UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

PLYMOUTH COUNTY RETIREMENT ASSOCIATION, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. ADVISORY BOARD COMPANY, ROBERT W. MUSSLEWHITE, and MICHAEL T. KIRSHBAUM, Defendants.	Civil No. 1:17-CV-01940-RC CLASS ACTION

LEAD PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND INCORPORATED MEMORANDUM OF LAW

TABLE OF CONTENTS

Page

I. PRELIMINARY STATEMENT 1

II. THE NOTICE PROGRAM AND PRELIMINARY APPROVAL 3

III. HISTORY OF THE ACTION 4

IV. ARGUMENT 5

A. The Proposed Settlement Warrants Final Approval 5

B. The Settlement Satisfies the Requirements of Rule 23(e)(2) 6

C. The Fact that the Settlement Is the Result of Non-Collusive, Arm's-Length Negotiations Favors Approval 7

D. The Terms of the Settlement in Relation to the Strength of the Case Favor Approval 8

E. The Stage of the Litigation Favors Approval 11

F. The Overwhelmingly Positive Reaction of the Class to Date Favors Approval 12

G. The Opinion of Counsel Supports Approval 13

V. THE PLAN OF ALLOCATION SHOULD BE APPROVED 13

VI. CLASS CERTIFICATION REMAINS WARRANTED 15

VII. CONCLUSION 15

TABLE OF AUTHORITIES

Page

CASES

Alvarez v. Keystone Plus Constr. Corp.,
303 F.R.D. 152 (D.D.C. 2014)..... *passim*

Ceccone v. Equifax Info. Servs. LLC,
No. 13-cv-1314 (KBJ), 2016 U.S. Dist. LEXIS 127942
(D.D.C. Aug. 29, 2016).....6, 8, 9, 12

Cohen v. Warner Chilcott Pub. Ltd. Co.,
522 F. Supp. 2d 105 (D.D.C. 2007).....11

Flinn v. FMC Corp.,
528 F.2d 1169 (4th Cir. 1975) 12

* *Howard v. Liquidity Servs.*,
No. 14-1183 (BAH), 2018 U.S. Dist. LEXIS 172321
(D.D.C. Oct. 5, 2018).....5, 6, 9, 13

In re Black Farmers Discrimination Litig.,
856 F. Supp. 2d 1 (D.D.C. 2011).....5

In re Chrysler-Dodge-Jeep Ecodiesel® Mktg., Sales Practices & Prods. Liab. Litig.,
No. 17-md-02777-EMC, 2019 U.S. Dist. LEXIS 75205
(N.D. Cal. May 3, 2019) 7

* *In re Fannie Mae Sec., Derivative, & ERISA Litig.*,
4 F. Supp. 3d 94 (D.D.C. 2013).....9, 10, 12, 14

In re Lorazepam & Clorazepate Antitrust Litig.,
205 F.R.D. 369 (D.D.C. 2002).....13

In re Lorazepam & Clorazepate Antitrust Litig.,
MDL No. 1290, 2003 U.S. Dist. LEXIS 12344
(D.D.C. June 16, 2003) 13

In re Newbridge Networks Sec. Litig.,
No. 94-1678-LFO, 1998 U.S. Dist. LEXIS 23238
(D.D.C. Oct. 23, 1998).....11

In re PaineWebber P'ships Litig.,
171 F.R.D. 104 (S.D.N.Y. 1997), *aff'd*, 117 F.3d 721
(2d Cir. 1997).....13

Page

In re Vitamins Antitrust Litig.,
MDL No. 1285, 2001 U.S. Dist. LEXIS 25066
(D.D.C. July 19, 2001).....11

In re Vitamins Antitrust Litig.,
No. 99-197 (TFH), 2000 U.S. Dist. LEXIS 8931
(D.D.C. Mar. 31, 2000).....13

Meijer, Inc. v. Warner Chilcott Holdings Co. III, Ltd.,
565 F. Supp. 2d 49 (D.D.C. 2008).....7

Osher v. SCA Realty I, Inc.,
945 F. Supp. 298 (D.D.C. 1996).....5

Pigford v. Glickman,
185 F.R.D. 82 (D.D.C. 1999),
aff'd, 206 F.3d 1212 (D.C. Cir. 2000).....9

