07199, ECF No. 369, slip op. (S.D.N.Y. Sept. 5, 2019) (J. Furman), awarded a fee of 27% in a $110 million securities class action settlement, and noted that an "award of 27%, just above the high end of the 15% to 25% range is appropriate here." ECF No. 370, Ex. 11.

NERA Economic Consulting does an annual survey and analysis of securities class action settlements. *See* Janeen McIntosh and Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2021 Full-Year Review* (NERA Jan. 25, 2022), Ex. 10 at 27. For settlements ranging from $25 million to $100 million, the median attorneys' fee awarded as a percentage of settlement values from 2012 to 2021 was 25%. During the period from 1996 to 2011, the median attorneys' fee in settlements of this size was 27%. *Id*.

A sampling of fee decisions in connection with securities class action settlements of the size of the Settlement, or more, within the Second Circuit is consistent with NERA's findings in this regard. *See, e.g*., *Pirnik,*(J. Furman) (awarding 27% of $110 million settlement, net of

expenses) (Ex. 11);[7] *In re Bisys Sec. Litig*., 2007 WL 2049726, at *1-2 (S.D.N.Y. July 16, 2007) (awarding 30% of $65.87 million settlement); *In re Priceline.com Inc. Sec. Litig*., 2007 WL 2115592, at *5 (D. Conn. July 20, 2007) (awarding 30% of $80 million settlement); *In re NQ Mobile, Inc. Sec. Litig*., Case No. 1:13-cv-07608-WHP, ECF No. 170, slip op. (S.D.N.Y. Mar. 11, 2016) (awarding 30% of $60.5 million settlement) (Ex. 11); *Landmen Partners, Inc. v. Blackstone Group L.P.*, No. 08-cv-03601-HB-FM, ECF No. 191, slip op. (S.D.N.Y. Dec. 18, 2013) (awarding 33.33% $85 million settlement) (Ex. 11); *In re CIT Group Inc. Securities Litigation*, No. 1:08-cv-06613-BSJ-THK, ECF No. 184, slip op. (S.D.N.Y. June 13, 2012) (Ex. 11) (awarding 26.5% of $75 million settlement); *cf. In re Amaranth Nat. Gas Commodities Litig*., 2012 WL 2149094, at *2 (S.D.N.Y. June 11, 2012) (J. Furman) (awarding 30% of $77.1 million antitrust class action settlement and noting, among other things, that the fee is "close to the standard range for fee awards given under *Goldberger*").

Accordingly, it is respectfully submitted that a 25% fee here would be consistent with fees awarded in similar cases within this District, and is in line with fees awarded nationwide in connection with settlements of this size.

### C. The Factors Considered Within the Second Circuit Confirm That the Requested Fee Is Reasonable

The Second Circuit has set forth the following criteria that courts should consider when reviewing a request for attorneys' fees in a common fund case, whether under the percentage-of-the-fund approach or the lodestar multiplier approach:

> (1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation; (4) the quality of representation; (5)

[7] All unreported "slip opinions" are submitted herewith in a compendium that is Ex. 11 to the Fox Declaration.

the requested fee in relation to the settlement; and (6) public policy considerations.

*Goldberger*, 209 F.3d at 50. As discussed below, these factors and the analyses herein demonstrate that Lead Counsel's requested fee is reasonable.

**1. Plaintiffs' Counsel Have Devoted Substantial Time and Labor to the Action**

The time and effort expended by Plaintiffs' Counsel in prosecuting the Action and achieving the Settlement support the requested fee. As set forth in detail in the Fox Declaration, Plaintiffs' Counsel, among other things:

- conducted a comprehensive investigation of the claims and potential claims against Nielsen and the Individual Defendants, including conducting 89 interviews of potential witnesses, including former Nielsen employees (¶¶22-27);
- researched and drafted detailed amended complaints (*Id.*);
- successfully opposed, in part, Defendants' motion to dismiss (¶¶32-45);
- engaged in rigorous and extensive fact and expert discovery, which included the analysis of more than 900,000 pages of documents produced by Defendants, Plaintiffs, and third-parties; participated in 21 remote depositions, including defending the depositions of three representatives of Lead Plaintiff MissPERS and one representative of plaintiff Monroe; more than 15 meet-and-confer sessions regarding the scope of discovery and discovery disputes; and engaged and consulted with experts in the fields of GDPR, Fair Valuation/Accounting, Data Analytics, and damages and loss causation; (¶¶46-80);
- fully briefed a motion for class certification, which included submission of an expert report on market efficiency, as well as defending an expert deposition (¶¶81-87); and
- engaged in extensive settlement negotiations with Defendants' Counsel and a preeminent mediator, including the exchange of numerous mediation submissions and two all-day mediation sessions (¶¶88-97).

In connection with this work, Plaintiffs' Counsel expended more than 17,200 hours with a lodestar value of $10,382,315.75. *See* Ex. 7 (Summary Table of Lodestars and Expenses). At all times, Plaintiffs' Counsel took care to staff the matter efficiently to avoid unnecessary

duplication of effort. Accordingly, it is respectfully submitted that the time and labor dedicated to the litigation support the fee request.

**2. The Magnitude and Complexity of the Action Support the Fee**

The magnitude and complexity of the Action also support the fee request. Courts regularly recognize that securities class action litigation is "notably difficult and notoriously uncertain." *City of Providence,* 2014 WL 1883494, at *5; *In re Signet Jewelers Ltd. Sec. Litig.,* 2020 WL 4196468, at *4 (S.D.N.Y. July 21, 2020) ("securities class actions are generally complex and expensive to prosecute"); *Guevoura Fund. v. Sillerman*, 2019 WL 6889901, at *7 (S.D.N.Y. Dec. 18, 2019) ("Securities class actions are notoriously complex.").

As discussed in the Fox Declaration and above, this Action involved difficult, complex, hotly disputed, and expert-intensive issues related to Nielsen's Buy business, goodwill, and the impact of changes in data privacy norms and the GDPR on Nielsen's business, among other issues, as well as the Exchange Act's elements of loss causation and damages. Prosecuting the Settlement Class's claims required expertise, skill and dedication, including extensive expert analysis across multiple fields. Accordingly, the magnitude and complexity of the Action support the conclusion that the requested fee is fair and reasonable. *See City of Providence*, 2014 WL 1883494, at *16 ("[T]he complex and multifaceted subject matter involved in a securities class action such as this supports the fee request.").

**3. The Risks of the Litigation Support the Requested Fee**

The fact that Plaintiffs prevailed, in part, with respect to Defendants' motion to dismiss did not guarantee ultimate victory. Plaintiffs still faced the substantial burdens of prevailing at class certification, summary judgment, *Daubert* motions, trial, and likely appeals – a process that would extend for years and might lead to a smaller recovery, or no recovery at all. While Plaintiffs remain confident in their ability to prove their claims and to effectively rebut

Defendants' defenses, many unresolved issues remained in connection with certifying the class and proving falsity, materiality, scienter, and loss causation. The contours of the ultimate class and actionable misstatements could also have compromised Plaintiffs' ability to succeed at trial and obtain a larger judgment for the class. *See In re Bayer AG Sec. Litig*., 2008 WL 5336691, at *5 (S.D.N.Y. Dec. 15, 2008) (noting the "difficulty of establishing loss causation [] and the difficulty in proving that Defendants acted with scienter, militate in favor of fee awards."). The Parties were deeply divided on virtually every issue in the litigation, as detailed above and in the Fox Declaration at §V, and there was no guarantee Plaintiffs' positions would prevail. If Defendants had succeeded on any of their defenses, Plaintiffs and the class would have recovered nothing or far less than the Settlement Amount.

