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 FINAL APPROVAL OF
CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

Lead Plaintiff hereby respectfully moves this Court pursuant to Rule 23 of the Federal Rules of Civil Procedure for entry of orders granting final approval of the Settlement and the Plan of Allocation as fair, reasonable, and adequate.[1]

I. PRELIMINARY STATEMENT

The Parties 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.[2] 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 in support of final approval.

The Settlement is an excellent recovery, representing approximately 11% to 32% of likely maximum recoverable damages—substantially greater than the typical recovery in securities class actions. Significantly, the Settlement is the embodiment of the Second Circuit's directive to promote "efficient prosecution and early resolution," securing an immediate and meaningful benefit for the Settlement Class that avoids the risk, delay and expense inherent in years of

[1] Plaintiff respectfully refers the Court to the accompanying Declaration of Joshua H. Saltzman in Support of: (I) Unopposed Motion for Final Approval of Class Action Settlement and Plan of Allocation; and (II) Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses ("Saltzman Decl." or "Saltzman Declaration") for a detailed description of the case and the Settlement. Unless otherwise indicated, all capitalized terms herein shall have the meanings provided in the Stipulation and Agreement of Settlement ("Stipulation" or "Settlement Agreement," ECF No. 61) or in the Saltzman Declaration. All citations to "¶" or to "Ex." refer to paragraphs in or exhibits to the Saltzman Decl.; all citations are omitted; and all emphasis is added.

[2] On October 8, 2025, the Court preliminarily approved the Settlement, certified the Settlement Class for purposes of the Settlement, and directed that notice be distributed to potential members of the Settlement Class. Defendants subsequently caused the $7.8 million Settlement Amount to be deposited into an escrow account for the benefit of the Settlement Class.

continued litigation. *See Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 121 (2d Cir. 2005); *see also Lea v. Tal Educ. Grp.*, 2021 WL 5578665, at *11 (S.D.N.Y. Nov. 30, 2021) (noting benefits of "efficient prosecution and early resolution"). Indeed, the Settlement is a particularly strong result when considering MBI's limited available cash and rapidly depleting Directors' and Officers' ("D&O") liability insurance policies (which were also simultaneously being used to fund defense costs in multiple other litigations), making a larger recovery highly improbable and speculative at best.

Moreover, although Plaintiff and Lead Counsel believe the Settlement Class had strong claims, they also recognize that if they had proceeded with the litigation, they would have faced significant risks in pleading and proving all of the elements of their claims, and in establishing damages. The Settlement is the product of Plaintiff's extensive litigation efforts, 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, opposing Defendants' motion to dismiss, 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. Accordingly, by the time the Parties had agreed to the Settlement, they had developed a full and clear understanding of the strengths and weaknesses of the claims and defenses asserted in this Action.

In light of the result achieved, as well as the risks of litigating this Action through trial, in addition to the fact that this litigation may have continued for several additional years, substantially delaying any recovery, Plaintiff and Lead Counsel believe the Settlement is a highly favorable result for the Settlement Class that is supported by each of the factors set forth in Rule 23 and by the Second Circuit in *City of Detroit v. Grinnell Corp.*, 495 F.2d 448 (2d Cir. 1974). The Settlement—which was negotiated at arms' length before Mr. Jed D. Melnick, a highly qualified, respected, and independent mediator—eliminates these substantial risks and provides an immediate $7.8 million cash recovery to the Settlement Class. Further, while the deadline for exclusions and objections has not yet passed, not a single exclusion request or objection has been received. Accordingly, Plaintiff respectfully submits that the Court should approve the Settlement as fair, adequate and reasonable.

Plaintiff also requests that the Court approve the proposed Plan of Allocation for the Net Settlement Fund. The Plan is designed to equitably distribute the Net Settlement Fund on a *pro rata* basis to Authorized Claimants. It was prepared with the assistance of Plaintiff's damages expert, who calculated the artificial inflation in the prices of MBI Securities during the Class Period, and is substantially similar to numerous other plans that have been approved in this District and around the country as fair, adequate, and reasonable.

II. THE PROPOSED SETTLEMENT WARRANTS FINAL APPROVAL

A. The Standards For Final Approval Of Class Action Settlements

"In the Second Circuit, [t]here is a strong judicial policy in favor of settlements, particularly in the class action context." *Lea*, 2021 WL 5578665, at *4. Federal courts "have long recognized that [because securities class actions are] notably difficult and notoriously uncertain," they "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).

