UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

IN RE TEVA SECURITIES LITIGATION THIS DOCUMENT RELATES TO:	: : : :	No. 3:17-cv-00558 (SRU) All Class Actions

MEMORANDUM OF LAW IN SUPPORT OF CLASS REPRESENTATIVES' MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENT AND APPROVAL OF PLAN OF ALLOCATION

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Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Class Representatives Ontario Teachers' Pension Plan Board and Anchorage Police & Fire Retirement System (together, "Class Representatives"), on behalf of themselves and each member of the Settlement Class, respectfully submit this memorandum of law in support of their motion for (1) final approval of the proposed settlement, and (2) approval of the Plan of Allocation for distribution of the Net Settlement Fund.[1]

PRELIMINARY STATEMENT

After years of vigorous litigation in this Court and a protracted mediation under the auspices of former District Judge Layn R. Phillips, the parties have agreed to settle this action for $420 million in cash, which has been deposited into escrow accounts.

Class Representatives and Class Counsel respectfully submit that the proposed settlement is an outstanding result for the Settlement Class and warrants the Court's final approval.[2] By Class Counsel's calculation, the proposed settlement (if approved) would be the second-largest class settlement in this District. (Fonti Decl. ¶4.) It would also be the fourth-largest securities settlement in the Second Circuit that does not involve a financial restatement or arise from the

[1] Additional support for this motion is provided in the accompanying Declaration of Joseph A. Fonti in Support of (I) Class Representatives' Motion for Final Approval of Class Settlement and Approval of Plan of Allocation and (II) Lead Counsel's Motion for Awards of Attorneys' Fees, Litigation Expenses, and Reasonable Costs and Expenses to Class Representatives (the "Fonti Decl."); the Declaration of Jeffrey Davis (the "Davis Decl."); the Declaration of Edward Jarvis (the "Jarvis Decl."); and the Declaration of Layn R. Phillips (the "Phillips Decl."). References to "Ex.__" are to the exhibits to the Fonti Declaration. Capitalized terms not defined herein shall have the meanings specified in the Fonti Declaration or the Stipulation of Settlement, dated January 18, 2022, filed with the Court (ECF 919-2). Emphasis is added, and citations and internal quotation marks are omitted, unless otherwise stated.

[2] "Class Counsel" are Bleichmar Fonti & Auld LLP; Bleichmar Fonti & Auld Canada; The Law Offices of Susan R. Podolsky; and Carmody Torrance Sandak & Hennessey LLP.

2008-09 financial crisis, circumstances that reduce plaintiffs' burden and risk and have resulted in some of the largest securities settlements. (*Id.*)

The proposed settlement provides prompt relief, maximizes the recovery from Teva and its insurance carriers, and achieves valuable certainty for the Settlement Class—particularly important here given Teva's publicly disclosed financial constraints and exposure to other material, outstanding litigation. Indeed, this action is the first to obtain any meaningful recovery based on Teva's generic drug price increases, with the antitrust *Generics MDL* and criminal action years behind.

The Court should grant final approval because the proposed settlement is "fair, reasonable, and adequate" under Rule 23(e)(2) and satisfies all of the traditional factors from *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974).

First, Rule 23(e)(2)(A) and (B) are satisfied because Class Representatives and Class Counsel "have adequately represented the class," and the proposed settlement "was negotiated at arm's length" over a protracted period. Both Class Representatives are sophisticated institutional investors with substantial experience leading PSLRA class actions and significant financial stakes in this litigation. Class Representatives carefully oversaw Class Counsel's work, were integrally involved in every step of the mediation, and fully support the proposed settlement.

Class Counsel have also vigorously pursued the interests of the Settlement Class. As detailed in the accompanying Fonti Declaration, Class Counsel devoted over five years of intense effort to this case and completed voluminous fact and expert discovery, including taking or defending 40 depositions (generating over 7,000 pages of testimony from 23 fact witnesses alone) and exchanging 17 merits expert reports. Class Counsel also achieved class certification over Defendants' vigorous opposition, including the exchange of six expert reports and a

Rule 23(f) petition to the Second Circuit. By obtaining class certification, completing discovery, litigating this case to the brink of summary judgment and *Daubert* motions, and demonstrating the strength of the merits to Defendants and their insurance carriers, Class Counsel's efforts set the stage to obtain the best possible result for the Settlement Class.

The proposed settlement was achieved through contentious, arm's-length negotiations, including three full-day mediation sessions with Judge Phillips in July 2020 and September 2021. The July 2020 session—conducted before any depositions and the majority of Defendants' document production—was unsuccessful, confirming the need for Class Counsel to continue their substantial investment of time and resources to fully develop the merits and advance the case toward summary judgment and trial. By September 2021, fact and expert discovery were complete, ensuring that the parties were fully apprised of the strengths and weaknesses of the merits. Nonetheless, the parties' positions remained significantly apart, and protracted further negotiation followed. On November 14, 2021, Judge Phillips issued a recommendation to settle the action for $420 million. After the deadline to respond was extended several times, the parties finally agreed to the settlement just hours before summary judgment and *Daubert* motions were due on December 2, 2021.

Second, the proposed settlement provides adequate relief and satisfies Rule 23(e)(2)(C), particularly given the "costs, risks, and delay of trial and appeal." Fed. R. Civ. P. 23(e)(2)(C)(i).

While Class Counsel invested significant effort to develop a strong case, if litigation had continued, it was far from clear that this action would have generated any recovery. Proving liability and damages, and obtaining a recovery from Defendants after trial, would be exceptionally expensive, risky, and protracted. To prove liability, Class Representatives would be required to demonstrate that certain price increases within Teva's portfolio of hundreds of generic

drugs caused Defendants' public statements regarding the sources of Teva's profits, generic drug pricing, and competition to be materially false or misleading and/or resulted in material omissions. To recover the vast majority of damages, Class Representatives would also need to prove Defendants' scienter and that the alleged misstatements and omissions caused losses on the Teva Securities. Moreover, Class Representatives would need to overcome several significant defenses—including Defendants' "truth on the market" argument that Teva's price increases and their role in Teva's profits were publicly disclosed—and arguments that threatened to severely reduce damages or eliminate liability. In short, absent the proposed settlement, there was a real risk of recovering nothing.

