UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE HUT 8 CORP. SECURITIES LITIGATION	Case No. 1:24-cv-00904-VM CLASS ACTION
THIS DOCUMENT RELATES TO: ALL ACTIONS	

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

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I. INTRODUCTION

Pursuant to Rule 23 of the Federal Rules of Civil Procedure ("Rule 23"),[1] Lead Plaintiff Abhishek Maheshwari ("Plaintiff"), individually and on behalf of all Settlement Class Members, presents for the Court's final approval a $2,350,000 cash settlement resolving all claims in the above-captioned action (the "Action") against Defendants, as set forth in the Stipulation and Agreement of Settlement, dated June 18, 2026 (ECF No. 75-1) (the "Stipulation"). Plaintiff proposes that the Settlement Class Members release the claims advanced in this Action for $2,350,000, which represents a highly favorable outcome for the Settlement Class given the risks and expenses of continued litigation. The Parties reached the Settlement after extensive arms-length negotiations with the assistance of an experienced mediator. Plaintiff came to appreciate the strengths and weaknesses of this case through, *inter alia*, a thorough investigation, drafting an amended complaint, defeating in part Defendants' motion to dismiss, meet-and-conferring with Defendants about their anticipated motion for judgment on the pleadings, and successfully resolving the case through mediation.

While Plaintiff believes that he would be able to prove his claims at trial, Plaintiff acknowledges that he would have faced significant challenges in obtaining a full judgment, including obtaining class certification, defeating Defendants' anticipated motions for judgment on the pleadings and summary judgment, and subsequently prevailing at trial on complex securities claims, on the expected post-trial motions and appeal, and then, finally, enforcing the judgment. Notably, here, although certain of Plaintiff's claims brought under the Securities Act of 1933 (the "Securities Act") survived the motion to dismiss, Plaintiff still faced the risk of dismissal on Defendants' anticipated motion for judgment on the pleadings based on traceability grounds, as

[1] Unless otherwise indicated, all capitalized terms herein have the meanings set forth in the Stipulation. All emphasis is added and all internal quotation marks, citations, and brackets are omitted unless otherwise noted.

further detailed herein. In contrast to potentially years of protracted litigation, and the risk of no recovery at all, the Settlement provides Plaintiff and the Settlement Class with immediate, certain recovery representing approximately 19.6% of the maximum estimated damages—well above the average recoveries in such securities cases.

Plaintiff, through the Court-appointed Claims Administrator, followed the Court-approved notice plan to solicit claims, requests for exclusions, and objections. As of October 2, 2026, Plaintiff has not received any objections, and has received only two requests for exclusions, which are currently invalid. For these reasons and those set forth below, the Court should approve the Settlement as fair, reasonable, and adequate, and it should likewise approve the Plan of Allocation, which treats all claimants fairly based on the applicable law.

II. NATURE OF THE ACTION

A. Facts and Procedural History

The initial complaint in this action was filed on February 7, 2024 (ECF No. 1), and a related complaint was filed on March 4, 2024. The two cases were consolidated on March 15, 2024 (ECF No. 9), and, on April 19, 2024, the Court appointed Abhishek Maheshwari as Lead Plaintiff and Pomerantz LLP ("Pomerantz") as Lead Counsel (ECF No. 34).

On June 14, 2024, Plaintiff filed the operative Complaint, which asserted claims on behalf of persons and entities that purchased or otherwise acquired Hut 8 securities between February 13, 2023 and January 18, 2024, inclusive (the "Settlement Class Period"), and were damaged thereby, under Sections 11 and 15 of the Securities Act and Sections 10(b) and 20(a) of the Securities Exchange Act. ECF No. 39. As alleged in the Complaint, Hut 8 is a Bitcoin mining company that formed following a merger (the "Merger") between privately held U.S. Data Mining Group d/b/a US Bitcoin Corp. ("USBTC") and publicly traded Hut 8 Mining Corp. ("Legacy Hut"). *See id.* ¶¶2-3, 36-39. The Merger closed on November 30, 2023, and Hut 8 shares began trading on

December 4, 2023. *Id.* ¶59; ECF No. 75-3 at 8 n.4. Plaintiff's claims were based on two categories of alleged misstatements, primarily those made in a registration statement, as amended, and prospectus (the "Registration Statement"), issued in connection with the Merger, concerning: (1) energy and internet issues at one of USBTC's digital asset mining sites, the King Mountain joint venture (the "King Mountain JV"); and (2) USBTC's dire financial condition before the Merger. ECF No. 39 ¶¶61-67, 86-90, 92. The Complaint alleged that Hut 8's stock price declined after a short seller report by J Capital Research revealed network and connectivity problems at the King Mountain JV and USBTC's financial issues before the Merger. *Id.* ¶¶9-10, 113-21.

Defendants moved to dismiss (ECF Nos. 52-54), and after full briefing (ECF Nos. 52-56), on September 12, 2025, the Court issued an order denying in part and granting in part Defendants' motion. ECF No. 57 (the "MTD Order"). Specifically, the MTD Order found that the Complaint adequately pled Section 11 and Section 15 claims for the following two alleged misstatements related to energy and internet issues at the King Mountain JV, which were made in the Registration Statement:

- "The operation of the grids USBTC relies on, including the . . . [Electrical Reliability Counsel of Texas (ERCOT) grid] . . . subjects USBTC to a variety of risks, including the breakdown and failure of equipment . . . [and] outages affecting information technology systems."
- "USBTC may face risks of Internet disruptions, which could have an adverse effect on the price of Bitcoin."

Id. at 11-12, 77. The Court dismissed the remaining claims—i.e., Plaintiff's Exchange Act claims in their entirety and the Securities Act claims based on the alleged misrepresentations about USBTC's dire financial condition before the Merger. *Id.* at 77.

Defendants subsequently filed an answer to the Complaint (ECF No. 60), which erroneously asserted that the Court had dismissed all claims against Defendant Visram with prejudice, and an amended answer, which clarified that Visram "join[ed] the other Defendants in answering the Complaint." ECF No. 62 at 1. At approximately this time, Defendants also raised, for the first time, traceability concerns with Plaintiff's remaining Section 11 claim, informing Plaintiff that they intended to move for judgment on the pleadings because Plaintiff's Hut 8 shares, which he purchased in the aftermarket after the Merger closed, could not be traced to the challenged Registration Statement as the registered shares issued to USBTC shareholders were commingled with the unregistered shares issued to Legacy Hut shareholders when the Merger closed. ECF No. 63.

