IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF PENNSYLVANIA

In re U. S. Steel Consolidated Cases	Civil Action No. 17-579 Judge Cathy Bissoon

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

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Court-appointed Lead Plaintiff Christakis Vrakas and Plaintiff Leeann Reed ("Plaintiffs"), by and through their undersigned counsel, respectfully move this Court, pursuant to Federal Rule of Civil Procedure ("Rule") 23, for an order: (i) finally approving the proposed Settlement of the above-captioned Action on the terms set forth in the Stipulation and Agreement of Settlement ("Stipulation"), dated May 20, 2022 (ECF No. 329-1); and (ii) approving the proposed Plan of Allocation for allocating the net proceeds of the Settlement to Settlement Class Members.[1]

I. INTRODUCTION

Plaintiffs are pleased to present for the Court's approval their agreement to settle this securities class action in exchange for a cash payment of $40 million for the benefit of the Settlement Class. Plaintiffs respectfully submit that the proposed Settlement is an excellent result given the risks they faced in proving the securities claims at issue and the significant delays of continued litigation. The Settlement is the culmination of nearly five years of vigorous litigation by Plaintiffs and Plaintiffs' Counsel, including through motions to dismiss, class certification, fact and expert discovery, and a then-pending motion for class decertification.

Plaintiffs and their counsel were well informed of the strengths and weaknesses of their claims and the U. S. Steel Defendants' defenses as they negotiated the Settlement. In addition to the Court's thorough rulings denying, in part, Defendants' motion to dismiss (ECF No. 133) and granting Plaintiffs' motion for class certification (ECF No. 215), Plaintiffs had developed a robust

[1] Unless otherwise stated or defined, all capitalized terms used herein shall have the meanings set forth in the Stipulation or the accompanying Declaration of Shannon L. Hopkins ("Hopkins Decl."), which is an integral part of this submission. For the sake of brevity, Plaintiffs respectfully refer the Court to the Hopkins Decl. for a detailed summary of, *inter alia*: the claims asserted, the procedural history, the arm's length negotiations, the serious risks of continued litigation, compliance with the Court-approved notice plan, and the Plan of Allocation. Unless otherwise specified, citations to "¶ __" refer to paragraphs in the Hopkins Decl., and citations to "Ex. __" refer to its exhibits. Unless noted, all internal cites and quotation marks are omitted, and emphasis is added.

factual record through their extensive pre-filing investigation, thorough discovery, and analysis and insights from the Parties' experts. By the time of the Settlement, Plaintiffs' investigation and discovery included: (i) review of more than 2.5 million pages of documents produced from the U. S. Steel Defendants and third parties pursuant to over fifty subpoenas; (ii) serving and responding to written discovery; (iii) class certification discovery, including of Plaintiffs and the Parties' market efficiency and damages experts; (iv) taking depositions of 25 fact witness (including a seven-part 30(b)(6) deposition of U. S. Steel) and defending nine depositions consisting of Plaintiffs, Plaintiff Reed's husband, U. S. Steel's former Chief Operating Officer and four confidential witnesses cited in the Amended Complaint, and Mr. Vrakas' investment advisor; (v) merits expert discovery, consisting of the retention of six experts, who produced reports and sat for depositions that Plaintiffs' Counsel defended, and taking the depositions of the U. S. Steel Defendants' five retained experts, including two depositions of the U. S. Steel Defendants' damages expert; (vi) full briefing of the U. S. Steel Defendants' motion for class decertification; (vii) attending four separate arms-length mediation sessions with the U. S. Steel Defendants, overseen by experienced mediators; and (viii) attending a settlement conference with the Court. ¶¶5, 139.

As detailed in the accompanying Hopkins Declaration and summarized herein, the proposed Settlement provides a substantial, certain, and immediate recovery for Settlement Class Members and avoids the significant risks of continued litigation, including the risk of a diminished recovery less than the Settlement Amount or no recovery at all—after years of additional litigation, appeals and delay. Further, the Settlement has the full support of Plaintiffs, who supervised the litigation and, with respect to Lead Plaintiff Vrakas, attended all of the mediations and participated directly in the arm's length settlement negotiations. Also, while the deadline to object to the

Settlement has not yet passed, no objections to the Settlement are pending.[2] Accordingly, Plaintiffs and Lead Counsel, who litigated this case from inception, believe the Settlement is a fair, reasonable, and adequate resolution for the Settlement Class, and balances the objective of securing the highest possible recovery against the substantial risks and costs of further litigation.

Plaintiffs also request that the Court approve the Plan of Allocation, which is set forth in the Notice that has been sent to Settlement Class Members. The Plan of Allocation, which was developed by Plaintiffs' consulting damages expert in consultation with Lead Counsel, provides a reasonable method for allocating the Net Settlement Fund among Settlement Class Members who submit valid claims based on the losses they suffered as result of the conduct alleged in the Action. Indeed, each Settlement Class Member that submits a valid Claim Form will receive a *pro rata* share of the recovery under the terms of the Plan of Allocation. For the reasons set forth below, the Plan of Allocation is fair and reasonable, and should likewise be approved.

Accordingly, Plaintiffs respectfully request the Court approve the Settlement and the Plan of Allocation.