Beyond these significant risks, to litigate through summary judgment and prevail at trial, the inevitable appeal, and any further proceedings would consume years and continue to deplete Teva's insurance coverage. Even then, as a practical matter, Teva's financial condition would significantly constrain any recovery: With over $20 billion in outstanding long-term debt and numerous other litigation exposures, including thousands of opioids cases (which Teva has been intent on taking to trial), there is a serious risk that Teva would be unable to pay a judgment in excess of the proposed settlement. Indeed, Teva's financial condition materially worsened through the first several years of this litigation. Moreover, Teva's financial condition would be further impaired if the civil or criminal antitrust actions succeeded. Even apart from these serious financial constraints, the proposed settlement is substantial relative to other large securities cases and well within the range of reasonableness.

Class Representatives and Class Counsel carefully evaluated and considered these and other factors in making a fully informed decision to enter the proposed settlement on behalf of the Settlement Class. Given Class Representatives' status as institutional investors, their significant

experience leading PSLRA actions and financial stake in this action, and their diligent oversight and full involvement in the settlement negotiations, their support for the proposed settlement strongly favors final approval. The overall Settlement Class's reaction should be considered as well: while the exclusion and objection deadlines (May 2 and May 12, respectively) have not yet passed, to date, no Settlement Class Members have objected and only 39 potential requests for exclusion have been received.

The proposed Plan of Allocation, developed with expert assistance, should also be approved as fair, reasonable, and adequate. It provides for each Authorized Claimant to receive their *pro rata* share of the Net Settlement Fund based on the size of their Recognized Claim, thereby ensuring equitable treatment of Settlement Class Members under Rule 23(e)(2)(D).

Finally, the Court-approved notice program—comprised of individual mailing to all Settlement Class Members who could be identified with reasonable effort, publication in the U.S. and Israel, a case-specific website, and dedicated telephone numbers—was effective and satisfies the requirements of Rule 23, due process, and the PSLRA.

For the reasons herein, Class Representatives respectfully request that the Court grant final approval of the proposed settlement and approve the Plan of Allocation.

I. THE PROPOSED SETTLEMENT WARRANTS FINAL APPROVAL

Under Rule 23(e)(2) of the Federal Rules of Civil Procedure, a proposed class settlement should be approved upon finding that it is "fair, reasonable, and adequate."

To evaluate proposed class settlements, courts in this Circuit have considered the nine factors from *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974), which are:

> (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of

> reasonableness of the settlement fund in light of the best possible recovery; [and] (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

While the proposed settlement here satisfies each factor, not every factor must be satisfied to warrant final approval. *See D'Amato v. Deutsche Bank*, 236 F.3d 78, 86-87 (2d Cir. 2001).

In addition, Rule 23(e)(2) (as amended in 2018) provides that courts should determine whether a class settlement is "fair, reasonable, and adequate after considering whether":

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

Fed. R. Civ. P. 23(e)(2). The "goal" of this amendment was "not to displace any factor, 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." Rule 23, Advisory Committee Notes to 2018 Amendment.

As a result, the following discussion addresses both the *Grinnell* and Rule 23(e)(2) factors. *See Kennedy v. Whitley*, 539 F. Supp. 3d 261, 267 (D. Conn. 2021) (Haight, J.) ("Given this history, and the guidance furnished by the Advisory Committee's Notes, in the case at bar I will consider both sets of factors . . . in analyzing whether the proposed settlement is fair, reasonable, and adequate, and should accordingly be granted final approval . . . .").

A. The Proposed Settlement Is Procedurally Fair under Rule 23(e)(2)(A)-(B)

Rule 23(e)(2)(A) and (B) require that "the class representatives and class counsel have adequately represented the class" and that "the proposal was negotiated at arm's length." Adequate representation and arm's-length negotiation are amply present here.

1. Class Representatives and Class Counsel Have Adequately Represented the Settlement Class

"Adequacy '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.'" *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, 574 F.3d 29, 35 (2d Cir. 2009). Class Representatives and Class Counsel's unrelenting prosecution of this action demonstrates their adequacy and satisfies Rule 23(e)(2)(A).

To begin, in granting class certification, the Court found that Ontario Teachers' and Anchorage are adequate class representatives. *In re Teva Sec. Litig.*, No. 3:17-cv-00558, 2021 WL 872156, at *12 (D. Conn. Mar. 9, 2021). Indeed, both Class Representatives are sophisticated institutional investors who have together recovered over $2.6 billion for investors in this and prior securities class actions and have significant financial stakes here. (*See* Ex. 3 (Davis Decl.) ¶¶5, 9; Ex. 4 (Jarvis Decl.) ¶¶5, 9.) Class Representatives actively supervised Class Counsel, fully participated in the mediation sessions and negotiations, and have carefully evaluated and authorized the proposed settlement on behalf of the Settlement Class. (Ex. 3 (Davis Decl.) ¶¶4-25; Ex. 4 (Jarvis Decl.) ¶¶4-25.)

The Court has also recognized that Class Counsel are "qualified, experienced and able to conduct the litigation." *Teva*, 2021 WL 872156 at *12; *see also* Ex. 7-A (BFA Firm Resume), Ex. 8-A (Carmody Firm Litigation Resume), and Ex. 9-A (Podolsky Firm Resume). The Fonti Declaration details Class Counsel's skilled and efficient work to achieve the best possible result in this complex case. (Fonti Decl. ¶¶22-251, 313-333.) Over five years, Class Counsel investigated and pleaded multiple complaints, overcame Defendants' motions to dismiss, secured exhaustive fact discovery (including over 8.2 million pages of documents from Defendants and numerous third parties), completed comprehensive expert discovery (including the

exchange of 17 merits expert reports), conducted 40 fact and expert depositions, achieved class certification (including the exchange of six expert reports and defeating Defendants' Rule 23(f) petition seeking to appeal this Court's ruling to the Second Circuit), and completed summary judgment and *Daubert* motions that were ready to be filed at the time of settlement. (Fonti Decl. ¶¶28-251.) In doing so, Class Counsel expended over 77,000 hours of work. (*Id.* ¶¶370-381.)