On December 5, 2025, the Court entered a case scheduling order (ECF No. 66), and later temporarily stayed all proceedings, upon the Parties' request, so that they could pursue mediation (ECF Nos. 68, 70). Meanwhile, an action on behalf of Canadian investors asserting related claims was commenced in the Ontario Superior Court of Justice on December 1, 2025, *Duckett v. Hut 8 Corp.*, Case No. CV-25-00757022-00CP (the "Canadian Action").

B. The Settlement

On May 7, 2026, the Parties participated in a full-day, virtual mediation session with Jed D. Melnick, Esq., a respected and experienced mediator, of JAMS (the "Mediator"). *See* Declaration of Jeremy A. Lieberman ("Lieberman Decl.") ¶26. In advance of the mediation, the Parties exchanged detailed opening and reply mediation statements that addressed liability and traceability issues and were accompanied by appendices of exhibits. *Id.* The session ended without the Parties reaching an agreement, but they subsequently continued discussions through the Mediator. *Id.* Ultimately, the Mediator issued a mediator's proposal to resolve the Action for $2,350,000, which the Parties accepted on May 13, 2026. *Id.* ¶27. Thereafter, the Parties

memorialized their agreement in principle to settle the Action in a term sheet executed on May 27, 2026 (the "Term Sheet"), *id.* and negotiated the terms of the Stipulation, which was executed on June 18, 2026. *Id.*

On June 22, 2026, Plaintiff filed his Unopposed Motion for Preliminary Approval of Class Action Settlement. ECF Nos. 73-75. On July 8, 2026, the Court entered an Order preliminarily approving the Settlement, approving the form and manner of providing notice to potential Settlement Class Members, and scheduling the Settlement Hearing for November 6, 2026. (ECF No. 80) (the "Preliminary Approval Order").

1. Cash Consideration and Release

The Settlement provides for a payment of $2,350,000 in cash to pay the Settlement Class's claims. In exchange, Plaintiff, on behalf of the Settlement Class Members, will forever release their claims against the Defendants that were alleged or could have been alleged in this Action. Stipulation ¶¶8-9. The Release expressly excludes claims brought in the related derivative actions. *Id.* ¶1(oo). Further, given the filing of the Canadian Action, the Settlement Class is limited to persons and entities who purchased or otherwise acquired Hut 8 securities in the United States or on an exchange based in the United States between February 13, 2024 and January 18, 2024, inclusive. *Id.* ¶1(ss). The Settlement is not "claims-made"—i.e., there is no reversion of unclaimed funds to Defendants. *Id.* ¶13.

2. Notice to the Class

In the Preliminary Approval Order (¶9), the Court approved the retention of Strategic Claims Services ("SCS") as the Claims Administrator. Pursuant to the Preliminary Approval Order (*id.* ¶¶10-12), SCS, *inter alia*,: mailed, by the Notice Date (August 7, 2026), the Postcard Notice to all potential Settlement Class Members who could be identified with reasonable effort; used reasonable efforts to give notice to nominees such as custodians and brokerage firms and mailed

or emailed nominees such as custodians and brokerage firms that hold stock on behalf of beneficial owners; emailed the link to the electronic Notice and Claim Form to potential Settlement Class Members at email addresses provided by individuals or nominees; posted the notices and Claim Form, along with other relevant documents, on the website it has developed for the Settlement, https://www.strategicclaims.net/case/hut8/; has caused the Summary Notice to be published in *PR Newswire*; and established and maintains a toll-free telephone number that potential Settlement Class Members may call to obtain information about the Settlement. *See* Declaration of Sarah Evans Concerning: (A) Mailing/Emailing of Notice; (B) Publication of the Summary Notice; And (C) Report on Requests for Exclusion and Objections (Lieberman Decl. Ex. 1) ("Evans Decl.") ¶¶3-12; Evans Decl. Ex. D (proof of publication of Summary Notice).

The Notice advised potential Settlement Class Members of, *inter alia*: (1) the terms of the Settlement and Plan of Allocation; and (2) that Plaintiff and Lead Counsel would seek: (a) a fee award to Plaintiffs' Counsel not to exceed 33.3% of the Settlement Fund, i.e., $782,550 plus interest, (b) reimbursement of actual Litigation Expenses, not to exceed $150,000.00, plus interest, and (c) an award to Plaintiff up to $10,000. Evans Decl. Ex. A (Notice).

To date, 169,114 notices (either a mailed Postcard Notice or an emailed link to the Notice and Claim Form on the Settlement website) were sent to potential Settlement Class Members. Evans Decl. ¶9.

3. Exclusions and Objections

Pursuant to the Preliminary Approval Order, the Notice and Postcard Notice state that members of the Settlement Class may request exclusion from the Settlement Class no later than October 16, 2026, and explain how to do so. Evans Decl. Ex. A (Notice) at 11-12; Evans Decl. Ex. C (Postcard Notice). The Notice and Postcard Notice also state that Settlement Class Members may object to the Settlement, the Plan of Allocation, and the requests for fees and expenses, no

later than October 16, 2026, and explain how to do so. Evans Decl. Ex. A (Notice and Claim Form) at 12-13; Evans Decl. Ex. C (Postcard Notice). To date, only two Settlement Class Members have requested exclusion from the Settlement Class, and both exclusion requests are currently invalid, as the requestors did not include documentary proof of the transactions in Hut 8 common stock during the Settlement Class Period to establish membership in the Settlement Class, as required by the Preliminary Approval Order and the Notice. Evans Decl. ¶13, Lieberman Decl. ¶37. As of this writing, no Settlement Class Member has objected to the Settlement, the Plan of Allocation, or the requests for attorneys' fees, reimbursement of Litigation Expenses, and award to Plaintiff. Evans Decl. ¶14; Lieberman Decl. ¶37. Plaintiff's reply papers, to be filed by October 30, 2026, will address any objections and requests for exclusion.