II. THE SETTLEMENT WARRANTS FINAL APPROVAL

Rule 23(e) requires court approval for any compromise of claims brought on a class basis. Fed. R. Civ. P. 23(e) ("claims…of a certified class - or a class proposed to be certified for purposes of settlement - may be settled…only with the court's approval."). Settlement of class action litigation is both favored and encouraged in Third Circuit courts. *See Ehrheart v. Verizon Wireless*, 609 F.3d 590, 594-95 (3d Cir. 2010) ("This presumption is especially strong in 'class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation.'"); *see also In re Warfarin Sodium Antitrust Litig*., 391 F.3d 516, 535 (3d Cir. 2004)

[2] *See* Section II.C., *infra*.

("[T]here is an overriding public interest in settling class action litigation, and it should therefore be encouraged."); *Curiale v. Lenox Grp., Inc*., 2008 U.S. Dist. LEXIS 92851, at *13 (E.D. Pa. Nov. 14, 2008) ("The law favors settlement particularly in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation.").

Under Rule 23(e)(2), the Court should approve a proposed class action settlement if it finds it to be "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2); *see also In re Nat'l Football League Players Concussion Injury Litig.*, 821 F.3d 410, 436 (3d Cir. 2016) ("*NFL Players*"). In making this determination, Rule 23(e)(2) provides that a court should consider whether:

> (2) Approval of the Proposal. If the proposal would bind class members, the court may approve it only after a hearing and only on finding that it is fair, reasonable, and adequate after considering whether:
> (A) the class representatives and class counsel have adequately represented the class;
> (B) the proposal was negotiated at arm's length;
> (C) the relief provided for the class is adequate, taking into account:
> (i) the costs, risks and delay of trial and appeal;
> (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
> (iii) the terms of any proposed award of attorneys' fees, including timing of payment; and
> (iv) any agreement required to be identified under Rule 23(e)(3); and
> (D) the proposal treats class members equitably relative to each other.

These factors overlap with those set forth by the Third Circuit in *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975), which include:

> . . . (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. . . .[3]

[3] The *Girsh* factors "are a guide and the absence of one or more does not automatically render the settlement unfair." *In re Schering-Plough/Merck Merger Litig.*, 2010 U.S. Dist. LEXIS 29121, at *16 (D.N.J. Mar. 25, 2010).

The Third Circuit has held that there is an initial "presumption of fairness" of the Settlement if the Court finds that: "(1) the settlement negotiations occurred at arm's length; (2) there was sufficient discovery; (3) the proponents of the settlement are experienced in similar litigation; and (4) only a small fraction of the class objected." *Warfarin Sodium*, 391 F.3d at 535; *see also, e.g.*, *Huffman v. Prudential Ins. Co. of Am.*, 2019 U.S. Dist. LEXIS 58667, at *8, n.6 (E.D. Pa. Apr. 4, 2019) (granting final approval, analyzing amended Rule 23(e)(2) and the *Girsh* factors). Third Circuit courts also consider, as appropriate, the factors set forth in *In re Prudential Insurance Company America Sales Practice Litigation Agent Actions*, 148 F.3d 283, 323 (3d Cir. 1998). As set forth below, all relevant factors favor approval.

A. The Proposed Settlement Is Fair

The first two factors for the Court's consideration under Rule 23(e)(2) are the adequacy of representation for the Settlement Class and the arm's-length nature of the Settlement's negotiations. *See* Rule 23(e)(2)(A)-(B). These two factors dovetail into the third *Girsh* factor, which focuses on the stage of the proceedings and the amount of discovery completed. *In re Ins. Brokerage Antitrust Litig.*, 282 F.R.D. 92, 102 (D.N.J. 2012) ("a presumption of fairness exists where a settlement has been negotiated at arm's length, discovery is sufficient, the settlement proponents [are] experienced in similar matters and there are few objectors").

Here, the Settlement is presumptively fair because it was the result of extensive arm's-length negotiations conducted by experienced counsel before highly respected independent mediators, and the Parties completed extensive fact and expert discovery and thereby had an adequate understanding of the merits of the case at the time of the settlement.

First, Plaintiffs and Lead Counsel have adequately represented the Settlement Class as required by Rule 23(e)(2)(A) by diligently prosecuting this Action on its behalf, including, among

other things, drafting an amended complaint, opposing and defeating Defendants' motions to dismiss, reviewing over 2.5 million pages of documents produced by the U. S. Steel Defendants and third parties produced in response to over fifty subpoenas, propounding and responding to written discovery, collecting and producing substantial discovery from their own files, successfully moving for class certification and opposing the U. S. Steel Defendants' Rule 23(f) petition to the Third Circuit to appeal this Court's class certification order, taking and defending 34 fact 14 and expert depositions, exchanging twenty expert reports and rebuttal reports, exchanging two expert declarations, fully briefing the U. S. Steel Defendants' class decertification motion, and preparing for and engaging in four mediation sessions and one settlement conference with the Court. ¶¶5, 139. Lead Counsel are highly experienced in prosecuting complex securities class actions in this Circuit and throughout the country and have successfully prosecuted hundreds of securities class actions on behalf of damaged investors. *See, e.g., E-Trade Fin. Corp. Sec. Litig.*, No. 07-cv-8538 (S.D.N.Y. 2012) ($79 million recovery for the shareholder class); *Rougier v. Applied Optoelectronics, Inc., et al.*, No. 17-cv-2399 (S.D. Tex. 2020) ($15.5 million)*; In re Illumina, Inc. Sec. Litig.*, No. 3:16-cv-03044 (S.D. Cal. 2021) ($13.85 million)*; In re Prothena Corp. plc Sec. Litig.*, No. 1:18-cv-06425 (S.D.N.Y. 2019) ($15.75 million); Ex. 6 (firm résumé).