As a result of this effort, Class Representatives and Class Counsel "were well informed about the strengths and weaknesses of the case before reaching the agreement to settle." *In re Signet Jewelers Ltd. Sec. Litig.*, No. 1:16-cv-06728, 2020 WL 4196468, at *3 (S.D.N.Y. July 21, 2020).

2. The Proposed Settlement Was Reached After Protracted Arm's-Length Negotiation, Led by Sophisticated Investors as Class Representatives, under the Auspices of an Experienced Mediator

Rule 23(e)(2)(B) is satisfied because the proposed settlement "was negotiated at arm's length" over a protracted period. The Second Circuit has indicated that a "presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm's-length negotiations between experienced, capable counsel after meaningful discovery." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 116 (2d Cir. 2005). Further, an even greater presumption of reasonableness attaches to a settlement reached "under the supervision and with the endorsement of a sophisticated institutional investor." *Signet*, 2020 WL 4196468 at *3 (quoting *In re Veeco Instruments Inc. Sec. Litig.*, No. 05-MDL-01695 (CM), 2007 WL 4115809, at *5 (S.D.N.Y. Nov. 7, 2007)).

Class Representatives—both sophisticated institutional investors and experienced PSLRA class representatives—unquestionably fit that bill, as both carefully supervised all aspects of the mediation, considered and authorized the proposed settlement, and fully support its approval. (Ex. 3 (Davis Decl.) ¶¶9-25; Ex. 4 (Jarvis Decl.) ¶¶9-25.)

As set forth in the Phillips, Fonti, Davis, and Jarvis Declarations (Ex. 1 ¶¶6-17; Fonti Decl. ¶¶313-332; Ex. 3 ¶¶11-25; and Ex. 4 ¶¶11-25, respectively), the proposed settlement was reached after intense negotiations during three full-day mediation sessions and numerous additional conferences between Class Counsel and Judge Phillips, which occurred over a period of sixteen months and ultimately resulted in Judge Phillips's recommendation of a $420 million settlement. *See Signet*, 2020 WL 4196468 at *3 (settlement "was reached only after months of arm's-length negotiations between experienced counsel, which included three full-day mediation sessions under the guidance of Judge Phillips," and was "the product of a mediator's recommendation by Judge Phillips"); *D'Amato*, 236 F.3d at 85 ("mediator's involvement in . . . settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure").

Judge Phillips observed that "[o]verall, this was among the most complex and challenging mediations [he has] handled in nearly thirty years of dispute resolution work." (Ex. 1 (Phillips Decl.) ¶17.) The parties' hard-fought negotiations were complicated by Teva's financial limitations, the involvement of numerous insurance carriers, and outstanding civil and criminal litigations against Teva involving generic drug price-fixing and opioids, among other factors. *See In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 461-62 (S.D.N.Y. 2004) ("The negotiations among the settling parties and GX's insurers were protracted, adversarial, and intensive, continuing over a 14-month period.").

With Class Representatives' full involvement, the mediation process unfolded over a lengthy period. The initial mediation session in July 2020 was unsuccessful, and no settlement demands or offers were exchanged. (Fonti Decl. ¶317; Ex. 1 (Phillips Decl.) ¶9.) At the time, Defendants had yet to produce the majority of their documents, and no depositions had occurred; Class Representatives and Class Counsel concluded that a meaningful consensual resolution could

not be reached without this discovery and the opportunity to delve deeply into the merits of the claims. (*See* Fonti Decl. ¶317.) To that end, Class Counsel continued to invest heavily in time and resources to achieve class certification, extract and analyze Defendants' and third parties' key documents, conduct 40 depositions, complete expert discovery, and prepare for summary judgment and trial. (*See id.* ¶¶317, 84-251.)

When mediation resumed fourteen months later in September 2021, the Court had granted class certification, and fact and expert discovery were complete.[3] This full development of the merits ensured that the parties and their counsel were well informed of the strengths, weaknesses, and risks of the case, and that Class Counsel were prepared to drive the case to trial. The two full-day sessions on September 17 and 27, 2021—which respectively concluded after 8:30 PM and 10:30 PM in New York—were productive, although the parties remained significantly apart. (Ex. 1 (Phillips Decl.) ¶¶10-14; Fonti Decl. ¶¶318-323.)

In parallel to the September 2021 mediation, drawing on the extensive proof amassed in fact and expert discovery, Class Counsel continued to develop a summary judgment motion and *Daubert* motions to exclude Defendants' merits experts. (Fonti Decl. ¶¶242-251.) Class Counsel did not assume that any consensual resolution was forthcoming, and thus prepared to file these motions to heighten Defendants' risk and advance the case toward trial.

After the September 27, 2021 mediation session did not yield an agreement, intense negotiations continued throughout October and the first half of November 2021 under Judge Phillips's guidance, with Class Representatives actively involved at every step. (Ex. 1 (Phillips Decl.) ¶15; Fonti Decl. ¶¶324-325; Ex. 3 (Davis Decl.) ¶20; and Ex. 4 (Jarvis Decl.) ¶20.)

[3] (Fonti Decl. ¶318.) The parties served reply expert reports on September 20, 2021, between the September 17 and September 27 mediation sessions. (*See id.*)

These strenuous negotiations involved the exchange of 11 further rounds of settlement demands and offers. (Ex. 1 (Phillips Decl.) ¶15.)

On November 14, 2021—nearly two months after the parties had resumed mediating on September 17—Judge Phillips issued a mediator's recommendation to settle the action for $420 million. (Ex. 1 (Phillips Decl.) ¶16; Fonti Decl. ¶326.) Even then, however, it was far from clear that the parties would agree to any resolution, and the deadline to respond was extended several times. (Fonti Decl. ¶¶327-328.) The summary judgment and *Daubert* deadline was extended in parallel, and Class Counsel completed and prepared to file Class Representatives' papers. (*Id.* ¶328.)

Finally, Judge Phillips advised that all parties had accepted the mediator's recommendation just hours before summary judgment and *Daubert* motions were to be filed on December 2, 2021. The subsequent Stipulation of Settlement required weeks of further negotiation. (*Id.* ¶¶329-332.)

