UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

RON MILLER, individually and on behalf of all others similarly situated, Plaintiff, v. SONUS NETWORKS, INC., RAYMOND P. DOLAN, MARK T. GREENQUIST, AND MICHAEL SWADE, Defendants.	Case No. 1:18-cv-12344-GAO

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION

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Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, Lead Plaintiffs Giuseppe Veleno and Gary Williams, and named Plaintiff Ron Miller (together, "Plaintiffs"), on behalf of themselves and the Settlement Class, respectfully submit this memorandum in support of their unopposed motion for: (1) final approval of the above-captioned action (the "Action"), and (2) approval of the proposed Plan of Allocation.[1]

I. PRELIMINARY STATEMENT[2]

Plaintiffs, through their counsel, have obtained a $4,500,000 all cash, non-reversionary settlement for the benefit of the Settlement Class. As described below and in the Joint Declaration, the Settlement is an excellent result for the Settlement Class, providing a significant and certain recovery in a case that presented numerous hurdles and risks. The Settlement represents approximately 17% of the Settlement Class's maximum recoverable class-wide aggregate damages, a favorable result when compared to the median recovery of 5.1% in securities class action settlements with similar aggregate damages. Moreover, the Settlement was reached only after extensive, arm's-length negotiations conducted by experienced counsel with the assistance

[1] Unless otherwise defined herein, all capitalized terms have the same meanings as set forth in the Stipulation and Agreement of Settlement dated July 21, 2023 ("Stipulation"), previously filed with the Court (ECF No. 122-1), or the Joint Declaration of Garth A. Spencer and Jacob A. Goldberg in Support of: (I) Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation; and (II) Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses. ("Joint Declaration"), filed concurrently herewith. Unless otherwise noted, all citations to "¶__" and "Ex." refer, respectively, to paragraphs in, and exhibits to, the Joint Declaration.

[2] The Joint Declaration is an integral part of this submission and, for the sake of brevity in this memorandum, the Court is respectfully referred to it for a detailed description of, *inter alia*, the factual and procedural history of the Action (¶¶7-20); the efforts involved in the drafting and defending of the complaints (¶¶13-15); the progress of discovery (¶16); the risks of continued litigation (¶¶23-33); the negotiations leading to the Settlement (¶¶17-18); and the Plan of Allocation (¶¶34-40).

of a respected mediator, and is the result of a mediator's recommendation that followed an all-day mediation session. The Settlement, therefore, is both substantively and procedurally fair.

Plaintiffs' and Lead Counsel's substantial efforts and well-developed understanding of the strengths and weaknesses of the Action also support final approval. As detailed in the Joint Declaration, prior to reaching the Settlement Plaintiffs and Lead Counsel, among other things: (i) analyzed Sonus's public filings with the SEC, public reports and news articles, Sonus investor calls, and research reports by analysts; (ii) investigated, including locating and interviewing confidential witnesses; (iii) drafted and filed the operative Complaint based on their investigation; (iii) successfully opposed Defendants' motion to dismiss; (iv) engaged in significant discovery, which included, *inter alia*, serving and responding to document requests and interrogatories, producing documents, reviewing and analyzing documents produced by Defendants (over 40,600 pages) and third-parties, and defending the depositions of all three Plaintiffs; (v) drafted a detailed mediation statement addressing both liability and damages; and (vi) participated in a full-day mediation with highly respected mediator David Geronemus of JAMS, resulting in the Settlement. ¶3. Plaintiffs and their counsel, therefore, had a comprehensive understanding of the strengths and weaknesses of the case and had sufficient information to make an informed decision regarding the fairness of the Settlement before entering into it and presenting it to the Court.

Plaintiffs and Lead Counsel believe that the Settlement is an outstanding result for the Settlement Class. This belief is supported by, among other things, the certainty of a $4.5 million recovery today versus the significant risk of a smaller or even no recovery following years of additional litigation; an analysis of the facts adduced to date; past experience in litigating complex securities class actions; the serious disputes between the parties concerning the merits and

damages; and the favorable reaction of the Settlement Class to date. ¶¶23-33, 40. Plaintiffs, therefore, respectfully submit that the Settlement is fair, reasonable, and adequate.

Plaintiffs also move for approval of the proposed Plan of Allocation of the Net Settlement Fund. The Plan of Allocation was developed in conjunction with Plaintiffs' damages expert and designed to distribute the Settlement proceeds fairly and equitably to Settlement Class Members. ¶¶41-47. Plaintiffs respectfully submit that it too should be approved.