Prince v. Aramark Corp.,
257 F. Supp. 3d 20 (D.D.C. 2017).....7

Radosti v. Envision EMI, LLC,
717 F. Supp. 2d 37 (D.D.C. 2010).....7

Snyder v. Ocwen Loan Servicing, LLC,
No. 14 C 8461, 2019 U.S. Dist. LEXIS 80926
(N.D. Ill. May 14, 2019).....7

Stephens v. US Airways Grp., Inc.,
102 F. Supp. 3d 222 (D.D.C. 2015).....7

Trombley v. Nat'l City Bank,
759 F. Supp. 2d 20 (D.D.C. 2011).....7

Vista Healthplan, Inc. v. Warner Holdings Co. III, Ltd.,
246 F.R.D. 349 (D.D.C. 2007).....5, 13

STATUTES, RULES AND REGULATIONS

15 U.S.C.
§78u-4(a)(4).....1, 2
§78u-4(e).....14

Page

Federal Rules of Civil Procedure
Rule 23(a).....15
Rule 23(b)(3).....15
Rule 23(c)(2).....12
Rule 23(e).....1, 5, 6
Rule 23(e)(2).....5, 6, 7
Rule 23(e)(3).....6

SECONDARY AUTHORITIES

Janeen McIntosh & Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2019 Full-Year Review* (NERA Feb. 21, 2020).....11

Lead Plaintiffs City of Atlanta Police Officers' Pension Fund and City of Atlanta Firefighters' Pension Fund ("Lead Plaintiffs"), on behalf of themselves and all Members of the Class, respectfully submit this memorandum of law in support of their motion, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, for final approval of the proposed Settlement of this securities class action (the "Litigation") against Advisory Board Company ("Advisory Board" or the "Company"), Robert W. Musslewhite and Michael T. Kirshbaum (collectively, the "Defendants"), approval of the proposed Plan of Allocation for the net proceeds of the Settlement and final certification of the Class for Settlement purposes.[1] This motion addresses the approval of the Settlement, the Plan of Allocation and class certification. A separate motion, filed herewith, addresses Lead Counsel's request for an award of attorneys' fees and payment of litigation costs, charges and expenses.

This motion is supported by the following memorandum of points and authorities and the accompanying Declaration of David A. Rosenfeld in Support of: (1) Lead Plaintiffs' Motion for Final Approval of Settlement and Approval of the Plan of Allocation; and (2) Lead Counsel's Motion for an Award of Attorneys' Fees and Expenses and Award to Lead Plaintiffs Pursuant to 15 U.S.C. §78u-4(a)(4) ("Rosenfeld Declaration" or "Rosenfeld Decl."), filed herewith.[2]

I. PRELIMINARY STATEMENT

The Settling Parties have reached a proposed settlement of this securities class action in the amount of $7,500,000 in cash (the "Settlement") that, if approved by the Court, will resolve all

[1] The terms of the Settlement are set forth in the Stipulation of Settlement, dated December 6, 2019, previously filed with the Court (the "Stipulation," ECF No. 37). All capitalized terms used herein that are not defined have the same meanings ascribed to them in the Stipulation.

[2] The Rosenfeld Declaration is an integral part of this motion and is incorporated herein by reference. For the sake of brevity, the Court is respectfully referred to the Rosenfeld Declaration for, *inter alia*, a detailed description of the allegations and claims, the procedural history of the Litigation, the risks faced by the Lead Plaintiffs in pursuing litigation, and the negotiations that led to a settlement.

claims asserted, or that could have been asserted, against the Defendants and the other Released Defendant Parties. As set forth below and in the accompanying Rosenfeld Declaration, the Settlement is a very good result for the Class, attributable to the Lead Plaintiffs' and Lead Counsel's comprehensive efforts to litigate claims under the federal securities laws, namely allegations that the Defendants made materially false and misleading statements and failed to disclose information to investors about the Company's integration of Royall & Company ("Royall"), which it acquired on January 9, 2015. Lead Plaintiffs allege that the false and misleading statements and omissions inflated the price of Advisory Board's common stock, and that when Defendants later disclosed negative financial results which resulted from the lack of integration, Advisory Board's stock price declined. *See* Rosenfeld Decl., ¶¶15-17.

