UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RETIREE BENEFIT TRUST OF THE CITY OF BALTIMORE, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. MALIBU BOATS, INC., JACK SPRINGER, BRUCE BECKMAN, DAVID BLACK, and WAYNE WILSON, Defendants.	No. 1:24-cv-03254-LGS **CLASS ACTION**

MEMORANDUM OF LAW IN SUPPORT OF LEAD PLAINTIFF'S UNOPPOSED MOTION FOR (I) PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; (II) CERTIFICATION OF THE SETTLEMENT CLASS; AND (III) APPROVAL OF NOTICE TO THE SETTLEMENT CLASS

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Lead Plaintiff Retiree Benefit Trust of the City of Baltimore respectfully submits this memorandum of law in support of its unopposed motion seeking: (i) preliminary approval of the proposed Settlement set forth in the Stipulation and Agreement of Settlement, dated July 29, 2025 (the "Stipulation"); (ii) certification of the proposed Settlement Class;[1] (iii) approval of the form and manner of the settlement notices to members of the Settlement Class; and (iv) the scheduling of a hearing (the "Settlement Hearing") on the final approval of the Settlement, proposed Plan of Allocation, and Lead Counsel's application for an award of attorneys' fees and reimbursement of Litigation Expenses (the "Motion").[2] The Parties' agreed-upon Order Preliminarily Approving Settlement and Providing for Notice (the "Preliminary Approval Order") is attached to the Stipulation filed separately as Exhibit A thereto.

I. PRELIMINARY STATEMENT

Lead Plaintiff and Defendants have negotiated, at arm's length and with the assistance of an experienced and neutral mediator, a proposed settlement of all claims in this Action for $7,800,000.00 in cash. The Settlement represents a notable result for the Settlement Class, as it secures a substantial and immediate monetary recovery in the face of significant legal risks and practical considerations, including the risk of a significantly lower recovery, or no recovery at all, had this case been prosecuted any further. As discussed below, the Settlement easily satisfies each of the factors relevant on a motion for preliminary approval.

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[1] As detailed more fully below, the "Settlement Class" consists of all persons or entities that purchased or otherwise acquired MBI Securities between November 4, 2022 and May 1, 2024, inclusive, and were damaged thereby. "MBI Securities" means MBI common stock and MBI call and put options.

[2] Unless otherwise stated or defined, all capitalized terms used herein shall have the meanings provided in the Stipulation, filed concurrently herewith. Unless otherwise indicated, all emphasis is added and citations and quotations omitted. The "Singer Decl." refers to the Declaration of Steven B. Singer in Support of this Motion.

The Settlement represents a highly favorable result that recovers for the Settlement Class 11% to 32% of likely recoverable damages—up to four times the typical securities class action recovery as a percentage of damages, which for 2024 was just 7.3% for settlements of Rule 10b-5 class actions.[3] Indeed, the Settlement is an excellent result when considering MBI's limited available cash and actively eroding Directors' and Officers' ("D&O") liability insurance policies, which made a larger recovery highly improbable and speculative.

Moreover, in undertaking this litigation, Lead Plaintiff and Lead Counsel faced numerous challenges to establishing liability and damages. "As a general rule, securities class actions are notably difficult and notoriously uncertain to litigate." *In re PPDAI Group Inc. Sec. Litig*., 2022 WL 198491, at *9 (E.D.N.Y. Jan. 21, 2022). The litigation risks were indeed enhanced by the fact that Plaintiff and Lead Counsel were litigating against highly skilled defense counsel under the heightened pleading standards and automatic discovery stay of the Private Securities Litigation Reform Act of 1995 ("PSLRA"). The risk of losing was also particularly acute in light of the credible arguments that Defendants advanced on the issues of falsity, scienter, loss causation and damages, among other issues, any one of which could have eliminated any recovery for the Settlement Class. Accordingly, the risk of a smaller recovery—or no recovery at all— is especially salient here if the Action were litigated through dispositive motions, trial, and the inevitable appeals, which weighs heavily in favor of settlement approval.

The Settlement is also the product of a procedurally fair process. It was negotiated by experienced, capable securities class action litigators. Lead Plaintiff is a sophisticated institutional investor who oversaw the litigation and authorized the Settlement. This resolution was possible

[3] *See Securities Class Action Settlements, 2024 Review and Analysis* at 7 (Cornerstone Research, March 2025) ("Cornerstone Report," attached to the Singer Decl. as Ex. 1).

only after a thorough investigation, including extensive review of court filings in two related lawsuits as well as the Tommy's Boats bankruptcy proceedings, interviews of former employees of MBI, Tommy's Boats, and other dealers in MBI's dealer network, the filing of a detailed amended complaint, consultation with experts, the submission of mediation statements setting forth the Parties' respective positions on the disputed issues in the case, and a formal day-long mediation involving rigorous and extensive negotiations. Based upon their experience, their evaluation of the facts and the applicable law, their recognition of the substantial amount of the Settlement, and their analysis of the risk and expense of protracted litigation against Defendants, Lead Counsel and Lead Plaintiff submit that the proposed Settlement is fair, reasonable, and adequate, and is in the best interests of the Settlement Class.

At this preliminary approval stage, the Court need only make an "initial evaluation" of the Settlement's fairness, such that the Settlement Class should be notified of the proposed Settlement. *See In re 3D Sys. Sec. Litig.,* 2023 WL 4621716, at *4 (E.D.N.Y. July 19, 2023) ("*3D Sys. I*"). For the reasons stated herein, Lead Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement.

II. HISTORY OF THE LITIGATION AND THE SETTLEMENT

On April 29, 2024, this Action was initiated. On August 15, 2024, the Court appointed Retiree Benefit Trust of the City of Baltimore as Lead Plaintiff and approved Lead Plaintiff's selection of Saxena White P.A. ("Saxena White") as Lead Counsel for the proposed class.