Pursuant to Rule 23(e)(2), a class action settlement should be approved if the Court finds it "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 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.

In the Second Circuit, courts have also traditionally considered the following "*Grinnell* factors," which overlap with the Rule 23(e)(2) factors, in evaluating a class action settlement:

> (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.

Guevoura Fund Ltd. v. Sillerman, 2019 WL 6889901, at *5 (S.D.N.Y. Dec. 18, 2019) (citing *Grinnell*, 495 F.2d at 463). "[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*, 2021 WL 5578665, at *8.[3]

As discussed herein, and as supported by the declarations submitted herewith, an analysis of the relevant factors unequivocally supports final approval of the Settlement.[4]

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[3] The goal of the 2018 amendment to Rule 23 was "'not to displace' any of the *Grinnell* factors," as such courts consider both sets of factors. *Ashe v. Arrow Fin. Corp.*, 2025 WL 487427, at *7 n.5 (N.D.N.Y. Feb. 13, 2025).

[4] Little has changed since preliminary approval, favoring final approval. *See In re Chrysler-Dodge-Jeep Ecodiesel Mktg., Sales Practices, & Prods. Liability Litig.*, 2019 WL 2554232, at *2 (N.D. Cal. May 3, 2019) (the "conclusions [made in granting preliminary approval] stand and counsel equally in favor of final approval now").

B. The Proposed Settlement Is Procedurally Fair

1. The Settlement Class Is Adequately Represented, And In The Judgment Of All Parties, The Settlement Is Fair, Reasonable, And Adequate

In determining whether class representatives and class counsel have adequately represented the class under Rule 23(e)(2), courts consider "whether (1) plaintiff's interests are antagonistic to the interest[s] of other members of the class and (2) plaintiff's attorneys are qualified, experienced and able to conduct the litigation." *Mikhlin v. Oasmia*, 2021 WL 1259559, at *4 (E.D.N.Y. Jan. 6, 2021).

Here, Plaintiff and Lead Counsel have adequately represented the Settlement Class in their prosecution of the Action and the negotiation and achievement of the Settlement.[5] Plaintiff and the Settlement Class have no antagonistic interests; rather, Plaintiff's interest in obtaining the largest possible recovery in this Action is firmly aligned with all Settlement Class Members. *See In re 3D Sys. Sec. Litig.*, 2024 WL 50909, at *8 (E.D.N.Y. Jan. 4, 2024) (plaintiffs and settlement class "all shared the common goal of maximizing recovery"). Lead Plaintiff is an institutional investor of the type envisioned by Congress when passing the PSLRA and has adequately represented the Settlement Class by closely monitoring and participating in this litigation. *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 conclusion that the Settlement is in the best interests of the

[5] On October 8, 2025, the Court so-ordered the proposed Preliminary Approval Order, certifying the Settlement Class and providing that "Lead Plaintiff and Lead Counsel have and will fairly and adequately represent and protect the interests of the Settlement Class" and "Lead Plaintiff is an adequate class representative." *See* ECF No. 73 at 3-4.

[Settlement] Class also supports approval." *Id.* at *4. As set forth in its firm resume (*see* Ex. E), Court-appointed Lead Counsel Saxena White is highly experienced in securities litigation and has a long and successful track record of representing investors in such cases; thus giving further weight to the conclusion that the Settlement is fair and reasonable.[6] *See Guevoura Fund*, 2019 WL 6889901, at *6 ("great weight is accorded to the recommendations of counsel, who are most closely acquainted with the facts of the underlying litigation").

2. The Settlement Is The Result Of Good Faith, Arm's-Length Negotiations With The Assistance Of An Experienced Mediator

Rule 23(e)(2)(B) asks whether "the proposal was negotiated at arm's length." Fed. R. Civ. P. 23(e)(2)(B). The Second Circuit recognizes a "presumption of fairness" when a settlement is the result of arm's-length negotiations between "experienced, capable counsel knowledgeable in complex class litigation." *Oasmia*, 2021 WL 1259559, at *5.

Here, the Settlement was reached only after vigorous, arm's-length negotiations between experienced, fully informed counsel.[7] The Settlement negotiations included an intensive mediation process, including the Parties' detailed written submissions and presentations addressing hotly contested issues concerning liability and damages. Significantly, these negotiations were overseen by Jed D. Melnick of JAMS, recognized by courts in this Circuit as a "highly qualified mediator" who has resolved over one thousand disputes with an aggregate value in the billions of

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[6] *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 "the 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").

