UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE ACUITY BRANDS, INC. SECURITIES LITIGATION	Civil Action No. 1:18-cv-02140-MHC

CLASS REPRESENTATIVE'S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION

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Counsel for Class Representative the Public Employees' Retirement System of Mississippi and Class Counsel for the Class
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Class Representative the Public Employees' Retirement System of Mississippi, on behalf of itself and all other members of the Court-certified Class, will move this Court, at the Settlement Hearing to be held on June 3, 2022 at 10:00 a.m., in Courtroom 1905, at the Richard B. Russell Federal Building and United States Courthouse, 75 Ted Turner Drive, SW, Atlanta, GA 30303, or by video or telephonic conference in the Court's discretion, under Rule 23 of the Federal Rules of Civil Procedure, for entry of the proposed Judgment approving the Settlement as fair, reasonable, and adequate and for entry of an Order approving the proposed Plan of Allocation for the proceeds of the Settlement as fair and reasonable.[1]

In support of this Motion, the undersigned submit the accompanying Joint Declaration of Andrew L. Zivitz and James W. Johnson and exhibits thereto, and the supporting Memorandum of Law.

A proposed Judgment, negotiated by the Parties, and a proposed Order granting the requested relief will be submitted with Class Representative's reply submission on or before May 27, 2022, after the deadline for objecting to the Motion or requesting exclusion from the Class has passed.

[1] All capitalized terms not defined herein have the meanings ascribed to them in the Stipulation and Agreement of Settlement dated as of December 2, 2021 (ECF No. 158-3).

Dated: April 29, 2022

Respectfully submitted,

s/ Andrew L. Zivitz
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CERTIFICATE OF SERVICE

I hereby certify that on April 29, 2022, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system. Notice of this filing will be sent to counsel of record by operation of the Court's electronic filing system.

s/ Andrew L Zivitz
Andrew L Zivitz

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE ACUITY BRANDS, INC. SECURITIES LITIGATION	Civil Action No. 1:18-cv-02140-MHC

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

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Pursuant to Federal Rule of Civil Procedure 23 ("Rule 23"), Court-appointed Class Representative the Public Employees' Retirement System of Mississippi ("Mississippi PERS, "Lead Plaintiff," or "Class Representative"),[1] on behalf of itself and the Court-certified Class, respectfully submits this memorandum of law in support of its motion for: (i) final approval of the proposed Settlement reached in the above-captioned Action; and (ii) approval of the proposed Plan of Allocation for distribution of the proceeds of the Settlement to the Class.

PRELIMINARY STATEMENT

Pursuant to the Settlement, Defendants have agreed to pay, or cause to be paid, $15,750,000 in cash in exchange for the settlement of all claims asserted in the Action and related claims. Class Representative respectfully submits that the proposed Settlement is an excellent result for the Class and readily satisfies the standards for final approval under Rule 23(e)(2).

As detailed in the accompanying Joint Declaration[2] and summarized herein,

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[1] All capitalized terms used and not otherwise defined in this Memorandum have the meanings ascribed to them in the Stipulation and Agreement of Settlement, dated as of December 2, 2021 (the "Stipulation" or "Stip."), previously filed with the Court (ECF No. 158-3) or in the Joint Declaration of Andrew L. Zivitz and James W. Johnson ("Joint Declaration" or Joint Decl.") filed herewith.

[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 history of the Action; the nature of the claims asserted;

the Settlement was reached after nearly three years of litigation efforts and a protracted mediation process overseen by an experienced mediator and is particularly favorable considering the risks of continued litigation. Indeed, Defendants' appeal of the Court's Certification Order ("Rule 23(f) Appeal") was pending at the time the Parties agreed to settle the Action and posed a significant risk to Class Representative and the Class. An adverse ruling for the Class on this appeal could have precluded *any* recovery for the Class, let alone a recovery greater than the Settlement Amount. Additionally, even if Class Representative defeated the Rule 23(f) Appeal, it still faced significant risks to proving that Defendants committed securities fraud, including establishing the elements of falsity, scienter, loss causation and damages. In light of these risks (and others), Class Representative and Class Counsel believe that the Settlement is a very favorable outcome.[3]

Based on their extensive prosecution of the claims in the Action, Class Representative and Class Counsel had a well-developed understanding of the

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the negotiations leading to the Settlement; and the risks and uncertainties of continued litigation, among other things. Citations to "¶" in this Memorandum refer to paragraphs in the Joint Declaration. All exhibits referenced below are attached to the Joint 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 Joint Declaration and the alphabetical reference is to the internal exhibit.

