UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STADIUM CAPITAL LLC, on behalf of itself and all others similarly situated, Plaintiff, v. CO-DIAGNOSTICS, INC., DWIGHT H. EGAN, and BRIAN L. BROWN, Defendants.	Case No.: 22-cv-6978-AS CLASS ACTION

LEAD PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF THE MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

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Lead Plaintiff Stadium Capital LLC ("Stadium" or "Lead Plaintiff"), on behalf of itself and all other members of the Class, respectfully submits this memorandum of law in support of its motion, pursuant to Rule 23 of the Federal Rules of Civil Procedure, for entry of the Parties' agreed-upon proposed Order Preliminarily Approving Settlement and Providing for Notice ("Preliminary Approval Order"), submitted herewith.[1]

PRELIMINARY STATEMENT

The Parties have reached a proposed settlement of this putative securities class action for $6,500,000 in cash (the "Stipulation" or "Settlement"). If approved by the Court, the Settlement will resolve all claims asserted against Defendants in the above-captioned consolidated action (the "Action" or the "Litigation"). This resolution was the result of nearly four years of intensive litigation that was reached as the case proceeded toward an October 2026 trial date. Stadium respectfully submits that the Settlement warrants preliminary approval because it represents a very favorable recovery for the Class, is the result of vigorous arm's-length negotiations by experienced counsel, overseen by a well-respected mediator, and meets the approval factors required by Rule 23(e) and Second Circuit precedent.

Entry of the Preliminary Approval Order will begin the process of considering final approval of the Settlement by authorizing notice of the Settlement to investors who are believed to be members of the Class. The Preliminary Approval Order will also set a final hearing ("Settlement Fairness Hearing") at which the Parties and Class Members may present arguments for and against the Settlement, and the Court can determine whether the Settlement is fair,

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[1] All capitalized terms not otherwise defined herein shall have the meanings provided in the Stipulation of Settlement, dated August 14, 2026 (the "Stipulation"), filed as Exhibit 1 to Declaration of Jason A. Uris in support of Lead Plaintiff's Motion for Preliminary Approval of Class Action Settlement, dated August 14, 2026 ("Uris Decl.").

reasonable, and adequate, and warrants final approval.

To facilitate this process, the Preliminary Approval Order will, among other things: (i) preliminarily approve the Settlement on the terms set forth in the Stipulation (Ex. 1 to the Uris Decl.); (ii) approve the form and content of the Notice, Claim Form, and Summary Notice attached as Exhibits A(1), A(2), and A(3) to the Preliminary Approval Order (Ex. A to the Stipulation); (iii) find that the proposed procedures for dissemination of the Notice, Claim Form, and Summary Notice constitute the best notice practicable under the circumstances, and comply with due process, Rule 23, and the Private Securities Litigation Reform Act of 1995 ("PSLRA"); and (iv) set a date and time for the Settlement Fairness Hearing, at which the Court will consider final approval of the Settlement, the Plan of Allocation, and Lead Counsel's application for attorneys' fees and expenses.

HISTORY OF THE ACTION

The initial complaint in the Litigation was filed on August 16, 2022. ECF No. 1. On August 9, 2023, the Court appointed Stadium as the lead plaintiff and appointed Kaplan Fox & Kilsheimer LLP as lead counsel ("Lead Counsel"). ECF No. 15. Stadium filed a consolidated amended complaint on September 21, 2023 (the "Complaint"), asserting claims under Sections 10(b) and 20(a) of the Securities Exchange Act ("Exchange Act") against Co-Diagnostics, Inc., Dwight H. Egan, and Brian L. Brown ("Defendants"), on behalf of class of purchasers of Co-Diagnostics securities during the period from May 12, 2022, through August 11, 2022. ECF No. 31. The Complaint alleged that Defendants made false and misleading statements or omissions regarding demand for the Company's core product during the Class Period (as defined below), the Logix Smart™ COVID-19 Test, in press releases and on earnings calls with investors. *Id.*

On October 20, 2023, Defendants moved to dismiss the Complaint. ECF Nos. 32-35. On November 21, 2023, Lead Plaintiff filed its opposition to Defendants' motion to dismiss (ECF

Nos. 37-39), and on December 13, 2023, Defendants filed their reply in further support of their motion (ECF Nos. 40-41). By Order dated February 5, 2024, the Court granted in part and denied in part Defendants' motion to dismiss. ECF No. 42.