4. The Plan of Allocation

The Notice provides a thorough explanation of the Plan of Allocation. *See* Evans Decl. Ex. A at 6-11. The Plan of Allocation fairly and reasonably distributes the Net Settlement Fund to Settlement Class Members consistent with the federal securities laws and principles of loss causation. The Plan of Allocation establishes a formula that determines Authorized Claimants' recognized losses and calculates their *pro rata* share of the Net Settlement Fund (i.e., the Settlement Fund less Notice and Administration Costs and any Court-approved attorneys' fees, Litigation Expenses, and Plaintiff award). *Id.*

III. ARGUMENT

A. The Court Should Grant Final Approval of the Settlement

Rule 23(e) requires judicial approval of any class action settlement, which must be "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). Public policy favors settlement, particularly in class actions. *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 116 (2d Cir. 2005) ("We are mindful of the 'strong judicial policy in favor of settlements, particularly in the class action

context.'"). Class actions readily lend themselves to compromise because of the difficulties of proof, the uncertainties of the outcome, and the typical length of litigation. When evaluating a proposed settlement under Fed. R. Civ. P. 23(e), courts determine whether a settlement, taken as a whole, is fair, reasonable, and adequate, ensuring that it was not the product of collusion. *Id.*

Rule 23(e)(2), as recently amended, identifies four factors for a court to consider in determining whether a class action settlement is fair, reasonable, and adequate:

> (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).

The Second Circuit has held that "the revised Rule 23(e)(2) does not displace our traditional *Grinnell* factors, which remain a useful framework for considering the substantive fairness of a settlement." *Moses v. New York Times Co.*, 79 F.4th 235, 243 (2d Cir. 2023) (citing *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 462-63 (2d Cir. 1974)).

Grinnell directs courts to consider the following factors:

> (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.

Moses, 79 F.4th at 244 n.4. Plaintiff submits that the proposed Settlement is fair, reasonable, and adequate when measured under the foregoing criteria, as detailed below, and should be approved by this Court.

1. The Settlement Is Procedurally Fair

"To evaluate the procedural fairness of a proposed settlement, a court must expressly consider the two factors under Rules 23(e)(2)(A)–(B): whether 'the class representatives and class counsel have adequately represented the class' and whether 'the proposal was negotiated at arm's length.'" *Schutter v. Tarena Int'l, Inc.*, 2024 WL 4118465, at *7 (E.D.N.Y. Sep. 9, 2024).

"Determination of adequacy typically entails inquiry as to whether: (1) plaintiff's interests are antagonistic to the interest of other members of the class and (2) plaintiff's attorneys are qualified, experienced and able to conduct the litigation." *Id*. at *5. "Here, there are no fundamental conflicts between the class representatives and the class members." *Id*. Plaintiff, like all Settlement Class Members, purchased Hut 8 Securities during the Settlement Class Period and was "damaged in the same or similar ways that the [Settlement] Class Members were damaged," and "are seeking to recover from Defendants' alleged misconduct." *Id*. "Therefore, [Plaintiff's] interests are aligned with those of other Settlement Class Members as they share the common objective of maximizing their recovery from [Defendants] for the same alleged misconduct." *Id*.

Further, Lead Counsel is qualified, experienced, and able to conduct the litigation. Pomerantz has successfully litigated dozens of securities class actions, including many in this District. *See, e.g.*, *In re Petrobras Sec. Litig.*, No. 14-cv-09662 (S.D.N.Y.) (Pomerantz, as Lead Counsel, recovered $3 billion for class members); *In re Ubiquiti Networks, Inc. Sec. Litig.*, No. 18-CV-01620, ECF No. 49 ¶4 (S.D.N.Y. Mar. 27, 2020) (Marrero, J.) (finding Pomerantz adequate

as Lead Counsel in approving securities class settlement); *see also* Lieberman Decl. ¶¶49-50; ECF No. 75-8 (Pomerantz résumé). Thus, Lead Counsel is adequate.

In addition, "[c]ourts reviewing proposed settlements must also scrutinize the negotiating process, to ensure they resulted from 'arm's-length negotiations and that plaintiffs' counsel have possessed the experience and ability . . . necessary to effective representation of the class's interests.'" *Hunter v. Blue Ridge Bankshares, Inc.*, 2025 WL 1649323, at *14 (E.D.N.Y. June 11, 2025). Here, "[t]he record is clear that this Settlement was the product of arm's-length negotiations by informed, experienced counsel." *Id.* at *15. Plaintiff and Defendants engaged in a formal mediation process, exchanging opening and reply mediation statements in advance of a full-day mediation session overseen by an experienced Mediator, and agreed to resolve the Action for an amount recommended by that Mediator. Lieberman Decl. ¶¶26-27. These were arm's-length negotiations between highly experienced counsel. *Id.* "While the Second Circuit held in *Moses* that arm's-length-negotiated settlements are no longer entitled to a presumption of fairness, such circumstances support approval of settlements." *Hunter*, 2025 WL 1649323, at *15; *see also In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 827 F.3d 223, 235 (2d Cir. 2016) (a "mediator's involvement in . . . settlement negotiations helps to ensure that the proceedings were free of collusion").

Moreover, the experience and qualifications of the mediator, Jed R. Melnick, have been recognized by many courts, which further supports final approval of the Settlement. *See, e.g.*, *Thant v. Rain Oncology Inc.*, 2026 WL 1113721, at *6 (N.D. Cal. Apr. 24, 2026) (describing Mr. Melnick as "experienced and well-respected" and finding that his "involvement and oversight" as mediator weighed in favor of granting final approval to securities class action settlement); *Ubiquiti*, *supra* p. 9 (this Court approving settlement mediated by Mr. Melnick).

Thus, Rule 23(e)(2)'s two factors concerning the procedural fairness of a class action settlement are both satisfied here and support granting final approval of the Settlement.

2. The Settlement Is Substantively Fair

With respect to evaluating the substantive fairness of the Settlement, "the factors outlined in *Grinnell* and the revised Rule 23(e)(2) largely overlap." *Moses*, 79 F.4th at 244; *see also Christine Asia Co. v. Yun Ma*, 2019 WL 5257534, at *10 (S.D.N.Y. Oct. 16, 2019) ("Rule 23(e)(2)(C)(i) incorporates the factors set out in *[Grinnell]*, and courts in this Circuit have long utilized the *Grinnell* nine-factor test in determining whether a settlement is substantively fair, reasonable, and adequate.").