Class Representatives' full participation and support, and the fact that the proposed settlement is the result of Judge Phillips's recommendation after an arduous, arm's-length mediation process, confirm that the proposed settlement is procedurally fair.

B. The Proposed Settlement Provides Adequate Relief under Rule 23(e)(2)(C) and Satisfies the *Grinnell* Factors

Rule 23(e)(2)(C)(i) provides that the adequacy of relief should be assessed "taking into account . . . the costs, risks, and delay of trial and appeal," overlapping with several *Grinnell* factors. Here, Rule 23(e)(2)(C) and each *Grinnell* factor is satisfied. As detailed in the Fonti Declaration and below, the all-cash settlement of $420 million is an outstanding result, particularly given the costs, risks, complexity, and delay of continued litigation, as well as Teva's financial constraints and uncertain ability to withstand a larger judgment.

1. The Complexity, Expense and Likely Duration of the Litigation

"Securities litigation is unpredictable because it involves complex issues of fact and law," and this case is no exception. *Christine Asia Co., Ltd., et al., v. Jack Yun Ma, et al.*, No. 1:15-md-02631, 2019 WL 5257534, at *11 (S.D.N.Y. Oct. 16, 2019).

Here, Class Representatives and Class Counsel faced an unusually high degree of complexity, evidenced in part by the fact that Class Counsel incurred over $9.7 million in expenses, including $7.2 million in expert expenses alone. (Fonti Decl. ¶¶397-400.) This action centers on price increases in Teva's portfolio of hundreds of generic drugs, each with fluctuating and customer-specific prices, sales volumes, and profits over time, as well as Teva's price erosion rates and alleged involvement in collusive conduct. (*See, e.g., id.* ¶¶20, 97-102, 145, 223.) Time-consuming, meticulous, data-intensive expert analysis was required to identify specific price increases, quantify their impact on Teva's publicly reported financial performance over a multi-year period, and assess whether Defendants violated applicable disclosure requirements. (*Id.* ¶¶206-208, 220-233.) Thoroughly investigating collusive conduct and possible spoliation of evidence added further complexity and required careful analysis of thousands of pages of detailed phone records and other evidence of interfirm communications. (*Id.* ¶¶145-171.)

Beyond the challenges of proving liability, proving loss causation and damages entailed the complex task of quantifying and demonstrating the effect of Defendants' alleged misstatements and omissions (and the eventual, piecemeal disclosure of the concealed truth) on the prices of the Teva Securities at issue. To do so, Dr. Tabak performed extensive statistical analyses to isolate Teva-specific price movements (net of market and industry effects) for eight different Teva Securities. (*Id.* ¶¶211-219.)

Moreover, had litigation continued, obtaining and collecting on a judgment against Defendants would have required substantial additional time and expense. Among other things,

Class Counsel would need to: (i) prevail on Defendants' anticipated summary judgment and *Daubert* motions; (ii) complete extensive pre-trial work, including *in limine* motions; (iii) conduct and prevail at a jury trial involving testimony from numerous fact and expert witnesses; (iv) resolve any post-trial motions; (v) prevail on a lengthy appeal; and (vi) address any individualized issues pursuant to the Court's bifurcation order (ECF 796), including Defendants' challenges to individual claims for recovery before those claims are paid. This process would consume years, exposing the Settlement Class to serious "costs, risks, and delay," Rule 23(e)(2)(C)(i), including the risk that Teva's financial condition could continue to decline over this lengthy period.

Thus, while the delay of protracted litigation "would cause Class Members to wait years for any recovery, further reducing its value," settlement "at this juncture results in a substantial and tangible present recovery, without the attendant risk and delay of trial." *Maley v. Del Global Tech. Corp.*, 186 F. Supp. 2d 358, 362 (S.D.N.Y. 2002).

2. The Reaction of the Settlement Class to the Proposed Settlement

"The reaction of the class to a proposed settlement is another relevant factor." *Signet*, 2020 WL 4196468 at *5. Here, as of April 27, 2022, the Court-appointed Claims Administrator (Epiq) has sent 942,255 Notices to potential Settlement Class Members and their nominees, in addition to publishing the Summary Notice in *Investor's Business Daily*, *The Wall Street Journal*, and the *Globes* business newspaper in Israel (in Hebrew), transmitting it over *PR Newswire*, establishing a case-specific website for the settlement (in English and Hebrew), and operating dedicated telephone lines to respond to potential Settlement Class Members' inquiries. (Ex. 2 (McGuinness Decl.) ¶¶3-24; Fonti Decl. ¶¶340-350.) The Notice and Summary Notice informed potential Settlement Class Members of their rights to opt out or object, as well as the deadlines to do so. (ECF 928-2 at 3-6 of 9; 928-4 at 3 of 4.)

While the May 2, 2022 deadline to seek exclusion from the Settlement Class (or for Direct Action Plaintiffs to seek inclusion) and the May 12, 2022 deadline to object have not yet passed, to date, no Settlement Class Members have objected and only 39 have submitted potential requests for exclusion. (Ex. 2 (McGuinness Decl.) ¶¶30, 32.) Class Representatives will address any objections and provide further information regarding requests for exclusion in their reply papers due on May 19, 2022.

3. The Stage of the Proceedings and the Amount of Discovery Completed

"When considering this *Grinnell* factor, the question is whether the parties['] . . . counsel possessed a record sufficient to permit evaluation of the merits of Plaintiffs' claims, the strengths of the defenses asserted by Defendants, and the value of Plaintiffs' causes of action for purposes of settlement." *Signet*, 2020 WL 4196468 at *7.

Here, the advanced stage of the proceedings and completion of fact and expert discovery satisfy this factor and strongly support the proposed settlement's adequacy. As indicated above, Class Counsel secured over 8.2 million pages of documents from Defendants and 23 third parties; the parties conducted 40 depositions, yielding thousands of pages of testimony on key elements of the Class's claims; and the parties exchanged 23 expert reports on class certification and merits issues. Class Counsel's efforts ensured an ample, thoroughly analyzed factual record at the time of settlement. Indeed, by achieving class certification, completing fact and expert discovery, and reaching the verge of summary judgment, Class Counsel prosecuted this action further than the vast majority of securities class actions. (*See* Fonti Decl. ¶¶261-62, 267.)