In the face of many uncertainties, Plaintiffs' Counsel undertook this case on a wholly contingent basis, knowing that the litigation would require the devotion of substantial time and expense with no guarantee of compensation. ¶¶144-49. Plaintiffs' Counsel's assumption of this contingency fee risk strongly supports the requested fee. *See In re Gen. Motors LLC Ignition Switch Litig*., 2020 WL 7481292, at *4 (S.D.N.Y. Dec. 18, 2020) (J. Furman) (noting that the "requested fee reflects the extraordinary risks that Class Counsel undertook in pursuing this case on a contingency basis"); *FLAG Telecom*, 2010 WL 4537550, at *27 ("Courts in the Second Circuit have recognized that the risk associated with a case undertaken on a contingent fee basis is an important factor in determining an appropriate fee award.").

**4. The Quality of Plaintiffs' Counsel's Representation**

The quality of the representation by Plaintiffs' Counsel is another important factor that supports the reasonableness of the requested fee. *See, e.g.*, *In re Veeco Instruments Inc. Sec. Litig.*, 2007 WL 4115808, at *7 (S.D.N.Y. Nov. 7, 2007); *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 467 (S.D.N.Y. 2004). Furthermore, Labaton Sucharow and Robbins

Geller are nationally recognized leaders in the field of securities class action litigation and have substantial experience litigating and trying securities class actions in courts throughout the country. ¶¶140-42; Exs. 5-F & 6-D. The attorneys who were principally responsible for prosecuting this case relied upon their skill to develop and implement sophisticated strategies to overcome myriad obstacles raised by Defendants throughout the litigation.

The quality of Plaintiffs' Counsel's representation is further demonstrated by the fact that this substantial recovery was obtained after opposing an aggressive defense by highly-skilled attorneys at Simpson Thatcher & Bartlett LLP. *See, e.g.*, *Gen. Motors,* 2020 WL 7481292, at *4 (J. Furman) ("Class Counsel faced worthy adversaries of high caliber, which is relevant to evaluating the quality of Class Counsel's work); *Veeco*, 2007 WL 4115808, at *7 (among factors supporting fee award was that defendants were represented by "one of the country's largest law firms"); *In re Adelphia Commc'ns Corp. Sec. and Derivative Litig.*, 2006 WL 3378705, at *3 (S.D.N.Y. Nov. 16, 2006) ("The fact that the settlements were obtained from defendants represented by formidable opposing counsel from some of the best defense firms in the country also evidences the high quality of lead counsels' work."), *aff'd*, 272 F. App'x. 9 (2d Cir. 2008).

**5. The Requested Fee in Relation to the Settlement**

"When determining whether a fee request is reasonable in relation to a settlement amount, the court compares the fee application to fees awarded in similar securities class-action settlements of comparable value." *In re Comverse Tech., Inc. Sec. Litig.*, 2010 WL 2653354, at *3 (E.D.N.Y. June 24, 2010). As discussed above, the requested fee is within the range of percentage fees that this Court and other courts have awarded in comparable cases and, accordingly, the fee requested is reasonable in relation to the Settlement.

**6. Public Policy Considerations Support the Requested Fee**

A strong public policy favors rewarding firms for bringing successful securities litigation. *See FLAG Telecom*, 2010 WL 4537550, at *29 (if the "important public policy [of enforcing the securities laws] is to be carried out, the courts should award fees which will adequately compensate Lead Counsel for the value of their efforts, taking into account the enormous risks they undertook"); *Maley v. Del Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 373 (S.D.N.Y. 2002) ("In considering an award of attorney's fees, the public policy of vigorously enforcing the federal securities laws must be considered."); *Hicks v. Morgan Stanley*, 2005 WL 2757792, at *9 (S.D.N.Y. Oct. 24, 2005) ("To make certain that the public is represented by talented and experienced trial counsel, the remuneration should be both fair and rewarding."). This factor supports Plaintiffs' Counsel's fee and expense application.