Moreover, the Court-appointed Lead Plaintiff Vrakas is a sophisticated investor with decades of investing experience and was the business owner of Atlas Engineering Inc., a design and project management company specializing in the design of offshore platforms, pipelines, and onshore oil and gas facilities. Ex. 1 at ¶3. Mr. Vrakas also has a Bachelor of Science in mechanical engineering and a Master of Science in engineering. *Id.* As set forth in Mr. Vrakas' declaration in support of the Settlement, Mr. Vrakas actively monitored this Action by frequently communicating with Lead Counsel, reviewing all significant Court filings, participating in discovery, and attending

all mediations. *Id.* at ¶4. Thus, Mr. Vrakas was fully informed of the Settlement's benefits, as compared to the significant risks and uncertainties of continued litigation, when he authorized Lead Counsel to agree to the Settlement. *Id.* at ¶6. The experience, expertise, and tenacity of Lead Counsel, and the sophistication of Lead Plaintiff, led to this excellent result, which will provide significant and immediate relief to the Settlement Class.

Given the advanced stage of the litigation, there can be no doubt that "counsel [had] an adequate appreciation of the merits of the case before negotiating" the Settlement. *Warfarin Sodium*, 391 F.3d at 537; *Schering-Plough*, 2010 U.S. Dist. LEXIS 29121, at *30. As detailed above in §II, by the time the Settlement occurred, Plaintiffs had engaged in extensive fact discovery, expert discovery, and motion practice, and therefore had a keen awareness of the risks of continued litigation, including the strength of the evidence that would be introduced at a trial. *See Schering-Plough*, 2010 U.S. Dist. LEXIS 29121, at *15, *16, *28-*30, *34, *38-*39 (applying the *Girsh* factors and finding discovery efforts weighed in favor of approving settlement); *see also In re Philips/Magnavox Television Litig*., 2012 U.S. Dist. LEXIS 67287, at *30-*31 (D.N.J. May 14, 2012) ("'Where this negotiation process follows meaningful discovery, the maturity and correctness of the settlement becomes all the more apparent.'").

All of this, combined with Lead Counsel's extensive experience in securities fraud litigation, provided a strong base upon which to evaluate the relative strengths and weaknesses of the claims and defenses in this case. *See Varacallo v. Mass. Mut. Life Ins. Co*., 226 F.R.D. 207, 240 (D.N.J. 2005) ("Class Counsel's approval of the Settlement also weighs in favor of the Settlement's fairness."); *Alves v. Main*, 2012 U.S. Dist. LEXIS 171773, at *72 (D.N.J. Dec. 4, 2012) ("[C]ourts in this Circuit traditionally 'attribute significant weight to the belief of experienced counsel that settlement is in the best interest of the class'"), *aff'd*, 559 F. App'x 151

(3d Cir. 2014); *Huffman*, 2019 U.S. Dist. LEXIS 58667, at *10-*11 (the court should "give credence to the estimation of the probability of success proffered by class counsel, who are experienced with the underlying case, and the possible defenses which may be raised to their cause of action").

Second, the Settlement was negotiated at arm's length, as contemplated by Rule 23(e)(2)(B). As detailed above in §IV, the Parties' settlement negotiations spanned several years and involved four mediation sessions with three different experienced mediators, as well as many follow up teleconferences, phone calls, and e-mail communications. The Parties also attended a Settlement Conference before the Court. ECF 308. Thus, as the Court is well-aware, the Parties' negotiations were vigorous and adversarial, and the U. S. Steel Defendants are represented by highly sophisticated counsel. It was not until after these lengthy, contentious settlement negotiations that Mr. Murphy issued a double-blinded "mediator's proposal" that recommended the amount of the Settlement, which the Parties ultimately accepted. ¶103; Ex. 4 at ¶13 (Declaration of David M. Murphy). Mr. Murphy's direct participation and support of the Settlement further ensures that negotiations were non-collusive and conducted at arm's length. *Bredbenner v. Liberty Travel, Inc.*, 2011 U.S. Dist. LEXIS 38663, at *30 (D.N.J. Apr. 8, 2011) ("Participation of an independent mediator in settlement negotiations 'virtually insures that the negotiations were conducted at arm's length and without collusion between the parties.'"); *see also* Ex. 4 at ¶10.[4]

B. The Benefits Under the Settlement Are Reasonable and Adequate

Rule 23(e)(2)(C)(i), which overlaps with *Girsh* in many respects (*i.e.*, factors 1, 4-9),