Lead Plaintiffs fully endorse the Settlement. *See* Declaration of Derek Brent Hullender in Support of Lead Plaintiffs' Motion for Final Approval of the Settlement and Plan of Allocation and for Lead Counsel's Motion for an Award of Attorneys' Fees and Expenses and an Award to Lead Plaintiffs Pursuant to 15 U.S.C. §78u-4(a)(4), ¶6; Declaration of Richard Light in Support of Lead Plaintiffs' Motion for Final Approval of the Settlement and Plan of Allocation and for Lead Counsel's Motion for an Award of Attorneys' Fees and Expenses and an Award to Lead Plaintiffs Pursuant to 15 U.S.C. §78u-4(a)(4), ¶6 (collectively, the "Lead Plaintiff Declarations"). The Settlement was achieved only after Lead Plaintiffs and Lead Counsel had developed a thorough understanding of the strengths and weaknesses of the claims and defenses in the Litigation, and following arm's-length negotiations conducted under the auspices of Michelle Yoshida, Esq. of Phillips ADR Enterprises, a highly-respected mediator with substantial experience overseeing negotiations of complex securities class actions. The $7,500,000 Settlement avoids all the risks, uncertainties, and expense of continued litigation, and provides a certain and substantial financial benefit for the Class. While Lead Plaintiffs and Lead Counsel believe that the claims asserted are

meritorious and strong, given the significant obstacles to recovery – including establishing the falsity of the alleged misstatements, proving that Defendants acted with scienter, proving loss causation, prevailing on *Daubert* motions and a likely summary judgment motion, securing a favorable jury verdict, and protecting that verdict through post-trial motions and appeals – Lead Plaintiffs and Lead Counsel respectfully submit that the Settlement provides a fair and reasonable resolution of the claims in this Litigation and should be finally approved.

II. THE NOTICE PROGRAM AND PRELIMINARY APPROVAL

On December 6, 2019, Lead Plaintiffs moved for preliminary approval of the Settlement. ECF No. 36. On January 6, 2020, the Court entered the Preliminary Approval Order, authorizing that notice of the Settlement be sent to Class Members and scheduling the Settlement Hearing for May 6, 2020, to consider whether to grant final approval to the Settlement. ECF No. 39. Following preliminary approval, the $7,500,000 Settlement Amount was deposited into an escrow account and has been invested for the benefit of the Class pursuant to the terms of the Settlement. Stipulation, ¶2.2. If and when the Settlement becomes final, at the conclusion of the claims process, the Net Settlement Fund will be distributed in accordance with the Plan of Allocation approved by the Court.

Pursuant to the Preliminary Approval Order, the Court instructed Gilardi & Co. LLC ("Gilardi") to disseminate copies of the Notice of Pendency and Proposed Settlement of Class Action (the "Notice") and Proof of Claim and Release form (collectively, the "Claim Packet") by mail and to publish the Summary Notice. ECF No. 39, ¶10. The Notice provided potential Class Members with information about the terms of the Settlement and, among other things: their right to opt out of the Class; their right to object to any aspect of the Settlement, the Plan of Allocation, or the Fee and Expense Application; and the procedure for submitting a Proof of Claim and Release form in order to be eligible for a payment from the net proceeds of the Settlement. The Notice also informed Class Members of Lead Counsel's intention to apply for an award of attorneys' fees of no

more than 25% of the Settlement Fund and for payment of litigation expenses, including awards to the Lead Plaintiffs pursuant to the Private Securities Litigation Reform Act of 1995 ("PSLRA"), in an amount not to exceed $60,000.00.

On January 27, 2020, Gilardi began mailing Claim Packets to potential Class Members, as well as banks, brokerage firms, and other third party nominees whose clients may be Class Members. *See* Declaration of Ross D. Murray Regarding Notice Dissemination, Publication, and Requests for Exclusion Received to Date ("Murray Decl."), ¶¶4-11. On February 3, 2020, Gilardi caused the Summary Notice to be published in *The Wall Street Journal* and to be transmitted over *Business Wire*. *Id.*, ¶12. To date, 23,550 copies of the Claim Packet have been mailed to potential Class Members and their nominees. *Id*., ¶11.

Pursuant to the terms of the Preliminary Approval Order, the deadline for Class Members to submit objections to the Settlement, the Plan of Allocation, or the Fee and Expense Application, or to opt out of the Class, is April 15, 2020. To date, the Class's reaction to the proposed Settlement has been overwhelmingly positive. While the deadline for objecting has not yet passed, there have been no objections to either the proposed Settlement or the Plan of Allocation and only one request for exclusion. *See* Rosenfeld Decl., ¶¶11, 33.