For the reasons set forth below and in the Joint Declaration, Plaintiffs respectfully request that the Court grant final approval of the Settlement and Plan of Allocation and grant final certification of the Settlement Class for settlement purposes.

II. STANDARDS FOR FINAL APPROVAL UNDER RULE 23(e) AND *GRINNELL*

In the First Circuit, as a matter of public policy, settlement is a highly favored means of resolving disputes. *See U.S. v. Comunidades Unidas Contra La Contaminacion*, 204 F.3d 275, 280 (1st Cir. 2000).[3] This is especially so in complex class action litigation. *See In re Lupron Mktg. & Sales Pracs. Litig.*, 228 F.R.D. 75, 88 (D. Mass. 2005) ("the law favors class action settlements"); *In re Tyco Int'l, Ltd. Multidistrict Litig.*, 535 F. Supp. 2d 249, 259 (D.N.H. 2007) ("public policy generally favors settlement – particularly in [large] class actions").

Federal Rule of Civil Procedure 23(e) requires judicial approval for any compromise or settlement of class action claims to ensure that it is procedurally and substantively "fair, reasonable and adequate." Fed. R. Civ. P. 23(e)(2); *see also Hill v. State Street Corp.*, 2015 WL 127728, at *6 (D. Mass. 2015) (O'Toole, J.) ("Courts generally consider both the negotiating process by which the settlement was reached and the substantive fairness of the terms of the settlement compared to the result likely to be reached at trial."). According to Rule 23(e)(2), which governs

[3] Unless otherwise indicated, all citations and quotations are omitted and all emphasis is added.

final approval, the four specific factors to consider when determining whether a proposed settlement is fair, reasonable, and adequate are:

> (A) the class representatives and class counsel have adequately represented the class;
> (B) the proposal was negotiated at arm's length;
> (C) 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) the proposal treats class members equitable relative to each other.

Fed. R. Civ. P. 23(e)(2). These factors do not "displace" previously adopted factors, but "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) advisory committee's notes to 2018 amendment, 324 F.R.D. 904, 918. "Accordingly, the Court [should] appl[y] the framework set forth in Rule 23, while continuing to draw guidance from the [First] Circuit's factors and relevant precedent." *Hefler v. Wells Fargo & Company*, 2018 WL 6619983, at *4 (N.D. Cal. 2018); *see also Swinton v. SquareTrade, Inc*., 2019 WL 617791, at *5 (S.D. Iowa Feb. 14, 2019).

"Although the First Circuit Court of Appeals has not provided supplemental guidance concerning the factors to be considered in assessing the fairness of a settlement, many courts in this Circuit have looked to those set forth by the Second Circuit Court of Appeals in *City of Detroit v. Grinnell Corp.*, 495 F.2d 448 (2d Cir. 1974)." *In re Ranbaxy Generic Drug Application Antitrust Litig.*, 630 F. Supp. 3d 241, 244 (D. Mass. 2022). Those factors are:

> (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; (9) the

> range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

Grinnell, 495 F.2d at 463. "The necessary assessment is, thus, holistic and incorporates 'a wide variety of factors bearing on the central question of whether the settlement is reasonable in light of the uncertainty of litigation'." *Ranbaxy*, 630 F. Supp. 3d at 244 (quoting *Bussie v. Allmerica Fin. Corp.*, 50 F. Supp. 2d 59, 72 (D. Mass. 1999)).

The proposed Settlement meets the criteria for final approval under the Rule 23(e)(2) factors, and the relevant, non-duplicative *Grinnell* factors.

III. ARGUMENT

A. The Settlement Is Fair, Reasonable, And Adequate In Light Of The Factors Outlined By Rule 23(e)(2) And The Remaining *Grinnell* Factors

1. Plaintiffs and Counsel Adequately Represented the Settlement Class

The first Rule 23(e)(2) factor is whether the "class representative[] and class counsel have adequately represented the class." Fed. R. Civ. P. 23(e)(2)(A). Adequacy is demonstrated where "the interests of the representative party will not conflict with the interests of any of the class members, and second, that the counsel chosen by the representative party is qualified, experienced and able to vigorously conduct the proposed litigation." *Andrews v. Bechtel Power Corp.*, 780 F.2d 124, 130 (1st Cir. 1985).