"[N]ot every [*Grinnell*] factor must weigh in favor of settlement, rather a court should consider the totality of these factors in light of the particular circumstances." *In re IMAX Sec. Litig.*, 283 F.R.D. 178, 189 (S.D.N.Y. 2012). "[W]hen evaluating a settlement agreement, the court is not to substitute its judgment for that of the parties, nor is it to turn consideration of the adequacy of the settlement into a trial or a rehearsal of the trial." *In re Sony Corp. SXRD*, 448 F. App'x 85, 87 (2d Cir. 2011). Indeed, because counsel are "most closely acquainted with the facts of the underlying litigation," courts give "great weight" to counsel's settlement recommendations, especially when negotiations are arm's length, as here. *IMAX*, 283 F.R.D. at 189.

Plaintiff submits that the proposed Settlement is substantively fair, reasonable, and adequate and should be finally approved.

a. The Case Is Complex, and Continued Litigation Will Be Protracted and Costly

In general, "the more complex, expensive, and time consuming the future litigation, the more beneficial settlement becomes as a matter of efficiency to the parties and to the Court." *In re Citigroup Inc. Sec. Litig.*, 965 F. Supp. 2d 369, 381–82 (S.D.N.Y. 2013). This is particularly true

here, as "securities class actions are by their very nature complicated and district courts in this Circuit have 'long recognized' that securities class actions are 'notably difficult and notoriously uncertain' to litigate." *City of Providence v. Aeropostale*, 2014 WL 1883494, at *5 (S.D.N.Y. May 9, 2014), *aff'd sub nom. Arbuthnot v. Pierson*, 607 F. App'x 73 (2d Cir. 2015). This Action is no exception. While Plaintiff believes that the claims are meritorious, it is highly uncertain whether he would be able to overcome all obstacles to proving the claims, establishing Defendants' liability and damages, and, critically, enforcing a judgment. Further litigation would have required substantial additional expenditures of time and resources, with a material risk of a lower recovery, if any. *See In re AOL Time Warner, Inc. Sec. & "ERISA" Litig.*, 2006 WL 903236, at *9 (S.D.N.Y. Apr. 6, 2006) ("In addition to the complex issues of fact involved in this case, the legal requirements for recovery under the securities laws present considerable challenges, particularly with respect to loss causation and the calculation of damages.").

In the absence of the Settlement, Plaintiff would have to survive dispositive motion practice, and then prepare for and prevail at trial, and then prevail *again* on the inevitable post-trial motions and appeals. At each additional step of litigation, Plaintiff would continue to face a robust defense from experienced and capable counsel. *See In re Alloy, Inc. Sec. Litig.*, 2004 WL 2750089, at *2 (S.D.N.Y. Dec. 2, 2004) (securities fraud issues are "likely to be litigated aggressively, at substantial expense to all parties").

Even if Plaintiff prevailed in securing a larger judgment after a trial, the additional delay through post-trial motions and the appellate process could deny the Settlement Class any recovery for years, reducing its value in comparison to the present proposed recovery. *See Kommer v. Ford Motor Co.* 2020 WL 7356715, at *4 (N.D.N.Y. Dec. 15, 2020) ("Even if a shareholder or class member was willing to assume all the risks of pursuing . . . 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".). Accordingly, a material risk exists that further litigation might yield a smaller recovery, years in the future—or no recovery at all. *See Hicks v. Morgan Stanley*, 2005 WL 2757792, at *6 (S.D.N.Y. Oct. 24, 2005) ("Further litigation would necessarily involve further costs; justice may be best served with a fair settlement today as opposed to an uncertain future settlement or trial of the action."). This risk is especially pronounced here, as Defendants' attorneys' fees and litigation expenses would erode the same insurance policies from which Plaintiff would seek a recovery on behalf of the Settlement Class.

The expense, duration, and difficulties of the Action were it to proceed through discovery, class certification, summary judgment, trial, and appeals weigh in favor of final approval of the Settlement.

b. The Reaction of the Settlement Class Supports Final Approval

"It is well-settled that the reaction of the class to a settlement is considered perhaps the most significant factor to be weighed in considering its adequacy." *In re Veeco Instruments Inc. Sec. Litig.*, 2007 WL 4115809, at *7 (S.D.N.Y. Nov. 7, 2007). "Lack of objection is strong evidence of the settlement's fairness." *In re Luxottica Grp. S.p.A. Sec. Litig.*, 233 F.R.D. 306, 311 (E.D.N.Y. 2006); *see also Lea v. Tal Educ. Grp.*, 2021 WL 5578665, at *2 (S.D.N.Y. Nov. 30, 2021) (approving the settlement where there were no objectors and only three requests for exclusion).

To date, no Settlement Class Members objected to any aspect of the Settlement, and only two Settlement Class Members have requested exclusion from the Settlement Class, despite 169,114 Notices being sent. Evans Decl. ¶¶9, 13-14; Lieberman Decl. ¶¶37, 60-61. The absence of objections and limited exclusion requests support final approval of the Settlement. *See In re Bear Stearns Cos. Sec., Derivative, & ERISA Litig.*, 909 F. Supp. 2d 259, 267 (S.D.N.Y. 2012)

(the low rate of exclusion requests and objections "weigh[] strongly in favor of approval"). When there are no objectors, as here, the Court can view this fact as indicative of the adequacy of the settlement. *See Wal-Mart*, 396 F.3d at 118; *Guevoura Fund Ltd. v. Sillerman*, 2019 WL 6889901, at *7 (S.D.N.Y. Dec. 18, 2019) ("The absence of objectors may itself be taken as evidencing the fairness of a settlement."). Plaintiff's reply papers will address any requests for exclusion or objections received after the date of this filing.

c. Plaintiff and Lead Counsel Were Sufficiently Informed During Settlement Negotiations

Courts also evaluate whether a lead plaintiff and lead counsel were sufficiently informed about the merits of the claims and defenses and the value thereof when they entered into the settlement. *Bear Stearns*, 909 F. Supp. 2d at 267. The parties need not have engaged in extensive discovery, or any discovery at all, so long as "they have engaged in sufficient investigation of the facts to enable the Court to intelligently make an appraisal of the settlement." *AOL Time Warner*, 2006 WL 903236, at *10; *see also IMAX*, 283 F.R.D. at 190 ("The threshold necessary to render the decisions of counsel sufficiently well informed, however, is not an overly burdensome one to achieve—indeed, formal discovery need not have necessarily been undertaken yet by the parties."). "Courts have approved settlements at all stages of the proceedings." *AOL Time Warner*, 2006 WL 903236, at *10.