III. HISTORY OF THE ACTION

To avoid repetition, Lead Plaintiffs respectfully refer the Court to the accompanying Rosenfeld Declaration for a detailed discussion of the factual background and procedural history of the Litigation, the efforts undertaken by Lead Plaintiffs and Lead Counsel during the course of the Litigation, the risks of continued litigation, and a discussion of the negotiations leading to the Settlement.

IV. ARGUMENT

A. The Proposed Settlement Warrants Final Approval

Under Rule 23(e), the Settlement should be approved if the Court finds it "fair, reasonable, and adequate" and not the product of collusion between the parties. Fed. R. Civ. P. 23(e)(2); *see also Howard v. Liquidity Servs.*, No. 14-1183 (BAH), 2018 U.S. Dist. LEXIS 172321, at *13 (D.D.C. Oct. 5, 2018). In this regard:

> It is well-established that courts assume a limited role when reviewing a proposed class action settlement. They should not substitute their judgment for that of counsel who negotiated the settlement. Rather, courts . . . strongly encourage settlements [and] [i]n the context of class actions, settlement is particularly appropriate given the litigation expenses and judicial resources required in many such suits.

Osher v. SCA Realty I, Inc., 945 F. Supp. 298, 304 (D.D.C. 1996).[3] Indeed, "there is a long-standing judicial attitude favoring class action settlements," *Vista Healthplan, Inc. v. Warner Holdings Co. III, Ltd.*, 246 F.R.D. 349, 357 (D.D.C. 2007), and "the discretion of the Court to reject a settlement is restrained by the 'principle of preference' that encourages settlements," *In re Black Farmers Discrimination Litig.*, 856 F. Supp. 2d 1, 30 (D.D.C. 2011), as amended (Nov. 10, 2011).

Rule 23(e)(2), as recently amended, provides that:

> *Approval of the Proposal*. If the proposal would bind class members, the court may approve it only after a hearing and only on finding that it 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;

[3] Citations are omitted and emphasis is added unless otherwise indicated.

(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).

Although the "D.C. Circuit has not set forth an 'obligatory test that [a] Court must perform' to evaluate a proposed settlement under Rule 23(e)," *Howard*, 2018 U.S. Dist. LEXIS 172321, at *13, courts in this District have generally considered the following factors in determining whether a settlement is fair, reasonable, and adequate: "'(a) whether the settlement is the result of arm's-length negotiations; (b) the terms of the settlement in relation to the strengths of plaintiffs' case; (c) the status of the litigation proceedings at the time of settlement; (d) the reaction of the class; and (e) the opinion of experienced counsel.'" *Ceccone v. Equifax Info. Servs. LLC*, No. 13-cv-1314 (KBJ), 2016 U.S. Dist. LEXIS 127942, at *9-*10 (D.D.C. Aug. 29, 2016) (quoting *Alvarez v. Keystone Plus Constr. Corp.*, 303 F.R.D. 152, 159 (D.D.C. 2014)). The factors set forth in Rule 23(e)(2) are applied in tandem with the applicable approval factors and "focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal." Fed. R. Civ. P. 23(e)(2) advisory committee's notes to 2018 amendments. In this case, an examination of the foregoing factors firmly demonstrates that the Settlement satisfies both Rule 23(e)(2) and the applicable approval factors, is fair, reasonable, and adequate to the Class, and should be approved by the Court.

B. The Settlement Satisfies the Requirements of Rule 23(e)(2)

As explained in Lead Plaintiffs' Memorandum of Law in Support of Unopposed Motion for Preliminary Approval of Class Action Settlement (the "Preliminary Approval Memorandum," ECF No. 36-1) at 3-6, and as acknowledged by the Preliminary Approval Order, Lead Plaintiffs have met

all of the requirements imposed by Rule 23(e)(2). ECF No. 39. Courts analyzing the recently amended Rule 23(e)(2) factors have noted that a plaintiff's satisfaction of these factors at final approval is virtually assured where, as here, little has changed between preliminary and final approval. *See In re Chrysler-Dodge-Jeep Ecodiesel® Mktg., Sales Practices & Prods. Liab. Litig.*, No. 17-md-02777-EMC, 2019 U.S. Dist. LEXIS 75205, at *29 (N.D. Cal. May 3, 2019) (finding that the "conclusions [made in granting preliminary approval] stand and counsel equally in favor of final approval now"); *Snyder v. Ocwen Loan Servicing, LLC*, No. 14 C 8461, 2019 U.S. Dist. LEXIS 80926, at *14 (N.D. Ill. May 14, 2019) (noting in analyzing Rule 23(e)(2) that "[s]ignificant portions of the Court's analysis remain materially unchanged from the previous order [granting preliminary approval]").