From February 2024 to February 2025, counsel for Lead Plaintiff and Defendants engaged in extensive fact and expert discovery. Among other things, Lead Plaintiff served numerous document requests and interrogatories. Defendants produced more than 58,000 documents to Lead Plaintiff, comprising a total of over 524,300 pages. Lead Plaintiff also took and/or defended 11 depositions of fact and expert witnesses. Additionally, third parties produced approximately 5,000 documents, comprising a total of over 20,600 pages.

On July 26, 2024, Lead Plaintiff filed its motion for class certification, through which it sought to certify a Class of all persons and entities who purchased the publicly traded securities of Co-Dx[2] during the period May 12, 2022, through the close of the market on August 11, 2022 (4:00 p.m. ET), inclusive. ECF Nos. 56-58. On September 6, 2024, Defendants filed a notice of non-opposition and reservation of rights in response to Lead Plaintiff's motion for class certification (ECF No. 68), and on September 9, 2024, Lead Plaintiff filed a reply in further support of its motion for class certification (ECF No. 69). On November 12, 2024, the Court granted Lead Plaintiff's motion for class certification, appointing Lead Plaintiff Stadium Capital as Class Representative, and appointing Kaplan Fox as Class Counsel. ECF No. 73.

On December 27, 2024, Defendants filed a motion to remove Stadium Capital as Lead Plaintiff and Class Representative and to decertify the Class. ECF Nos. 77-79. On January 17, 2025, Lead Plaintiff filed its opposition to Defendants' decertification motion (ECF No. 83-84),

[2] The Class includes investors that purchased or otherwise acquired Co-Dx common stock or call options, or sold Co-Dx put options.

and on January 21, 2025 Defendants filed their reply in further support. ECF No. 85. On January 24, 2025, following briefing and a hearing, the Court denied Defendants' decertification motion. ECF No. 88.

On March 17, 2025, Lead Plaintiff filed a Letter Motion seeking entry of an Order Approving Dissemination of Class Notice. ECF No. 97. On March 18, 2025, the Court granted this motion, approving the form, substance, and content of the Notices, as well as the method and schedule for notifying the Class of the pendency of the Action. ECF No. 100.

On March 21, 2025, Lead Plaintiff moved to partially preclude the expert witness reports and testimonies of Dr. Thomas C. Tsai ("Tsai") and Dr. Vinita Juneja ("Juneja") (ECF Nos. 104-106), and filed its motion for partial summary judgment (ECF Nos. 112-114). Also on March 21, 2025, Defendants moved for summary judgment (ECF Nos. 101-103, 107) and moved to exclude the testimony of Lead Plaintiff's expert Chad C. Coffman ("Coffman") (ECF Nos. 109-111). Both Parties filed Rule 56.1 Statements on March 21, 2025. ECF Nos. 108, 115. On May 2, 2025, Defendants filed their oppositions to Lead Plaintiff's motion for partial summary judgment and motion to partially preclude the expert witness reports and testimonies of Tsai and Juneja. ECF Nos. 122, 125-26. Also on May 2, 2025, Lead Plaintiff filed its oppositions to Defendants' motion for summary judgment and motion to preclude testimony of Coffman. ECF Nos. 119, 123-24. Both Parties provided Rule 56.1 Responses on May 2, 2025. ECF Nos. 120-21. On May 30, 2025, Lead Plaintiff filed replies in further support of its motion for partial summary judgment and to partially exclude the expert witness reports and testimonies of Tsai and Juneja. ECF Nos. 127-129. Also on May 30, 2025, Defendants filed replies in further of their motions for summary judgment and to exclude testimony of Coffman. ECF Nos. 130, 132.