Thereafter, Lead Counsel conducted a comprehensive investigation into Defendants' allegedly wrongful acts, which included, among other things: (a) review and analysis of public filings made by MBI with the U.S. Securities and Exchange Commission (the "SEC"); (b) review and analysis of press releases, news articles, research reports prepared by securities and financial analysts, conference calls, and postings on MBI's website concerning Defendants' public statements; (c) review of the Verified Complaint and other filings in *Tommy's Castaic, LLC, et al. v. Malibu Boats, Inc. et al.*, Case No. 3:24-cv-00166 (E.D. Tenn. April 10, 2024) (ECF No. 1); (d) review of the signed Declaration of Matthew Borisch in Support of Debtors' Motion to Enforce Automatic Stay and Punitive Damages for Willful Violations of the Automatic Stay Against Malibu Boats, Inc. and Malibu Boats, LLC, filed in *In re Tommy's Fort Worth, LLC, et al.*, No. 24-90000-elm11, (Bankr. N.D. Tex. June 4, 2024) (ECF No. 113); (e) review of the complaint filed in *Matthew Allen Borisch v. Malibu Boats, Inc., et al.*, Case No. 3:24-cv-339 (E.D. Tenn. August 16, 2024) (ECF No. 1); (f) review and analysis of other filings in the aforementioned court proceedings; (g) interviews of former employees of MBI, Tommy's Boats, and third-party dealers within MBI's dealer network, including OneWater Marine, Inc.; and (h) multiple telephone calls with litigation counsel for Matthew Borisch, President and owner of Tommy's.

Following the extensive investigation, and after consultation with experts in loss causation and damages, Lead Plaintiff filed its Amended Complaint on October 4, 2024, on behalf of the Settlement Class, asserting claims against Defendants under Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 promulgated thereunder, and against the Individual Defendants under Section 20(a) of the Exchange Act. The Amended Complaint alleges, among other things, that throughout the Class Period, MBI and its executives made materially false and misleading statements to assure the market that MBI's performance was insulated from the post-COVID recreational boat market downturn, that it was appropriately managing inventory levels at its third-party dealers, and that its dealer network remained healthy. The Amended Complaint further alleged that MBI's stock price was artificially inflated as a result of Defendants' misstatements, and that MBI's stock price declined when the truth regarding Defendants' misrepresentations was revealed through several partial corrective disclosures.

On November 8, 2024, Defendants filed their motion to dismiss the Amended Complaint and accompanying documents. ECF Nos. 50-52. Lead Plaintiff filed its opposition on December 6, 2024 (ECF No. 55), and Defendants filed their reply on December 20, 2024 (ECF No. 57).

On May 16, 2025, the Parties and Defendants' insurance carriers participated in an initial in-person mediation session with nationally recognized mediator Jed Melnick of JAMS. In advance of the mediation, the Parties prepared and exchanged detailed mediation statements addressing the facts and law of the case, including, among other things, Defendants' defenses on the issues of loss causation and falsity. After a full day of extensive, hard-fought, arm's length negotiations before Mr. Melnick, the Parties reached an agreement in principle to settle the Action for $7,800,000 in cash for the benefit of the Settlement Class, subject to certain terms and conditions and the execution of certain related papers. The same evening, at the conclusion of the mediation session, Lead Plaintiff and Defendants informed the Court that they had reached an agreement in principle to settle the case.

III. SETTLEMENT TERMS

The proposed Settlement, which would resolve the Action in its entirety, provides that Defendants will pay or cause to be paid $7,800,000 into an escrow account for the benefit of the Settlement Class. The full terms and conditions of the Settlement are set forth in the Stipulation.

IV. LEGAL STANDARD

The Second Circuit and courts around the country recognize that there is a "strong judicial policy in favor of settlements, particularly in the class action context." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 116-17 (2d Cir. 2005); *see also In re BofI Holding, Inc. Sec. Litig.*, 2022 WL 9497235, at *4 (S.D. Cal. Oct. 14, 2022) (same). This policy has even more force in cases such as this one, as "[s]ecurities class actions are inherently complex," and substantial judicial resources can be conserved by avoiding further formal litigation. *PPDAI*, 2022 WL

198491, at *9. Accordingly, federal courts have long recognized that securities class actions "readily lend themselves to compromise because of the difficulties of proof, the uncertainties of the outcome, and the typical length of the litigation." *In re Signet Jewelers Ltd. Sec. Litig.*, 2020 WL 4196468, at *4 (S.D.N.Y. July 21, 2020).

Approval of a proposed class action settlement is a two-step process. *Mikhlin v. Oasmia Pharm. AB*, 2021 WL 1259559, at *2 (E.D.N.Y. Jan. 6, 2021). First, the Court performs a preliminary review of the terms of the proposed settlement to determine whether to send notice of the proposed settlement to the class; second, after notice and a hearing, the Court determines whether to approve the settlement as "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). Pursuant to Rule 23(e)(1), preliminary approval is appropriate where "the parties[] show[] that the court will likely be able to: (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal." Rule 23(e)(2) identifies factors that courts must consider at final approval in determining whether the settlement is "fair, reasonable, and adequate," including 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 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.

Further, courts in this Circuit have traditionally considered several factors known as the

"*Grinnell* factors," many of which overlap with the Rule 23(e) factors:

> (1) the expense, complexity, and likely duration of the litigation; (2) the class's reaction to the settlement;[4] (3) the stage of the proceedings and amount of discovery completed; (4) the risks of establishing damages; (5) the risks of establishing liability; (6) the risks of maintaining the class throughout the litigation; (7) defendants' ability to withstand greater judgment; (8) the range of reasonableness of the settlement amount considering the best possible recovery; and (9) the range of reasonableness of the settlement amount given the risks of litigation.

Mikhlin, 2021 WL 1259559, at *3 ("The court understands the new Rule 23(e) factors to add to, rather than displace, *Grinnell* factors ... [and] considers both sets of factors ... in its analysis."). "[N]ot every factor must weigh in favor of [the] settlement, rather the court should consider the totality of these factors in light of the particular circumstances." *Lea v. Tal Education Group*, 2021 WL 5578665, at *8 (S.D.N.Y. Nov. 30, 2021).

As summarized below, and as will be detailed further in Lead Plaintiff's motion for final approval of the Settlement, these factors support approval of the Settlement.