[3] *See* Declaration of Ta'Shia S. Gordon on Behalf of Mississippi PERS, Ex. 1, ¶ 6.

strengths and weaknesses of the Action prior to reaching the Settlement. Class Counsel had, among other things: (i) conducted a robust investigation concerning the misrepresentations and omissions alleged in the Action, including interviews with former Acuity employees and other persons with potentially relevant knowledge (18 of whom were cited in the Complaint as confidential witnesses); (ii) prepared the detailed Complaint; (iii) opposed Defendants' comprehensive motion to dismiss the Complaint; (iv) engaged in extensive discovery, including taking or defending 22 depositions, reviewing approximately 300,000 pages of documents, and addressing multiple discovery disputes; (v) briefed and obtained class certification; (vi) opposed Defendants' Rule 23(f) petition and subsequent Appeal; and (vii) consulted with experts regarding, *inter alia*, loss causation and damages. Moreover, as noted above, the Settlement is the product of a mediation process which culminated in the Parties' acceptance of a mediator's recommendation to settle the Action for $15.75 million for the benefit of the Class.

Given the foregoing considerations and the factors addressed below, Class Representative respectfully submits that the Settlement is fair, reasonable, and adequate, and warrants final approval by the Court. Likewise, Class Representative requests that the Court also approve the Plan of Allocation set forth in the Notice. The Plan of Allocation, which was developed by Class Counsel in consultation with

Class Representative's damages consultant, BVA Group, provides a fair and reasonable method for equitably allocating the Net Settlement Fund among Class Members who submit valid Claims.

ARGUMENT

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

A. Standards for Final Approval

Courts have long recognized a strong public policy in favor of class action settlements. *See In re HealthSouth Corp. Sec. Litig.*, 572 F.3d 854, 862 (11th Cir. 2009) ("Public policy strongly favors pretrial settlement of class action lawsuits."). This is particularly true in complex securities cases. *Mashburn v. Nat'l Healthcare, Inc.*, 684 F. Supp. 660, 667 (M.D. Ala. 1988) ("Due to the notable unpredictability of results in complex securities litigation and the distinct possibility of litigation spanning up to a decade or more, securities fraud class actions readily lend themselves to settlement.").[4]

Rule 23(e)(2) provides that a class action settlement must obtain court approval, and should be approved if found to be "fair, reasonable, and adequate" upon consideration of whether:

[4] Internal quotation marks and citations within quotations are omitted throughout unless otherwise specified.

> (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 attorney's 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 equitably relative to each other.

Fed. R. Civ. P. 23(e)(2). Rule 23, which was amended in December 2018, has not changed the well-established standard for approving a proposed class settlement, *i.e.* evaluating whether it is fair, adequate, and reasonable.[5] Courts in this District may also consider the following factors set forth in *Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984), which substantially overlap with the Rule 23(e)(2) factors:

> (1) the likelihood of success at trial; (2) the range of possible recovery; (3) the range of possible recovery at which a settlement is fair,

[5] The Advisory Committee Notes to the 2018 amendments to the Federal Rules of Civil Procedure indicate that the factors set forth in Rule 23(e)(2) are not intended to "displace" any factor previously adopted by a 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.

> adequate, and reasonable; (4) the anticipated complexity, expense, and duration of litigation; (5) the opposition to the settlement; and (6) the stage of proceedings at which the settlement was achieved.

See In re Equifax Inc. Customer Data Sec. Breach Litig., 2020 WL 256132, at *10 (N.D. Ga. Mar. 17, 2020) ("[i]n addition to the rule-based factors set forth in Rule 23, in considering whether to approve the settlement the Court is guided by the factors set forth in *Bennett*"). Accordingly, Class Representative will discuss the fairness, reasonableness, and adequacy of the Settlement principally in relation to the four factors set forth in Rule 23(e)(2), as well as the application of relevant, non-duplicative factors traditionally considered by the Eleventh Circuit.