C. The Fact that the Settlement Is the Result of Non-Collusive, Arm's-Length Negotiations Favors Approval

"'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.'" *Meijer, Inc. v. Warner Chilcott Holdings Co. III, Ltd.*, 565 F. Supp. 2d 49, 55 (D.D.C. 2008); *see also Stephens v. US Airways Grp., Inc.*, 102 F. Supp. 3d 222, 227 (D.D.C. 2015).

Here, the Settlement meets these requirements and is entitled to this presumption. Although document discovery had not been produced as a result of the mandatory PSLRA discovery stay until the Court denied Defendants' motion to dismiss, written discovery had been produced by Defendants, and Lead Counsel conducted an extensive investigation prior to entering into settlement negotiations to ensure that an informed decision could be made with respect to any settlement. It is well settled that "'formal discovery is not . . . necessarily required . . . for final approval of a proposed settlement.'" *Prince v. Aramark Corp.*, 257 F. Supp. 3d 20, 25 (D.D.C. 2017) (quoting *Trombley v. Nat'l City Bank*, 759 F. Supp. 2d 20, 26 (D.D.C. 2011)); *see also Radosti v. Envision EMI, LLC*, 717 F. Supp. 2d 37, 62 (D.D.C. 2010) (approving settlement before formal discovery

began but "Plaintiffs' counsel conducted significant factual investigation into possible class claims and the financial situation of [the defendant] prior to the mediation").

The Settlement was reached as a result of arm's-length negotiations between highly experienced counsel. Lead Plaintiffs are represented by Lead Counsel, Robbins Geller Rudman & Dowd LLP, a firm that is extremely well-versed in prosecuting securities class actions. *See* Declaration of David a. Rosenfeld Filed on Behalf of Robbins Geller Rudman & Dowd LLP in Support of Application for Award of Attorneys' Fees and Expenses, Ex. E, filed herewith. Defendants are represented by Skadden, Arps, Slate, Meagher & Flom LLP, a premier international defense firm. The arm's-length nature of the negotiations is further evidenced by the fact that they were conducted through a highly experienced and well-regarded mediator, Michelle Yoshida, Esq. of Phillips ADR Enterprises. Settlement negotiations, moreover, were hard fought. The Settling Parties were unable to come to an agreement during the September 25, 2019 mediation. Only after additional negotiations, facilitated by Ms. Yoshida, did the Settling Parties reach an agreement in principle to settle the Litigation on September 27, 2019. The Settling Parties then negotiated the terms of that settlement and finalized the terms of the agreement on October 18, 2019. Rosenfeld Decl., ¶¶26-27.

On these facts, "[t]here is no evidence of collusion or coercion on the part of the parties, and no reason for the Court to doubt that the settlement 'was the product of legitimate negotiation on behalf of both sides.'" *Ceccone*, 2016 U.S. Dist. LEXIS 127942, at *21-*22 (quoting *Alvarez*, 303 F.R.D. at 163). Thus, this factor weighs in favor of approval, and the Settlement is entitled to a presumption that it is fair, reasonable, and adequate. *Id.*

D. The Terms of the Settlement in Relation to the Strength of the Case Favor Approval

"Next, the Court compares the terms of the settlement with the likely recovery plaintiffs would attain if the case proceeded to trial, an exercise which necessarily involves evaluating the

strengths and weaknesses of plaintiffs' case." *In re Fannie Mae Sec., Derivative, & ERISA Litig.*, 4 F. Supp. 3d 94, 103 (D.D.C. 2013); *see also Alvarez*, 303 F.R.D. at 164 (approving settlement in light of "the uncertainty of recovering such damages and the time and money that it would have taken to litigate this case to a verdict"); *Pigford v. Glickman*, 185 F.R.D. 82, 104 (D.D.C. 1999) (considering that "bringing this case to trial likely would have been a very complex, long and costly proposition" in evaluating settlement), *aff'd*, 206 F.3d 1212 (D.C. Cir. 2000); *Ceccone*, 2016 U.S. Dist. LEXIS 127942, at *24 (weighing guaranteed recovery against the "potential difficulties and uncertainties [that would] reduce the plaintiffs' expected recovery if the case had proceeded to trial" in evaluating settlement). "'The D.C. Circuit has suggested that this may be the most important factor in evaluating a class settlement.'" *Howard*, 2018 U.S. Dist. LEXIS 172321, at *16.