V. THE PROPOSED SETTLEMENT MERITS PRELIMINARY APPROVAL

A. The Proposed Settlement Is Procedurally Fair

1. Lead Plaintiff And Lead Counsel Have Adequately Represented The Settlement Class

To determine the adequacy of Lead Plaintiff's and Lead Counsel's representation, the Court weighs 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." *Signet Jewelers,* 2020 WL 4196468, at *2. Here, Lead Plaintiff has adequately represented the Settlement Class. Having incurred substantial injury as a result of Defendants' alleged conduct, Lead Plaintiff "has an interest in vigorously pursuing the claims of the class."

[4] The second *Grinnell* factor–"the class's reaction to the settlement"–cannot be assessed at this time because the Settlement Class has not been notified of the Settlement. *3D Sys. I*, 2023 WL 4621716, at *8 n.6.

Mikhlin, 2021 WL 1259559, at *4. Further, because Lead Plaintiff's interests do not conflict with those of the Settlement Class, and Lead Plaintiff seeks to recover against Defendants on its own behalf and on behalf of the Settlement Class, the Court should have "no reason to doubt the compatibility of the class representative['s] and putative class members' interests." *Id.* In addition, Lead Counsel possesses the requisite experience and qualifications to professionally and effectively conduct this Action. *See* ECF No. 17-4 (Saxena White firm resume demonstrating the firm's long successful track record of representing investors in securities class actions). The adequacy requirement is thus satisfied.

2. The Settlement Is The Result Of Good Faith, Arm's-Length Negotiations

Courts afford a proposed settlement a "presumption of fairness" when it is the result of arm's-length negotiations between counsel. *Lea*, 2021 WL 5578665, at *4. "Absent fraud or collusion, the Court should be hesitant to substitute its judgment for that of the parties who negotiated the settlement." *Guevoura Fund Ltd. v. Sillerman*, 2019 WL 6889901, at *6 (S.D.N.Y. Dec. 18, 2019). "Involvement by a mediator in settlement negotiations also supports a finding of procedural fairness." *Mikhlin*, 2021 WL 1259559, at *5.

As described above, the Settlement here was reached after vigorous, arm's-length negotiations before Jed D. Melnick, Esq., "an experienced JAMS mediator" who has mediated over one thousand disputes with an aggregate value in the billions of dollars. *In re 3D Sys. Sec. Litig.*, 2024 WL 50909, at *2 (E.D.N.Y. Jan. 4, 2024) ("*3D Sys. II*"); *see also Gordon v. Vanda Pharms. Inc.*, 2022 WL 4296092, at *4 (E.D.N.Y. Sept. 15, 2022) ("[t]he participation of Jed D. Melnick, a highly qualified mediator strongly supports a finding that negotiations were conducted at arm's length and without collusion"); https://www.jamsadr.com/melnick/ (Mr. Melnick's biography). As part of those negotiations, Lead Counsel and Defendants' Counsel prepared and presented detailed submissions concerning, among other things, their respective views regarding the merits of the litigation, and significant issues pertaining to falsity, scienter, loss causation, and damages. After intensive back-and-forth negotiations, the Parties reached an agreement in principle to settle the Action. Lead Plaintiff and Lead Counsel had an adequate basis for assessing the strength of the Class's claims and Defendants' defenses thereto when they agreed to the Settlement. Under these circumstances, the Settlement is entitled to a presumption of fairness. *See 3D Sys. I*, 2023 WL 4621716, at *6; *PPDAI*, 2022 WL 198491, at *9.

Additionally, Lead Counsel's and Lead Plaintiff's conclusion that the Settlement is in the best interests of the Class further supports approval. The fact that Lead Plaintiff is a sophisticated institutional investor of the type favored by Congress when it passed the PSLRA lends credibility to its recommendation that the Settlement be approved. *See Signet Jewelers*, 2020 WL 4196468, at *4 ("[a] settlement reached under the supervision and with the endorsement of a sophisticated institutional investor … is entitled to an even greater presumption of reasonableness"). In addition, Lead Counsel's substantial experience in cases of this nature gives further weight to their judgment that the Settlement is fair and reasonable.[5] *See id*. ("[t]he judgment of Lead Counsel, which is experienced in securities class-action litigation, that the Settlement is in the best interests of the Class is entitled to 'great weight'"); *Guevoura Fund*, 2019 WL 6889901, at *6 ("great weight is

[5] *See, e.g., In re Wilmington Tr. Sec. Litig.*, 2018 WL 6046452, at *8 (D. Del. Nov. 19, 2018) (approving $210 million settlement, noting Saxena White is "highly experienced" and that "[t]he significant amount of recovery in the settlement agreements attests to their efficiency"); *In re Perrigo Co. PLC Sec. Litig.*, 2022 WL 500913, at **1-2 (S.D.N.Y. Feb. 18, 2022) (approving $31.9 million recovery and noting that Saxena White "conducted the litigation and achieved the Settlement with skill, perseverance and diligent advocacy"); *Leventhal v. Chegg, Inc.*, 2025 WL 1481382, at *7 (N.D. Cal. May 21, 2025) (approving $55 million settlement and noting Saxena White's "extensive experience litigating similar cases").

accorded to the recommendations of counsel, who are most closely acquainted with the facts of the underlying litigation”).

B. The Relief Provided For The Settlement Class Is Adequate

1. Proceeding Through Trial And Appeal Would Carry Substantial Costs And Risks And Would Significantly Delay Recovery

The first factor in assessing whether the proposed settlement provides adequate relief for the putative class is an evaluation of the “costs, risks, and delay of trial and appeal.” Fed. R. Civ. P. 23(e)(2)(C)(i). This factor “subsumes several *Grinnell* factors, including the complexity, expense and likely duration of litigation, the risks of establishing liability, the risks of establishing damages, and the risks of maintaining the class through trial (factors 1, 4, 5, and 6).” *3D Sys. I,* 2023 WL 4621716, at *6. “Put simply, courts must assess whether the proposed settlement results in substantial and tangible present recovery, without the attendant risk and delay of trial.” *Id*.