Plaintiff achieved this Settlement only after thoroughly litigating this case for over two years. Since its appointment as Lead Counsel, Pomerantz vigorously prosecuted this case under the oversight and for the benefit of Plaintiff and the Settlement Class. Plaintiff's and Lead Counsel's efforts have included, among other things: (i) conducting a comprehensive investigation into Defendants' alleged misconduct, which included, *inter alia*, reviewing and analyzing regulatory filings, press releases, news reports and articles, call transcripts, analyst reports, and

other publicly available information, as well as interviewing former employees of Hut 8 and its predecessors with the aid of a private investigator, and consulting with an accounting expert; (ii) filing a detailed amended complaint; (iii) successfully defeating, in part, Defendants' motion to dismiss; (iv) meeting and conferring with Defendants about their original answer, which erroneously stated that Defendant Visram had been dismissed; (v) meeting and conferring with Defendants regarding traceability and their anticipated motion for judgment on the pleadings; (vi) conferring with a damages expert on estimated damages; (vii) updating Plaintiff about case developments, including settlement, (viii) exchanging opening and reply mediation briefs addressing the strengths and weaknesses of Plaintiff's claims; (ix) participating in a full-day, virtual mediation session; and (x) negotiating the proposed Settlement. Lieberman Decl. ¶¶39-40. *See also In re Warner Commc'ns Sec. Litig.*, 618 F. Supp. 735, 745 (S.D.N.Y. 1985) (settlement approved where the parties "have a clear view of the strengths and weaknesses of their cases"), *aff'd*, 798 F.2d 35 (2d Cir. 1986). Further, Lead Counsel engaged in a thorough mediation process overseen by a well-regarded Mediator before agreeing to resolve the Action, as discussed above. Lieberman Decl. ¶¶26-27. Therefore, Plaintiff and Lead Counsel had a thorough understanding of the strengths and weaknesses of their claims, further supporting final approval.

d. Plaintiff Faced Risks to Establishing Liability and Damages

In evaluating fairness, courts consider the "risks of establishing liability [and] the risks of establishing damages." *Grinnell*, 495 F.2d at 463; *Wal-Mart*, 396 F.3d at 117. Courts should not "adjudicate the disputed issues or decide unsettled questions; rather, 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). In other words, "the Court should balance the benefits afforded to members of the Class and the immediacy and certainty of a substantial recovery for them against the continuing risks of litigation." *Maley v. Del Glob.*

Techs. Corp., 186 F. Supp. 2d 358, 364 (S.D.N.Y. 2002). Courts should, therefore, "approve settlements where plaintiffs would have faced significant legal and factual obstacles to proving their case." *Glob. Crossing*, 225 F.R.D. at 459.

"The difficulty of establishing liability is a common risk of securities litigation." *AOL Time Warner*, 2006 WL 903236, at *11. Here, notably, Defendants raised traceability concerns with Plaintiff's remaining Section 11 claim, which their motion to dismiss had failed to challenge, and which represented significant risks if this litigation continued at multiple stages. Specifically, after the MTD Order, Defendants informed Plaintiff that they intended to move for judgment on the pleadings because Plaintiff's Hut 8 shares, which he purchased in the aftermarket after the Merger closed, could not be traced to the challenged Registration Statement as the registered shares issued to USBTC shareholders were commingled with the unregistered shares issued to Legacy Hut shareholders when the Merger closed. *See* ECF No. 63; Lieberman Decl. ¶¶22-23. Thus, Defendants contended that given such commingling it would be virtually impossible to trace shares purchased in the aftermarket back to the Registration Statement for the Merger. ECF No. 63; Lieberman Decl. ¶¶22-23. Defendants would surely continue to press these arguments if the Action continued, not only in their anticipated motion for judgment on the pleadings, but at class certification and beyond.

In addition, Defendants would also fiercely litigate the merits, and argue at summary judgment and trial, as they did in their motion to dismiss, that their alleged misstatements and omissions were inactionable because they were not material to a reasonable investor, were not false or misleading because they were supported by Defendants' internal documents, and that, in any case, Defendants' public disclosures adequately warned of the risks and problems at issue. Lieberman Decl. ¶44. While Plaintiff strongly disagrees with these arguments, had the litigation

continued there is simply no guarantee that the finder of fact would ultimately adopt Plaintiff's view of the case on any of these liability issues. If Defendants prevailed on this and similar arguments at a later stage of the Action, it would substantially reduce, or entirely eliminate, any possible recovery.

Moreover, even if Plaintiff overcame the barriers to proving traceability and material falsity, he faced significant risks in recovering lower, or no, damages. In particular, Section 11 offers defendants an affirmative defense that bars plaintiffs from recovering for stock price declines that were caused by other factors, rather that by the alleged misstatements or omissions (the "negative causation" defense). 15 U.S.C. § 77k(e); Lieberman Decl. ¶45. Thus, Plaintiff could be unable to recover Section 11 damages if Defendants were able to establish negative causation—i.e., that Hut 8's stock price declined for reasons other than the remaining misstatements, for example, because no new, corrective information was disclosed in the J Capital Research short seller report as Hut 8's connectivity problems were already publicly available and thus known to the market. Lieberman Decl. ¶45; *see also In re OSG Sec. Litig.*, 2015 WL 3466094, at *4 (S.D.N.Y. May 29, 2015) (granting defendants' motion for summary judgment dismissing Section 11 claims based on negative causation defense).

These issues would certainly become fodder for expert testimony, likely leading to an expensive (and always unpredictable) "battle of the experts." Before verdict, neither the parties nor a court can predict which expert's testimony or methodology a jury will adopt, and thus courts recognize the need for compromise. *See generally Doe #1 ex rel. Parent #1 v. N.Y.C. Dep't of Educ.*, 2018 WL 3637962, at *11 (E.D.N.Y. July 31, 2018) (finding that the prospect of an expensive battle of the experts supports settlement); *In re Am. Bank Note Holographics, Inc., Sec. Litig.*, 127 F. Supp. 2d 418, 426-27 (S.D.N.Y. 2001) (approving settlement based, in part, on

counsel's recognizing that a jury might accept defendants' expert and eliminate or reduce damages materially).