B. Approval of the Settlement under Rule 23(e)(2)

1. Class Representative and Class Counsel Have Adequately Represented the Class

In determining whether to approve a class action settlement, courts consider whether "the class representative and class counsel have adequately represented the class." Fed. R. Civ. P. 23(e)(2)(A). In granting class certification, the Court found Lead Plaintiff was adequate to serve as Class Representative, and Co-Lead Counsel were fit to serve as Class Counsel. *See* ECF No. 130. Furthermore, since their appointment, Class Representative and Class Counsel have adequately represented the Class in both their vigorous prosecution of the Action and in their negotiation of the Settlement.

Class Representative, a sophisticated institutional investor, has been an active and informed participant in the litigation. Among other things, Class Representative regularly communicated with Class Counsel and reviewed material filings in the case, such as the Complaint, the briefing on Defendants' motion to dismiss, its motion for class certification, and Defendants' Rule 23(f) Appeal; searched for and produced potentially relevant documents in response to discovery requests; prepared and sat for a deposition; attended the two full-day mediations; was aware of both side's best arguments concerning liability and damages; and reviewed and approved the terms of the Settlement. *See* Ex. 1, ¶¶ 4-5. Additionally, Class Representative's claims are typical of other Class Members and, as such, Class Representative has an interest in obtaining the largest possible recovery on behalf of the Class.[6]

Likewise, Class Counsel, who are highly experienced in prosecuting complex class actions, had a clear view of the strengths and risks of the case and were equipped to make an informed decision regarding the reasonableness of a potential settlement. *See Lunsford v. Woodforest Nat'l Bank*, 2014 WL 12740375, at *9 (N.D. Ga. May 19, 2014) ("The Court should give 'great weight to the recommendation of counsel for the parties, given their considerable experience in this type of

[6] *See 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 class representatives and other class members.").

litigation.'"). Over the course of the litigation, Class Counsel developed a deep understanding of the facts of the case and the merits of the claims. *See* generally Joint Decl. at §§ III-V. Further, in consultation with Class Representative's damages expert, Class Counsel evaluated the potential damages in the case and negotiated vigorously with Defendants to secure the $15.75 million recovery. Indeed, "[t]he excellent job counsel have done for the class is . . . demonstrated in benefits afforded by the settlement." *Equifax*, 2020 WL 256132, at *6.

Moreover, Class Counsel are highly qualified and experienced in securities litigation, as set forth in their firm resumes (*see* Exs. 4-D & 5-C) and were able to successfully conduct the litigation against skilled opposing counsel.[7] Accordingly, the Class has been, and remains, well represented.

2. The Settlement Is the Product of Good Faith, Informed, and Arm's-Length Negotiations by Experienced Counsel

In weighing whether to approve a settlement, the Court must consider whether the settlement "was negotiated at arm's length." Fed. R. Civ. P. 23(e)(2)(B). Indeed, courts presume that a proposed settlement is fair and reasonable when, as was the case here, it is the result of arm's-length negotiations between counsel. *See Gunthert v. Bankers Standard Ins. Co*., 2019 WL 1103408, at *3 (M.D. Ga. Mar. 8, 2019)

[7] Defendants were represented by a very well-regarded law firm, King & Spalding LLP.

("There is a presumption of good faith in the negotiation process . . .").

Additionally, the settlement negotiations were facilitated by a well-respected and experienced mediator, David M. Murphy, Esq. of Phillips ADR. *See Equifax Data Breach*, 2020 WL 256132, at *6 (approving settlement facilitated by experienced mediator); *Pinon v. Daimler AG*, 2021 WL 6285941, at *7 (N.D. Ga. Nov. 30, 2011) (noting close participation of a mediator supports the procedural fairness of the settlement). Here, the Parties participated in two full-day mediations before Mr. Murphy, both preceded by the exchange of detailed mediation submissions addressing liability and damages issues. ¶¶ 94-98. In preparing the mediation submissions and in preparation for the mediations themselves, Class Counsel consulted with their expert, Dr. Mason, on various loss causation and damages scenarios. ¶ 69. The first mediation session in September 2020 did not result in a resolution of the Action as the Parties were too far apart in their respective positions. The second mediation session in July 2021, after the conclusion of fact discovery and prior to oral argument on Defendants' Rule 23(f) Appeal, also did not result in a resolution; however, the Parties continued their discussions with the assistance of Mr. Murphy for an additional two months, until they ultimately reached an agreement in principle to settle the Action for $15.75 million pursuant to Mr. Murphy's recommendation. ¶¶ 94-99.