**D. The Requested Attorneys' Fees Are Reasonable Under the Lodestar Cross-Check**

To ensure the reasonableness of a fee awarded under the percentage method, the Second Circuit encourages a "cross-check" against counsel's lodestar. *Goldberger*, 209 F.3d at 50. Under the lodestar method, a court must engage in a two-step analysis: first, to determine the lodestar, the court multiplies the number of hours each timekeeper spent on the case by each person's reasonable hourly rate; and second, the court adjusts that lodestar figure (by applying a multiplier) to reflect such factors as the risk and contingent nature of the litigation, the result obtained, and the quality of the attorney's work. *See, e.g., FLAG Telecom*, 2010 WL 4537550, at *26 ("Under the lodestar method, a positive multiplier is typically applied to the lodestar in recognition of the risk of litigation, the complexity of the issues, the contingent nature of the engagements, the skill of the attorneys, and other factors"); [.]"); *Comverse,* 2010 WL 2653354, at *5 ("Where, as here, counsel has litigated a complex case under a contingency fee

arrangement, they are entitled to a fee in excess of the lodestar"). Performing the lodestar cross-check here confirms that the fee requested is reasonable and should be approved.

Plaintiffs' Counsel have collectively expended more than 17,200 hours in the prosecution of this case. *See* Fox Decl. at ¶139; Exs. 5-A & 6-A. The resulting lodestar at current rates is $10,382,315.75. *Id*. "[T]he use of current rates to calculate the lodestar figure has been endorsed repeatedly by the Supreme Court, the Second Circuit and district courts within the Second Circuit as a means of accounting for the delay in payment inherent in class actions and for inflation." *In re Hi-Crush Partners L.P. Sec. Litig.*, 2014 WL 7323417, at *15 (S.D.N.Y. Dec. 19, 2014) (citing *Missouri v. Jenkins*, 491 U.S. 274, 283-84 (1989)); *see also Gierlinger v. Gleason*, 160 F.3d 858, 882 (2d Cir. 1998) (similar).

The hourly rates of Plaintiffs' Counsel here range from $675 to $1,300 for partners, $550 to $1,090 for of-counsels, and $350 to $675 for associates and staff attorneys. *See* ¶138. In fact, "perhaps the best indicator of the market rate in the New York area for plaintiffs' counsel in securities class actions is to examine the rates charged by New York firms that *defend* class actions on a regular basis." *Telik*, 576 F. Supp.2d at 589. Defense firm rates gathered and analyzed by Labaton Sucharow from bankruptcy court filings nationwide in 2021 in many cases exceeded these rates. *See* Fox Decl. at ¶138; Ex. 8.

Using a lodestar of $10,382,315.75, the requested fee of $18,037.433 (25% of the Settlement Fund, minus litigation expenses of $850,266.93) results in a multiplier of 1.7 of Plaintiffs' Counsel's lodestar. This multiplier is comparable to those regularly awarded in securities class actions and other complex class litigation both within and outside of this District, and would be justified under the circumstances of this case. *See, e.g. Comverse,* 2010 WL 2653354, at *5 (approving a 2.78 multiplier in case involving a $165 million settlement); *In re*

*Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d 344, 347, 353 (S.D.N.Y. 2014) (awarding 25% of $45.9 million settlement, equating to multiplier of 5.2); *Wal-Mart*, 396 F.3d at 123 (upholding multiplier of 3.5 as reasonable); *In re Deutsche Telekom*, *AG Sec. Litig*. 2005 WL 7984326, at *4 (S.D.N.Y. June 14, 2005) (awarding 28% of $120 million settlement; a 3.96 multiplier); *Maley*, 186 F. Supp. 2d at 369 (awarding fee equal to a 4.65 multiplier, "well within the range awarded by courts in this Circuit").

## V. PLAINTIFFS' COUNSEL'S EXPENSES ARE REASONABLE AND WERE NECESSARILY INCURRED TO ACHIEVE THE BENEFIT OBTAINED

Lead Counsel's fee application includes a request for payment of $850,266.93 in litigation expenses, which were reasonably incurred and necessary to prosecute the Action. *See* Ex. 7; Fox Decl. at §VIII.B. These expenses are detailed in counsel's individual fee and expense declarations. *See* Exs. 5-B, & 6-B. The amount is well-below the $1,100,000 cap in the Notice.