Accordingly, the material risks of Plaintiff failing to establish liability and damages—particularly given Defendants' traceability argument—and/or Defendants successfully proving a negative causation defense, could lead to the Settlement Class recovering less than the Settlement Amount or even nothing at all. This factor thus strongly favors final approval of the Settlement, which eliminates these risks entirely.

e. The Risks of Maintaining Class Action Status Through Trial

At the time of Settlement, Plaintiff had not yet moved for Class Certification. Thus, there was a significant risk of the Court denying class certification, especially given Defendants' traceability argument, which they likely would have asserted at that stage, including to challenge predominance. Lieberman Decl. ¶43. For example, Defendants could argue that class certification would be virtually impossible here, because once unregistered shares entered the market and commingled with registered shares, individualized issues regarding who—if anybody—is able to trace would predominate and thereby render class certification inappropriate. *Id.* Further, even if the Court certified a class over Defendants' likely opposition, and Plaintiff prevailed on any subsequent Rule 23(f) appeal, Defendants could later move to decertify the class before trial or on appeal, as class certification "may be altered or amended any time before a decision on the merits" under Rule 23(c)(1)(C). *Christine Asia*, 2019 WL 5257534, at *13. The risks of obtaining and maintaining the class action status support final approval of the Settlement.

f. The Settlement Amount Is Reasonable in Light of the Best Possible Recovery and Attendant Risks

Courts typically analyze the last two *Grinnell* factors together. 495 F.2d at 463. In so doing, 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." *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, 2010 WL 4537550, at *20 (S.D.N.Y. Nov. 8, 2010). A court's "determination of whether a given settlement amount is reasonable in light of the best possibl[e] recovery does not involve the use of a mathematical equation yielding a particularized sum." *Bear Stearns*, 909 F. Supp. 2d at 269. Instead, the Second Circuit has held "[t]here is a range of reasonableness with respect to a settlement—a range which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion." *Wal-Mart*, 396 F.3d at 119.

Here, under the best-case scenario—assuming Plaintiff overcomes all the obstacles noted above at and beyond trial, and Defendants do not prevail on any of their anticipated arguments—Plaintiff's expert's estimate of the maximum, potentially recoverable class-wide damages is approximately $12.08 million. Lieberman Decl. ¶32. That estimate encompasses all surviving claims after the MTD Order, which sustained only Plaintiff's claims under the Securities Act for only two alleged misstatements.

Moreover, this $12.08 million estimate does not account for the risks of continued litigation described herein, including Plaintiff surviving a motion for judgment on the pleadings based on the traceability issue, the class being certified, Plaintiff prevailing at summary judgment and trial, the Court and jury accepting Plaintiff's damages theory, and the jury verdict and damages award being upheld on appeal. Thus, this $12.08 million estimate represents a best-case scenario. *See In re Facebook, Inc., IPO Sec. & Derivative Litig.*, 343 F. Supp. 3d 394, 414 (S.D.N.Y. 2018) ("Because Plaintiffs face serious challenges to establishing liability, consideration of Plaintiffs' best possible recovery must be accompanied by the risk of non-recovery"), *aff'd sub nom. In re Facebook, Inc., IPO Class Action Settlement,* 822 F. App'x 40 (2d Cir. 2020). Nevertheless, the

$2,350,000 Settlement represents a recovery of approximately 19.6% of the maximum recoverable damages, which is well above the 12.9% median recovery and 14.6% average recovery for cases with only Securities Act claims in 2025, as well as securities class actions generally. *See* Laarni Bulan & Eric Tam, Securities Class Action Settlements – 2025 Review and Analysis (Cornerstone Research 2026) (Lieberman Decl. Ex. 4), at 20; *In re China Sunergy Sec. Litig.*, 2011 WL 1899715, at *5 (S.D.N.Y. May 13, 2011) ("[T]he average settlement amounts in securities fraud class actions where investors sustained losses over the past decade . . . have ranged from 3% to 7% of the class members' estimated losses.").[2]

In factually and legally complex securities class actions, responsible counsel cannot be certain that they will be able to obtain a judgment at or near the full amount of the class-wide damages that they will seek to prove at trial. The possibility that a class "might have received more if the case had been fully litigated is no reason not to approve the settlement." *Granada Invs., Inc. v. DWG Corp.*, 962 F.2d 1203, 1206 (6th Cir. 1992). Money in Settlement Class Members' pockets now is more valuable than a speculative recovery that they might obtain after a complex trial, undertaking the substantial risk that the Settlement Class may end up with nothing given the challenges that Plaintiff faces in establishing liability and damages. *See In re "Agent Orange" Prod. Liab. Litig.*, 611 F. Supp. 1396, 1405 (E.D.N.Y. 1985) ("[M]uch of the value of a settlement lies in the ability to make funds available promptly."), *aff'd in part, rev'd in part on other grounds*, 818 F.2d 179 (2d Cir. 1987).

[2] This damages estimate reflects statutory damages under the Securities Act for the roughly 34.23 million registered shares issued pursuant to the Merger (excluding roughly 10 million registered shares issued to insiders). Lieberman Decl. ¶33. Under the proposed Plan of Allocation, former USBTC shareholders who received registered shares pursuant to the Merger are eligible to recover. *Id.* While, as discussed herein, the commingling of unregistered and registered shares issued pursuant to the Merger posed risks for proving traceability for shareholders who purchased on the open market after the Merger closed on November 30, 2023, the proposed Plan of Allocation also deems those shareholders who purchased shares of Hut 8 common stock in the open market in the United States or on a U.S. exchange after the Merger closed during the Settlement Class Period to be eligible for recovery. *Id.*

Moreover, Defendants' ability to withstand a greater judgment supports approval or is, at best, neutral. Obtaining a judgment would require litigating through class certification, discovery, summary judgment, trial, and appeals, which could exhaust all insurance coverage available to pay the Settlement Class. Regardless, "[c]ourts have recognized that the defendant's ability to pay is much less important than other factors, especially where the other *Grinnell* factors weigh heavily in favor of settlement approval," as here. *In re Metlife Demutualization Litig.*, 689 F. Supp. 2d 297, 339 (E.D.N.Y. 2010); *see also AOL Time Warner*, 2006 WL 903236, at *12 ("[T]he mere ability to withstand a greater judgment does not suggest that the Settlement is unfair.").