At all times during the mediations and follow-up discussions, Class Counsel and Defendants' Counsel zealously negotiated on behalf of their side's best interests.

3. The Settlement Provides Significant and Certain Benefits to the Class, Considering the Costs, Risks, and Delay of Litigation and Other Rule 23(e)(2) Factors

The Settlement also satisfies Rule 23(e)(2)(C). In determining whether a class-action settlement is "fair, reasonable, and adequate," the Court must 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 Rule 23(e)(2) factor encompasses four of the six factors considered under the traditional *Bennett* analysis: "(1) the likelihood of success at trial; (2) the range of possible recovery; (3) the point on or below the range of possible recovery at which a settlement is fair, adequate, and reasonable; [and] (4) the complexity, expense, and duration of litigation." 737 F.2d at 986.

In assessing this factor, courts balance the continuing risks of litigation against the benefits of settlement. This Settlement provides for a certain near-term recovery of $15.75 million to be allocated among Class Members following the deduction of Court-approved fees and expenses. In contrast, if the Action were to continue, the hurdles faced by the Class would be substantial. While Class Representative stands by its claims, further litigation – including defeating Defendants' Rule 23(f) Appeal,

surviving summary judgment motions, and winning at trial—presents clear risks and difficulties. *See In re Netbank, Inc. Sec. Litig*., 2011 WL 13353222, at *3 (N.D. Ga. Nov. 9, 2011) ("As has been noted by other courts, the complexity of securities class action litigation is 'notably difficult and notoriously uncertain.'").

(a) Risks of Continued Litigation

(i) Risks Related to Defendants' Rule 23(e) Appeal

As set forth in the Joint Declaration, Class Representative faced Defendants' pending Rule 23(f) Appeal, which was fully briefed and scheduled for oral argument before the Eleventh Circuit, at the time of settlement. ¶¶ 81-93. In their appeal, Defendants argued that the Court misapplied *Comcast Corp. v Behrend*, 569 U.S. 27 (2013), by failing to require Class Representative to submit, at the class certification stage, a damages model capable of measuring class-wide damages only based on the five remaining alleged misstatements in the case. If the Eleventh Circuit credited this argument, reversing and remanding (or vacating) the Court's Class Certification Order, Class Representative would have had to seek to recertify the class while satisfying any guidance or additional requirements mandated by the Eleventh Circuit. Defendants also likely would have raised new challenges given the Supreme Court's ruling in *Goldman Sachs Group, Inc. v. Arkansas Teacher Retirement System*, 141 S. Ct. 1951 (2021), which was issued after the Parties completed

briefing on Defendants' appeal. ¶¶ 85, 106-08. Indeed, an adverse ruling for Class Representative by the Eleventh Circuit could have had the effect of dramatically reducing or foreclosing entirely any recovery for the Class.[8]

(ii) Risks to Proving Liability

Falsity. Class Representative faced challenges in proving that the five statements that survived Defendants' motion to dismiss were materially false.[9] In particular, Defendants would likely continue to argue that these statements were literally true and constituted non-actionable statements of opinion. For example, with respect to the October 7, 2015 statement that Acuity was "seeing good growth" in sales to Home Depot, Defendants would likely seek to present evidence that retail sales to Home Depot actually increased during the period in which the statement was made, rendering the statement literally true. Defendants also would seek to assert that they genuinely and reasonably believed in the accuracy of the October 7, 2015, January 8, 2016, June 29, 2016, and April 4, 2017 competition statements when made, and that these statements contained no material untrue facts, on the basis that,

[8] Even if the Eleventh Circuit upheld this Court's Class Certification Order, class certification can be reconsidered at any time before a judgment is entered. *See Culpepper v. Irwin Mortg. Corp.*, 491 F.3d 1260, 1275 (11th Cir. 2007) ("Under Rule 23(c)1(C) of the Federal Rules of Civil Procedure, a district court may alter or amend its certification order at any time before rendering a decision on the merits.").