Here, Plaintiffs' claims are typical of and co-extensive with the claims of the Settlement Class, and they have no antagonistic interests; rather, Plaintiffs' interests in obtaining the largest possible recovery in this Action is aligned with the other Settlement Class Members. *See In re Puerto Rican Cabotage Antitrust Litig.*, 269 F.R.D. 125, 133 (D.P.R. 2010) ("Plaintiffs, like other members of the proposed class, have the same incentives to maximize recovery for the wrongs allegedly perpetrated on them by Defendants."). Each of the three Plaintiffs was highly involved in each stage of the litigation and worked closely with Lead Counsel throughout the pendency of

this Action to achieve the best possible result for himself and the Settlement Class, including by producing documents, sitting for deposition, communicating with Lead Counsel concerning mediation, and ultimately approving the Settlement. *See* Exs. 2-4.

Plaintiffs retained counsel who are highly experienced in securities litigation, and who have a long and successful track record of representing investors in such cases. Court appointed Lead Counsel, The Rosen Law Firm, P.A. ("Rosen") and Glancy Prongay & Murray LLP ("GPM"), as well as Liaison Counsel Andrews DeValerio LLP ("Andrews DeValerio"), have all successfully prosecuted securities class actions and complex litigation in federal and state courts throughout the country, including in this District. *See* Exs. 5-7 (GPM, Rosen and Andrews DeValerio firm résumés). Moreover, as set forth in detail above, and in the Joint Declaration, Lead Counsel vigorously prosecuted Plaintiffs' claims throughout the litigation by, *inter alia*, conducting a detailed investigation into Sonus including interviews with former employees; drafting the amended complaint; defeating Defendants' motion to dismiss; thoroughly reviewing over 40,000 pages of documents produced by Defendants including transcripts of testimony given by Sonus employees in a factually related SEC investigation; preparing for and defending the Plaintiffs' depositions; and successfully negotiating a resolution favorable to the Settlement Class at the Parties' all-day mediation session. ¶¶16-18.

Finally, the Court has previously found that Plaintiffs and Lead Counsel have adequately represented the Settlement Class. *See* Preliminary Approval Order, ECF No. 133 at ¶¶2-3. Consequently, this factor supports final approval of the Settlement.

2. The Settlement Was Reached After Sufficient Discovery And Arm's-Length Negotiations Between Experienced Counsel Under the Auspices of a Well-Respected Mediator

The second Rule 23(e)(2) factor is whether the settlement was "negotiated at arm's length." Fed. R. Civ. P. 23(e)(2)(B); *see also Grinnell*, 495 F.2d at 463 (third factor). "If the parties

negotiated at arm's length and conducted sufficient discovery, the district court *must* presume the settlement is reasonable." *In re Pharm. Indus. Average Wholesale Price Litig*., 588 F.3d 24, 32-33 (1st Cir. 2009) (emphasis added).

Here, the Settlement merits a presumption of reasonableness because it is the product of substantial arm's-length negotiations between experienced counsel who thoroughly evaluated the merits of the claims and were well-aware of the strengths and weaknesses of the case. ¶55; Exs. 5-7 (detailing the investigation and work performed by Lead Counsel). Further, the full-day mediation following the exchange of detailed mediation statements, was led by Mr. Geronemus, a well-respected mediator of complex actions. *See Feller v. Transamerica Life Ins. Co.*, 2019 WL 6605886, at *4 (C.D. Cal. Feb. 6, 2019) (David Geronemus is an "experienced and highly-regarded nationally-renowned mediator"); *Steele v. GE Money Bank*, 2011 WL 13266350, at *4 (N.D. Ill. May 17, 2011) (David Geronemus is an "experienced and well-respected mediator").

Further, the Parties undertook meaningful discovery, and were knowledgeable about the strengths and weaknesses of the case prior to agreeing to settle. Lead Counsel conducted an in-depth investigation of Sonus; reviewed and analyzed over 11,000 documents (including testimony transcripts) produced by Defendants; briefed the motion to dismiss; issued subpoenas to relevant third parties; produced Plaintiffs' relevant documents; and defended Plaintiffs' depositions ¶16. Lead Counsel were well informed when they negotiated the Settlement.

Courts accord great weight to the recommendations of counsel, who are most closely acquainted with the facts of the litigation. *See Rolland v. Cellucci*, 191 F.R.D. 3, 10 (D. Mass. 2000) (Representations of experienced, knowledgeable counsel that a settlement is "fair, reasonable, and adequate should be given significant weight."); *Bussie*, 50 F. Supp. 2d at 77 (same); *Gulbankian v. MW Mfrs., Inc.*, 2014 WL 7384075, at *3 (D. Mass. Dec. 29, 2014) (same).