Here, Lead Plaintiff and Lead Counsel have considered the difficulties inherent in litigating a securities fraud class action to a jury verdict. As an initial matter, “[c]lass action suits have a well-deserved reputation as being most complex, and securities class actions are notably difficult and notoriously uncertain to litigate.” *Lea*, 2021 WL 5578665, at *9. Indeed, complex securities fraud class actions present myriad risks that plaintiffs must overcome to ultimately secure a recovery. *See, e.g.*, *In re Oracle Corp. Sec. Litig*., 627 F.3d 376, 395 (9th Cir. 2010) (affirming summary judgment in favor of defendants); *In re Tesla Inc. Sec. Litig*., 2023 WL 4032010, at *1 (N.D. Cal. June 14, 2023) (jury returned verdict for defendants despite grant of partial summary judgment in plaintiff’s favor); *Robbins v. Koger Props., Inc.*, 116 F.3d 1441 (11th Cir. 1997) (jury verdict of $81 million for plaintiffs against an accounting firm reversed on appeal). The uncertainty created by these circumstances weighs in favor of approval.

While Plaintiff remained confident in its ability to ultimately succeed at trial, it would be required to prove all elements of its claims to prevail, whereas Defendants needed to succeed on only one defense to potentially defeat the entire Action. Indeed, Defendants made several credible arguments which the Court at motion to dismiss, class certification, or summary judgment, a jury at trial, or an appellate court could have accepted.[6] And, while Plaintiff believes it had colorable counterarguments on all of these points, there is no guarantee that discovery would have borne them out, or that they would have been sufficient to defeat Defendants' arguments through all stages of litigation.

For example, had the Action continued, Defendants would have likely continued to vigorously contest the core claim elements of falsity, materiality, and scienter. *See, e.g., In re Genworth Fin. Sec. Litig.*, 210 F. Supp. 3d 837, 841-42 (E.D. Va. 2016) ("plaintiffs would [] need to prove that the statements made were in fact false . . . Even with a strong case, the plaintiffs nonetheless face a large risk before a jury"); *Lea*, 2021 WL 5578665, at *9 ("The element of scienter is often the most difficult and controversial aspect of a securities fraud claim"). Defendants likely would have continued to argue that there were no facts in existence at the time of Defendants' statements about wholesale and retail demand that rendered them false, and that, in fact, Defendants warned investors that they expected a decline in demand. *See, e.g.,* ECF No. 52 at 19-22. Moreover, Defendants would have also continued to argue that many of the challenged statements are inactionable statements of corporate optimism or opinion. *See id.* at 25-

[6] Regarding *Grinnell* factor 3, the fact that there has been no formal discovery in this case does not weigh against preliminary approval, especially given the PSLRA discovery stay in securities class actions. *3D Sys. II*, 2024 WL 50909, at *10 ("Although the parties have not engaged in formal discovery, the record demonstrates that Plaintiffs' counsel have thoroughly investigated the strengths and weaknesses of the claims and conducted extensive legal research in responding to the motion to dismiss"). As detailed in §II, prior to settlement, Lead Plaintiff conducted a thorough and informed investigation. Accordingly, Lead Plaintiff and Lead Counsel entered into the Settlement fully informed about the Action's strengths and weaknesses.

27. And further, Defendants would have continued to argue that they had no motive to defraud—including because there was no suspicious insider trading by the Individual Defendants (*id*. at 28)—and that there were no facts, other than unproven allegations from the Tommy's litigation, showing that Defendants deliberately engaged in channel stuffing (*id*. at 30-31).

Likewise, Defendants likely would have vigorously contested loss causation and price impact at class certification, summary judgment, and trial for the alleged corrective disclosures. Defendants undoubtedly would have argued that three of Plaintiff's four alleged corrective disclosures (the January, February, and May 2024 disclosures) say nothing about Tommy's or any purported channel stuffing scheme. *See* ECF No. 52 at 43. Regarding the April 11, 2024 press release disclosing the Tommy's lawsuit, Defendants would likely continue to assert that their statement that they would "vigorously defend" Tommy's claims did not constitute a concession that the allegations in Tommy's complaint corrected any prior misstatement. *See* ECF No. 52 at 35. Further, Defendants would likely claim that two of the alleged corrective disclosures (the January and May 2024 disclosures) revealed no new information to the market at all. *Id*. at 34. Defendants would also continue to argue that Plaintiff's failure to allege any corrective disclosure that revealed the falsity of challenged public statements is fatal to Plaintiff's case. *Id.* at 44. An adverse ruling on these issues could have precluded any recovery for the Settlement Class. *See* *Guevoura Fund*, 2019 WL 6889901, at **8-9.

Defendants likewise would have raised numerous challenges with respect to damages. *See* *In re Giant Interactive Grp., Inc. Sec. Litig*., 279 F.R.D. 151, 162 (S.D.N.Y. 2011) ("[e]ven if [P]laintiffs had overcome these obstacles and established liability, proof of substantial damages was not a foregone conclusion"). For example, Defendants would have disputed what portion (if any) of MBI's stock price declines following the alleged corrective disclosures were attributed to the disclosure as opposed to other factors affecting the Company's business, leading to a battle of experts over "disaggregation" of fraud- versus non-fraud-related portions of the stock price declines. *See, e.g., Ashe v. Arrow Fin. Corp.*, 2025 WL 487427, at *9 (N.D.N.Y. Feb. 13, 2025); *McIntosh v. Katapult Holdings, Inc.*, 2024 WL 5118192, at *10 (S.D.N.Y. Dec. 13, 2024). Defendants also would likely have presented evidence from a well-qualified expert who would opine that the Settlement Class's damages were small or non-existent. *Mikhlin*, 2021 WL 1259559, at *6 ("Courts have observed that proof of damages in a securities fraud case is always difficult and invariably requires expert testimony"). As such, the trial likely would involve a battle of experts, with no guarantee whom the jury would believe and the possibility of damages materially reduced or eliminated. *PPDAI*, 2022 WL 198491, at *11 ("If there is anything in the world that is uncertain when a [securities] case like this one is taken to trial, it is what the jury will come up with as a number for damages").