On January 14, 2026, the Court granted in part and denied in part Lead Plaintiff's motion for partial summary judgment, and denied Defendants' motion for summary judgment in its entirety. ECF No. 134. The Court denied Defendants' motion to exclude testimony of Coffman and denied Lead Plaintiff's motion to partially exclude the expert witness reports and testimonies of Tsai and Juneja (stating that in its motions *in limine* Lead Plaintiff may reassert any portion of its *Daubert* motion that it thinks remains live). *Id*. On February 11, 2026, the Court entered a Scheduling Order scheduling trial to begin on October 5, 2026. ECF No. 137.

THE PROPOSED SETTLEMENT

In June of 2024, the Parties agreed to discuss a possible resolution of the Action. To facilitate their negotiations, the Parties scheduled a formal mediation with Jed Melnick, Esq. of JAMS, a well-respected and highly experienced mediator. In advance of the mediation, the Parties submitted detailed mediation statements. Although the Parties were unable to reach a resolution of the Action at the mediation on October 18, 2024, they continued their discussions with the assistance of Mr. Melnick, and after extensive additional negotiations, agreed to resolve the matter through the proposed settlement. On July 29, 2026, the Parties agreed to resolve the matter for $6.5 million and executed a binding term sheet setting forth the material terms of their agreement (the "Term Sheet"). The same day, the Parties notified the Court that they had agreed in principle to resolve all claims alleged in this Action.

In light of the significant benefit achieved for the Class; the substantial costs and risks of continuing litigation through further motion practice, trial, and appeals; and the fact that the Settlement is the result of arm's-length negotiations by experienced counsel overseen by a well-respected mediator; Lead Plaintiff respectfully submits that the Settlement warrants preliminary approval so that notice of the Settlement can be provided to the Class.

ARGUMENT

I. THE PROPOSED SETTLEMENT MERITS PRELIMINARY APPROVAL

"The law favors settlement, particularly in class actions and other complex cases where substantial resources can be conserved by avoiding the time, cost, and rigor of prolonged litigation." *In re Advanced Battery Techs., Inc. Sec. Litig.*, 298 F.R.D. 171, 174 (S.D.N.Y. 2014); *see also Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 116-17 (2d Cir. 2005) ("We are mindful of the strong judicial policy in favor of settlements, particularly in the class action context. The compromise of complex litigation is encouraged by the courts and favored by public policy.") (internal quotation marks and citation omitted). Thus, the procedural and substantive fairness of a settlement should be examined "in light of the strong judicial policy in favor of settlement of class action suits." *Aponte v. Comprehensive Health Mgmt., Inc.*, No. 10 Civ. 4825 (JLC), 2013 WL 1364147, at *2 (S.D.N.Y. Apr. 2, 2013) (quotation omitted).

Rule 23(e) of the Federal Rules of Civil Procedure requires judicial approval for the compromise of class claims. The review is a two-step process: (i) preliminary approval; and (ii) a subsequent "fairness hearing." *In re Initial Pub. Offering Sec. Litig.*, 243 F.R.D. 79, 87 (S.D.N.Y. 2007). In weighing a grant of preliminary approval, district courts must determine whether "giving notice is justified by the parties' showing that the court ***will likely be able to*** . . . approve the proposal under Rule 23(e)(2)[.]" Fed. R. Civ. P. 23(e)(1)(B)(i).[3] Rule 23(e)(2) provides that a court should consider the following factors when determining whether a settlement is fair, reasonable, and adequate:

(A) the class representatives and class counsel have adequately represented the class;

(B) the proposal was negotiated at arm's length;

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[3] All emphasis added unless otherwise noted.

(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.

Fed. R. Civ. P. 23(e)(2).