Here, the Settlement provides for the immediate creation of an all-cash settlement fund of $7,500,000. Considered against the strengths and weakness of Lead Plaintiffs' case, this is a very favorable result and weighs heavily in favor of approval. These risks are summarized below and are described in more detail in ¶29 of the Rosenfeld Declaration.

At summary judgment and at trial, Defendants would likely have continued to argue, as they have throughout the case, that the remaining alleged misstatements were not actionable. With respect to the revenue guidance statement, Defendants would argue that the Company's year-end 2015 revenue was $780.8 million, and thus within the guidance announced in May 2015 of $780 to $800 million, and therefore the guidance and the statement in support of that guidance was not materially misleading. Defendants would also argue that Lead Plaintiffs would be unable to prove that any stock price decline was caused by the May 2015 guidance projection rather than other information disclosed in August 2015, creating issues of loss causation. Defendants have also maintained that Lead Plaintiffs will be unable to prove that Defendants knew, on May 5, 2015, that the departures of Royall senior executives would cause Royall to underperform relative to forecast.

Likewise, Defendants would have challenged Lead Plaintiffs' scienter allegations, arguing that Lead Plaintiffs have not demonstrated Defendants' motive to commit fraud. There is no guarantee that Lead Plaintiffs would gather enough evidence through fact discovery to prove their claims. Lead Plaintiffs' experts would also likely face *Daubert* challenges and a summary judgment motion on potentially case-dispositive issues such as loss causation. Should the case get to trial, Lead Plaintiffs would have to persuade a jury on each element of the claims.

If Lead Plaintiffs successfully navigated all of those obstacles, moreover, they would have only established Defendants' liability. The task of quantifying damages presented yet another risk, including that the factfinder could have concluded that the effect of any fraud was smaller than asserted, and thus a damages award would be substantially lower than that sought by Lead Plaintiffs. And, of course, even obtaining favorable judgments on liability and damages is not the end of the story. Lead Plaintiffs would also have to successfully protect those judgments through appeal.

Against these risks, Lead Plaintiffs respectfully submit that the benefit to the Class of a certain $7,500,000 cash settlement, which, according to the estimates of Lead Plaintiffs' damages consultant constitutes approximately 11% of the ***maximum*** realistic recoverable damages (*i.e.*, approximately $69.5 million), weighs in favor of approval. *See* Rosenfeld Decl., ¶5. Notably, there is a significant risk that the actual recoverable damages would be much less than $69.5 million. Damages could have been even lower if Defendants were able to convince the Court or a jury that the remaining corrective disclosures did not ***correct*** previous false statements or that Lead Plaintiffs' expert's disaggregation methodology did not reasonably disaggregate confounding information.

The Settlement's recovery for the benefit of the Class of approximately 11% of potentially recoverable damages, assuming that liability was established, compares positively with other securities class action settlements. *See Fannie Mae*, 4 F. Supp. 3d at 103-04 (noting that settlement that represents 4%-8% of the potential recovery compares favorably with other cases approving

securities class action settlements); *see also In re Newbridge Networks Sec. Litig.*, No. 94-1678-LFO, 1998 U.S. Dist. LEXIS 23238, at *8 (D.D.C. Oct. 23, 1998) ("Courts have not identified a precise numerical range within which a settlement must fall in order to be deemed reasonable; but an agreement that secures roughly six to twelve percent of a ***potential*** trial recovery, while preventing further expenditures and delays and eliminating the risk that no recovery at all will be won, seems to be within the targeted range of reasonableness.") (emphasis in original); Janeen McIntosh & Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2019 Full-Year Review* at 20 Figure 13 (NERA Feb. 21, 2020) (the median ratio of settlement to investor losses in 2019 was 2.1%, and averaged 2% in years 2010-2019).

E. The Stage of the Litigation Favors Approval

In considering this factor, courts assess "'whether counsel had sufficient information, through adequate discovery, to reasonably assess the risks of litigation vis-a-vis the probability of success and range of recovery.'" *Alvarez*, 303 F.R.D. at 164 (quoting *Cohen v. Warner Chilcott Pub. Ltd. Co.*, 522 F. Supp. 2d 105, 117 (D.D.C. 2007)). Here, the Settling Parties engaged in two years of litigation prior to reaching the Settlement, including an extensive investigation despite the PSLRA-mandated discovery stay, as well as some formal discovery, and vigorous motion to dismiss briefing. *See generally* Rosenfeld Decl. As a result of these efforts, Lead Counsel had, at the time of the Settlement, "'sufficient information . . . to reasonably assess the risks of litigation.'" *Alvarez*, 303 F.R.D. at 164.