In sum, Defendants had "plausible defenses that could have ultimately left class members with a reduced or non-existent recovery," which weighs in favor of approving the Settlement. *In re TracFone Unlimited Serv. Plan Litig.*, 112 F. Supp. 3d 993, 999 (N.D. Cal. 2015); *City of Providence v. Aeropostale, Inc.*, 2014 WL 1883494, at *8 (S.D.N.Y. May 9, 2014) ("The risks of the case being lost or its value diminished on a pre-trial motion or at trial, when weighed against the immediate benefits of settlement, reinforce Lead Plaintiffs judgment that the Settlement is in the best interest of the Class"). Indeed, absent settlement now, the Parties would face years litigating this Action to a final resolution, including voluminous document production, depositions, costly fact and expert discovery, class certification, dispositive motions, trial, and likely post-trial appeals. *See 3D Sys. II*, 2024 WL 50909, at *9; *PPDAI*, 2022 WL 198491, at *9.

Finally, even had Lead Plaintiff fully prevailed on all of its claims and secured a judgment for maximum damages, there was a significant risk that it would have been unable to collect more than the Settlement Amount, and possibly nothing at all. For example, the Company has only $39 million in cash, and its most recent quarterly earnings release, dated May 8, 2025, reduced the Company's guidance to predict a 3%-5% decline in MBI's net sales year-over-year. As a practical matter, the primary source of funds available for the Settlement was therefore MBI's D&O insurance. *See, e.g., Guevoura Fund*, 2019 WL 6889901, at *9 ("Here, the D&O [I]nsurance coverage is a wasting asset as it pays legal fees of the [] Defendants, as well as providing coverage for the claims asserted in the Action"; "each day that the Action was not settled would take away money available for the Class for settlement."). Here, the Settlement Amount constitutes the majority of MBI's D&O insurance that remained available to fund a recovery in this action, which was actively eroding from this and other litigations.[7] In view of the foregoing, the Settlement constitutes a highly favorable result and is deserving of preliminary approval. *See PPDAI*, 2022 WL 198491, at *12 ("PPDAI's legal defense in this case is being funded by insurance, and were this case to go forward ... through summary judgment and trial, there's no guarantee that there would be any money left in the insurance policy"); *Signet Jewelers*, 2020 WL 4196468, at *11 ("[t]he Settlement represents a favorable result for the Class in light of the risk that Signet would be unable to satisfy a significant judgment after trial").

2. Additional Factors Evidencing The Adequacy Of The Settlement

Rule 23(e)(2) also instructs federal district courts to consider whether "the relief provided for the class is adequate, taking into account," among other things, "the effectiveness of any

[7] Further regarding *Grinnell* factor 7, even if Defendants "could withstand a greater judgment, [their] ability to do so, standing alone, 'does not suggest that the settlement is unfair.'" *Nichols v Noom*, 2022 WL 2705354, at *10 (S.D.N.Y. July 12, 2022); *see also Giant Interactive,* 279 F.R.D. at 162 (holding that a "defendant is not required to 'empty its coffers' before a settlement can be found adequate").

proposed method of distributing relief to the class, including the method of processing class-member claims"; "the terms of any proposed award of attorney's fees, including timing of payment"; and "any agreement required to be identified under Rule 23(e)(3)." Fed. R. Civ. P. 23(e)(2)(C)(ii)-(iv). Each of these factors also supports preliminary approval here.

First, the proposed Settlement is adequate because it provides a proposed Plan of Allocation containing a fair and reasonable method for distributing the proceeds of the Net Settlement Fund to Authorized Claimants on a *pro rata* basis based upon their recognized claim compared to the total recognized claims of all Authorized Claimants. *See* Declaration of Eric A. Nordskog in support of this Motion at ¶21 ("Nordskog Decl.," Ex. 2 to Singer Decl.). The Plan of Allocation was developed in consultation with Plaintiff's damages expert and treats all Settlement Class Members equitably. "This methodology is appropriate and consistent with many other securities class action settlements' plans of allocation, and treats class members equitably relative to each other." *PPDAI*, 2022 WL 198491, at *13; *see also In re Citigroup Inc. Sec. Litig*., 2014 WL 2112136, at *5 (S.D.N.Y. May 20, 2014) (approving similar plan of allocation involving stock and options).

In addition, the proposed Settlement provides for well-established procedures for processing claims of the Settlement Class and seeks to appoint A.B. Data, a well-respected and experienced claims administrator, as Claims Administrator for the Settlement. *See, e.g., Lea*, 2021 WL 5578665, at *11 (A.B. Data appointed as Claims Administrator); *PPDAI*, 2022 WL 198491, at *13 (same). As set forth in the Stipulation, A.B. Data will process the claims of the Settlement Class under Lead Counsel's guidance, allow claimants the opportunity to cure any deficiencies in their claims or seek Court review, and mail or wire Authorized Claimants their *pro rata* share of the Net Settlement Fund (per the Plan of Allocation) after Court approval. This method is standard in securities class settlements and has long been found to be effective. *See, e.g., Signet Jewelers*, 2020 WL 4196468, at *13 (finding similar proposals to be "well-established, effective methods that have been widely used in securities class-action litigation").

Second, as disclosed in the Notice, Lead Counsel intend to seek an award of attorneys' fees of no more than 30% of the Settlement Fund to compensate them for the services they rendered on behalf of the Settlement Class. Here, a proposed attorneys' fee of 30% is adequate and reasonable in light of the litigation efforts of Lead Counsel and the notable results obtained for the proposed Settlement Class. Importantly, this fee percentage is well within the range of percentage-based fees that are regularly awarded by courts in this District and Circuit in connection with settlements of federal class actions, and particularly complex federal securities class actions such as this Action.[8] *See, e.g., PPDAI*, 2022 WL 198491, at *16 (approving one-third of $9 million settlement as "[I]t is very common to see 33% contingency fees in cases with funds of less than $10 million"); *Stein v. Eagle Bancorp, Inc.*, 2022 WL 407367, at *2 (S.D.N.Y. Feb. 10, 2022) (Schofield, J.) (approving 30% of the $7.5 million settlement amount as "fair and reasonable and consistent with awards in similar cases"); *Guevoura Fund*, 2019 WL 6889901, at *15 (awarding one-third of $7.5 million settlement).