At this stage, the Court need not answer the ultimate question of whether the Settlement is fair, reasonable, and adequate. When the Court makes that ultimate determination at a later stage, it will be asked to review the following "*Grinnell* factors", many of which overlap with the Rule 23 factors: "(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." *In re Signet Jewelers Ltd. Sec. Litig.*, No. 1:16-cv-06728-CM-SDA, 2020 WL 4196468, at *2 (S.D.N.Y. July 21, 2020) (quoting *Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974)); *see also D'Amato v. Deutsche Bank*, 236 F.3d 78, 86 (2d Cir. 2001). At the preliminary approval stage, "the Court need only find that the proposed settlement fits within the range of possible approval to proceed." *In re Warner Chilcott Ltd. Sec.*

Litig., No. 06 Civ. 11515 (WHP), 2008 WL 5110904, at *2 (S.D.N.Y. Nov. 20, 2008) (internal quotation omitted).

In accordance with the above standards, Lead Plaintiff requests that the Court grant preliminary approval because the Settlement is highly likely to satisfy the factors required for final approval.

A. Lead Plaintiff and Lead Counsel Have Ably and Zealously Represented the Class

Lead Plaintiff and Lead Counsel have zealously prosecuted the Action on behalf of the Class and will continue to do so throughout the administration of the Settlement to secure and deliver its benefits. Lead Plaintiff was an active and informed participant in the Action who, among other things, stayed informed of all case developments since inception, responded to the discovery demands propounded by Defendants, including the production of responsive documents in connection with those demands, sat for depositions, and oversaw and consulted repeatedly with Lead Counsel regarding settlement negotiations. Lead Plaintiff understands both the Class's and Defendants' best arguments concerning liability, damages, and the risks of proceeding with the Action, and approved the terms of the Settlement.

Likewise, Lead Counsel developed a deep understanding of the facts of the Action and merits of the claims through (i) an extensive investigation into the claims; (ii) drafting a detailed amended complaint; (iii) opposing Defendants' motion to dismiss; (iv) engaging experts to evaluate the claims and damages; (v) engaging in extensive document and deposition discovery; (vi) filing a motion for class certification; (vii) opposing Defendants' motion to decertify the Class; (viii) filing a motion for partial summary judgment and opposing Defendants' motion for summary judgment; and (ix) filing a motion to partially preclude the reports and testimonies of Defendants' expert witnesses and opposing Defendants' motion to preclude the report and testimony of Lead

Plaintiff's expert witness. In consultation with its damages experts, Lead Counsel evaluated the potential damages in the case and negotiated vigorously to secure the $6.5 million recovery. Accordingly, the Class has been, and remains, well represented.

B. Arm's-Length Negotiations Conducted by Experienced Counsel Favor Preliminary Approval

Courts find that a proposed settlement is fair and reasonable when it is the result of arm's-length negotiations between well-informed counsel. *See Wal-Mart*, 396 F.3d at 116 (noting strong "presumption of fairness" where settlement is product of arm's-length negotiations conducted by experienced, capable counsel after meaningful discovery); *In re Flag Telecom Holdings Ltd. Sec. Litig.*, No. 02-CV-3400 (CM)(PED), 2010 WL 4537550, at *13 (S.D.N.Y. Nov. 8, 2010) (same). The use of a mediator in settlement negotiations further supports a finding of fairness and that the settlement achieved was free of collusion. *See D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (noting that "mediator's involvement in . . . settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure"); *Flag Telecom*, 2010 WL 4537550, at *14; *In re Elan Sec. Litig.*, 385 F. Supp. 2d 363, 369 (S.D.N.Y. 2005).

The Settlement results from extensive, arms' length negotiations conducted by experienced counsel for all Parties, with the assistance of the independent mediator Jed Melnick of JAMS. During the mediation, Lead Plaintiff and Defendants discussed their respective views regarding the merits of the Action, including the evidence adduced, Defendants' defenses, and issues relating to loss causation and damages.

Moreover, in evaluating the Settlement, the Court should consider the judgment of Lead Counsel. *Guevoura Fund Ltd. v. Sillerman*, No. 1:15-cv-07192-CM, 2019 WL 6889901, at *6 (S.D.N.Y. Dec. 18, 2019) ("Where counsel for plaintiff is able and experienced, particularly in the specific area with which these actions are concerned . . . counsel's judgment is entitled to great weight.") (internal quotations omitted).[4] Here, Lead Counsel is a leading securities class action litigation firm with decades of experience in the practice area, and was well-informed of the risks and merits of the case before reaching the proposed Settlement. *See* Uris Decl., Ex. 2 (Kaplan Fox & Kilsheimer LLP Firm Resume). Accordingly, Lead Counsel's judgment that the Settlement is in the best interest of the Class should be given weight.