[4] *See also Sanders v. CJS Solutions Grp., LLC*, 2018 U.S. Dist. LEXIS 32655, at *7 (S.D.N.Y. Feb. 28, 2018) ("[T]he settlement was negotiated for at arm's length with the assistance of an independent mediator, which reinforces the non-collusive nature of the settlement.").

instructs the Court to consider the adequacy of the settlement relief in light of the costs, risks, and delay that trial and appeal would inevitably impose. *Compare* Fed. R. Civ. P. 23(e)(2)(C)(i) *with Girsh*, 521 F.2d at 157 (factor one focuses on the complexity, expense and likely duration of the litigation). This aspect of Rule 23(e)(2)(C)(i) also weighs in favor of approval. *See In re Ocean Power Techs., Inc., Sec. Litig.*, 2016 U.S. Dist. LEXIS 158222, at *37 (D.N.J. Nov. 15, 2016) ("Settlement is favored under this factor if litigation is expected to be complex, expensive and time consuming.").

"Securities fraud class actions are notably complex, lengthy, and expensive[.]" *In re PAR Pharm. Sec. Litig*., 2013 U.S. Dist. LEXIS 106150, at *13 (D.N.J. July 29, 2013). This case is no exception. Despite the advanced stage of the litigation, this case would still face a significant risk of substantial delay before ultimate resolution, including delays associated with briefing summary judgment, scheduling trial, and potential appeals that could last for years into the future. *See Ins. Brokerage Antitrust Litig*., 282 F.R.D. at 103 ("By reaching a favorable Settlement with most of the remaining Defendants prior to the disposition of Defendants' renewed dismissal motions or even an eventual trial, Class Counsel have avoided significant expense and delay, and have also provided an immediate benefit to the Settlement Class."); *Talone v. Am. Osteopathic Ass'n*, 2018 U.S. Dist. LEXIS 203983, at *36-*37 (D.N.J. Dec. 3, 2018) (settlement is favored where, as here, continuing to litigate through trial would require "extensive pretrial motions addressing complex factual and legal questions" and then "a complicated, lengthy trial"). The near-term relief that the Settlement provides to Settlement Class Members warrants approval in light of the delays inherent in continued litigation.

Further, the relief is fair, reasonable, and adequate considering the risks of continued litigation, which would require Plaintiffs to prove (and defeat the U. S. Steel Defendants'

counterarguments regarding) falsity, materiality, scienter, loss causation and damages at trial, as well as that Rule 23's certification requirements were met. *See Girsh*, 521 F.2d at 157 (*Girsh* factors 4-6 relate to risks of establishing liability, damages and maintaining a class action support settlement approval); *W. Palm Beach Police Pension Fund v. DFC Glob. Corp.*, 2017 U.S. Dist. LEXIS 152725, at *16-*17 (E.D. Pa. Sept. 20, 2017) (approving settlement in a securities class action where "[e]stablishing liability would be difficult for the Class [and] [e]stablishing damages would also be no picnic;" finding that "these factors weigh heavily in favor of approving the settlement").

Although Plaintiffs believe their case is strong, they acknowledge, as they must, there are risks to litigation and ultimate recovery. The U. S. Steel Defendants' arguments highlight the risks Plaintiffs would face proving their claims. For example, the U. S. Steel Defendants strenuously argued that Plaintiffs have not adduced evidence to support jury findings that any alleged misstatements regarding RCM, or regarding the benefits of RCM that U. S. Steel said it achieved, were false or misleading. ¶119. In support of this argument, the U. S. Steel Defendants provided (disputed) counter evidence that: (i) U. S. Steel purportedly achieved over $70 million in benefits from RCM during the Settlement Class Period as evidenced by a project listing in U. S. Steel's Wave system and as audited by Ernst & Young, LLP; and (ii) that employees at U. S. Steel with RCM titles were being paid to purportedly implement RCM. ¶119. Further, Defendants argued that any issues regarding capacity to meet demand were limited to three specific unplanned outages in early 2016 for which there was purportedly no related corrective disclosure. ¶124.

The U. S. Steel Defendants have also argued that Plaintiffs could not establish the element of scienter, because the evidence did not support that any statements, even potentially misleading ones, were made with the requisite intent to defraud. ¶120. The U. S. Steel Defendants further

argued that Defendants Burritt's and Longhi's insider sales were not suspicious because there were legal and financial restrictions that prevented them from selling any sooner and their sales were otherwise consistent with those of other executives in the industry. *Id.* The U. S. Steel Defendants have likewise challenged Plaintiffs' theory of loss causation (and therefore recoverable damages), maintaining that the April 25, 2017 corrective disclosure did not reveal anything to the market indicating that their prior statements were false or misleading. ¶37, 93. Instead, the U. S. Steel Defendants argued that the corrective disclosures announcing U. S. Steel's Q1 2017 earnings miss and reduced fiscal 2017 financial forecast were caused by increased spending under an entirely different and previously disclosed Asset Revitalization Plan (not the failure to implement RCM) meant to work in concert with U. S. Steel's purported existing RCM. *See* ECF 316-18.