Lead Counsel here have extensive experience in securities class action litigation and were well-informed about the facts of the case, and, in light of the significant risks of continued litigation, believe that the $4.5 million Settlement is in the best interests of the Settlement Class. These representations "should be given significant weight." *Cellucci*, 191 F.R.D. at 10;.

Plaintiffs, who were thoroughly involved in all aspects of the litigation, also support the Settlement. *See* Veleno Decl. at ¶¶3-8; Williams Decl. at ¶¶3-8; Miller Decl. at ¶¶3-8. This support weighs in favor of the Settlement's approval. *See In re StockerYale, Inc. Sec. Litig.*, 2007 WL 4589772, at *3 (D.N.H. December 18, 2007) ("The Court finds it significant that the Lead Plaintiffs are fully in support of the settlement. Thus, this factor favors settlement as well."); *see also In re Portal Software, Inc. Sec. Litig*., 2007 WL 4171201, at *5 (N.D. Cal. Nov. 26, 2007) (noting Congress' intent to foster involvement of Lead Plaintiff when passing PSLRA and stating that "the role taken by the lead plaintiff in the settlement process supports settlement because lead plaintiff was intimately involved in the settlement negotiations.").

3. The Settlement is an Excellent Result for the Settlement Class in Light of the Benefits of the Settlement and the Risks of Continued Litigation

Under Rule 23(e)(2)(C), 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" along with other relevant factors. Fed. R. Civ. P. 23(e)(2)(C). This factor essentially incorporates six of the traditional *Grinnell* factors: the complexity, expense, and likely duration of the litigation (first factor); the risks of establishing liability and damages (fourth and fifth factor); the risks of maintaining the class action through the trial (sixth factor); and the range of reasonableness of the settlement fund in light of the best possible recovery and the attendant risks of litigation (eighth and ninth factors). *Cf. Grinnell*, 495 F.2d at 463. As demonstrated below, each of these factors supports approval of the Settlement.

(a) Complexity, Expense, and Duration of Litigation

This factor "captures the probable costs, in both time and money, of continued litigation." *StockerYale*, 2007 WL 4589772, at *3. Continuing to litigate this case through the conclusion of fact and expert discovery, class certification, summary judgment, trial, and appeals would require years and substantial, all with no guarantee of any, let alone greater, success. Accordingly, this factor supports final approval. *See In re OCA, Inc. Sec. & Derivative Litig*., 2009 WL 512081, at *11 (E.D. La. Mar. 2, 2009) (continued litigation through discovery, class certification, trial and appeals, "would consume substantial judicial and attorney time and resources, and avoiding such costs weighs in favor of settlement"); *StockerYale*, 2007 WL 4589772, at *3 (the "time and expense leading up to trial would have been significant.").

(b) Risks of Establishing Liability and Damages

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 so doing, the Court need not "decide the merits of the case[,] resolve unsettled legal questions," (*Carson v. Am. Brands, Inc*., 450 U.S. 79, 88 n.14 (1981)), or "foresee with absolute certainty the outcome of the case." *Shapiro v. JPMorgan Chase & Co*., 2014 WL 1224666, at *10 (S.D.N.Y. Mar. 24, 2014). "[R]ather, the Court need only assess the risks of litigation against the certainty of recovery under the proposed settlement." *In re Glob. Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 459 (S.D.N.Y. 2004). While Lead Counsel believe that Plaintiffs' claims are meritorious, they also recognize that they faced substantial obstacles to proving liability and establishing loss causation and damages. When compared to the certainty of the significant recovery achieved by the Settlement, these risks militated against further litigation, and informed Plaintiffs' and Lead Counsel's belief that the Settlement is fair, reasonable, and adequate.

Statute of Limitations. Defendants argued that Plaintiffs' claims were barred by the applicable two-year statute of limitations because their counsel filed a related case against Sonus in May 2016, and so, in Defendants' view, the statute of limitations began to run at that time. *See* ECF No. 49 at 6-13. While the Court rejected this argument in the context of Defendants' motion to dismiss (*see Miller v. Sonus Networks, Inc.*, 636 F. Supp. 3d 245, 251 (D. Mass. 2022)), Defendants likely would have raised this point again on summary judgment, arguing that evidence produced in discovery showed that Plaintiffs were on notice of their claims more than two years before the filing of the instant action in November 2018.