In light of the aforementioned material risks that Plaintiff and the Settlement Class might recover less, or nothing, without the Settlement, the Settlement is well within the range of reasonableness. *Grinnell*, 495 F.2d at 455 n.2 ("[T]here is no reason . . . why a satisfactory settlement could not amount to a hundredth or even a thousandth part of a single percent of the potential recovery"). Indeed, courts regularly approve securities class action settlements where the settlement amount is as—or even less—substantial as the 19.6% of estimated damages achieved here. *E.g.*, *Aeropostale*, 2014 WL 1883494, at *9 (approving settlement with "recovery in the range of approximately 9.2% to 21% of estimated damages" as "well within the range of reasonableness"); *City of Pontiac Gen. Emps.' Ret. Sys. v. Lockheed Martin Corp.*, 954 F. Supp. 2d 276, 280 (S.D.N.Y. 2013) (approving settlement for 10% of plaintiff's estimated damages); *Morris v. Affinity Health Plan, Inc.*, 859 F. Supp. 2d 611, 621-22 (S.D.N.Y. 2012) (granting final approval of settlement that amounted to 2% of potential recovery).

Thus, the proposed Settlement is both procedurally and substantively fair, reasonable, and adequate, and in the Settlement Class's best interests.

3. The Settlement Satisfies the Remaining Rule 23(e) Factors

The factors set forth in Rule 23(e)(2)(A), (B), and (C)(i-ii) are addressed above. The

proposed fee award (to be considered pursuant to Rule 23(e)(2)(C)(iii)) is discussed in the accompanying Plaintiff's Memorandum of Law in Support of the Motion for Attorneys' Fees, Reimbursement of Litigation Expenses, and Award to Plaintiff, which demonstrates that Lead Counsel's request for attorneys' fees in the amount 33.3% of the Settlement Fund, and reimbursement of expenses, is fair and reasonable.

With respect to identifying agreements pursuant to Rule 23(e)(3)(C)(iv), the Parties have entered into a confidential Supplemental Agreement, as previously disclosed to the Court. Stipulation ¶37. The Supplemental Agreement provides Defendants with the option to terminate the Settlement if the number of Settlement Class Members requesting exclusion from the Settlement Class exceeds a certain threshold. *Id.* To protect the Settlement Class, the precise terms of the Supplemental Agreement are kept confidential to avoid creating incentives for a small group of Settlement Class Members to opt out solely to leverage larger individual settlements for themselves to the detriment of the rest of the Settlement Class. "This type of agreement is standard in securities class action settlements and has no negative impact on the fairness of the Settlement." *Christine Asia*, 2019 WL 5257534, at *15.[3]

In sum, the Settlement is fair, reasonable, and adequate under Rule 23(e)(2) and the *Grinnell* factors, and should be finally approved.

B. The Court Should Approve the Plan of Allocation

The Court must also evaluate whether the Settlement treats Settlement Class Members equitably relative to one another. Fed. R. Civ. P. 23(e)(2)(D). The Plan of Allocation "must be fair and adequate." *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 344 (S.D.N.Y. 2005). "When formulated by competent and experienced counsel, a plan for allocation of net settlement proceeds

[3] The Term Sheet, Stipulation, and Supplemental Agreement are the only agreements concerning the Settlement entered into by the Parties. Lieberman Decl. ¶31.

need have only a reasonable, rational basis." *IMAX*, 283 F.R.D. at 192; *see also Christine Asia*, 2019 WL 5257534, at *15-16. "In determining whether a plan of allocation is fair, courts look largely to the opinion of counsel." *Marsh & McLennan Cos. Sec. Litig.*, 2009 WL 5178546, at *13 (S.D.N.Y. Dec. 23, 2009); *see also Fleisher v. Phoenix Life Ins. Co.*, 2015 WL 10847814, at *12 (S.D.N.Y. Sep. 9, 2015) ("Counsel's conclusion that the distribution plan is fair, adequate, and reasonable is entitled to great weight.").

The Plan of Allocation is fair, reasonable, and adequate, and does not treat Plaintiff, nor any other Settlement Class Member, preferentially. *In re Tremont Sec. Law, State Law & Ins. Litig.*, 2015 WL 5333494, at *6 (S.D.N.Y. Sep. 14, 2015), *aff'd in part, vacated in part on other grounds*, 699 F. App'x 8 (2d Cir. 2017). Pro-rata distributions, such as here, have "frequently been determined to be fair, adequate, and reasonable." *Fleisher*, 2015 WL 10847814, at *12 (collecting cases).

The Notice sent to potential Class Members, which the Court approved in the Preliminary Approval Order, describes the Plan of Allocation in full detail. Evans Decl. Ex. A. Lead Counsel formulated the Plan of Allocation with the help of the Settlement Administrator and Plaintiff's damages expert to fairly and reasonably distribute the Net Settlement Fund to Class Members consistent with the federal securities laws—namely, the Securities Act, the sole remaining claims here, which provides a statutory measure of damages for Section 11, and the principles of loss causation. Lieberman Decl. ¶38. To that end, the Plan of Allocation does not compensate losses resulting from "in and out" transactions, i.e. losses from sales made prior to revelation of the truth. *Id.* The Plan of Allocation establishes a formula that determines Authorized Claimants' recognized losses based on the foregoing application of the securities laws and calculates Class Members' pro rata share of the Net Settlement Fund (i.e., the Gross Settlement Fund, less: (i) attorneys' fees and

expenses; (ii) taxes and tax expenses; (iii) Notice and Administration Expenses; and (iv) a reimbursement award to Plaintiff, if any). *Id.* Lead Counsel developed the Plan of Allocation in close consultation with a consulting damages expert and the Claims Administrator, and believe that the Plan of Allocation provides a fair and reasonable method for equitably distributing the Net Settlement Fund among Authorized Claimants. *Id*.

Under the Plan of Allocation, a "Recognized Loss" will be calculated for each acquisition of Hut 8 Securities during the Settlement Class Period. Evans Decl. Ex. A (Notice and Claim Form) at 6-7. The Claims Administrator, under Lead Counsel's direction, will determine each Authorized Claimant's pro rata share of the Net Settlement Fund based upon each Authorized Claimant's total Recognized Loss compared to the aggregate Recognized Losses of all Authorized Claimants. *Id*. Calculation of Recognized Losses will depend upon several factors, including when the Authorized Claimant purchased Hut 8 Securities during the Class Period, whether the securities were sold and, if so, when. *Id*.

The Plan of Allocation closely tracks the form of plans of allocation commonly approved in similar securities class action settlements, and is consistent with Plaintiff's allegations. In securities class actions, "plans that allocate money depending on the timing of purchases and sales of the securities at issue are common." *In re Datatec Sys., Inc. Sec. Litig.*, 2007 WL 4225828, at *5 (D.N.J. Nov. 28, 2007); *see also In re Lloyds' Am. Tr. Fund Litig.*, 2002 WL 31663577, at *19 (S.D.N.Y. Nov. 26, 2002) ("[P]ro rata allocations . . . are not only reasonable and rational, but appear to be the fairest method of allocating the settlement benefits."), *aff'd sub nom. Adams v. Rose*, 2003 WL 21982207 (2d Cir. Aug. 20, 2003).