The U. S. Steel Defendants also argued that Plaintiffs' expert's damages methodology failed to disaggregate confounding information and that only a fraction, if any, of Plaintiffs' estimated damages, could possibly relate to the alleged misstatements. ¶¶52, 124. The U. S. Steel Defendants' expert opined that market analyst commentary in response to U. S. Steel's reduced fiscal 2017 financial guidance reflected that, at most, 45% to 50% of the reduction was attributable to the reported lower flat-rolled steel volumes and additional planned outages. ECF 322-2 at 75-76. Thus, the U. S. Steel Defendants' expert claimed that if Plaintiffs could prove such volumes and outages were related to their allegations (which was not certain, and highly disputed), the maximum amount of the stock price decline that could be attributed to the fraud would be 45% to 50%, compared to the 93.7% calculated by Plaintiffs' expert. *Id.*

In addition, the U. S. Steel Defendants argued the class should be decertified primarily on the grounds that: (i) pursuant to the Supreme Court's decision in *Goldman Sachs Group, Inc. v. Arkansas Teacher Retirement System*, 141 S. Ct. 1951 (2021), there was no impact on U. S. Steel's

stock price from the alleged misstatements and, thus, the market for U. S. Steel stock was not efficient; and (ii) Plaintiffs were potentially inadequate or atypical. ECF 316-18. Maintaining class certification was by no means guaranteed as there are very few judicial decisions analyzing and applying the Supreme Court's *Goldman Sachs* decision and Plaintiffs risked the possibility the Court could side with the U. S. Steel Defendants and find that the alleged RCM misstatements were too generic and, thus, had no price impact.

Moreover, Plaintiffs' claims would be subject to complex expert testimony offered by the U. S. Steel Defendants' experts, which would conflict with Plaintiffs' experts' analyses. Indeed, the opinions of each side's experts vary substantially, and continued litigation poses the risks that the U. S. Steel Defendants would prevail in a "battle of experts." *In re Am. Bank Note Holographics*, 127 F. Supp. 2d 418, 426-27 (S.D.N.Y. 2001). Such a battle would increase the expense and risk involved with advancing the litigation toward a positive resolution for Plaintiffs and the Settlement Class, and a jury might credit the U. S. Steel Defendants' experts and accordingly reject Plaintiffs' claims. *See PAR Pharm.*, 2013 U.S. Dist. LEXIS 106150, at *20 (noting "the inherent unpredictability and risk associated with damage assessments in the securities fraud class-action context" which militates in favor of settlement approval).

The seventh *Girsh* factor considers "whether the defendants could withstand a judgment for an amount significantly greater than the [s]ettlement." *In re Cendant Corp. Litig.*, 264 F.3d 201, 240 (3d Cir. 2001). But even the "fact that [defendants] could afford to pay more does not mean that [they are] obligated to pay any more than what the . . . class members are entitled to under the theories of liability that existed at the time the settlement was reached." *Warfarin Sodium*, 391 F.3d at 538; *see also In re Schering-Plough Corp. Secs. Litig.*, 2009 U.S. Dist. LEXIS 121173, at *11 (D.N.J. Dec. 31, 2009) ("pushing for more in the face of risks and delay would not

be in the interests of the class"). Here, even if the U. S. Steel Defendants could conceivably afford to pay more, that factor does not outweigh the numerous factors strongly favoring the Settlement, including the serious risks to continued litigation and the certain and immediate recovery of a substantial recovery for Class Members.

The eighth and ninth *Girsh* factors—the reasonableness of the settlement in light of the best possible recovery and the risks of litigation—also weigh in favor of approving the Settlement. "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. . . . [r]ather, the percentage recovery, must represent a material percentage recovery to plaintiff in light of all the risks[.]" *In re AT&T Corp., Sec. Litig.*, 455 F.3d 160, 170 (3d Cir. 2006). The $40 million all-cash Settlement easily meets this threshold.

The Settlement is a very strong result for the Settlement Class when balanced against the risks of continued litigation. In connection with the Settlement, Lead Counsel conferred with a damages expert to assess the reasonableness of potential settlement offers. ¶126. Pursuant to Lead Counsel's expert's analysis, the $40 million recovery is approximately 6% to 7% of aggregate estimated damages, net of Settlement Class Period common stock gains, assuming Plaintiffs prevailed on all their arguments. *Id*. However, the finder of fact could have accepted Defendants' expert's opinion that the maximum amount of the stock price decline following the corrective disclosure attributable to the fraud equaled 45%. *Id*. In such scenario, the Settlement represents approximately 13% of the aggregate estimated damages (net of gains). *Id*.

U. S. Steel's market capitalization fell from $5.42 billion on April 25, 2017, to $3.98 billion on April 26, 2017, resulting in a one-day market capitalization drop of $1.44 billion. ¶127. Thus, the Settlement, which represents between 6 and 13% of recoverable aggregate damages, exceeds

the 4.2% average percentage recovery in securities class actions settled in 2021 and 2.3% average percentage recovery in securities class actions settled between 2012 and 2020 where market cap losses exceed $1 billion. *See* Ex. 5 at 6, fig. 5, *Laarni T. Bulan and Laura E. Simmons, Securities Class Action Settlements: 2021 Review and Analysis*, (Cornerstone Research 2022), Hopkins Decl., at ¶127; *see also AT&T*, 455 F.3d at 169-70 (recovery representing 4% of total claimed damages was "an excellent, sizeable result"); *Utah Ret. Sys. v. Healthcare Servs. Grp.*, 2022 U.S. Dist. LEXIS 5841, *29-*30 (E.D. Pa. Jan. 12, 2022) (settlement in securities class action "representing approximately 6.4% of the maximum estimated damages alleged, is in line with averages in this geographic area").