Establishing Liability. Even if Plaintiffs' claims survived Defendants' statute of limitation arguments, Plaintiffs faced numerous hurdles to establishing liability. *See In re Hi-Crush Partners L.P. Sec. Litig.*, 2014 WL 7323417, at *8 (S.D.N.Y. Dec. 19, 2014) ("Securities class actions present hurdles to proving liability that are difficult for plaintiffs to meet."). Specifically, they confronted substantial risks and uncertainties in proving, *inter alia*, that Defendants' alleged misstatements concerning Sonus's revenue projections for the first quarter of 2015 were materially false and misleading and that Defendants acted with scienter. Defendants argued, *inter alia*, that their expression of comfort with analyst estimates was non-actionable puffery, and that all of the challenged statements were forward-looking and so protected by the PSLRA safe harbor. *See* ECF No. 49 at 13-27. Defendants further argued that neither challenged statement was misleading because the first was only based on a top-down view of market opportunities, and the second was based on specific potential sales that they reasonably thought they could achieve. *See id.*

Plaintiffs also would have faced significant obstacles in proving that the Defendants acted with scienter. *See In re Gilat Satellite Networks, Ltd*., 2007 WL 2743675, at *11 (E.D.N.Y. Sept.

18, 2007) ("Establishing scienter is a difficult burden to meet."). In particular, Defendants argued that they had not engaged in insider stock sales, and that there was no plausible motive for them to knowingly overstate revenue projections that would be revealed as false in only a few weeks. *See* ECF No. 49 at 27-29. In so arguing, Defendants quoted the Court's order dismissing the earlier *Sousa* case as stating "[i]t is at least on the surface implausible, and thus inconsistent with a strong inference of scienter, to conclude that the defendants would intentionally make a revenue projection in February that they knew to be likely wrong, with the almost certain prospect of having to publicly correct the projection just a little over a month later." *Sousa v. Sonus Networks, Inc.*, 261 F. Supp. 3d 112, 120–21 (D. Mass. 2017). Defendants also pointed to the results of the SEC investigation into Sonus, wherein the SEC ultimately did not pursue scienter-based claims, but rather negligence-based claims. *See* ECF No. 49 at 3-6. In short, proving falsity and scienter were major risks for Plaintiffs.

Loss Causation And Damages. Even if Plaintiffs successfully established liability, they also faced substantial risk in proving loss causation and damages. *See Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 345–46 (2005) (plaintiffs bear the burden of proving "that the defendant's misrepresentations 'caused the loss for which the plaintiff seeks to recover'"). At summary judgment and trial, Defendants likely would have argued that some or all of the price decline in Sonus's stock on March 24, 2015 was caused by factors other than misrepresentations. For example, Defendants likely would have argued that their reduced guidance was due in substantial part to customer orders previously expected in the first quarter of 2015 being delayed or cancelled for unforeseen reasons. Defendants likely would have argued that Plaintiffs had to disaggregate such confounding news from the overall March 24, 2015 price decline.

Plaintiffs would have to proffer expert testimony to prove: (i) the true value of Sonus stock had there been no alleged material misstatements during the class period; (ii) the amount by which Sonus shares were inflated by the alleged material misstatements; and (iii) the amount of inflation removed by the disclosures of the alleged true facts. Defendants would have presented their own damages expert(s) to argue conflicting conclusions and reason(s) for Sonus's share price decline, requiring a jury to decide the "battle of the experts" – an intrinsically expensive and unpredictable process. Courts have recognized that such a "battle of experts" is a significant litigation risk, and weighs in favor of approving a settlement. *Tyco*, 535 F. Supp. 2d at 260-61.

In addition, Plaintiffs would have argued a leakage theory to include in damages stock price falls in the two days preceding the corrective disclosure on March 24, 2015. *See* ¶30. Defendants almost certainly would have attacked this theory and argued that no corrective disclosures occurred on those dates. If any of Defendants' damages or loss causation arguments were accepted, then the Settlement Class's damages could have been significantly reduced or eliminated.

Risks on Appeal. Finally, even if the Plaintiffs were to prevail on liability and damages at trial, they faced additional risk on appeal. *See, e.g.*, *Robbins v. Koger Properties, Inc.*, 116 F.3d 1441 (11th Cir. 1997) ($81 million jury verdict for plaintiffs against an accounting firm reversed on appeal on loss causation grounds and judgment entered for defendant).

Summary of Risks. Against the backdrop of the above-described risks, the Settlement represents a favorable recovery for the Class. *See Gulbankian*, 2014 WL 7384075, at *3 ("Settlement . . . avoids substantial risks and costs for both sides, giving a certain positive outcome in the face of a costly and uncertain one."); *In re Prudential Sec. Inc. Ltd. Partnerships Litig.*, 163 F.R.D. 200, 210 (S.D.N.Y. 1995) ("Instead of the lengthy, costly, and uncertain course of further

litigation, the settlement provides a significant and expeditious route to recovery for the Class. In the circumstances of such as case as this, it may be preferable to take the bird in the hand instead of the prospective flock in the bush."). Accordingly, the risks of establishing liability and damages weighs in favor of final approval. *See Bussie*, 50 F. Supp. 2d at 76 ("the reality that the Class would encounter significant, and potentially insurmountable, obstacles to a litigated recovery underscores the reasonableness of the compromise set forth in the Settlement Agreement.").