[7] Defendants were represented by a well-regarded global law firm, Cooley LLP.

dollars. *3D Sys.*, 2024 WL 50909, at *2 n.2 ("The parties wanted to retain a mediator that could bring benefit to the discussion and understood the complexities of similar cases"); *Gordon v. Vanda Pharms. Inc.*, 2022 WL 4296092, at *4 (E.D.N.Y. Sept. 15, 2022) ("The participation of Jed D. Melnick, a highly qualified mediator strongly supports a finding that negotiations were conducted at arm's length and without collusion").[8]

In short, because the Settlement was negotiated at arm's length by experienced counsel before an independent and highly regarded mediator, resulting in a highly favorable and immediate recovery for the benefit of the Class, the Settlement is procedurally fair, and should be approved by the Court. *See McIntosh v. Katapult Holdings, Inc.*, 2024 WL 5118192, at *9 (S.D.N.Y. Dec. 13, 2024).

C. The Relief Obtained For The Settlement Class Is Adequate[9]

1. The Complexity, Expense, And Likely Duration Of The Litigation Supports Final Approval Of The Settlement

"Class 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. In a securities fraud case, there are "significant legal and factual obstacles" to prevailing at every stage of the litigation. *Oasmia*, 2021 WL 1259559, at *5.

This case is no exception. Certainly, the complexity, cost and duration of continued

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[8] Mr. Melnick's biography is available at https://www.jamsadr.com/melnick/.

[9] Rule 23(e)(2)(C)(i), "the relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal…," essentially incorporates several of the *Grinnell* factors, including the complexity, expense, and likely duration of the litigation (first factor); the risks of establishing liability and damages (fourth and fifth factors); and the risks of maintaining class action status through the trial (sixth factor). *See Grinnell*, 495 F.2d at 463; *see also In re Payment Card*, 330 F.R.D. 11, 36 (E.D.N.Y. 2019) ("The first factor – costs, risks, and delay of trial and appeal – subsumes several *Grinnell* factors …"). For purposes of this analysis, Plaintiff addresses the *Grinnell* factors first, and then, to the extent that they do not overlap, considers the factors identified in Rule 23(e)(2).

litigation here are significant. *Id*. ("Plaintiff[] in this [A]ction would face several hurdles in attempting to establish liability: they would presumably need to defeat a motion to dismiss, defeat a motion for summary judgment, win at trial, and prevail on appeal").

First, as detailed further below in §II.C.4, Defendants' pending motion to dismiss argued that every alleged misstatement was "defective on one or more grounds, to wit, falsity, materiality, scienter and loss causation." *See* ECF No. 52; *3D Sys.,* 2024 WL 50909, at *9. Second, had the case survived, "in litigating motions for class certification, Defendants would have challenged market efficiency, a requisite for proof of class-wide reliance." *Id*. Third, "[a]t the summary judgment stage, Plaintiff[] would face the burden of establishing the existence of a genuine issue of material fact regarding the element of scienter, which is notably difficult to establish." *Oasmia*, 2021 WL 1259559, at *5. Fourth, "both parties would present expert testimony on the issue of damages, which makes it 'virtually impossible to predict' which side's testimony would be found more credible, as well as which damages would be found to have been caused by actionable, rather than the myriad nonactionable factors such as general market conditions." *Id*. at *6. An unfavorable outcome at any of those stages could diminish or even eliminate any potential recovery for Settlement Class Members.

By contrast, the Settlement provides an immediate recovery of $7.8 million for the Settlement Class. In other words, the Settlement brings to a close litigation that could have lasted several more years and incurred additional costs—including the expenses of vendors and experts, Defendants' Counsel's fees, and the value of Lead Counsel's billed time. *See Toure v. Amerigroup Corp.*, 2012 WL 3240461, at *3 (E.D.N.Y. Aug. 6, 2012) (approval warranted where "[l]itigation through trial would be complex, expensive, and long"). The substantial Settlement Plaintiff achieved here allows the Settlement Class to recover a substantial sum of money while avoiding continued protracted litigation that would have continued to deplete the Company's rapidly wasting insurance funds, which were simultaneously being depleted by multiple other litigations.