Third, the Parties have no side agreements other than a standard, confidential Supplemental Agreement, which provides that if the number of shares held by Settlement Class Members who opt out of the Settlement equals or exceeds a certain amount, Defendants will have the option to

[8] As demonstrated by data from the National Economic Research Associates, for securities class actions settled between 1996 and 2014 and between 2015 and 2024, with a settlement value ranging from $5 million to $10 million, the median of plaintiffs' attorneys' fees as a percentage of settlement value was 30%. *See Recent Trends in Securities Class Action Litigation: 2024 Full-Year Review* at p. 30 (NERA Jan. 22, 2025) ("NERA Report," attached to the Singer Decl. as Ex. 3). The request here is therefore reasonable.

terminate the Settlement. *See PPDAI*, 2022 WL 198491, at *13 ("This type of agreement is standard in securities class action settlements and has no negative impact on the fairness of the Settlement. Accordingly, the Court finds that the supplemental agreement does not pose an impediment to approval of the settlement agreement."). Therefore, consideration of these Rule 23 adequacy factors also shows that preliminary approval should be granted.

3. The Settlement Is Within The Range Of Reasonableness

Two *Grinnell* factors that are not already addressed by the Rule 23(e)(2) factors—(i) the range of reasonableness in light of the best possible recovery and (ii) the range of reasonableness to a possible recovery in light of all the attendant risks of litigation—are frequently combined when courts engage in this analysis. *See PPDAI*, 2022 WL 198491, at *12. When determining whether a settlement amount falls within a range of reasonableness, the Court must find the "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." *Lea*, 2021 WL 5578665, at *4. "In analyzing these factors, the adequacy of the amount offered in settlement must be judged not in comparison with the possible recovery in the best of all possible worlds, but rather in light of the strengths and weaknesses of plaintiffs' case." *Guevoura Fund*, 2019 WL 6889901, at *9. Additionally, "the Second Circuit has held that the fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved." *Id*. at *10.

Here, Lead Plaintiff's expert has calculated the realistic maximum possible value of the recovery if Lead Plaintiff was to fully prevail on all of its claims as approximately $68.4 million for common stockholders and $2 million (or zero if options were not certified) for option holders. This estimate takes into account that two of the alleged corrective disclosures—January 30, 2024 and May 2, 2024—were earnings releases that, even under the most Plaintiff-friendly assumptions, included significant amounts of information unrelated to the alleged fraud. Had Defendants successfully argued that a greater amount of the price declines on those dates was unrelated to the fraud, damages would have been reduced further.

Moreover, as noted above, Defendants advanced several credible arguments that could have materially reduced damages—or eliminated them altogether. This included claiming that three of the corrective disclosures had nothing whatsoever to do with Tommy's; according to Plaintiff's expert, if that theory were accepted, it would reduce damages to just $24 million for common stockholders and less than $500,000 (or zero if options were not certified) for option holders. As such, Plaintiff recognizes that there was a risk that the Court on the motion to dismiss, at class certification, summary judgment, or the jury at trial could have agreed with Defendants, thereby dramatically reducing or eliminating damages altogether. Thus, even if successful at trial, Plaintiff believes that the likely maximum recoverable damages that could be established ranged from $24.5 million to $70.45 million. Accordingly, the Settlement here represents a recovery in the range of 11% to 32% of the estimated maximum damages—an outstanding result and far exceeds the typical recovery in comparable securities class actions. *See* Cornerstone Report at 7.[9]

Given the complexities of the Action and the continued risks if the Parties were to proceed to trial, the Settlement represents a more than reasonable resolution and eliminates the risk that the Settlement Class might not otherwise recover from Defendants. The proposed Settlement will allow for a substantial "payment to the [Settlement] Class now, rather than a speculative payment potentially many years down the road." *See Guevoura Fund*, 2019 WL 6889901, at *10.

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[9] Additionally, per the Cornerstone Report, the median recovery for settlements in 2024 in cases involving $25-$74 million in damages was just 8.4%, and the figure was only slightly higher (10.3%) from 2015 to 2023. *Id.* For cases with damages less than $25 million, the median for 2015 to 2023 was 20%, and the figure was 28.2% for 2024. *Id.*

VI. CERTIFICATION OF THE SETTLEMENT CLASS IS APPROPRIATE

In granting preliminary settlement approval, Plaintiff requests that the Court also certify the proposed Settlement Class for purposes of the Settlement under Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure. The proposed Settlement Class, which has been stipulated to by the Parties, consists of all persons or entities who purchased or otherwise acquired MBI Securities between November 4, 2022 and May 1, 2024, inclusive, and who were damaged thereby.[10]

A. Numerosity

A class may be properly certified only if "the class is so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). "In securities fraud class actions brought against publicly owned and nationally listed corporations, the numerosity requirement may be satisfied by a showing that a large number of shares were outstanding and traded during the relevant period." *Lea*, 2021 WL 5578665, at *5. "When a class consists of forty or more members, numerosity is presumed." *PPDAI*, 2022 WL 198491, at *6. Here, the numerosity requirement is met as MBI common stock was publicly traded on the NASDAQ, with between 20.39 and 20.45 million shares outstanding during the Class Period, resulting in thousands of potential class members. *See Micholle v. Ophthotech Corp*., 2022 WL 1158684, at *2 (S.D.N.Y. Mar. 14, 2022) ("Given that tens of millions of shares of common stock were outstanding and traded on the NASDAQ . . . the Settlement Class here is likely to consist of thousands of people. . . . Therefore, the Settlement Class can be presumed sufficiently numerous and joinder will be impractical").