Lead Counsel maintained control over the primary expenses in the Action by managing a joint litigation fund ("Joint Litigation Expense Fund" or "Litigation Fund"). Labaton Sucharow and Robbins Geller collectively contributed $554,667.00 to the Joint Litigation Expense Fund. A description of the expenses incurred by the Litigation Fund by category is included in the individual firm declaration submitted on behalf of Labaton Sucharow. *See* Ex. 5 at ¶¶7-8.

Much of Plaintiffs' Counsel's expenses were for the fees of Plaintiffs' experts ($581,520.88 or 68% of total expenses). *See* Ex. 5-B & E. As set forth in the Fox Declaration, Lead Plaintiff engaged four experts in the fields of: (i) data privacy and the European Union's GDPR, (ii) Fair Valuation / Accounting, (iii) Data Analytics, and (iv) market efficiency, loss causation and damages. ¶154. Plaintiffs' data privacy expert provided advice to Plaintiffs' Counsel throughout fact discovery and was preparing an expert report in connection with Nielsen's readiness for the effective date of the GDPR and the GDPR's effect on the Company.

Plaintiffs' Fair Valuation/Accounting expert provided advice throughout fact discovery and was preparing an expert report in connection with Nielsen's goodwill impairment testing of the Buy Reporting Unit during the Class Period. Plaintiffs' Data Analytics expert provided advice throughout fact discovery and was preparing a report on the changing dynamics in the data analytics market leading up to the start of the Class Period. Plaintiffs' damages expert, Mr. Coffman, opined on market efficiency in connection with class certification and was preparing a merits report on loss causation and damages. Mr. Coffman also provided substantial assistance in connection with mediation and prepared the Plan of Allocation. *Id*.

Another substantial component of Plaintiffs' Counsel's expenses (*i.e.*, $101,716.58, or approximately 12% of the total expenses) was the cost of court reporters, videographers, and transcripts in connection with the depositions counsel took or defended during the course of the Action. ¶155, Ex. 5-E. The next largest expense (*i.e.,* $69,514.96, or approximately 8% of Plaintiffs' Counsel's total expenses) was for document hosting and management/litigation support. Robbins Geller hosted the document production using a platform called Relativity, and maintained the approximately 900,000 pages of documents produced by Defendants and third parties so they would be efficiently reviewed and shared by Plaintiffs' Counsel. Hosting the documents internally was a significant cost saving measure. Lead Counsel also used an outside e-discovery vendor to gather and host MissPERS' document production. ¶156, Ex. 5-E, Ex. 6-B. Plaintiffs' Counsel also incurred a total of $41,902.50 in connection with the mediation sessions with Judge Phillips. ¶158, Ex. 5-E.

Additionally, Plaintiffs' counsel incurred expenses related to, among other things, electronic factual and legal research, limited travel and work-related meals and transportation, court fees, duplicating, and long-distance telephone and conference calling. A complete

breakdown by category of the expenses incurred is set forth in Plaintiffs' Counsel's respective declarations. The requested expenses are properly recoverable. *See Gen. Motors,* 2020 WL 7481292, at *2 (J. Furman) (finding the expense request reasonable for fees paid to experts, mediation fees, computerized research, document production and storage, and travel, among others, and noting that "[c]ourts routinely note that counsel is entitled to reimbursement from the common fund for reasonable litigation expenses").