C. The Settlement Provides a Substantial Recovery That is Adequate Under All of the Rule 23(e)(2)(C) and *Grinnell* Factors

The Rule 23(e)(2)(C) and *Grinnell* Factors support preliminary approval here.[5]

1. The Costs, Risks, and Delay of Trial and Appeal and the *Grinnell* Factors

The costs, risks, and delay of succeeding at trial and on appeal and the *Grinnell* Factors weigh strongly in favor of preliminary approval of the Settlement.

Without the Settlement, further litigation would be expensive, complex, and time consuming. There can be no doubt that litigating the Action through additional motion practice, trial, and appeals would be time consuming and expensive. Here, the Settlement provides a substantial cash benefit to the Class without the risk and delays of continued litigation. *See Strougo v. Bassini*, 258 F. Supp. 2d 254, 261 (S.D.N.Y. 2003) ("if a shareholder or class member was willing to assume all the risks of [Litigation] . . . the passage of time would introduce yet more risks . . . and would, in light of the time value of money, make future recoveries less valuable than this current recovery.").

Additionally, although Lead Plaintiff is confident in the merits of his claims and believes

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[4] *See also*, *In re IMAX Sec. Litig.*, 283 F.R.D. 178, 189 (S.D.N.Y. 2012) ("great weight is accorded to the recommendations of counsel, who are most closely acquainted with the facts of the underlying litigation.").

[5] Additionally, all agreements required to be disclosed under Rule 23(e)(3) have been disclosed.

that substantial evidence supporting the allegations has been adduced, it also recognizes that the Action presented many risks to establishing both liability and damages at trial. Had the Litigation continued, Defendants would have argued at trial that they acted in good faith and therefore lacked sufficient knowledge of, or did not act recklessly with respect to, the falsity of their statements (also known as scienter). Even if the hurdles to establishing liability were overcome, the amount of damages that could be attributed to the allegedly false statements would be hotly contested. For example, Defendants would have argued that Co-Dx's share price decline on the alleged corrective disclosure date was caused, in whole or substantial part, by factors unrelated to the alleged fraud. Lead Plaintiff would have to prevail at an imminent trial, and even if they prevailed at this trial, they would have to prevail on the appeals that were likely to follow. If any of these arguments prevailed at trial, the Class could have recovered significantly less or, indeed, nothing.

Based on Lead Plaintiff's expert's estimate of aggregate damages, the Settlement Amount represents a recovery of approximately 30.1-40.6% of the Class's best case damages—a very favorable recovery under any circumstances. This percentage range of recovery is well above the recovery range of settlements that have been approved in this District. *See, e.g.*, *In re Patriot Nat'l, Inc. Sec. Litig.*, 828 F. App'x 760, 762 (2d Cir. 2020) (affirming district court's approval of settlement representing 6.1% of the class's maximum potentially recoverable damages); *Vaccaro v. New Source Energy Partners L.P.*, No. 15 CV 8954 (KMW), 2017 WL 6398636, at *6 (S.D.N.Y. Dec. 14, 2017) (approving settlement representing 6.5% of the maximum recoverable damages and noting that the settlement amount is "in line with other settlements in securities class actions"); *In re Merrill Lynch & Co. Rsch. Reports Sec. Litig.*, 246 F.R.D. 156, 167 (S.D.N.Y. 2007) (approving settlement that was "between approximately 3% and 7% of estimated damages"). In comparison, the median recovery in similarly-sized securities class actions in from 2016-2024 was approximately 22.9% of estimated damages. *See* Laarni T. Bulan & Eric Tam, *Securities Class Action Settlements: 2025 Review and Analysis*, CORNERSTONE RESEARCH, at 20 (2025), https://www.cornerstone.com/wp-content/uploads/2026/02/Securities-Class-Action-Settlements-2025-Review-and-Analysis.pdf.