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[10] Excluded from the Settlement Class are: (1) Defendants; (2) the Officers or directors of MBI during the Settlement Class Period; (3) the Immediate Family members of any Defendant or any Officer or director of MBI during the Settlement Class Period; and (4) any entity that any Defendant owns or controls, or owned or controlled, during the Settlement Class Period. Also excluded from the Settlement Class are those persons and entities who or which exclude themselves by submitting a request for exclusion that is accepted by the Court.

B. Commonality

A class action requires "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). "In securities fraud cases, where putative class members have been injured by similar material misrepresentations and omissions, the commonality requirement is satisfied." *Gordon*, 2022 WL 4296092, at *7. Here, this Action presents numerous factual questions common to the Class, including: (i) whether Defendants omitted or misrepresented material facts; (ii) whether Defendants acted with scienter; (iii) whether the price of the Company's securities were artificially inflated or maintained during the Class Period; and (iv) whether disclosure of the truth caused Settlement Class Members to suffer economic loss and damages. The class members therefore face common questions of law and fact. *See In re Signet Jewelers Ltd. Sec. Litig.*, 2019 WL 3001084, at *8 (S.D.N.Y. July 10, 2019).

C. Typicality

Under Rule 23(a)(3), "the claims or defenses of the representative parties [must be] typical of the claims or defenses of the class." As with commonality, "typicality is established because all class members' claims arise from the same course of events and involve similar arguments on liability." *In re Barrick Gold Sec. Litig.*, 314 F.R.D. 91, 103 (S.D.N.Y. 2016). Specifically, Lead Plaintiff's claims are typical of the claims of the Settlement Class because they all arise from Defendants' alleged false and misleading statements. Lead Plaintiff, "like other members of the proposed [Settlement] Class, claim[] to have purchased [MBI securities] during the Class Period based on the false and misleading statements of the defendants," and claims to have been damaged when the truth emerged. *Burns v. FalconStor Software, Inc.*, 2013 WL 12432583, at *3 (E.D.N.Y. Oct. 9, 2013). Further, there are no unique defenses that threaten to become the focus of the litigation. Rule 23(a)(3)'s typicality requirement is therefore satisfied.

D. Adequacy

To satisfy "Rule 23(a)(4)'s requirement that all members of the class are adequately represented, district courts must make sure that the members of the class possess the same interests, and that no fundamental conflicts exist among the members." *PPDAI*, 2022 WL 198491, at *7. "In addition, courts must ensure that class counsel is qualified, experienced, and generally able to conduct the litigation." *Id*.

As detailed above, Lead Plaintiff and Lead Counsel readily satisfy the adequacy requirement. First, based upon its purchases of MBI securities during the Settlement Class Period and their alleged losses, Plaintiff's interests are directly aligned with the interests of other Settlement Class Members, who were injured by the same alleged materially false and misleading statements and omissions as Lead Plaintiff. Second, there are no conflicts between Plaintiff and the Settlement Class. *See Gordon*, 2022 WL 4296092, at *8 (finding that the class representative was adequate because "plaintiff's interests are not antagonistic to those of the Class").

Lead Plaintiff has also retained highly proficient counsel. As discussed above, Saxena White is a nationally recognized and experienced securities fraud class action firm with substantial experience in cases such as this one. Lead Plaintiff and Lead Counsel have demonstrated their willingness to commit considerable resources to prosecuting this Action, and have vigorously represented the Settlement Class's interests. Thus, the adequacy requirement is satisfied.

E. Rule 23(b)(3) Is Satisfied

This Action also satisfies the requirements of Rule 23(b)(3), namely, that: (1) "the questions of law or fact common to class members predominate over any questions affecting only individual members"; and (2) "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy."

As elaborated above, here there are numerous common questions of law and fact, including whether Defendants' statements were false or misleading, whether Defendants acted with the requisite scienter, and whether, and to what extent, Settlement Class Members suffered damages arising from the alleged fraud. Thus, the predominance requirement is easily satisfied. *See, e.g., PPDAI*, 2022 WL 198491, at *8 ("[p]redominance is a test readily met in certain cases alleging consumer or securities fraud or violations of the antitrust laws"); *Mikhlin*, 2021 WL 1259559, at *11 ("The putative class members purchased the same securities, the value of which was allegedly damaged by the same series of fraudulent acts and omissions. Accordingly, the court will likely find that common factual and legal questions predominate over individual issues.").

Further, "[c]ourts have long recognized that [c]lass actions are a particularly appropriate and desirable means to resolve claims based on the securities laws." *In re NYSE Specialists Sec. Litig.*, 260 F.R.D. 55, 80 (S.D.N.Y. 2009). The geographically dispersed nature of the Settlement Class, the inefficiency of multiple lawsuits, and the size of individual recoveries in comparison to the cost of litigation strongly support a finding of superiority here. *See Micholle*, 2022 WL 1158684, at *4. Accordingly, for these reasons, among others, Plaintiff's request to certify the Settlement Class for settlement purposes also should be granted in all respects.

VII. NOTICE TO THE SETTLEMENT CLASS SHOULD BE APPROVED

As outlined in the agreed-upon form of proposed Preliminary Approval Order, Lead Counsel will cause the Claims Administrator to notify Settlement Class Members of the Settlement by emailing or mailing, by first class mail, individual copies of the Postcard Notice (Exhibit A-4 to the Stipulation) to all Settlement Class Members who can be identified with reasonable effort, as well as to the thousands of brokerage firms and other nominees who regularly act as nominees for beneficial purchasers of securities. *See* Nordskog Decl. at ¶7. Contemporaneously with the emailing or mailing of the Postcard Notice, as applicable, copies of the (long-form) Notice (Exhibit A-1 to the Stipulation) and the Claim Form (Exhibit A-2 to the Stipulation) will be posted on a website to be developed for the Settlement, from which copies of the Notice and Claim Form can be downloaded, and where claims can be submitted online. The Claims Administrator will also mail copies of the Notice and/or Claim Form upon request. No more than ten (10) business days after mailing the Postcard Notice, the Summary Notice (Exhibit A-3 to the Stipulation) will also be published in *Investor's Business Daily* and transmitted over *PR Newswire*.