Given the complexity of this case and the risks and delay inherent in continued litigation, the $40 million Settlement is an excellent result. Taking into account that the case has been actively litigated for nearly five years, and the significant amount of the recovery, the Settlement here falls well within the range of reasonableness in light of the attendant risks and uncertainties of continued litigation, and should be preliminarily approved. *See Girsh*, 521 F.2d at 157.

C. Reaction of the Settlement Class to Date

The second *Girsh* factor considers "the reaction of the class to the settlement." *Girsh*, 521 F.2d at 157; *NFL Players*, 821 F.3d at 438. The deadline for Class Members to object to the Settlement is February 20, 2023. ¶112. On January 28, 2023, Lead Counsel received an email from a purported investor in U. S. Steel securities containing purported objections to the Claim Form. ¶113. On January 30, 2023, the individual withdrew his objections. *Id*. Should any further objections be filed or received by Lead Counsel, Plaintiffs will address such objections in their reply papers.

D. The *Prudential* Factors Also Support Approval of the Settlement

Courts in this Circuit also consider the various *Prudential* factors, as appropriate to the specifics of the litigation. As relevant here, these factors support approval of the proposed Settlement. *See Prudential*, 148 F.3d at 323 (including the maturity of the substantive issues; the existence of other possible claims by Settlement Class Members; the comparison of the results achieved to those of other Settlement Class Members or potential Settlement Class Members; the ability of Settlement Class Members to opt out of settlement; the reasonableness of attorneys' fees; and the reasonableness of the claims processing procedure).

To start, the substantive issues had matured at the time of the Settlement given the comprehensive record in the Action, Lead Counsel's extensive investigation, the drafting of a thorough and detailed amended complaint, motion practice, class certification, fact and expert discovery, and the mediation process. Plaintiffs and Lead Counsel thus had a clear understanding of the strengths and weaknesses of the case based on their extensive litigation of the Settlement Class's claims (as set forth in detail in the Hopkins Declaration and herein), which supports approval of the proposed Settlement. *See supra* § II.B.; ¶¶115-31. Next, there are no settlements that have been "achieved—or [are] likely to be achieved" by any individuals or other potential Settlement Class Members that are comparable to the "results achieved by the" proposed Settlement for the benefit of Class Members in this case. *Prudential*, 148 F.3d at 323. For example, there have been no other securities claims brought by separate classes or subclasses of claimants within the Class Periods certified by the Court in this Action. *Id.*

Finally, other relevant *Prudential* factors, including the ability of Settlement Class Members to opt out of the Settlement, the reasonableness of attorneys' fees, and the reasonableness of the procedure for processing individual claims, *id.* at 323, also favor the Settlement. Settlement

Class Members were afforded the opportunity to opt out in connection with the Class Notice mailed in June 2020, and in connection with the Notice to the Settlement Class in December 2022. Ex. 3 at ¶4. To date, the Claims Administrator has received 43 requests for exclusion, representing 36,250.48 shares of U. S. Steel stock—all from individuals (not institutional investors). *Id.* at ¶16. Lead Counsel's request for attorneys' fees is also reasonable, as set forth below in § II.E.2. and in the accompanying Memorandum of Law in Support of Lead Counsel's Motion for Award of Attorneys' Fees and Litigation Expenses, and Service Awards to Plaintiffs Pursuant to 15 U.S.C. §78u-4(a)(4) (the "Fee Memorandum") (and, in any event, approval of the Settlement is separate from and not dependent on any outcome of the motion for attorneys' fees and reimbursement of litigation expenses). And the Plan of Allocation, which was developed with Plaintiffs' damages expert and which will govern the allocation of the Net Settlement Fund, is fair and reasonable. *See* § III, *infra*; ¶107.

E. The Other Rule 23(e)(2) Factors are Met

Rule 23(e)(2) also enumerates three additional factors for the Court to consider in approving a settlement: (i) the effectiveness of the proposed method for distributing relief; (ii) the terms of the proposed attorneys' fees; and (iii) the existence of any other "agreements." Fed. R. Civ. P. 23(e)(2)(C)(ii)-(iv) (am. 2018). These factors also weigh in favor of preliminary approval.

1. The Proposed Method for Distributing Relief Is Effective

The proposed method of distribution and claims processing ensures equitable treatment of Class Members. *See* Fed. R. Civ. P. 23(e)(2)(C)(ii) & (e)(2)(D). Class Members' claims will be processed, and the Net Settlement Fund will be distributed, pursuant to a standard method routinely approved in securities class actions. The Court-authorized Claims Administrator, AB Data, will review and process all Claims received, provide Claimants with an opportunity to cure any

deficiency or request judicial review of the denial of their Claims, if applicable, and will ultimately mail or wire Authorized Claimants their *pro rata* share of the Net Settlement Fund, as calculated under the Plan of Allocation. *See infra* § III; ¶107. Importantly, the Settlement is not "claims-made" and all proceeds of the Settlement, after the deduction of Court-approved fees and costs, will be distributed to eligible claimants; none of the Settlement proceeds will revert to Defendants. *See* Stipulation at ¶4.4.