[9] Most of the misstatements alleged, including those pertaining to alleged channel-stuffing, were dismissed on falsity and scienter grounds.

in the periods addressed by these statements, Acuity compared favorably to its largest competitors while increasing its net sales, gross margin, and market share year-over-year. ¶¶ 109-12.

Scienter. Class Representative also faced challenges in proving Defendants' scienter, one of the most difficult elements for a plaintiff in a securities fraud case to prove. *See, e.g., Thorpe v. Walter Inv. Mgmt. Corp.*, 2016 WL 10518902, at *3 (S.D. Fla. Oct. 17, 2016) ("Proving scienter at trial would have required showing not just negligence but severe recklessness, posing additional substantial risk and uncertainty."). Defendants would likely argue that evidence demonstrated they did not act intentionally or recklessly (i.e., with scienter). Defendants would likely seek to present evidence purportedly indicating that Acuity's sales, margins, and market share continued to grow during the Class Period to show that they genuinely and reasonably believed that increased competition was not materially affecting Acuity's performance at the time of the alleged misstatements. ¶¶ 113-15. For example, with respect to Acuity's relationship with Home Depot, Defendants may seek to show that, at the time of the statement, Acuity had just completed a year of record sales growth with Home Depot, for which Acuity received an award, and was projecting sales growth with Home Depot for the next several years. ¶ 114.

(iii) Risks Related to Loss Causation and Damages

Class Representative also faced considerable challenges in establishing loss causation and damages. *See Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 345-46 (2005) (plaintiffs bear burden of proving "that the defendant's misrepresentations 'caused the loss for which the plaintiff seeks to recover'"). In further litigation of the Action, Defendants would continue to assert that the alleged corrective disclosures did not reveal any corrective information about Acuity's relationship with Home Depot or the impact of competition on Acuity's business, as, *inter alia*, none of the alleged disclosures make any mention of competition challenges or Home Depot. ¶ 117. Defendants also would argue that Class Representative could not disaggregate the effect of information unrelated to the alleged fraud that the market learned at the time of the alleged corrective disclosures. For example, Defendants would contend, as they did at the class certification stage, that Class Representative could not disaggregate the purportedly confounding economic impact of the 42 alleged misstatements that were dismissed. Defendants would also likely point to other negative information released on the alleged corrective disclosure dates that could have potentially led to the decline in the price of Acuity common stock. ¶ 118. Acceptance of any such arguments by the Court or a jury, in whole or part, would dramatically limit any potential recovery for the Class, or eliminate it altogether.

These issues would have boiled down to a battle of experts at trial. Courts in this District have recognized that, even with the aid of expert testimony, disputes over damages present a substantial risk before a jury. *See Carpenters Health & Welfare Fund v. Coca Cola Co.*, 2008 WL 11336122, at *8 (N.D. Ga. Oct. 20, 2008) ("reaction of a jury to such expert testimony is highly unpredictable and [i]n such a battle, Plaintiffs' Counsel recognize the possibility that a jury could be swayed by experts for Defendants").

In contrast, the Settlement avoids the potential impact of each of these challenges and others and achieves a fair and certain result. Indeed, the Settlement represents a meaningful portion of the Class's reasonably recoverable damages, as estimated under various potential scenarios analyzed by Class Representative's damages expert. Such scenario-based analysis was especially relevant in this case, where Defendants argued that the Class's claims were highly vulnerable throughout the Class Period and in particular at the beginning and middle of the Class Period.

Here, had the Class's claims survived Defendants' 23(f) Appeal and summary judgment completely intact, and liability and damages were found 100% supported at trial, the Class's aggregate damages were estimated to be approximately $950 million. ¶ 119. However, analyses more aligned with the evidence and strengths and weaknesses of the case show different results and represent better comparators for