The Postcard Notice, Summary Notice, and long-form Notice will advise Settlement Class Members of: (i) the pendency of the class action; (ii) the essential terms of the Settlement; and (iii) information regarding Lead Counsel's application for an award of attorneys' fees and reimbursement of litigation expenses. *See generally* Stip., Exs. A-1, A-3, A-4. They also will provide specifics on the date, time, and place of the Final Approval Hearing and set forth the procedures, as well as deadlines, for opting out of the Settlement Class, for objecting to the Settlement, the proposed Plan of Allocation and/or the application for attorneys' fees and Litigation Expenses, and for submitting a Claim Form. *Id*. Courts regularly hold that this form and manner of providing notice to the Settlement Class satisfies the requirements of due process, Rule 23, and the PSLRA. *See, e.g., Utne v. Home Depot U.S.A., Inc*., 2018 WL 11373654, at *1 (N.D. Cal. Aug. 21, 2018) ("[D]irect mail postcard notice supplemented with additional information accessible via the internet fully meets the requirements of Rule 23"); *In re Grab Holdings Ltd. Sec. Litig*., 2025 WL 1413515, at **1-2 (S.D.N.Y. May 15, 2025) (similar notice program); *In re Romeo Power Inc. Sec. Litig*., No. 1:21-cv-03362, ECF No. 197 at 6-7 (S.D.N.Y. Jan. 30, 2024) (Schofield, J.) (same).

VIII. PROPOSED SCHEDULE OF SETTLEMENT EVENTS

Lead Plaintiff proposes the following schedule:

Event	Proposed Due Date
Deadline for mailing or emailing the Postcard Notice to the Settlement Class (Preliminary Approval Order ¶7(a))	Not later than 20 business days after entry of Preliminary Approval Order (the "Notice Date")

Event	Proposed Due Date
Deadline for publishing the Summary Notice (Preliminary Approval Order ¶7(c))	Not later than 10 business days after the Notice Date
Deadline for filing of papers in support of final approval of Settlement, Plan of Allocation, and Lead Counsel's application for attorneys' fees and expenses (Preliminary Approval Order ¶28)	35 calendar days prior to the Settlement Hearing
Deadline for receipt of exclusion requests or objections (Preliminary Approval Order ¶¶14, 18)	21 calendar days prior to the Settlement Hearing
Deadline for submitting Claim Forms (Preliminary Approval Order ¶11)	100 calendar days after the Notice Date
Deadline for filing reply papers and submitting proof of the mailing of the Postcard Notice to Settlement Class Members and publication of the Summary Notice (Preliminary Approval Order ¶28)	7 calendar days prior to Settlement Hearing
Settlement Hearing (Preliminary Approval Order ¶5)	At least 100 days after entry of Preliminary Approval Order

IX. PROPOSED DEDUCTIONS FROM THE SETTLEMENT FUND

Pursuant to this Court's Individual Rules and Procedures for Civil Cases, Item III.C.5, Plaintiff and Lead Counsel respectfully provide the following anticipated deductions:

	Amount	Settlement Fund %	Average Per Damaged Share[11]	Average Per Damaged Option[12]
Settlement Amount	$7,800,000.00	100%	$0.77	$0.11
Claims Administrator Fees, Costs, and Expenses	$145,000	1.8%	$0.01	$0.00
Proposed Attorneys' Fees	$2,340,000	30%	$0.24	$0.03

[11] Plaintiff's consulting damages expert estimates the alleged conduct at issue in the Action affected 9,791,848 shares of MBI common stock. $7,570,115 of the gross settlement amount is allocated to common stock.

[12] Plaintiff's consulting damages expert estimates the alleged conduct at issue in the Action affected 2,097,100 options purchased during the Settlement Class Period. $229,885 of the gross settlement amount is allocated to options.

	Amount	**Settlement Fund %**	**Average Per Damaged Share[11]**	**Average Per Damaged Option[12]**
Litigation Expenses[13]	$150,000	1.9%	$0.01	$0.00
Attorneys' Costs and Expenses	$148,500	1.9%		
PSLRA Reimbursement	$1,500	0%		
Broker Reimbursement[14]	$35,000	0.44%	$0.00	$0.00
Estimated Taxes[15]	$30,000	0.38%	$0.00	$0.00
Anticipated Recovery	$5,100,000.00	65.38%	$0.51	$0.07
Anticipated Recovery To Settlement Class Members As A Percentage of Maximum Damages		7.24%	7.24%	7.24%

X. CONCLUSION

Lead Plaintiff respectfully requests that the Court (i) certify the proposed Settlement Class for the purposes of the Settlement; (ii) approve the proposed form and manner of notice given to the Settlement Class; and (iii) schedule a hearing on Lead Plaintiff's motion for final approval of the Settlement and Lead Counsel's application for an award of attorneys' fees and expenses. The Parties' agreed-upon form of proposed Preliminary Approval Order, and exhibits thereto, is attached as Exhibit A to the Stipulation.

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[13] Based on estimated maximum amounts. Actual litigation expenses and plaintiff reimbursement are subject to review and finalization and may be less than these amounts. There are no fee sharing agreements with any attorney or other person.

[14] Nominees may request reimbursement for distributing notices to potential Settlement Class Members. According to the Claims Administrator, this estimate is considered a "high-end" estimate based on similarly-sized class action settlements.

[15] According to the Claims Administrator, this estimate is considered a "high-end" estimate based on similarly-sized class action settlements.

Dated: July 31, 2025

Respectfully submitted,

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Lead Counsel for Lead Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on July 31, 2025, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send a Notice of Electronic Filing to all counsel of record.

Respectfully submitted,

By: *<u>/s/ Steven B. Singer</u>*
Steven B. Singer

CERTIFICATE OF COMPLIANCE

I hereby certify, pursuant to Local Civil Rule 7.1(c) and §III.B.1 of the Court's Individual Rules and Procedures for Civil Cases, that the foregoing memorandum of law complies with the word-count limitations thereof, in that it contains 8,104 words.

Dated: July 31, 2025

By: *Steven B. Singer*
Steven B. Singer