2. Attorneys' Fees and Expenses

Rule 23(e)(2)(C)(iii) addresses "the terms of any proposed award of attorney's fees, including timing of payment." As set forth in the accompanying Fee Memorandum, Plaintiffs' Counsel's request attorneys' fees in the amount of one third of the Settlement Fund.[5] This fee request is consistent with attorneys' fees regularly approved in connection with class action settlements within this District and the Third Circuit. *See, e.g.*, *Chludzinski v. NWPA Pizza, Inc*., *et al*., Case No. 1:20-cv-163 (W.D. Pa.) (Bissoon, J.) at Dkt. No. 43 (approving one-third of settlement fund in attorneys' fees and noting "[t]his is the standard amount awarded in district courts within the Third Circuit"); *Conley v. Cabot Oil and Gas Corp*., Case No. 2:17-cv-01391 (Bissoon, J.) at Dkt. No. 59 (granting fees of 33% of settlement fund); *Bell v. Fore Sys.*, 2003 U.S. Dist. LEXIS 26676, at *11 (W.D. Pa. Dec. 22, 2003) (awarding one third fee as fair and reasonable).

3. The Parties Have No Other Agreements Besides an Agreement to Address Requests for Exclusion

Rule 23(e)(2)(C)(iv) calls for the disclosure of any other agreements entered into in

[5] In connection with its fee request, Lead Counsel also seek payment from the Settlement Fund for litigation expenses in the total amount of $2,711,338.12, and awards to Plaintiffs in connection with their representation of the Settlement Class pursuant to 15 U.S.C. §78u-4(a)(4) in the amounts of $70,000 for Lead Plaintiff Vrakas and $10,000 for Plaintiff Reed.

connection with the settlement of a class action. The Settling Parties have entered into a supplemental agreement that provides the U. S. Steel Defendants with the right to terminate the Settlement in the event that timely and valid requests for exclusion from the Settlement Class exceed the criteria set forth in the Supplemental Agreement. *See* Stipulation, ¶IV.12.2.[6]

4. Settlement Class Members Are Treated Equitably

The final factor, Rule 23(e)(2)(D), concerns whether the Settlement treats Settlement Class Members equitably. As discussed above, all Settlement Class Members are treated equitably under the terms of the Stipulation, which provides that each Settlement Class Member that properly submits a valid Claim Form will receive a *pro rata* share of the Net Settlement Fund, calculated under the Plan of Allocation.

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The Settlement satisfies each factor identified under Rule 23(e)(2) and the Third Circuit's *Girsh* opinion. Moreover, pursuant to *Warfarin Sodium*, 391 F.3d at 535, the Settlement is entitled to a presumption of fairness. Given the litigation risks involved, and the complexity of the underlying issues, the $40 million recovery is an excellent one. Therefore, Plaintiffs and Lead Counsel respectfully submit that the Settlement is fair, reasonable and adequate, and the Settlement should be finally approved.

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

The "[a]pproval of a plan of allocation of a settlement fund in a class action is governed by the same standards of review applicable to approval of the settlement as a whole: the distribution plan must be fair, reasonable and adequate." *In re Merck & Co. Vytorin ERISA Litig*., 2010 U.S.

[6] As is standard in securities class actions, agreements of this kind are not made public to avoid incentivizing the formation of a group of opt-outs for the sole purpose of leveraging the opt-out threshold to exact individual settlements. In accordance with the Stipulation, the Supplemental Agreement may be submitted to the Court *in camera* upon order of the Court.

Dist. LEXIS 12344, at *22 (D.N.J. Feb. 9, 2010) (citing *In re Ikon Office Solutions, Inc., Sec. Litig.*, 194 F.R.D. 166, 184 (E.D. Pa. 2000)). "In evaluating a plan of allocation, the opinion of qualified counsel is entitled to significant respect. The proposed allocation need not meet standards of scientific precision, and given that qualified counsel endorses the proposed allocation, the allocation need only have a reasonable and rational basis." *Boyd v. Coventry Health Care, Inc.*, 299 F.R.D. 451, 461 (D. Md. 2014); *PAR Pharm.*, 2013 U.S. Dist. LEXIS 106150, at *25.

Here, the proposed Plan of Allocation, which was developed by Lead Counsel in consultation with Plaintiffs' consulting damages expert, provides a fair and reasonable method to allocate the Net Settlement Fund among Settlement Class Members who submit valid Claim Forms. Under the Plan of Allocation, a "Recognized Loss Amount" will be calculated for each purchase or acquisition of U. S. Steel publicly traded common stock and/or stock options during the Settlement Class Period that is listed in the Claim Form and for which adequate documentation is provided. The calculation of Recognized Loss Amounts is generally based on the date and price at which the security was acquired and the amount of the decline in the security's price following the release of negative information about the Company related to the alleged fraud. The sum of the Recognized Loss Amounts for all of a claimant's purchases of U.S. Steel's common stock during the Settlement Class Period is the claimant's "Recognized Claim" and the Net Settlement Fund will be allocated to Authorized Claimants on a *pro rata* basis based on the relative size of their Recognized Claims.