Although Lead Plaintiff and Defendants disagree about the amount of maximum recoverable damages, the $6.5 million Settlement Amount is a substantial recovery nonetheless. Moreover, the adequacy of the amount offered in settlement must be judged "not in comparison with the possible recovery in the best of all possible worlds, but rather in light of the strengths and weaknesses of plaintiffs' case." *In re "Agent Orange" Prod. Liab. Litig.*, 597 F. Supp. 740, 762 (E.D.N.Y. 1984), *aff'd*, 818 F.2d 145 (2d Cir. 1987). The Court need only determine whether the Settlement falls within a "range of reasonableness," a range that "recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion." *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972). Additionally, the Court should consider that the Settlement provides for payment to the Class now rather than a speculative payment many years later. *See In re AOL Time Warner, Inc.*, No. MDL 1500, 2006 WL 903236, at *13 (S.D.N.Y. Apr. 6, 2006). Here, Lead Plaintiff faced numerous legal, procedural, and practical hurdles that, if not met or overcome, could result in zero recovery for Lead Plaintiff and the Class. Thus, the Settlement Amount is an excellent result in light of the substantial risks that Lead Plaintiff and the Class would face in proving all of the elements of the asserted claims.

2. The Effectiveness of The Proposed Method of Distributing Relief to The Class

The Settlement, like most securities class action settlements, will be effectuated with the assistance of an experienced claims administrator. The Claims Administrator will employ a welltested protocol for the processing of claims in a securities class action. Namely, a potential class member will submit, either by mail or online using the Settlement website, the Court-approved Claim Form. Based on the trade information provided by claimants, the Claims Administrator will determine each claimant's eligibility to participate by, among other things, calculating their respective "Recognized Claims" based on the Court-approved Plan of Allocation, and ultimately determine each eligible claimant's *pro rata* portion of the Net Settlement Fund. *See* Stip. ¶ 20 (Ex. 1 to Uris Decl.). Lead Plaintiff's claim will be reviewed in the same manner. Claimants will be notified of any defects or conditions of ineligibility and be given the chance to contest the rejection of their claims. *Id*. at ¶ 24. Any claim disputes that cannot be resolved will be presented to the Court for a determination. *Id*.

After the Settlement reaches its Effective Date (*id*. at ¶ 31) and the claims process is completed, Lead Plaintiff will seek Court approval to distribute the Net Settlement Fund. If approval is granted, Authorized Claimants will be issued payments as described in the Stipulation. If there are unclaimed funds after the initial distribution, and it would be feasible and economical to conduct a further distribution, the Claims Administrator will conduct a further distribution of remaining funds (less the estimated expenses for the additional distribution, Taxes, and unpaid Notice and Administration Expenses). Additional distributions will proceed in the same manner until it is no longer economical to conduct further distributions. At this point, if there are unclaimed funds, Lead Plaintiff will request Court approval of a *cy pres* beneficiary. Notice at ¶ 55 (Ex. A(1) to the Preliminary Approval Order).