(c) Risks of Maintaining Class Action Status

At the time the Settlement was reached, Plaintiffs had not yet moved for class certification. Although Plaintiffs believe such a motion would have been meritorious, there is no guarantee that the Court would have agreed or, even if it did, that the First Circuit would not have granted a Rule 23(f) motion for interlocutory review and overturned the decision. Furthermore, Rule 23 provides that a class certification order may be altered or amended any time before a decision on the merits. Thus, as in any class action suit, there was a risk that even if the class was certified, it would be modified or decertified prior to a decision on the merits. "The numerous opportunities for certification to fail could lead to delay and create substantial risk of Plaintiffs failing completely." *Roberts v. TJX Cos., Inc.*, 2016 WL 8677312, at *7 (D. Mass. Sept. 30, 2016). Consequently, this factor favors approving the Settlement.

(d) Range of Reasonableness in Light of the Best Possible Recovery and Attendant Risks of Litigation

Courts commonly analyze the last two *Grinnell* factors together. *See Grinnell*, 495 F.2d at 463. In doing so, courts "consider[] and weigh[] the nature of the claim, the possible defenses, the situation of the parties, and the exercise of business judgment in determining whether the proposed settlement is reasonable." *Id*. at 462. This is not a "mathematical equation yielding a particularized sum." *Massiah v. MetroPlus Health Plan, Inc*., 2012 WL 5874655, at *5 (E.D.N.Y. Nov. 20,

2012). Instead, "there is a range of reasonableness with respect to a settlement." *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972); *see also Shapiro*, 2014 WL 1224666, at *11 (settlement fund must be judged "not in comparison with the possible recovery in the best of all possible worlds, but rather in light of the strengths and weaknesses of plaintiffs' case").

Here, Plaintiffs' damages expert estimates that if Plaintiffs fully prevailed on each of their claims at both summary judgment and after a jury trial, if the Court certified the same class period as the Settlement Class Period, and if the Court and jury accepted Plaintiffs' damages theory, including proof of loss causation as to each of the three stock price drop dates that Plaintiffs would have attempted to prove in this case—*i.e.*, Plaintiffs' best case scenario, the total maximum damages would be approximately $26.8 million using a two-trader model. Thus, the $4.5 million Settlement Amount equates to a recovery of approximately 17% of class-wide damages. Notably, this recovery is ***more than three times*** the median recovery for cases of a similar magnitude. *See, e.g.,* ¶21 & Ex. 11 (NERA Report, at p. 25 (Fig. 21) (median recovery was 5.1% for securities class actions with estimated damages between $20-$49 million that settled between January 2014-December 2023)).

As discussed above, if a jury or the Court had credited even some of Defendants' arguments with respect to liability or damages, the Settlement Class might have recovered nothing, or significantly less than the Settlement Amount, many years in the future. For example, if the trier of fact rejected Plaintiffs' argument that news of Sonus's reduced guidance leaked into the market prior to March 24, 2015, damages could have been reduced by approximately one-third. Given these risks, the Settlement is an extremely favorable outcome for the Class and it is certainly well-within the range of reasonableness. *See Medoff v. CVS Caremark Corp.*, 2016 WL 632238, at *6 (D.R.I. Feb. 17, 2016) (approving a settlement representing 5.33% of estimated recoverable

damages as "well above the median percentage of settlement recoveries in comparable securities class action cases"); *In re Merrill Lynch & Co. Research Reports Sec. Litig.*, 2007 WL 313474, at *10 (S.D.N.Y. Feb. 1, 2007) (a recovery of approximately 6.25% was "at the higher end of the range of reasonableness of recovery in class action[] securities litigations").

4. Other Rule 23(e)(2)(C) Factors Support Final Approval

Under Rule 23(e)(2)(C), courts also must consider whether the relief provided for 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 terms of any proposed award of attorneys' fees, including timing of payment," and "any agreement required to be identified under Rule 23(e)(2)." Fed. R. Civ. P. 23(e)(2)(C)(ii)-(iv). Each of these factors either support the Settlement's approval or are neutral, supporting a conclusion that the settlement is adequate.