evaluating the Settlement. For example, if Defendants prevailed in showing that the competition and Home Depot statements made early in the Class Period were not false and misleading or were made without scienter and, as a result, the Class Period was shortened to begin in June 2016 (when the last competition misstatement was made), aggregate damages were estimated to be approximately $577 million. And, in this scenario, if the first corrective disclosure on October 5, 2016 (which faced significant loss causation challenges) was also dismissed, estimated aggregate damages would be reduced to approximately $498 million. Further, if the Class Period started in June 2016 and Class Representative lost both the October 5, 2016 and January 9, 2017 alleged corrective disclosures (a plausible result given Defendants' loss causation and disaggregation arguments), aggregate damages were estimated to be no more than $215 million. ¶ 120. Under these scenarios, the Settlement represents approximately 2.7% to 7.3% of the Class's estimated damages. These percentages are in line with recoveries obtained in other court-approved securities settlements. *See, e.g., Thorpe v. Walter Inv. Mgmt. Corp.,* 2016 WL 10518902, at *3 (approving a $24 million settlement that represents 5.5% of maximum damages and noting that the settlement is an "excellent recovery"); *Int'l Bhd of Elec. Workers Local 697 Pension Fund v. Int'l Game Tech., Inc.*, 2012 WL 5199742, at *3 (D. Nev. Oct. 19, 2012) (approving $12.5 million settlement

representing 3.5% of damages and noting the amount is within the median recovery in securities class actions settled in the last few years); *In re Merrill Lynch & Co. Rsch. Reports Sec. Litig.*, 246 F.R.D. 156, 167 (S.D.N.Y. 2007) (approving settlement "between approximately 3% and 7% of estimated damages [and] within the range of reasonableness for recovery in the settlement of large securities class actions").[10]

(b) The Expense and Duration of Continued Litigation

Further litigation of the Action would also be expensive and time-consuming for both sides. Absent the Settlement, achieving a recovery for the Class would have required completing complex and expensive expert discovery; briefing anticipated motions for summary judgment; trial preparation and trial; and post-trial motions, among other things. The fact that the Settlement eliminates this delay and expense favors final approval of the Settlement.

(c) The Effective Process for Distributing Relief

The Settlement, like most securities class action settlements, will be effectuated with the assistance of an established and experienced claims

[10] The $15.75 million Settlement also exceeds the median reported recovery in securities class action settlements in 2021 of $8 million (excluding merger objection settlements, settlements for $0 to the class, and settlements of $1 billion or greater). *See* Janeen McIntosh and Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2021 Full-Year Review*, NERA Economic Consulting, 20 (2022), Ex. 2.

administrator. 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 the Court-approved Claim Form, either by mail or online using the Claims Administrator's website. Based on the Claimant's trade information, the Claims Administrator will determine each Claimant's eligibility to participate in the Settlement by calculating their respective "Recognized Claim" under the Court-approved plan of allocation. *See* Stip., ¶¶ 20-24. Class Representative's Claim will be reviewed in the same manner. Claimants will be notified of any defects or conditions of ineligibility in their Claims and will be given the chance to cure or contest the rejection of their Claims. *Id*. ¶ 24(d)-(e). Any Claim disputes that cannot be resolved will be presented to the Court. *Id*.

(d) The Settlement Does Not Excessively Compensate Class Counsel

As discussed in the accompanying Fee and Expense Memorandum, the requested fee award of 25% of the Settlement Fund, to be paid when ordered by the Court, is reasonable in light of Class Counsel's efforts,[11] the result obtained for the Class, and the risks in the litigation. Additionally, the Court's approval of attorneys'

[11] Notably, if approved, a 25% fee would result in a *negative* multiplier of approximately 0.22 on Plaintiffs' Counsel's lodestar. As set forth in the Fee and Expense Memorandum, through April 15, 2022, Plaintiffs' Counsel have devoted more than 33,000 hours to the case, resulting in a lodestar of $18,111,103.50. ¶ 150.

fees is entirely separate from its approval of the Settlement, and neither Class Representative nor Class 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. *See* Stip., ¶¶ 14-15.[12]

(e) The Relief Provided Is Adequate Taking into Account All Agreements Related to the Settlement

Rule 23(e)(2)(C)(iv) requires the disclosure of any agreement between the Parties in connection with the Settlement. In addition to the Stipulation and preceding Term Sheet, the Parties have also entered into a confidential agreement regarding requests for exclusion dated December 2, 2021 ("Supplemental Agreement"). *See* Stip., ¶ 35. The Supplemental Agreement sets forth the conditions under which Defendants have the option to terminate the Settlement in the event that requests for exclusion 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 of a group of opt outs for the sole purpose of leveraging a larger individual settlement, to the detriment of the Class. Pursuant

[12] Additionally, the proposal that any Court-awarded attorneys' fees be paid upon issuance of such award is reasonable and consistent with common practice in similar cases, as the Stipulation dictates that if the Settlement were terminated or any fee award subsequently modified, Class Counsel must repay the subject amount with interest. *See* Stip., ¶ 15.

to its terms, the Supplemental Agreement may be submitted to the Court *in camera* or under seal. The Supplemental Agreement, Stipulation, and Term Sheet are the only agreements concerning the Settlement entered into by the Parties.