3. The Proposed Fees and Expense Application is Reasonable

Lead Counsel will request compensation from the Settlement Fund under the common fund doctrine. The proposed Notice provides that Lead Counsel will seek a maximum fee of 33 $^{1}/_{3}$% of the Settlement Fund (plus interest earned at the same rate as the Settlement Fund), an amount that is in line the percentages that courts in the Second Circuit have approved in comparable class actions.[6] *See*, *e.g.*, *In re Hub Cyber Sec. Ltd.*, No. 1:23-cv-05764-AS, 2026 WL 2151071, at *1 (S.D.N.Y. July 27, 2026) (awarding 33⅓% of $11 million settlement) (Subramanian, J.); *Guevoura Fund Ltd. v. Sillerman*, No. 1:15-cv-07192-CM, 2019 WL 6889901, at *15 (S.D.N.Y. Dec. 18, 2019) (awarding 33.33% of $7.5 million settlement); *Fogarazzo v. Lehman Bros. Inc.*, No. 03 Civ. 5194 (SAS), 2011 WL 671745, *4 (S.D.N.Y. Feb. 23, 2011) (awarding 33.3% of $6.75 million settlement); *In re Giant Interactive Grp., Inc. Sec. Litig.*, 279 F.R.D. 151, 165 (S.D.N.Y. 2011) (awarding 33% of $13 million settlement); *Maley v. Del Global Tech. Corp.*, 186 F. Supp. 2d 358, 370 (S.D.N.Y. 2002) ("Petitioners' request [for 33⅓% of the Class Settlement Fund] falls comfortably within the range of fees typically awarded in securities class actions."). Moreover, a 33 ⅓% fee award would represent a negative multiplier to Lead Counsel. If preliminary approval is granted, Lead Counsel will present its lodestar in connection with its fee application at the final approval stage. Approval of the attorneys' fees sought is not a condition of the Settlement.

In addition, Lead Counsel will seek reimbursement of litigation expenses or charges incurred during the prosecution of the Action, in an amount not to exceed $500,000. As will be detailed in Lead Counsel's final approval papers, these expenses were necessary and proper for the prosecution of the Action, and are the types and amounts of expenses commonly reimbursed.

D. The Settlement Treats Class Members Equitably Relative to One Another

The Settlement does not improperly grant preferential treatment to either Lead Plaintiff or any portion of the Class. Rather, all members of the Class, including Lead Plaintiff, will receive a

[6] As set forth in the Notice, Lead Counsel's application will also include time and expenses from Kobre & Kim LLP, which appeared in the Action in June 2026 as trial co-counsel.

distribution from the Net Settlement Fund pursuant to the Plan of Allocation approved by the Court. The proposed Plan of Allocation was created by Lead Plaintiff's damages expert and is consistent with Lead Plaintiff's theory of damages under the Exchange Act. All Class Members that were allegedly harmed as a result of the alleged fraud, and that have an eligible claim pursuant to the Plan of Allocation, will receive their *pro rata* share of the Net Settlement Fund based on their "recognized claim" under the Plan of Allocation. *See*, *e.g.*, *In re Merrill Lynch Tyco Rsch. Sec. Litig.*, 249 F.R.D. 124, 135 (S.D.N.Y. 2008) ("A plan of allocation that calls for the pro rata distribution of settlement proceeds on the basis of investment loss is presumptively reasonable.").

E. The Settlement Was Reached After Significant Proceedings Had Occurred

As set forth above, extensive fact and expert discovery had been completed by the time the Settlement was reached. In fact, class certification and summary judgment motions had been decided, and only trial remained.

II. THE PROPOSED NOTICE PLAN AND FORMS SHOULD BE APPROVED

The proposed Notice and Summary Notice, attached as Exhibits A(1) and A(3) to the Preliminary Approval Order (attached as Ex. A to the Stipulation), respectively, satisfy due process, the Federal Rules of Civil Procedure, and the PSLRA. "Due process requires that the notice to class members fairly apprise the ... members of the class of the terms of the proposed settlement and of the options that are open to them in connection with [the] proceedings." *Maywalt v. Parker & Parsley Petroleum Co.*, 67 F.3d 1072, 1079 (2d Cir. 1995) (internal quotation marks and citations omitted). Rule 23(c)(2)(B) requires notice of the pendency of the class action to be "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." It must be "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 & Trust Co.*, 339

U.S. 306, 314 (1950).

Collectively, as required by Rule 23(c)(2)(B), the proposed forms of notice here describe "clearly and concisely state in plain, easily understood language" the (1) nature of the action; (2) definition of the certified class; (3) the class claims, issues, or defenses; (4) that a class member may appear through counsel; (5) that a class member will be excluded at his request; (6) the time and manner for requesting exclusion; and (7) the binding effect of a class judgment under Rule 23(c)(3). *See In re Take Two Interactive Sec. Litig*., No. 06 Civ. 803 (RJS), 2010 WL 11613684, at *12-13 (S.D.N.Y. June 29, 2010). The Notice also satisfies the PSLRA's separate requirements by, *inter alia*, stating: (A) the amount of the Settlement determined in the aggregate and on an average per share basis; (B) that the Parties do not agree on the average amount of damages per share that would be recoverable; (C) that Lead Counsel intends to make an application for attorneys' fees and expenses (including the amount of such fees and expenses on an average per share basis); (D) the contact information for Lead Counsel; and (E) the reasons why the Parties are proposing the Settlement. 15 U.S.C. §78u-4(a)(7)(A)-(E).