First, the method for processing Settlement Class Members' claims and distributing relief to eligible claimants includes well-established, effective procedures for processing claims submitted by potential Settlement Class Members and efficiently distributing the Net Settlement Fund. Here, Strategic Claims Services ("SCS"), the Court-approved Claims Administrator, will process claims under the guidance of Lead Counsel, allow claimants an opportunity to cure any deficiencies in their claims or request the Court to review a claim denial, and, lastly, mail or wire Authorized Claimants their pro rata share of the Net Settlement Fund (per the Plan of Allocation), after Court-approval.[4] This claims process is standard in securities class action settlements, effective, and necessary insofar as neither Plaintiffs nor Defendants possess the individual investor trading data required for a claims-free process to distribute the Net Settlement Fund. *See New York*

[4] This is not a claims-made settlement. If the Settlement is approved, Defendants will not have any right to the return of a portion of the Settlement based on the number or value of the claims submitted. *See* Stipulation ¶13.

State Teachers' Ret. Sys. v. Gen. Motors Co., 315 F.R.D. 233-34, 245 (E.D. Mich. 2016) (approving settlement with a nearly identical distribution process).

Second, as discussed in the accompanying fee and expense application, Lead Counsel is applying for a percentage of the common fund fee award to compensate all Plaintiffs' Counsel for the services they have rendered on behalf of the Settlement Class. The proposed attorneys' fee of 33⅓% of the Settlement Fund (which, by definition, includes interest earned on the Settlement Amount) is reasonable in light of the work performed and the results obtained. *See Machado v. Endurance Int'l Grp. Holdings, Inc.*, 2019 WL 4409217, at *1 (D. Mass. Sept. 13, 2019) (O'Toole, J.) (awarding 33⅓ of $18,650,000 settlement fund and stating: "[t]he amount of attorneys' fees awarded and expenses to be reimbursed from the Settlement Fund are fair and reasonable and consistent with awards in similar cases[.]"). Approval of the requested attorneys' fees is separate from approval of the Settlement, and the Settlement may not be terminated based on any ruling with respect to attorneys' fees. *See* Stipulation ¶16.

Third, in accordance with Rule 23(e)(2)(C)(iv), the parties entered into a confidential agreement which establishes certain conditions under which Sonus may terminate the Settlement if Settlement Class Members, who collectively purchased a specific number of shares of Sonus common stock, request exclusion (or "opt out") from the Settlement. This type of agreement is standard in securities class action settlements and has no negative impact on the fairness of the Settlement. *See Erica P. John Fund, Inc. v. Halliburton Co*., 2018 WL 1942227, at *5 (N.D. Tex. Apr. 25, 2018) (approving securities class action settlement with similar confidential agreement).

5. The Settlement Treats all Members of the Settlement Class Equitably Relative to Each Other

Rule 23(e)(2)(D) requires courts to evaluate whether the settlement treats class members equitable relative to one another. Fed. R. Civ. P. 23(e)(2)(D). Under the proposed Plan of

Allocation, each Authorized Claimant will receive his, her, or its *pro rata* share of the Net Settlement Fund. Specifically, an Authorized Claimant's *pro rata* share shall be the Authorized Claimant's Recognized Claim divided by the total of Recognized Claims of all Authorized Claimants, multiplied by the total amount in the Net Settlement Fund. ¶46. Plaintiffs will receive the same level of *pro rata* recovery, based on their Recognized Claim as calculated by the Plan of Allocation, as all other similarly situated Settlement Class Members.

6. The Class's Reaction to the Settlement Supports Final Approval

Though not included in Rule 23(e)(2), the reaction of the Settlement Class "albeit not dispositive, constitutes strong evidence of fairness of proposed settlement and supports judicial approval." *Hill*, 2015 WL 127728, at *8. A small percentage of objections and opt-outs constitutes strong evidence that a settlement is fair and reasonable. *Bussie*, 50 F. Supp. 2d at 77.

Here, in accordance with the Court's Preliminary Approval Order, 18,964 copies of the Postcard Notice were sent to potential Settlement Class Members via mail, or emailed link to the Claim Form, and nominees and the Summary Notice was published both in the national edition of *Investor's Business Daily* and transmitted over the *PR Newswire*. *See* ¶4, and Ex. 1 ¶¶8, 11. SCS also established a dedicated website (www.strategicclaims.net/sonus) providing Settlement information and downloadable copies of the Notice and Claim Form to potential Settlement Class Members, as well as copies of the Stipulation, Preliminary Approval Order, and the Complaint.