4. The Risks of Establishing Liability

As courts in this Circuit have recognized, securities litigation "is notably difficult and notoriously uncertain." *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, No. 02-CV-3400, 2010 WL 4537550, at *15 (S.D.N.Y. Nov. 8, 2010); *see also In re Priceline.com, Inc. Sec. Litig.*, No. 3:00-

cv-1884 (AVC), 2007 WL 2115592, at *3 (D. Conn. July 20, 2007) ("*Priceline*") (noting "risks of establishing liability" through "complex and fact-intensive analysis of accounting and fraud issues"); *Signet*, 2020 WL 4196468 at *7 (noting "several significant risks" that "created serious doubt as to whether the Class would ultimately succeed at trial").

From the outset, this action faced substantial risks. To begin, there was a serious risk of outright dismissal; recent research has found that in securities class actions, 56% of motions to dismiss are granted with prejudice. (Fonti Decl. ¶¶259-60.) Even those cases that survive motions to dismiss may nonetheless be lost at class certification, summary judgment, trial, or on appeal. (*Id.* ¶¶261-268.) Here, the risks of proving liability were especially acute given the case's complexity, Defendants' steadfast refusal to acknowledge any wrongdoing, and Teva's combative nature. Specific liability risks are detailed below.

Risks of Proving Falsity and Materiality: Because both falsity and materiality are required elements of the Exchange Act and Securities Act claims, if Defendants defeated either element, the entire case would be lost. (*Id.* ¶¶272-278.)

These risks were heightened because Teva did not issue a financial restatement or face an SEC enforcement action challenging its public disclosures. (*Id.* ¶¶256, 270.) In securities cases, restatements are highly significant—and effectively establish the Exchange Act and Securities Act elements of falsity and materiality—because "under Generally Accepted Accounting Principles . . . a restatement issues only when errors are material." *SEC v. Kelly*, 663 F. Supp. 2d 276, 285 (S.D.N.Y. 2009). For example, *Carlson v. Xerox*, 392 F. Supp. 2d 267, 277-278 (D. Conn. 2005), involved two restatements and an SEC enforcement action, greatly reducing the risk for the plaintiffs in that case. Indeed, in *Xerox*, the defendants did not even challenge falsity and

materiality in their motions to dismiss. *See id.* at 283-92. By contrast, Class Representatives and Class Counsel faced heightened risk in proving the entire case from scratch.

Most notably, Defendants would assert a "truth on the market" defense arguing that Teva's generics price increases and related profits were disclosed and publicly known. (Fonti Decl. ¶274.) Defendants advanced this argument through multiple experts. (*Id.*) While Class Representatives defeated this argument at class certification, Defendants were certain to raise it again at summary judgment and trial.

Further, Defendants were expected to contest falsity on multiple grounds, including that Teva's disclosed sources of financial performance (such as new product launches) were larger contributors than any impact from generic drug price increases; that Teva in fact earned the revenues and profits it publicly reported; and that Teva's independent auditor approved its SEC filings. (*Id.* ¶¶275-276.) Moreover, Defendants likely would argue that the regulations forming the basis for the Class's omissions claims—Item 303 of SEC Regulation S-K and Item 5 of SEC Form 20-F—did not require disclosure, threatening to eliminate any omissions-based claims. (*Id.* ¶278.)

As to materiality, in addition to their "truth on the market" argument, Defendants likely would further argue that any financial impact from Teva's price increases was simply too small to be material, and that Teva's overall generic drug portfolio had declining prices. (*Id.* ¶277.)

While Class Representatives had strong responses to these arguments, any finding that Defendants' statements were non-actionable or immaterial would negate liability entirely.

Risks of Proving Scienter: The element of scienter—necessary for the Exchange Act claims and the majority of overall damages—also posed significant risks. (*Id.* ¶¶279-282.)

Defendants vigorously disputed scienter, and would likely argue at summary judgment and trial that every Teva executive who was deposed categorically denied making any intentional false statements. (*Id.* ¶280.) In addition, Defendants likely would argue that price increases on certain generic drugs were understood to be an ordinary business activity that merely offset declining prices on other drugs. (*Id.*) Further, the Individual Defendants likely would argue that they did not focus on U.S. generic drug pricing or know of any alleged non-competitive activity. (*Id.*) Finally, Defendants likely would argue that the challenged public statements were reviewed and approved by in-house and outside counsel, as well as Teva's outside auditor. (*Id.*)

Again, while Class Representatives had strong responses, it was far from certain how scienter would have been resolved at summary judgment or trial, and any finding that scienter was absent would foreclose Exchange Act liability and eliminate the majority of damages. (*Id.* ¶¶281-282.)

Risks of Proving Collusion: Other key risks relate to proving Defendants' awareness and/or participation in collusive conduct concerning generic drug pricing. In this regard, many key Teva witnesses were unlikely to be available to testify, while Defendants were likely to argue that circumstantial evidence, such as phone records, is inadmissible. (*Id.* ¶¶283-286.) Defendants' expert Dr. Gaier also offered purported economic justifications for Teva's pricing. (*Id.* ¶287.) While Class Representatives vigorously developed the available proof, there was a risk that the Court or a jury could conclude that Teva was not involved in collusive activity. Class Representatives also faced risks associated with DOJ's intervention, which threatened to impede depositions and potentially disrupt the trial schedule. (*Id.* ¶¶299-302.)

Jury and *Daubert* Risk: Class Representatives faced various other risks in proving liability, including the absence of a single "star witness" (such as a whistleblower); the complex

and highly technical subject matter of the claims, which demanded heavy reliance on experts; Defendants' likely *Daubert* motions against Class Representatives' experts; and Defendants' four competing experts who would opine that Teva's statements and conduct were justified and truthful. As a result, Class Representatives would likely be presenting their case-in-chief through experts and hostile fact witnesses, all of which would create a greater trial risk. (*Id.* ¶¶288-291.)

5. The Risks of Establishing Damages

Class Representatives faced numerous risks in proving loss causation and damages. These risks threatened to eliminate any recovery under the Exchange Act and substantially reduce any Securities Act damages. (*See infra* at 21.)