If any funds remain after the initial distribution from the Net Settlement Fund to Authorized Claimants, SCS will, at Lead Counsel's direction, conduct a second distribution to Authorized

Claimants, as long as the second distribution is cost-effective. Evans Decl. Ex. A (Notice) at 9. Such redistributions shall be repeated, if economically feasible, until the balance remaining in the Net Settlement Fund is *de minimis*, and such remaining balance will then be distributed pursuant to a method approved by the Court. *Id.*

To date, no Settlement Class Member has objected to the Plan of Allocation. Evans Decl. ¶14; Lieberman Decl. ¶37. Accordingly, the Court should approve the proposed Plan of Allocation.

C. The Court Should Approve the Notice Disseminated to the Settlement Class as Satisfying the Requirements of Rule 23 and Due Process

The notice program, alerting the Settlement Class to their rights to file a claim or request exclusion, the right to object, and the consequences of any particular choice, complies with this Court's Preliminary Approval Order and satisfies Fed. R. Civ. P. 23(c)(2) and Rule 23(e)(1), the Private Securities Litigation Reform Act of 1995 ("PSLRA"), 15 U.S.C. § 78u-4(a)(7), and due process.

Courts evaluate a notice program's compliance with Rule 23 and due process in terms of its reasonableness. Fed. R. Civ. P. 23(e)(1); *Arbuthnot*, 607 F. App'x 73. Notice is reasonable where it "fairly apprise[s] 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." *Arbuthnot*, 607 F. App'x at 73-74. Notice need not be perfect but only "the best notice that is 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), (e)(2)(C)(ii). Here, the Court previously approved the notice program and its substance, and approved the retention of SCS as Claims Administrator. Preliminary Approval Order ¶¶8-9.

The Notice provided to the Settlement Class also provided all necessary information for Settlement Class Members to make an informed decision regarding the Settlement. The notice

"fairly apprise[s] 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." *Arbuthnot*, 607 F. App'x at 73-74. The Notice gave Settlement Class Members all the information they needed to decide whether to opt out, object, or file a claim. It told Settlement Class Members, among other things: (1) the amount of the Settlement; (2) why the parties propose the Settlement; (3) the estimated average recovery per damaged share; (4) the maximum amount of attorneys' fees and expenses, award to Plaintiff, and administrative costs that Lead Counsel would seek; (5) Lead Counsel's contact information; (6) that Settlement Class Members could object to the Settlement or exclude themselves from the Settlement Class, and the consequences thereof; and (7) the dates and deadlines for certain Settlement-related events. *See* 15 U.S.C. § 78u-4(a)(7). The Notice further explained that the Net Settlement Fund would be distributed to eligible Settlement Class Members who submit valid and timely claim forms under the Plan of Allocation.

Under Lead Counsel's direction, SCS executed the notice program as the Court directed. To date, 93,202 Postcard Notices have been mailed to potential Settlement Class Members. Evans Decl. ¶7. In addition, to date, 75,912 emails containing links to the Long Notice and Claim Form have been sent to potential Settlement Class Members. *Id.* ¶8. Thus, a total of 169,114 notices (either via a mailed Postcard Notice or an emailed link to the Notice and Claim Form on the Settlement website) have been sent to potential Settlement Class Members. *Id.* ¶9. In addition, SCS published the Court-approved Summary Notice via *PR Newswire*. *Id.* ¶10 & Ex. D. SCS also established and maintains a toll-free telephone number for Settlement Class Members to call and obtain information about the Settlement, and published information regarding the Settlement on the Settlement website. *Id.* ¶¶11-12. *See Christine Asia*, 2019 WL 5257534, at *16 ("[T]he combination of Notice Packets sent individually by first-class mail and/or e-mail to those Class

Members who could be identified with reasonable effort, combined with the print and Internet-based publication of Settlement documents was 'the best notice practicable under the circumstances.'").

In sum, the Notice fairly apprised Settlement Class Members of their rights, was the best notice practicable under the circumstances, and complied with the Court's Preliminary Approval Order, Federal Rule of Civil Procedure 23, the PSLRA, and due process.

D. The Court Should Certify the Settlement Class

In connection with approving a proposed class action settlement, the Court must determine whether the action may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591 (1997). The Second Circuit has long acknowledged the propriety of certifying a class solely for settlement purposes. *See Weinberger v. Kendrick*, 698 F.2d 61, 73 (2d Cir. 1982).

Rule 23(a) sets four prerequisites to class certification, specifically: (i) numerosity, (ii) commonality, (iii) typicality, and (iv) adequacy of representation. The class must also meet one of the three requirements of Rule 23(b). The proposed Settlement Class is defined in the Stipulation as follows: "all persons and entities that purchased or otherwise acquired Hut 8 Securities in the United States or on an exchange based in the United States between February 13, 2023 and January 18, 2024, inclusive, and who were damaged thereby." Stipulation ¶1(ss).

On July 8, 2026, this Court certified the Settlement Class preliminarily for settlement purposes. Preliminary Approval Order ¶¶2-3. No circumstances have changed that would militate against final certification of the Settlement Class for settlement purposes. Thus, the Court should finally certify the Settlement Class for settlement purposes, appoint Plaintiff as Class Representative for the Settlement Class, and approve his selection of Pomerantz as Class Counsel for the Settlement Class.

IV. CONCLUSION

For the forgoing reasons, the Court should grant final approval of the proposed Settlement and Plan of Allocation, approve the notice program as executed, and enter final judgment. Plaintiff will submit, with his reply papers, a proposed Final Order and Judgment (in the form previously filed as Exhibit B to the Stipulation, ECF No. 75-7) to reflect any valid requests for exclusion from the Settlement Class.

Dated: October 2, 2026

Respectfully submitted,

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CERTIFICATION PURSUANT TO LOCAL CIVIL RULE 7.1(c)

The undersigned certificates that this memorandum of law contains 8,715 words and complies with the word-count limitations set forth in Local Civil Rule 7.1(c).

/s/ Irina Vasilchenko
Irina Vasilchenko