Accordingly, this factor weighs in favor of approval as well, because the Settlement "does not come too early to be suspicious nor too late to be a waste of resources." *In re Vitamins Antitrust Litig.*, MDL No. 1285, 2001 U.S. Dist. LEXIS 25066, at *26 (D.D.C. July 19, 2001).

F. The Overwhelmingly Positive Reaction of the Class to Date Favors Approval

"'The attitude of the members of the class, as expressed directly or by failure to object, after notice, to the settlement, is a proper consideration for the trial court.'" *Ceccone*, 2016 U.S. Dist. LEXIS 127942, at *25-*26 (quoting *Flinn v. FMC Corp.*, 528 F.2d 1169, 1173 (4th Cir. 1975)). Here, Lead Plaintiffs fully endorse the Settlement. *See* Lead Plaintiff Declarations. In addition, as of March 30, 2020, the Claims Administrator has disseminated 23,550 copies of the Notice by mail to potential Class Members and their nominees, Murray Decl., ¶11, and there have been no objections. Further, the Summary Notice was published in *The Wall Street Journal* and transmitted over *Business Wire* on February 3, 2020. *Id.*, ¶12. Information regarding the Settlement was also posted on the case website, referenced in the Notice, www.AdvisoryBoardSecuritiesSettlement.com. *Id.*, ¶14.

Rule 23(c)(2) requires "that the [class] notice provided be 'the best . . . practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.'" *Ceccone*, 2016 U.S. Dist. LEXIS 127942, at *18. Courts have found settlement notice programs satisfactory where the claims administrator mailed individual notices, published notice in a major publication, disseminated the notice using a wire service, set up a dedicated website, email address and telephone hotline, and "advised Class Members of the essential terms of the Settlement Agreement, the Plan of Allocation, how to make a claim, how to object to the settlement, and the date, time, and location of the Fairness Hearing." *See, e.g.*, *Fannie Mae*, 4 F. Supp. 3d at 101 (approving notice program almost identical to that followed here). Each of these steps was followed here and, as such, the notice program was adequate.

To date, there have been no objections to any aspect of the Settlement. Rosenfeld Decl., ¶11. Thus, this factor "unambiguously weighs in favor of approval." *Alvarez*, 303 F.R.D. at 164.

G. The Opinion of Counsel Supports Approval

"[T]he opinion of experienced counsel 'should be afforded substantial consideration by a court in evaluating the reasonableness of a proposed settlement.'" *Vista Healthplan*, 246 F.R.D. at 363; *see also In re Lorazepam & Clorazepate Antitrust Litig.*, MDL No. 1290, 2003 U.S. Dist. LEXIS 12344, at *19-*20 (D.D.C. June 16, 2003) ("[The] [o]pinion of such experienced and informed counsel should be afforded substantial consideration by a court in evaluating the reasonableness of a proposed settlement.").

Here, Lead Counsel has extensive experience litigating securities class actions, and has submitted the Rosenfeld Declaration attesting to Lead Counsel's opinion that the settlement is fair, reasonable, and adequate. *See generally* Rosenfeld Decl. Accordingly, this factor also weighs in favor of approval.

V. THE PLAN OF ALLOCATION SHOULD BE APPROVED

"As with settlement agreements, courts consider whether distribution plans are fair, reasonable, and adequate." *Lorazepam & Clorazepate*, 2003 U.S. Dist. LEXIS 12344, at *23 (citing *In re Lorazepam & Clorazepate Antitrust Litig.*, 205 F.R.D. 369, 381 (D.D.C. 2002)); *In re Vitamins Antitrust Litig.*, No. 99-197 (TFH), 2000 U.S. Dist. LEXIS 8931, at *31-*32 (D.D.C. Mar. 31, 2000).

A plan of allocation need not be tailored to fit each and every class member with "mathematical precision," *In re PaineWebber P'ships Litig.*, 171 F.R.D. 104, 133 (S.D.N.Y. 1997), *aff'd*, 117 F.3d 721 (2d Cir. 1997), and is "sufficient where. . . . there is 'a rough correlation' between the settlement distribution and the relative amounts of damages recoverable by Class Members." *Lorazepam & Clorazepate*, 2003 U.S. Dist. LEXIS 12344, at *23; *see also Howard*, 2018 U.S. Dist. LEXIS 172321, at *23 (approving plan of allocation which distributes net settlement fund among authorized claimants on a *pro rata* basis, based on recognized loss formulas tied to

liability and damages). Courts also consider the opinion of experienced counsel in evaluating plans of allocation. *See Fannie Mae*, 4 F. Supp. 3d at 108.