2. The Positive Reaction Of The Settlement Class To Date Favors Approval

"The fact that the vast majority of class members neither objected nor opted out is a strong indication" of fairness. *Ashe*, 2025 WL 487427, at *8. Therefore, here, the second *Grinnell* factor weighs in favor of final approval.

Pursuant to the Preliminary Approval Order, any Settlement Class Member who wishes to be excluded from the Settlement or to object to any aspect of the Settlement, the Plan of Allocation, or to the attorneys' fees and expense request, is required to submit such exclusion request or objection no later than January 6, 2026.[10] ECF No. 73 at ¶ 14. While this deadline has not passed, to date, no Settlement Class Member has objected to any aspect of the Settlement, and out of the 25,226 Postcard Notices that have been emailed or mailed to potential Settlement Class Members, A.B. Data received no valid requests for exclusion from the Settlement Class. *See* Ex. B at ¶¶11, 19. This reaction is particularly significant given that the majority of the Settlement Class consists of sophisticated institutional investors with the resources and motivation to object, if warranted. *See In re Tenaris S.A. Sec. Litig.*, 2024 WL 1719632, at *12 (E.D.N.Y. Apr. 22, 2024) ("Courts recognize that in 'a securities class action, where the class likely contains sophisticated investors ... [plaintiffs] are [ ] in a position to object' such that the absence of objections should be credited as an indication of a successful settlement."). Thus, the overwhelmingly positive reaction of the Settlement Class to the Settlement further favors approval by the Court.

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[10] As provided in the Preliminary Approval Order, Plaintiff will file reply papers no later than January 20, 2026, addressing any objections and requests for exclusion that may be received after this brief is filed.

3. Plaintiff And Lead Counsel's Thorough Investigation Supports Approval Of The Settlement

As demonstrated herein and in the Saltzman Declaration, Plaintiff and Lead Counsel had sufficient information "to appreciate the merits of the case." *3D Sys.*, 2024 WL 50909, at *10 (E.D.N.Y. Jan. 4, 2024). Though the Parties here did not move beyond the pleadings stage, Plaintiff and Lead Counsel did conduct a comprehensive investigation which included an extensive review of court filings in two related lawsuits and the Tommy's Boats bankruptcy proceedings, interviews of former employees of MBI, Tommy's Boats, and other dealers in MBI's dealer network, multiple telephone calls with litigation counsel for Matthew Borisch, President and owner of Tommy's, and review and analysis of MBI's public SEC filings, press releases, and investor conference calls, and news articles and research reports prepared by securities and financial analysts about the Company.[11] *See Ashe*, 2025 WL 487427, at *8 ("The parties 'need not have engaged in extensive discovery as long as they have engaged in sufficient investigation of the facts to enable the Court to intelligently make an appraisal of the settlement."). Because the record demonstrates that Lead Counsel has thoroughly investigated the strengths and weaknesses of the claims and conducted extensive legal research in responding to Defendants' motion to dismiss, settlement is favored and the third *Grinnell* factor is met.

4. The Risks Of Establishing Liability And Damages Support Final Approval of the Settlement

Grinnell factors four and five—the risks of establishing liability and damages—also favor approval of the Settlement. "In considering these factors, the Court need not adjudicate the

[11] Moreover, while discovery in this Action was stayed under the PSLRA, several hurdles to recovery would exist even if evidence were later uncovered demonstrating falsity and scienter. For example, Defendants could convince the Court or a jury that their misstatements were immaterial, or that MBI's stock price dropped, in whole or in part, for reasons unrelated to disclosure of the fraud, preventing Plaintiff from proving loss causation and/or damages.

disputed issues or decide unsettled questions; rather, 'the Court need only assess the risks of litigation against the certainty of recovery under the proposed settlement.'" *Katapult Holdings, Inc*., 2024 WL 5118192, at *10. As detailed below and in the Saltzman Declaration, while Plaintiff believes that its claims have merit, Defendants lodged multiple credible defenses, each of which, in addition to diminishing insurance proceeds through continued litigation, would have presented grave risks that the Settlement Class's recovery would be substantially reduced, or that the Settlement Class would recover nothing at all.