Specifically, as to the Exchange Act—which accounts for the majority of overall damages—Defendants vigorously disputed whether Class Representatives' expert Dr. Tabak adequately demonstrated loss causation or damages. (Fonti Decl. ¶¶292-296.) For example, Defendants' expert Dr. James contested Dr. Tabak's methodologies, argued that none of the eight corrective events that Dr. Tabak utilized were corrective, and asserted that each event included so-called "confounding" (non-fraud-related) information, and/or was the materialization of previously disclosed (rather than concealed) risks. (*Id.* ¶¶293-294.) Defendants were also likely to move to exclude Dr. Tabak's opinions in full, which could be fatal to the Exchange Act claims. (*See id.* ¶¶296 & 250 (citing *In re Pfizer Inc. Sec. Litig.*, 819 F.3d 642, 645 (2d Cir. 2016)).)

As to the Securities Act, Defendants have invoked a statutory negative causation defense. 15 U.S.C. § 77k(e); *see also* 15 U.S.C. § 77l(b). Their expert Dr. James submitted nearly 900 pages of expert reports (including exhibits) arguing that the price declines in the offered ADS, Preferred Shares, and Notes were largely caused by factors other than the alleged misstatements. (Fonti Decl. ¶297.) If these arguments were accepted, Securities Act damages could be reduced dramatically. (*See id.* ¶¶354-355.)

6. The Risks of Maintaining a Class Action Through Trial

The Court certified the Class, and Class Representatives defeated Defendants' Rule 23(f) petition. (Fonti Decl. ¶¶195-197.) Nonetheless, class certification was vigorously contested, and Defendants could seek to de-certify the Class at any time "before final judgment." Fed. R. Civ. P. 23(c)(1)(C). *See Priceline*, 2007 WL 2115592 at *3 ("[A]lthough the court has certified the class in this case, the prospects of decertification certainly exist in light of the defendants' vigorous opposition to the plaintiffs' motions for certification and the defendants' defeat of one of the plaintiffs' motions for appointment of a lead plaintiff as a class representative.").

7. Defendants' Ability to Withstand a Greater Judgment

An important consideration in the settlement calculus here has been the serious risk that Teva would be unable to satisfy a greater judgment after trial.

During the first several years of this litigation, Teva's financial condition materially worsened. Teva ADS prices peaked at $72.00 per share in July 2015. (Fonti Decl. ¶303.) Following the November 3, 2016 publication of the *Bloomberg* article and the November 6, 2016 filing of the first securities action (*id.* ¶28), the Teva ADS traded at approximately $40 per share. (*Id.* ¶303.) As this litigation proceeded, however, Teva continued to announce new, negative information, including a total of $16.5 billion in permanent goodwill impairment charges disclosed in August 2017 and February 2018. By the end of the Class Period in May 2019, the price of Teva ADS had dropped to $12.23, and by the time discovery commenced on September 25, 2019, it had plummeted to $6.96. (*Id.*)

Teva has not recovered from these events. Today, Teva faces material financial limitations and exposures on numerous fronts. (*Id.* ¶¶304-312.) To begin, Teva is saddled with over $20 billion in outstanding debt (rated as "junk" given Teva's financial position), has limited growth prospects, and had a market capitalization of below $10 billion at the time the parties

entered the proposed settlement, far below its Class Period peak of over $52 billion. (*Id.* ¶¶304-306.) Compounding these issues, Teva has material exposures to unresolved litigations that threaten to further weaken its financial position; these include the criminal and civil price-fixing litigations, as the Court is aware, as well as opioids litigations around the country (including an action in New York where Teva recently lost a jury trial). (*Id.* ¶¶307-312.)

There is thus a serious risk that Teva would be unable to pay a judgment in excess of the proposed settlement. Indeed, estimated Securities Act damages alone could approach one-third of Teva's market capitalization at the time of settlement and exhaust Teva's free cash flow for over a year. (*Id.* ¶361.) If Class Representatives obtained such a judgment, Teva might be forced into bankruptcy.[4] *Signet*, 2020 WL 4196468 at *12 (even if lead plaintiff had obtained judgment for maximum recoverable damages, "there is no assurance that the Company could have satisfied it, and it might have been forced into bankruptcy"); *In re Warner Communications Sec. Litig.*, 618 F. Supp. 735, 746 (S.D.N.Y. 1985) (the "prospect of a bankrupt judgment debtor down at the end of the road does not satisfy anyone involved in the use of class action procedures"). In these circumstances, the proposed settlement provides important certainty in the form of a substantial cash recovery for the Settlement Class.

Finally, even if Teva were able to pay more than the $420 million settlement amount, that "does not, standing alone, indicate that the settlement is unreasonable or inadequate." *In re PaineWebber Ltd. P'ships Litig.*, 171 F.R.D. 104, 129 (S.D.N.Y. 1997). "This is especially true where, as here, the other *Grinnell* factors weigh heavily in favor of settlement approval."

[4] As noted in the Fonti Declaration, other pharmaceutical companies have filed for bankruptcy to address litigation exposure related to opioids. (¶308.)

Global Crossing, 225 F.R.D. at 460; *see also D'Amato*, 236 F.3d at 86 (despite defendants' ability to withstand higher judgment, settlement was fair in light of other *Grinnell* factors).

8. The Range of Reasonableness of the Settlement Fund in Light of the Best Possible Recovery and the Attendant Risks of Litigation (*Grinnell* Factors 8 & 9)

These factors consider whether the settlement fund falls within a "range of reasonableness"—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." *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972).

Importantly, the "settlement amount's ratio to the maximum potential recovery need not be the sole, or even the dominant, consideration when assessing the settlement's fairness." *Global Crossing*, 225 F.R.D. at 460-61. Instead, courts should "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." *Grinnell*, 495 F.2d at 462; *see also In re "Agent Orange" Prod. Liab. Litig.*, 597 F. Supp. 740, 762 (E.D.N.Y. 1984), *aff'd*, 818 F.2d 145 (2d Cir. 1987) (adequacy of settlement is "judged not in comparison with the possible recovery in the best of all possible worlds, but rather in light of the strengths and weaknesses of plaintiffs' case"); *In re PaineWebber Litig.*, 171 F.R.D. at 130 (fairness determination "is not susceptible of a mathematical equation yielding a particularized sum").