Here, the Plan of Allocation is designed to equitably distribute the Settlement proceeds among the Members of the Class who were allegedly injured by Defendants' alleged misrepresentations and who submit valid Proof of Claim and Release forms that are approved for payment ("Authorized Claimants"). Lead Counsel developed the Plan of Allocation in consultation with Lead Plaintiffs' damages consultant. Rosenfeld Decl., ¶32. The Plan of Allocation, which was provided in full to Class Members in the Notice, provides for the calculation of a "Recognized Loss" amount for each properly documented purchase or acquisition of Advisory Board common stock during the Settlement Class Period. An Authorized Claimant's total "Recognized Claim" depends on, among other things, when their shares were purchased and/or sold during the Settlement Class Period in relation to the disclosure dates alleged in the Litigation, whether the shares were held through or sold during the statutory 90-day look-back period, *see* 15 U.S.C. §78u-4(e) (providing methodology for limiting damages in securities fraud actions), and the value of the shares when they were sold or held. Murray Decl., Ex. A.

The Recognized Loss formulas are tied to liability and damages. In developing the Plan of Allocation, Lead Plaintiffs' damages consultant considered the amount of artificial inflation allegedly present in Advisory Board's common stock throughout the Settlement Class Period that was purportedly caused by the alleged fraud. This analysis entailed studying the price declines associated with Advisory Board's allegedly corrective disclosures, adjusted to eliminate the effects attributable to general market or industry conditions.

Under Lead Counsel's direction, the Claims Administrator, Gilardi, will determine each Authorized Claimant's *pro rata* share of the Net Settlement Fund based upon each Authorized Claimant's total Recognized Claim compared to the aggregate Recognized Claims of all Authorized

Claimants. *Id*. The Net Settlement Fund will be distributed to Authorized Claimants on this *pro rata* basis as long as it is economically feasible to do so. Any balance that still remains in the Net Settlement Fund after such distributions, which is not feasible or economical to reallocate, after payment of outstanding Notice and Administration Expenses, Taxes, and attorneys' fees and expenses, will be donated to one or more not-for-profit, non-sectarian organizations serving the public-interest selected by Lead Plaintiffs, and approved by the Court. *See* Stipulation, ¶5.10.

Lead Counsel respectfully submits that the Plan provides a fair, reasonable, and rational basis for Class Members to recover their *pro rata* share of the Settlement. To date, moreover, there have been no objections to the Plan of Allocation. Rosenfeld Decl., ¶33. Accordingly, the Plan of Allocation should be approved.

VI. CLASS CERTIFICATION REMAINS WARRANTED

The Court previously, for settlement purposes only, preliminarily: (1) approved this Litigation as a class action pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure, and (2) appointed Lead Plaintiffs as class representatives and Lead Counsel as class counsel. ECF No. 39. None of the facts regarding certification of the Class have changed since Lead Plaintiffs submitted their motion for preliminary approval, and there has been no objection to certification. Accordingly, Lead Plaintiffs respectfully request that the Court grant final certification of the Class and appointment of Lead Plaintiffs as class representatives and Lead Counsel as class counsel, for settlement purposes only, pursuant to Rules 23(a) and (b)(3).

VII. CONCLUSION

For the foregoing reasons, Lead Plaintiffs respectfully request that the Court approve the proposed Settlement and Plan of Allocation as fair, reasonable, and adequate, and finally certify the Class for Settlement purposes. A form of proposed Order and Final Judgment, negotiated by the

Parties, and Plan of Allocation Order will be submitted to the Court on April 29, 2020, after the deadline for objections has passed.

DATED: April 1, 2020

Respectfully submitted,

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Lead Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I, Nancy M. Juda, hereby certify that on April 1, 2020, I authorized a true and correct copy of the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such public filing to all counsel registered to receive such notice.

/s/ Nancy M. Juda
NANCY M. JUDA

Mailing Information for a Case 1:17-cv-01940-RC PLYMOUTH COUNTY RETIREMENT ASSOCIATION v. ADVISORY BOARD COMPANY et al

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Manual Notice List

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