The proposed notice program uses the "gold standard" method in securities cases for notifying class members: individual notification by mail, publication in a national newspaper focusing on investors, and dissemination over the internet using a wire service. Upon entry of the Preliminary Approval Order, the Claims Administrator will mail the Notice and Claim Form to all Settlement Class Members who can be identified and located through reasonable effort, using information provided by Co-Dx's transfer agent, as well as information provided by third-party banks, brokers, and other nominees about their customers who may have eligible purchases. Lead Counsel will also cause the Summary Notice to be published in *Investor's Business Daily* and transmitted over the internet using *PR Newswire*. In addition, the Notice and Claim Form will be made available for viewing and downloading on the settlement website.

Lead Plaintiff also requests that the Court appoint RG/2 Claims Administration LLC ("RG/2") as the Claims Administrator to provide all Court-approved notices to Class Members, to process Claim Forms, and to administer the Settlement. RG/2 is a nationally-recognized notice and claims administration firm that has successfully administered numerous complex securities class action settlements, and was selected by Lead Counsel through a competitive bidding process. *See* Uris Decl., Ex. 3 (RG/2 brochure).

III. PROPOSED SCHEDULE OF EVENTS

Lead Plaintiff respectfully proposes the following schedule for the Court's review and approval, which summarizes the deadlines in the Preliminary Approval Order. If the Court agrees with the proposed schedule, Lead Plaintiff requests that the Court schedule the Settlement Fairness Hearing for a date one hundred (100) calendar days after entry of the Preliminary Approval Order, or at the Court's earliest convenience thereafter.

Deadline for mailing individual Notices and Claim Forms ("Notice Date")	***20 calendar days after entry of Preliminary Approval Order.***
Deadline for publication in *Investor's Business Day* and transmission over *PR Newswire*	***Within 10 calendar days of the Notice Date.***
Deadline for filing motions in support of the Settlement, the Plan of Allocation, and Lead Counsel's application for fees and expenses	***No later than 35 calendar days before the Settlement Fairness Hearing.***
Deadline for submission of requests for exclusion or objections	***Received no later than 21 calendar days before the Settlement Fairness Hearing.***
Deadline for filing reply papers in support of the motions	***No later than 7 calendar days before the Settlement Fairness Hearing.***
Deadline for submission of Claim Forms	***Postmarked or received no later than 120 calendar days after the Notice Date.***

Settlement Fairness Hearing	***At the Court's convenience, but no fewer than 100 calendar days after the Notice Date.***

IV. CONCLUSION

For the foregoing reasons, Lead Plaintiff respectfully requests that the Court grant its motion and enter the Preliminary Approval Order, submitted herewith.

Dated: August 14, 2026

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/s/ Jason A. Uris

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that, in accordance with Rule 7.1 of the Local Rules of the United States District Courts of the Southern and Eastern Districts of New York, dated January 2, 2025, and Rule 8.C. of the Individual Practices in Civil Cases of Judge Subramanian dated March 14, 2025, this memorandum complies with all formatting requirements set forth therein and contains 5,389 words (including footnotes but excluding the cover page, table of contents, table of authorities, signature blocks, and this certification of compliance).

/s/ Jason A. Uris
Jason A. Uris

CERTIFICATE OF SERVICE

I, Jason A. Uris, hereby certify that, on August 14, 2026, I caused the foregoing to be served on all counsel of record by filing the same with the Court using the CM/ECF system which will send electronic notices of the filing to all counsel of record.

/s/ Jason A. Uris
Jason A. Uris