Plaintiffs' method of notice is routinely approved as fair in securities class action settlements. *See, e.g., In re Gen. Instrument Sec. Litig.*, 209 F. Supp. 2d 423, 431 (E.D. Pa. 2001) (deeming plan of allocation "even handed" where "claimants are to be reimbursed on a *pro rata* basis for their recognized losses based largely on when they bought and sold their shares of General

Instrument stock"); *Ocean Power*, 2016 U.S. Dist. LEXIS 158222, at *73 ("*pro rata* distributions are consistently upheld, and there is no requirement that a plan of allocation 'differentiat[e] within a class based on the strength or weakness of the theories of recovery'") (quoting *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 328 (3d Cir. 2011)). Lead Counsel submit that the Plan of Allocation fairly and rationally allocates the proceeds of the Net Settlement Fund among Settlement Class Members based on the losses they suffered as a result of the conduct alleged in the Complaint. Moreover, to date, there have been no objections to the proposed Plan of Allocation.

Accordingly, the Plan of Allocation is fair and reasonable, and should be approved.

IV. THE NOTICE PROGRAM SATISFIES RULE 23 AND DUE PROCESS

Plaintiffs have provided the Settlement Class with adequate notice of the Settlement. Here, notice satisfied both: (i) Rule 23, as it was "the best notice . . . practicable under the circumstances" and directed "in a reasonable manner to all class members who would be bound by the" Settlement, Fed. R. Civ. P. 23(c)(2)(B) & (e)(1)(B); *see also Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173-75 (1974); and (ii) due process, as it was "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950). In accordance with the Court's Preliminary Approval Order, on December 1, 2022, AB Data began mailing copies of the Notice Package to potential Settlement Class Members and nominees. *See* Ex. 3 ¶¶5-8. Through February 6, 2023, AB Data has mailed a total of 315,783 Notice Packages. *Id.* at ¶11. In addition, AB Data caused the Summary Notice to be published in *Investors' Business Daily* and transmitted over *PR Newswire* on December 5, 2023. *Id.* at ¶12. AB Data also updated the case website to include copies of the Notice and Claim Form and to include information concerning the Settlement. *Id.* at ¶13.

The Notice apprises Settlement Class Members of (among other things) the nature of the Action, the definition of the Settlement Class, the claims and issues in the Action, and the claims that will be released in the Settlement. The Notice also: (i) advises that a Settlement Class Member may enter an appearance through counsel if desired; (ii) describes the binding effect of a judgment on Settlement Class Members under Rule 23(e)(3); (iii) states the procedures and deadline for Settlement Class Members to object to the proposed Settlement, the proposed Plan of Allocation, and the requested attorneys' fees and expenses; (iv) states the procedures and deadline for Settlement Class Members to submit a Claim Form to recover from the Settlement; and (v) provides the date, time, and location of the Final Approval Hearing.

The Notice and Summary Notice also satisfy the PSLRA's specific notice requirements by, *inter alia*, stating: (i) the amount of the Settlement determined in the aggregate and on an average per-common share basis; (ii) that the Parties do not agree on the average amount of damages per common share that would be recoverable in the event Plaintiffs prevailed at trial, and stating the issue(s) on which the Parties disagree; (iii) that Lead Counsel intends to make an application for an award of attorneys' fees and expenses; (iv) the amount, on an average per-common share basis, of the Lead Counsel's requested fees, Litigation Expenses, and requests for costs and expenses reasonably incurred by Plaintiffs, if approved; (v) contact information for Lead Counsel; and (vi) the reasons the Parties are proposing the Settlement.

In sum, this combination of sending individual notice via first-class mail to all Settlement Class Members who could be identified with reasonable effort, supplemented by notice in an appropriate publication, transmission over a newswire, and publication on internet websites, represents the best notice practicable under the circumstances and satisfies the requirements of due process and Rule 23. *See Jones v. Commerce Bancorp, Inc.*, 2007 U.S. Dist. LEXIS 52144, at *14

(D.N.J. July 16, 2007) ("the proposed distribution of notice to class members by first class mail is reasonable because no alternative method of distribution is more likely to notify class members"). Comparable notice programs are routinely approved by Courts in this Circuit. *See, e.g., In re Valeant Pharm. Int'l Sec. Litig.*, 2020 U.S. Dist. LEXIS 103675, at *39 (D.N.J. June 15, 2020); *Ocean Power*, 2016 U.S. Dist. LEXIS 158222, at *29-*30; *In re ViroPharma Inc. Sec. Litig.*, 2016 U.S. Dist. LEXIS 8626, at *56-*59 (E.D. Pa. Jan. 25, 2016).

For all of the foregoing reasons, the Court should find that the notice program was fair, reasonable, consistent with Rule 23 and due process, and the best notice practicable.

V. CONCLUSION

For the reasons set forth herein, and in the Hopkins Declaration herewith, Plaintiffs respectfully request the Court grant final approval of the Settlement and the Plan of Allocation.

DATED: February 6, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 6, 2023, I served a copy of the foregoing document on all appearing counsel through the Court's ECF system.

/s/ Shannon L. Hopkins
Shannon L. Hopkins