Here, Plaintiff's ability to prove liability was threatened by the falsity, materiality, scienter, and loss causation challenges raised in Defendants' motion to dismiss, which remained outstanding at the time of the Settlement. Even if Plaintiff prevailed against Defendants' arguments at the pleading stage, and later at class certification and summary judgment, Defendants would have likely continued to contest each element of Plaintiff's claims. Plaintiff would be required to prove all elements of its claims, while Defendants would only need to succeed on one defense to potentially defeat the entire Action.[12]

For example, regarding falsity, Defendants likely would have continued to argue that not only are there no facts showing MBI plotted to "stuff" Tommy's with "excess" inventory, but this theory is also contradicted by the Borisch declaration. *See, e.g*., ECF No. 52 at 14, 16. 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 id*. at 19-22. Defendants

[12] *See e.g., In re Retek Inc. Sec. Litig*., 621 F. Supp. 2d 690, 708-09 (D. Minn. 2009) (granting summary judgment where plaintiffs failed to present evidence of loss causation); *Fosbre v. Las Vegas Sands Corp*., 2017 WL 55878, at *28 (D. Nev. Jan. 3, 2017) (granting summary judgment due to, inter alia, lack of falsity and scienter).

likely would also have continued to argue that many of the alleged misstatements are inactionable statements of corporate puffery or opinion. *See id*. at 25-27.

"Even more difficult, [] plaintiff[] would need to prove that these statements were made with scienter, and were not simple good faith mistakes or the result of negligence." *In re Genworth Fin. Sec. Litig.*, 210 F. Supp. 3d 837, 841 (E.D. Va. 2016). Defendants would have continued to argue that they had no motive to defraud and that the incentive compensation alleged was insufficient to present a motive. *See, e.g.*, ECF No. 52 at 28. Defendants would argue that the more compelling inference is that Tommy's and Borisch sought to scapegoat MBI for their own debt and burden mismanagement. *See* ECF No. 57 at 13. For example, Defendants argued that Tommy's and MBI agreed to 2023 boat commitments in 2022—before the Class Period even started—with a plan to rebuild inventory to pre-pandemic levels (*Id.*) and that, amid an industry downturn in 2023 and 2024, Tommy's could not sell as many boats as expected, defaulted with its lender, and then attempted to blame MBI. *Id.* Such arguments could have undermined Plaintiff's efforts to establish Defendants' scienter. *See Genworth*, 210 F. Supp. 3d at 844 ("For the reasons stated above concerning the complexity of securities fraud cases and the need to prove scienter on the part of the defendants, the risk of non-recovery at trial is very real.").

In addition, Defendants likely would have vigorously contested loss causation, arguing that three of the four alleged corrective disclosures (the January, February, and May 2024 disclosures) did not pertain to Tommy's or any purported channel stuffing. *See* ECF No. 52 at 43. Regarding the April 11, 2024 press release disclosing the Tommy's lawsuit, Defendants likely would 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. *Id*. An adverse ruling on these issues could have dramatically reduced or even precluded any recovery for the Class.

Furthermore, "[e]ven if [P]laintiff[] had overcome these obstacles and established liability, proof of substantial damages was not a foregone conclusion." *In re Giant Interactive Grp., Inc. Sec. Litig.*, 279 F.R.D. 151, 162 (S.D.N.Y. 2011). 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,* 2025 WL 487427, at *9; *Katapult Holdings, Inc.,* 2024 WL 5118192, at *10. Defendants' expert would likely opine that the Class's damages were small or non-existent. *See Schutter v. Tarena Int'l, Inc.*, 2024 WL 4118465, at *11 (E.D.N.Y. Sept. 9, 2024) (Court acknowledged that Defendants "have argued and would continue to argue that there are no damages"). "[I]t is virtually impossible to predict with any certainty which testimony would be credited, and ultimately, which damages would be found to have been caused by actionable [] factors." *Tenaris*, 2024 WL 1719632, at *8.

While Plaintiff believes it had credible responses to Defendants' arguments, there is no question these issues would persist throughout the Action, representing real risks that Plaintiff could ultimately recover materially less than the Settlement Amount—or nothing at all. *See Amerigroup*, 2012 WL 3240461, at *4 ("Here, the fact-intensive nature of Plaintiffs' claims and Defendants' affirmative defenses presents risk. The settlement eliminates this uncertainty.").