The Postcard Notice set out the Settlement's essential terms and informed potential Settlement Class Members of, among other things, their right to opt out of the Settlement Class or object to any aspect of the Settlement, as well as the procedure for submitting Claim Forms. The pertinent information and documents were also posted online. *Id.* at ¶13. While the deadline for

Settlement Class Members to exclude themselves or object to the Settlement has not yet passed, to date, no objections to the Settlement or the Plan of Allocation have been received.[5]

In sum, all of the relevant factors support a finding that the Settlement is fair, reasonable, and adequate.

B. The Plan of Allocation is Fair and Reasonable And Should Be Approved

Plaintiffs respectfully request final approval of the Plan of Allocation. A plan for allocating settlement proceeds, like the settlement itself, should be approved if it is fair, reasonable, and adequate. *See Tyco*, 535 F. Supp. 2d at 262; *see also City of Providence v. Aeropostale, Inc.*, 2014 WL 1883494, at *10 (S.D.N.Y. May 9, 2014) (holding that "[a] plan of allocation need only have a reasonable, rational basis"). In addition, "[w]hen evaluating the fairness of a Plan of Allocation, courts give weight to the opinion of qualified counsel." *See In re Advanced Battery Techs., Inc. Sec. Litig.*, 298 F.R.D. 171, 180 (S.D.N.Y. 2014).

The Plan of Allocation is detailed in the long form Notice and incorporated by reference into the Stipulation. *See* Stipulation ¶1(ii). The full Notice is posted online at www.strategicclaims.net/sonus, is downloadable, and is mailed to Settlement Class Members upon request.

The proposed Plan of Allocation reflects, and is based on, Plaintiffs' allegations that the price of Sonus common stock was artificially inflated during the period from January 8, 2015 to March 24, 2015, due to Defendants' materially false and misleading statements. The Plan of Allocation is based on the premise that the decreases in the price of Sonus's common stock, adjusted for general equity market-related and industry-related movements, that followed (i) the

[5] The deadline for submitting objections and requesting exclusion from the Settlement Class is April 3, 2024. Plaintiffs will file reply papers by April 17, 2024, addressing any exclusion requests and objections received.

alleged corrective disclosure on March 24, 2015, and (ii) the two preceding trading days of March 23, 2015 and March 20, 2015 (during which Plaintiffs would argue that news of Sonus's soon-to-be reduced guidance had leaked into the market prior to its announcement), may be used to measure the artificial inflation in the price of Sonus common stock prior to these dates. ¶¶41-47. The same methodology would have been proffered by Plaintiffs at summary judgment and trial had the Action not settled.

An individual Claimant's recovery under the Plan of Allocation will depend on a number of factors, including how many shares of Sonus common stock the Claimant purchased, acquired, or sold during the Settlement Class Period, when that Claimant bought, acquired, or sold the shares, and the number of valid claims filed by other Claimants. The Plan of Allocation also incorporates the "90-Day Lookback Period" damage claim ceiling provisions of the Private Securities Litigation Reform Act of 1995. If a Claimant has an overall market gain with respect to his, her, or its overall transactions in Sonus stock during the Settlement Class Period, or if the Claimant purchased shares during the Settlement Class Period, but did not hold any of those shares through at least one of the alleged corrective disclosures, the Claimant's recovery under the Plan of Allocation will be zero, as any loss suffered would not have been caused by the revelation of the alleged fraud. *Id.*

Plaintiffs and Lead Counsel believe that the proposed Plan of Allocation will result in a fair and equitable distribution of the Net Settlement Fund among Settlement Class Members similar to the result if Plaintiffs prevailed at trial. As of March 20, 2024, no objections to the Plan of Allocation have been filed on the Court's docket. ¶40. For these reasons, Plaintiffs respectfully request that the Court approve the proposed Plan of Allocation.

C. The Settlement Class Should Be Finally Certified

The Court's Preliminary Approval Order certified the Settlement Class for Settlement purposes only pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure. ECF No.

133 at 2-3. Nothing has changed to alter the propriety of the Court's decision and, for all the reasons stated in Plaintiffs' Preliminary Approval Brief (ECF No. 123), Plaintiffs respectfully request that the Court affirm its determinations certifying the Settlement Class.

IV. CONCLUSION

For the above-stated reasons, and those set forth in the Joint Declaration, Plaintiffs respectfully request that the Court approve the proposed Settlement and Plan of Allocation as fair, reasonable, and adequate; and finally certify the Settlement Class for the purposes of settlement.

Dated: March 20, 2024

Respectfully submitted,

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