## VI. PLAINTIFFS SHOULD BE AWARDED THEIR REQUESTED REIMBURSEMENT UNDER 15 U.S.C. §78u-4(a)(4)

Lead Counsel also seeks reimbursement of $17,750 for Lead Plaintiff MissPERS and $5,625 for additionally named plaintiff Monroe County directly related to their representation of the class. *See* Ex. 1 at ¶¶8-10 and Ex. 2 at ¶¶8-9. The PSLRA specifically provides that an "award of reasonable costs and expenses (including lost wages) directly relating to the representation of the class" may be made to "any representative party serving on behalf of a class." 15 U.S.C. § 78u-4(a)(4). Here, as described in Plaintiffs' declarations, they have been committed to pursuing the class's claims—and have taken an active role in so doing. Courts "award such costs and expenses to both reimburse the named plaintiffs for expenses incurred through their involvement with the action and lost wages, as well as provide an incentive for such plaintiffs to remain involved in the litigation and incur such expenses in the first place." *Hicks*, 2005 WL 2757792, at *10. "In the Second Circuit, Plaintiff incentive awards 'are common in class action cases and are important to compensate plaintiffs for the time and effort expended in assisting the prosecution of the litigation, the risks incurred by becoming and continuing as a litigant, and any other burdens sustained by plaintiffs." *Gen. Motors,* 2020 WL 7481292, at *4 (J. Furman) (non-PSLRA settlement).

As public pension funds, both MissPERS and Monroe County actively and effectively

fulfilled their obligations as representatives of the class, complying with all of the many demands placed upon them during the litigation and settlement of the Action, and providing valuable assistance to Plaintiffs' Counsel. Each (i) regularly communicated with Plaintiffs' Counsel regarding the posture and progress of the Action; (ii) reviewed and/or discussed significant pleadings, motions, and briefs filed in the Action; (iii) produced documents and written discovery responses to Defendants; (iv) prepared for and virtually participated in depositions; and (v) evaluated and approved the proposed Settlement. Ex. 1 at ¶¶4-5, Ex. 2 at ¶¶4-8. Lead Plaintiff MissPERS also participated in the virtual mediation sessions. These efforts required representatives of Plaintiffs to dedicate time and resources to the Action that they would have otherwise devoted to their regular duties. MissPERS seeks $17,750 in connection with the 81 hours it dedicated to the litigation. *See* Ex. 1 at ¶¶8-10. Monroe County seeks $5,625 in connection with the 45 hours it dedicated to the litigation. *See* Ex. 2 at ¶¶8-9.

Numerous courts within this District have approved payments to compensate representative plaintiffs under similar circumstances. *See, e.g., In re Qudian Inc. Sec. Litig.,* 2021 WL 2328437, at *2 (S.D.N.Y. June 8, 2021) (J. Furman) (awarding lead plaintiff $12,5000); *Signet Jewelers,* 2020 WL 4196468, at *24 (awarding $25,410 to lead plaintiff MissPERS); *City of Warren Police and Fire Ret. Sys. v. World Wrestling Ent.*, 2021 WL 2736135, at *1 (awarding $6,286.40 to lead plaintiff); *In re Silvercorp Metals Inc. Sec. Litig.,* No. 12-cv-09456-JSR, ECF No. 81, slip op. at 9 (S.D.N.Y. Feb. 13, 2015) (awarding two lead plaintiffs $12,500 each) (Ex. 11); *In re Petrobras Sec. Litig*., 317 F. Supp. 3d 858, 879 (S.D.N.Y. 2018) (awarding institutional lead plaintiffs $300,000, $50,000, and $50,000); *In re Satyam Comput. Servs. Ltd. Sec. Litig*., No. 09-MD-2027, ECF No. 365, slip op. at 3-4 (S.D.N.Y. Sept. 13, 2011) (awarding a combined $193,111 to four institutional lead plaintiffs) (Ex. 11); *In re Bank of Am. Corp. Sec.,*

*Derivative & ERISA Litig.*, 772 F.3d 125, 132-134 (2d Cir. 2014) (affirming over $450,000 award to representative plaintiffs for time spent by their employees); *Marsh & McLennan,* 2009 WL 5178546, at *21 (awarding a combined $214,657 to two institutional lead plaintiffs).

## VII. THE REACTION OF THE SETTLEMENT CLASS SUPPORTS THE REQUESTED FEES AND EXPENSES

To date, one objection to the Fee and Expense Application has been received. Larry D. Killion, who appears to be a member of the Settlement Class, objects to the 25% fee. *See* Ex. 9. Without the benefit of Lead Counsel's motion papers, he essentially argues that the 25% fee is unreasonable based on his own preference for a sliding scale fee tied to the phase of litigation, which would peg a proposed fee here at $13,450,000 or approximately 18.4%.