Additionally, Defendants' D&O insurance policies are wasting policies that would have been significantly depleted had the litigation proceeded, and the Settlement was reached as Defendants were continuing to draw on that insurance to fund defense costs. In other words, there was a substantial risk that, even if Plaintiff prevailed on all issues through the remainder of the litigation and secured a verdict at trial, it could have been a pyrrhic victory as the Settlement Class could have recovered less than the Settlement amount, if anything. *See, e.g., Guevoura Fund*, 2019 WL 6889901, at *9 ("Here, the D&O insurance 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" and "each day that the Action was not settled would take away money available for the Class for settlement.").

5. The Risk Of Maintaining The Class Action Through Trial Supports Final Approval

Regarding the sixth *Grinnell* factor, "[c]ourts generally acknowledge that a contested motion to certify a class would pose at least some increased risk that class certification might be denied." *See Oasmia*, 2021 WL 1259559, at *6. While Defendants do not oppose certification of the Settlement Class for purposes of the Settlement only, they likely would have opposed Lead Plaintiff's class certification motion and may have been successful in doing so. *See id.* ("this factor ... weighs in favor[] of settlement w[h]ere it is likely that defendants would oppose class certification if the case were to be litigated"). Moreover, even were Plaintiff to prevail on a class certification motion, Rule 23(c)(1)(C) provides that a class certification order could be "altered or amended before final judgment." Thus, "[t]he risks attendant to certifying a class and defending any decertification motion supports approval of the [S]ettlement." *Lea*, 2021 WL 5578665, at *10.

6. Defendants' Ability To Withstand A Greater Judgment

The seventh *Grinnell* factor—the ability of the defendant to withstand a greater judgment—also supports approval of the Settlement. This factor "stands for the proposition that if a defendant could not withstand a greater judgment than what is provided for in the settlement, then the settlement is more likely to be reasonable, fair, and adequate." *Id*. Here, given MBI's limited assets and rapidly wasting insurance policy, there was a substantial risk that Defendants would be unable to satisfy a judgment meaningfully larger than the Settlement, let alone a judgment equivalent to maximum provable damages.[13] Indeed, the Settlement recovers most of Defendants' remaining available insurance proceeds, and the same insurance policies were also being drawn on to fund multiple other litigations.

Were this case to proceed through the pleadings stage, class certification, summary judgment, trial, and likely appeals, there is no guarantee that there would be sufficient funds in Defendants' insurance policies or other assets to cover a settlement or judgment. *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"). Moreover, "even if Defendants could withstand a greater judgment," their ability to do so, standing alone, does not "preclude a finding that the settlement is fair." *See In re PPDAI,* 2022 WL 198491, at *12; *see also Giant*, 279 F.R.D. at 162 (holding that a "defendant is not required to 'empty its coffers' before a settlement can be found adequate").

7. The Range Of Reasonableness In Light Of The Best Possible Recovery And Attendant Risks Of Litigation Support Final Approval

These two *Grinnell* factors are often analyzed together. *PPDAI ,* 2022 WL 198491, at *12. "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

[13] For example, as of the date of Settlement, MBI had recently reported just $39 million in cash on hand, and MBI's most recent earnings release had reduced the Company's guidance to predict a 3-5% year-over-year decline in net sales.

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; *see also Grinnell*, 495 F.2d at 455 n.2 ("there is no reason … why a satisfactory settlement could not amount to a hundredth or even a thousandth part of a single percent of the potential recovery.").

Plaintiff's expert has opined that, if Plaintiff were to fully prevail on all of its claims, the realistic maximum damages would be approximately $68.4 million for common stockholders and $2 million (or zero if options were not certified) for option holders. This estimate reflects that two of the alleged corrective disclosures (the January 30, 2024 and May 2, 2024 disclosures) were earnings announcements that, even under assumptions most favorable to Plaintiff, contained 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.

Indeed, as noted above, Defendants raised several credible arguments that could have significantly reduced or eliminated damages. 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 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. *See* ECF 62-1, Cornerstone Report at 7; *see also Vaccaro v. New Source Energy Partners L.P.*, 2017 WL 6398636, at *6 (S.D.N.Y. Dec. 14, 2017) (recovery "represent[ing] 6.5% of the maximum recoverable damages [] is reasonable and in line with other settlements in securities class actions").[14]

In light of the significant risks discussed above, Plaintiff and Lead Counsel believe that the Settlement provides an immediate and substantial benefit that outweighs the benefits and risks of continued litigation.