4. Class Members Are Treated Equitably

The Settlement does not improperly grant preferential treatment to Class Representative or any segment of the Class. Rather, all members of the Class, including Class Representative, will receive a *pro rata* distribution from the Net Settlement Fund pursuant to the plan of allocation approved by the Court.[13] Moreover, Class Counsel developed the proposed Plan of Allocation with the assistance of Class Representative's damages expert and it is consistent with the Class's theories of damages under the Exchange Act. *See* Ex. 3-A at Appendix A.

5. The Remaining Eleventh Circuit Factors Support Approval of the Settlement

When assessing a proposed settlement, courts in this Circuit also consider the opposition to the Settlement (fifth *Bennett* factor) and the stage of the proceedings when the settlement was achieved (sixth *Bennett* factor). *See Bennett*, 737 F. 2d at

[13] Class Representative is seeking reimbursement of its reasonable costs and expenses (including lost wages) directly related to its participation in the Action, pursuant to the PSLRA. This would not constitute preferential treatment. *See* 15 U.S.C. § 78u-4(a)(4) (reimbursement of a plaintiff's costs and expenses is explicitly contemplated, in addition to receiving a *pro rata* portion of the recovery).

986. Both of these factors support approval of the Settlement.

As noted above, the reaction of the Class has been positive and there has been no opposition. While the deadline to object or request exclusion (May 13, 2022) has not yet passed, to date, there have been no objections and only five requests for exclusion. ¶ 127; *see In re Home Depot, Inc. Customer Data Sec. Breach Litig.*, 2016 WL 6902351, at *6 (N.D. Ga. Aug. 23, 2016) ("low percentage of objections points to the reasonableness of a proposed settlement and supports its approval").[14]

Likewise, the stage of proceedings at the time of settlement, also supports the Settlement. As detailed in the Joint Declaration, Class Counsel conducted a robust investigation; prepared the comprehensive Complaint; opposed Defendants' motion to dismiss the Complaint; successfully moved for certification of the Class; opposed Defendants' Rule 23(f) Appeal; engaged in extensive discovery efforts that led to the review of approximately 300,000 pages of documents and participation in 22 depositions, including depositions of Class Representative and its investment manager, and current and former Acuity employees; retained and consulted with several experts; and prepared for settlement negotiations with Defendants, including two formal mediations. *See generally* Joint Decl. at § III. In particular, the Parties

[14] As provided in the Preliminary Approval Order, Class Representative will file reply papers no later than May 27, 2022 addressing any objections and any additional requests for exclusion received after this submission.

had completed fact discovery and were beginning expert discovery when the Court stayed the Action pending resolution of Defendants' Rule 23(f) Appeal. *Id*. ¶ 68. Accordingly, Class Representative and Class Counsel respectfully submit that they had "sufficient knowledge of the law and facts to fairly weigh the benefits of the settlement against the potential risk of continued litigation." *Equifax Data Breach*, 2020 WL 256132, at *10.

In sum, all of the factors to be considered under Rule 23(e)(2) and Eleventh Circuit precedent support final approval of the Settlement.

II. THE PLAN OF ALLOCATION IS FAIR AND REASONABLE AND SHOULD BE APPROVED

A plan for allocating settlement proceeds should be approved if it is "fair, adequate and reasonable and is not the product of collusion between the parties." *In re Chicken Antitrust Litig. Am. Poultry*, 669 F.2d 228, 238 (5th Cir. 1982). A plan of allocation does not need to be tailored to fit each and every class member with precision but will be found fair and reasonable where there is a "rough correlation" between class members' injuries and the settlement distribution. *Id*. at 240.