Here, the proposed settlement is well within the range of reasonableness and represents a historic and highly favorable result for the Settlement Class.

As the Fonti Declaration explains, estimated damages would be approximately $576 million if scienter is not proven (thereby eliminating Exchange Act liability) and Defendants prevailed on their arguments about Securities Act damages; in this scenario, the proposed settlement would amount to a 73% recovery. (Fonti Decl. ¶354.) At the high end, estimated

realistically provable damages would be approximately $12.22 billion if Class Representatives proved all Exchange Act elements (including scienter), demonstrated loss causation for each corrective event, and defeated Defendants' arguments about Securities Act damages—a highly uncertain scenario that would require the Class to prevail on every contested issue of liability and damages for all claims. (*Id.* ¶357.) In this scenario, the proposed settlement would amount to a 3.4% recovery. (*Id.*)

Significantly, even the 3.4% recovery is substantial relative to recoveries in other large securities cases. For example, the consulting firm NERA regularly calculates settlement value as a percentage of "NERA-Defined Investor Losses." While NERA-Defined Investor Losses are not identical to aggregative damages, for cases with $10 billion or greater in NERA-Defined Investor Losses, NERA has found historical median settlement values of 0.5%. (*Id.* ¶359.)

Moreover, the above estimates of potential damages are wholly theoretical in light of Teva's numerous financial constraints, discussed above and in the Fonti Declaration (¶¶303-312). In light of those constraints, Teva's "ability to pay was an actual and vital consideration" for the proposed settlement. *In re Lucent Techs., Inc. Sec. Litig.*, 327 F. Supp. 2d 426, 436 (D.N.J. 2004). Indeed, in deciding to enter the proposed settlement, Class Representatives carefully considered not only merits risks, but also analysis by a consulting expert of Teva's financial risks and constraints, and the circumstances of Teva's insurance coverage, which would diminish as litigation (and Defendants' substantial legal fees) continued. (Ex. 3 (Davis Decl.) ¶¶18, 22-23; Ex. 4 (Jarvis Decl.) ¶¶18, 22-23.)

The "certainty" of the "settlement amount has to be judged in this context of the legal and practical obstacles to obtaining a large recovery," including "substantial legal obstacles," the prospect of "long and costly litigation," "a significant issue as to whether [a larger] judgment could

be collected," and the fact that "the insurance coverage in this case [was] limited" and "rapidly being consumed by legal fees." *Global Crossing*, 225 F.R.D. at 461. When "judged against the realistic, rather than theoretical, potential for recovery after trial," *id.*, the proposed settlement's immediate, certain cash recovery of $420 million is a particularly exceptional result and well within the range of reasonableness.

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

Rule 23(e)(2)(C) also directs the Court to consider "(ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorneys' fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3)." These factors also support approval.

First, the proposed notice and claims administration process are an effective method to distribute relief to the Settlement Class and reflect well-established procedures utilized in securities class actions. Based on Settlement Class Members' submission of the Proof of Claim and Release (with supporting documentation, as needed), the Claims Administrator will process claims under Class Counsel's supervision; notify claimants of any deficiencies or ineligibility and process responses; and, after making claim determinations, make distributions to Authorized Claimants. (*See* ECF 919-9 ¶¶17-18.) These procedures have commenced, with the Proof of Claim and Release due by May 17, 2022, and a number of claims already received.[5] (Ex. 2 (McGuinness Decl.) ¶¶25-26.)

[5] Lead Counsel has engaged an independent third party, The JNL Firm, LLC ("JNL"), to provide further assurance that the claims process is conducted in accordance with industry standards and consistent with the Plan of Allocation. JNL will provide a written submission to the Court concerning the results of the administration, and JNL's fees and expenses (net of a $5,000 retainer, and not to exceed $50,000 absent further Court approval) will be submitted to the Court in connection with distribution of the Net Settlement Fund. (Fonti Decl. ¶350.)

Second, as to the "terms of any proposed award of attorneys' fees, including timing of payment," Fed. R. Civ. P. 23(e)(2)(C)(iii), consistent with the terms of the Notice, Lead Counsel has made an application for fees and expenses to be paid from the Settlement Fund. While this application is separate from the Court's approval of the proposed settlement, for the reasons stated in the application and its supporting papers, the fee and expense request is reasonable. The Stipulation (filed with the Court and made available on the settlement website) provides for payment of any fee and expense award upon the Court's execution of the Judgment and entry of an order awarding such fees and expenses. (ECF 919-2 ¶6.2.)

Third, beyond the Stipulation itself, the only other "agreement required to be identified under Rule 23(e)(3)," Fed. R. Civ. P. 23(e)(2)(C)(iv), is the Supplemental Agreement, which was previously identified in Class Representatives' preliminary approval papers (ECF 919-1 at 28 of 37). As is standard in securities class actions, the Supplemental Agreement provides specified options to terminate the settlement if Settlement Class Members reach certain thresholds based on the Recognized Loss Amounts on Teva Securities subject to the settlement (*see* ECF 919-2 ¶7.4). "This type of agreement is a standard provision in securities class actions and has no negative impact on the fairness of the [s]ettlement." *Signet*, 2020 WL 4196468 at *13.

D. The Settlement Treats Class Members Equitably Relative to Each Other, Satisfying Rule 23(e)(2)(D)

Rule 23(e)(2)(D) directs the Court to evaluate whether the Proposed Settlement "treats class members equitably relative to each other." As discussed below, the Plan of Allocation satisfies this requirement by providing for each Authorized Claimant to receive their *pro rata* share of the Net Settlement Fund based on the size of their Recognized Claim. In turn, Recognized Claims are determined by an objective formula that applies equally to all Settlement Class Members, including Class Representatives.

II. THE PLAN OF ALLOCATION SHOULD BE APPROVED

The proposed Plan of Allocation, like the settlement itself, should be approved as fair, reasonable, and adequate. An "allocation formula need have only a reasonable, rational basis, particularly if recommended by experienced and competent class counsel." *In re Am. Bank Note Holographies, Inc. Sec. Litig.*, 127 F. Supp. 2d 418, 429-30 (S.D.N.Y. 2001). A reasonable plan may consider the relative strength and values of different categories of claims. *In re Lloyd's Am. Trust Fund Litig.*, No. 96 Civ. 1262, 2002 WL 31663577 (S.D.N.Y. Nov. 26, 2002).