8. All Other Factors Set Forth In Rule 23(e)(2)(C) Support Final Approval

Rule 23(e)(2)(C) also requires the Court to consider whether the relief provided for the class is adequate considering "the effectiveness of any 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," and "any agreement required to be identified under Rule 23(e)(3)." Fed. R. Civ. P. 23(e)(2)(C)(ii)-(iv). These factors also favor approval.

First, the procedures for processing Settlement Class Members' claims and distributing the proceeds of the Settlement to eligible claimants in this case are well-established, effective methods that have been widely used in similar securities class action cases. *See, e.g., Signet Jewelers*, 2020 WL 4196468, at *13 (finding similar proposals to be "well-established, effective methods that have

[14] The Cornerstone Report (at 7) shows that the median settlement as a percentage of damages for cases with damages from $25 million to $74 million was 10.3% in 2015 through 2023, and 8.4% in 2024. 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*.

been widely used in securities class-action litigation"). As set forth in the Court-approved Notice, under the proposed Plan of Allocation described further below, the proceeds of the Settlement will be distributed on a *pro rata* basis to Settlement Class Members who submit eligible Claim Forms with required documentation to the Court-appointed Claims Administrator, A.B. Data, Ltd. ("A.B. Data"). *See* ECF 61-2; *Oasmia*, 2021 WL 1259559, at *6 ("This allocation plan appears to be rational and fair, as it treats class members equitably, considering the magnitude of injury"). A.B. Data "will review and process the Claims under the supervision of Lead Counsel; provide Claimants with an opportunity to cure any deficiencies in their Claims or request review of the denial of their Claim by the Court; and then mail or wire claimants their *pro rata* share of the Net Settlement Fund upon approval of the Court." *Signet Jewelers*, 2020 WL 4196468, at *13.

Second, as set forth in the accompanying Fee Memorandum, the requested fee award of 30% of the Settlement Fund is highly reasonable, in light of the work performed and the results obtained, and is comparable to other settlements in securities class actions approved in the Second Circuit and nationwide. *See, e.g., Stein v. Eagle Bancorp, Inc.*, 2022 WL 407367, at *2 (S.D.N.Y. Feb. 10, 2022) (Schofield, J.) (finding that 30% fees on a $7.5 million settlement was "fair and reasonable and consistent with awards in similar cases"); *Tenaris*, 2024 WL 1719632, at *12 (awarding 33 1/3% fees on a $9.5 million settlement, plus interest earned).; *In re Talkspace, Inc. Sec. Litig.*, 2023 WL 12028295, at *1 (S.D.N.Y. Oct. 30, 2023) (awarding 30% fees on a $8.5 million settlement, plus interest earned).

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 terminate the Settlement. *See Signet Jewelers*, 2020 WL 4196468, at *13 ("This type of agreement is a standard provision in securities class actions and has no negative impact on the fairness of the Settlement"). Significantly, there has not been a single request for exclusion received thus far.

D. The Settlement Treats Class Members Equitably Relative To Each Other

As discussed below, pursuant to the Plan of Allocation, eligible claimants approved for payment by the Court will receive their *pro rata* share of the recovery based on their purchases or acquisitions of MBI Securities during the Settlement Class Period. Plaintiff will receive the same level of *pro rata* recovery as all other Settlement Class Members.[15]

Each of the above factors fully supports a finding that the Settlement is fair, reasonable, and adequate, and therefore deserves this Court's final approval.

III. THE PLAN OF ALLOCATION IS FAIR, REASONABLE, AND ADEQUATE

"To warrant approval, the plan of allocation must also meet the standards by which the settlement was scrutinized — namely, it must be fair and adequate.... [a]n allocation formula need only have a reasonable, rational basis, particularly if recommended by experienced and competent class counsel." *Lea*, 2021 WL 5578665, at *11.

Here, the Plan of Allocation proposed by Plaintiff and Lead Counsel for approval, was developed in consultation with Plaintiff's damages expert after careful consideration of its theories of liability and alleged damages under the Exchange Act. In developing the Plan and calculating the estimated artificial inflation allegedly caused by Defendants' alleged misrepresentations and omissions, Plaintiff's damages expert considered price changes in MBI common stock and MBI call and put options in reaction to certain public announcements allegedly revealing the truth concerning Defendants' alleged misrepresentations and material omissions, adjusting for price

[15] Lead Plaintiff has separately moved for a modest representative reimbursement to compensate it for its time expended on this Action, pursuant to the PSLRA. The Settlement is in no way contingent upon whether any such award is granted.

changes that were attributable to market or industry forces. *See* ECF No. 61-2 at Ex. A.