Such a sliding fee arrangement, however, is subject to many of its own pitfalls. It uses a proxy (phase of litigation) to analyze effort exerted, when a far more direct measure (checking the reasonableness of the fee percent) is available. A sliding fee arbitrarily changes the fee based on factors unrelated to the effort, result achieved, or quality of representation. For example, the objector's proposed arrangement would pay a larger fee percentage if the matter required an appeal, but whether an appeal is needed has little to do with counsel's effort and is no more likely to demonstrate high quality representation, than it is to demonstrate imperfect advocacy at the District Court level.

The objector's only case-specific analysis argues that the request is unreasonably high based on his assessment that litigating and settling the Action was a straightforward matter that was readily ascertainable from the public record; Lead Counsel's experience meant that it did not need to dedicate much effort; and the class is vulnerable and should pay discounted fees.

As explained above, it is respectfully submitted that Mr. Killion's characterization of the claims in the Action and the efforts undertaken by Plaintiffs' Counsel are very far from accurate.

Stock price decreases do not result in actionable claims and a recovery without significant and meaningful work by experienced counsel, much less an excellent recovery. Here, there were no parallel investigations, admissions, or governmental proceedings to assist Plaintiffs' Counsel or provide any kind of "road map" for the litigation. Developing the amended complaint required substantial investigation; overcoming the motion to dismiss was arduous (as evidenced by the dismissal of certain claims); discovery was time consuming, costly, and complex; and positioning the case for the greatest possibility of success on the merits, and correspondingly achieving this Settlement, required high quality legal representation and navigation of highly complex issues spanning Nielsen's business, the data analytics industry, accounting practices, privacy regulations, and intricate market efficiency and loss causation issues.

The Settlement Class here has been ably represented with respect to fees, and in all matters, by Lead Plaintiff MissPERS and additionally named plaintiff Monroe County. Both are experienced public pension funds that have reviewed the request and believe it to be fair and reasonable. *See* Ex. 1 ¶7 & Ex. 2 ¶7.

Lead Counsel will provide a copy of these motion papers to Mr. Killion and will address any additional objections in their reply papers, which will be filed on or before July 6, 2022.

## CONCLUSION

Plaintiffs respectfully request that the Court grant final approval of the proposed Settlement, approve the proposed Plan of Allocation, and finally certify the Settlement Class for purposes of the Settlement only. Lead Counsel respectfully requests that the Court approve Lead Counsel's Fee and Expense Application. Proposed orders will be submitted with the reply papers, after the deadlines for objecting and seeking exclusion have passed.

Dated: June 15, 2022

Respectfully submitted,

**LABATON SUCHAROW LLP**

*/s/ Christine M. Fox*
Carol C. Villegas
Eric J. Belfi
Christine M. Fox
Jake Bissell-Linsk
140 Broadway, 34th Floor
New York, NY 10005
Telephone: (212) 907-0700
Facsimile: (212) 818-0477
cvillegas@labaton.com
ebelfi@labaton.com
cfox@labaton.com
jbissell-linsk@labaton.com

*Lead Counsel for Plaintiffs and Proposed Settlement Class*

**ROBBINS GELLER RUDMAN & DOWD LLP**
Shawn A. Williams
Christopher P. Seefer
Post Montgomery Center
One Montgomery Street, Suite 1800
San Francisco, CA 94104
Telephone: (415) 288-4545
Facsimile: (415) 288-4534
shawnw@rgrdlaw.com
cseefer@rgrdlaw.com

**ROBBINS GELLER RUDMAN & DOWD LLP**
Ellen Gusikoff Stewart
Patton L. Johnson
655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: (619) 231-1058
Facsimile: (619) 231-7423
elleng@rgrdlaw.com
pjohnson@rgrdlaw.com

*Additional Counsel for Plaintiffs*

**CERTIFICATE OF SERVICE**

I hereby certify that on June 15, 2022, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all registered ECF participants.

/s/ *Christine M. Fox*
CHRISTINE M. FOX