Here, the Plan of Allocation was developed by Class Counsel with Dr. Tabak's expert assistance, and provides a method for the fair, equitable, and reasonable distribution of the Net Settlement Fund to Authorized Claimants based on estimates of their recognized losses from transactions in Teva Securities during the Class Period. (Fonti Decl. ¶¶334-339.)

Specifically, transactions in Teva ADS may result in Exchange Act Recognized Loss Amounts, with the calculation depending on when the claimant purchased and/or sold the ADS and whether the claimant held the ADS through the PSLRA's 90-day look-back period after the end of the Class Period. (*Id.* ¶336.) The Exchange Act Recognized Loss Amount is generally the difference between the estimated artificial inflation on the date of purchase and the date of sale, or (if less) the difference between the actual purchase price and sale price. (*See* ECF 928-5 at 25 of 32.) The estimates of artificial inflation for the ADS are consistent with Dr. Tabak's expert opinions regarding artificial inflation during the prosecution of the action. (Fonti Decl. ¶336.)[6]

[6] In addition, the Plan of Allocation provides for a 5% increase in Exchange Act Recognized Loss Amounts for eligible ESPP purchasers, recognizing the Securities Act and state-law claims asserted on their behalf, and that Defendants had substantial "tracing," preclusion, and other defenses to these additional claims. (*See* ECF 928-5 at 24 of 32 n.3.)

Transactions in Teva Preferred Shares and Notes (and ADS purchased in the ADS Offering) may result in Securities Act Recognized Loss Amounts. To avoid double-counting, the Plan of Allocation does not provide Exchange Act Recognized Loss Amounts for these securities, since Exchange Act damages for these transactions are subsumed by larger Securities Act damages for the same transactions. The calculation of Securities Act Recognized Loss Amounts generally reflects the Securities Act's statutory damages formula and depends on the amount paid for each of these Teva Securities and the security's price or value at the time of suit or the time of sale. (*Id.* ¶337.) This approach is consistent with Dr. Tabak's expert opinions during the prosecution of the action. (*Id.*)

Finally, a claimant's "Recognized Claim" will be the sum of the claimant's Recognized Loss Amounts. The Net Settlement Fund will be allocated to Authorized Claimants on a *pro rata* basis based on the relative size of their Recognized Claims, as determined by the Claims Administrator. (*Id.* ¶338.)

These provisions appropriately allocate the Net Settlement Fund based on the various claims asserted in this case and recognize the different methods to calculate damages under the Securities Act and the Exchange Act. *See Priceline*, 2007 WL 2115592 at *4 (concluding that plan of allocation "is fair and has a 'reasonable rational basis' in light of the circumstances of this case") (quoting *Maley*, 186 F. Supp. 2d at 367); *Signet*, 2020 WL 4196468 at *14 (plan of allocation was "fair and reasonable method to allocate the Net Settlement Fund among Class Members").

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

Finally, notice to the Settlement Class was "reasonable" under Rule 23(e)(1) and satisfied Rule 23(c)(2)(B)'s requirement to provide "the best notice that is practicable under the

circumstances, including individual notice to all members who can be identified through reasonable effort."

First, the Court-approved Notice contained all information required by Rule 23(c)(2)(B) and the PSLRA, 15 U.S.C. § 78u-4(a)(7), including: (i) the nature of the action and the claims asserted; (ii) the definition of the Settlement Class; (iii) that Settlement Class Members may seek exclusion, object, or enter appearances through an attorney; (iv) notice of the binding effect of a class judgment on Settlement Class Members; (v) the amount of the settlement (on an aggregate and per-security basis); (vi) the issues about which the parties disagree, including liability and the amount of damages; (vii) the maximum amount of attorneys' fees and litigation expenses that Lead Counsel would seek (including on a per-share basis); (viii) Lead Counsel's contact information; and (ix) a brief statement explaining the reasons why the parties are proposing the settlement.

Second, the method of dissemination of notice was effective. Pursuant to the Preliminary Approval Order, Epiq began mailing Notices to potential Settlement Class Members and nominees on February 16, 2022, and also caused the Notice and related materials to be published on the DTC Legal Notice System on February 21, 2022. (Ex. 2 (McGuinness Decl.) ¶¶3-6.) As of April 27, 2022, Epiq has mailed 942,255 individual Notices. (*Id.* ¶11; Fonti Decl. ¶347.) Epiq also caused the Summary Notice to be published in the U.S. and Israel (in Hebrew) and transmitted over *PR Newswire*, and established a case-specific website and telephone numbers for the settlement, as noted above. (Ex. 2 (McGuinness Decl.) ¶¶14-24.)

This combination of individual mailing to all Settlement Class Members who could be identified with reasonable effort, supplemented by multiple publications and a website, satisfies

the requirements of Rule 23 and due process.[7] *See Priceline*, 2007 WL 2115592 at *3 (notice "was adequate in form and content to satisfy the requirements of the federal rules and due process," and "sufficient for class members to understand the proposed settlement and their options"); *Signet*, 2020 WL 4196468 at *14 (sufficient notice by "combination of individual mail to all Class Members who could be identified with reasonable effort, supplemented by notice in an appropriate, widely circulated publication, transmitted over the newswire, and set forth on internet websites").

CONCLUSION

Class Representatives respectfully request that the Court grant final approval of the proposed settlement and approve the Plan of Allocation.

Dated: New York, New York
April 28, 2022

Respectfully submitted,

/s/ *Joseph A. Fonti*

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[7] In addition, on January 21, 2022, Defendants served the notice required under the Class Action Fairness Act, 28 U.S.C. § 1715 (2005) *et seq*. (Fonti Decl. ¶348.)

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CERTIFICATE OF SERVICE

I hereby certify that on April 28, 2022, a copy of the foregoing was filed electronically with the Clerk of Court via CM/ECF. Notice of this filing will be sent by email to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing. Parties may access this filing through the court's CM/ECF system.

/s/ Joseph A. Fonti
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