A "Recognized Loss Amount" shall be calculated by the Claims Administrator for each purchase or acquisition of MBI common stock or MBI Options during the Settlement Class Period that is listed in the Claim Form and for which adequate documentation is provided. Individual Authorized Claimants' recoveries will depend on when during the Class Period they purchased or acquired MBI Securities and whether and when they sold them. Authorized Claimants will recover their proportional "*pro rata*" amount of the Net Settlement Fund based on their recognized loss, calculated under the Plan using the transactional information provided by claimants. No preferential treatment is provided, and there have been no objections to the Plan filed by Settlement Class Members. Courts routinely approve substantially similar methods of distributing recoveries in securities class actions such as this one, and Plaintiff respectfully submits that this Court should approve the Plan of Allocation submitted here. *See e.g., Vaccaro*, 2017 WL 6398636, at *6 (approving similar plan of allocation); *Signet Jewelers*, 2020 WL 4196468, at *14 (same).

IV. THE NOTICE OF PROPOSED SETTLEMENT SATISFIES RULE 23 AND DUE PROCESS REQUIREMENTS AND IS REASONABLE

The Court previously approved the form and content of the Postcard Notice, Notice, Claim Form, and Summary Notice and found Plaintiff's proposal to mail, email, and publish notice satisfied the "requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4, as amended, and all other applicable laws and rules." *See* Preliminary Approval Order at 6-7. Lead Counsel and A.B. Data fully complied with this notice program.

Indeed, here, the Court-approved notice program includes all the information required by Rule 23(c)(2)(B) and the PSLRA in plain language, including: (i) an explanation of the Action and the claims asserted; (ii) the definition of the Settlement Class; (iii) the Settlement Amount; (iv) a description of the Plan of Allocation; (v) an explanation of the reasons why the Parties are proposing the Settlement; (vi) a statement indicating the attorneys' fees and expenses that will be sought and the firms that will share in such an award; and (vii) a description of Settlement Class Members' legal rights and options, including how to submit a claim, object to the settlement, exclude oneself from the Action, and attend the Settlement Hearing, as well as the consequences of pursuing or declining to pursue each option. *See Oasmia*, 2021 WL 1259559, at *12.

Pursuant to the Preliminary Approval Order and as detailed in the Brauns Declaration: (a) a total of 25,226 Postcard Notices were emailed or mailed to potential Settlement Class Members; (b) Summary Notice was published on *PR Newswire* and in *Investor's Business Daily* on November 17, 2025; and (c) potential Settlement Class Members had access to both a dedicated webpage containing the relevant documents pertaining to the Settlement and a toll-free telephone number to seek further information about the Settlement and/or assistance from the Claims Administrator. Brauns Decl., at ¶¶11-15; *see Signet Jewelers*, 2020 WL 4196468, at *14 ("This "combination of individual mail to all [Settlement] 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, was 'the best notice ... practicable under the circumstances.'").

V. THE COURT SHOULD CERTIFY THE SETTLEMENT CLASS

In the Preliminary Approval Order, this Court conditionally certified the Settlement Class for purposes of the Settlement. *See* ECF No. 73 at ¶1 (the Settlement Class consists of "all persons or entities who purchased or otherwise acquired MBI Securities [including common stock and call and put options] between November 4, 2022 and May 1, 2024, … and were damaged thereby."). Nothing has occurred since then to cast doubt on the propriety of class certification for settlement purposes, and no objections to certification have been received. For all the reasons stated in the

Preliminary Approval Order and papers in support of Plaintiff's unopposed motion for preliminary approval of the Settlement (ECF Nos. 59-62, 70, 73), Plaintiff respectfully requests that the Court grant final certification to the Settlement Class under Rules 23(a) and (b)(3).

VI. CONCLUSION

Based on all the foregoing reasons, Plaintiff respectfully requests that the Court approve the proposed Settlement and Plan of Allocation as fair, reasonable, and adequate.

Dated: December 23, 2025

Respectfully submitted,

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Lead Counsel for Lead Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on December 23, 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/ Joshua H. Saltzman</u>*
Joshua H. Saltzman

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 7,045 words.

Dated: December 23, 2025

By: *Joshua H. Saltzman*
Joshua H. Saltzman