Here, the proposed Plan of Allocation ("Plan"), which was developed by Class Counsel in consultation with Class Representative's 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. 3-A at

Appendix A. The Plan provides for the distribution of the Net Settlement Fund based upon each Class Member's "Recognized Claim," as calculated by the formulas described in the Notice. In developing the Plan, Class Representative's damages expert considered the amount of artificial inflation in the per share price of Acuity common stock during the Class Period that was allegedly caused by Defendants' alleged wrongdoing. ¶¶ 130-31; Ex. 3-A at Appendix A (¶¶ 1-4).

The 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 of Recognized Claims.[15] A claimant's total Recognized Claim will depend on, among other things, when their shares were purchased/acquired and/or sold in relation to the disclosure dates, whether the shares were held through or sold during the statutory 90-day look-back period, *see* 15 U.S.C. § 78u-4(e), and the value of the shares when they were sold or held. Overall, the Plan is designed to fairly and rationally allocate the proceeds of the Settlement. To date, no objections to the Plan of Allocation have been received.

III. NOTICE SATISFIED THE REQUIREMENTS OF RULE 23, DUE PROCESS AND THE PSLRA

Class Representative has provided the Class with notice that satisfied: (i) Rule

[15] *See Beneli v. BCA Fin. Servs., Inc.*, 324 F.R.D. 89, 105 (D.N.J. Feb. 6, 2018) ("pro rata distributions are consistently upheld . . . .").

23(e), which requires "the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort," Fed. R. Civ. P. 23(c)(2)(B); and (ii) due process as it was "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950).

More specifically, the Notice provides all of the necessary information for Class Members to make an informed decision regarding the Settlement, the Fee and Expense Application, and the Plan of Allocation. The Notice explains, among other things: (i) the amount of the Settlement; (ii) the reasons for the Settlement; (iii) the estimated average recovery per affected share of common stock; (iv) the maximum amount of attorneys' fees and expenses that will be sought; (v) the contact information for the representatives of Class Counsel who are reasonably available to answer questions; (vi) the right of Class Members to object; (vii) the right of Class Members to request exclusion from the Class; (viii) the binding effect of a judgment; and (ix) the dates and deadlines for Settlement-related events. *See* 15 U.S.C. § 78u-4(a)(7). The Notice also contains the Plan of Allocation and explains how to submit a Claim Form. Ex. 3-A.

Pursuant to the Preliminary Approval Order, as of April 28, 2022, the Court-

appointed Claims Administrator, Strategic Claims Services ("Strategic Claims") has disseminated 120,940 copies of the Notice Packet (i.e., the Notice and Claim Form). *See* Ex. 3, ¶¶ 2-10. In addition, Strategic Claims caused the Summary Notice to be published in *The Wall Street Journal* and transmitted over *PR Newswire*. *Id*. ¶ 12. Additional information, as well as access to copies of the Notice, Claim Form, Stipulation, Preliminary Approval Order, and Complaint, are available on the website of the Claims Administrator. *Id*. ¶ 14.

This combination of individual mail to those who could be identified, supplemented by publication and internet notice, was "the best notice . . . practicable under the circumstances." Fed. R. Civ. P. 23(c)(2)(B). Similar notice campaigns are routinely approved within this District. *See, e.g., In re Immucor, Inc. Sec. Litig.,* 2007 WL 9701354, at *2 (N.D. Ga. Sept. 26, 2007); *In re Profit Recovery Grp. Int'l, Inc. Sec. Litig*., 2005 WL 8172262, at *1-2 (N.D. Ga. May 26, 2005).

CONCLUSION

For the reasons set forth herein and in the Joint Declaration, Class Representative respectfully requests that the Court grant final approval of the Settlement and approve the Plan of Allocation. Proposed orders will be submitted with Class Representatives' reply papers, after the deadlines for objecting and seeking exclusion from the Class have passed.

Dated: April 29, 2022

Respectfully submitted,

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RULE 7.1(D) CERTIFICATION

The undersigned counsel certifies that this document has been prepared with one of the font and point selections approved by the Court in Civil Local Rule 5.1(C).

s/ Andrew L. Zivitz
Andrew L. Zivitz

CERTIFICATE OF SERVICE

I hereby certify that on April 29, 2022, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system. Notice of this filing will be sent to counsel of record by operation of the Court's electronic filing system.

s/ Andrew L. Zivitz
Andrew L. Zivitz