UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

In re Tenaris S.A. Securities Litigation	Case No. 1:18-cv-07059-KAM-SJB Honorable Kiyo A. Matsumoto

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

TABLE OF CONTENTS

I. INTRODUCTION 1

II. STANDARDS FOR FINAL APPROVAL UNDER RULE 23(E) AND *GRINNELL* 3

III. ARGUMENT 5

A. The Settlement Is Fair, Reasonable, And Adequate In Light Of The Factors Outlined By Rule 23(E)(2) And The Remaining Grinnell Factors 5

1. Plaintiffs And Counsel Adequately Represented The Settlement Class 5

2. The Settlement Was Reached After Substantial Litigation And Arm's-Length Negotiations Between Experienced Counsel 7

3. The Settlement Is A Fair And Reasonable Result For The Settlement Class In Light Of The Benefits Of The Settlement And The Rusks Of Continued Litigation 8

(a) Complexity, Expense, And Duration Of Litigation 9

(b) Risks Of Establishing Liability And Damages 10

(c) Risk Of Maintaining Class Action Status 13

(d) Range Of Reasonableness In Light Of The Best Possible Recovery And Attendant Risks Of Litigation 15

4. Rule 23(e)(2) 16

5. The Settlement Treats all Members of the Settlement Class Equitably Relative to Each Other 18

6. The Settlement Class's Reaction To The Settlement Supports Final Approval 18

7. Defendants' Ability To Withstand A Greater Judgment 19

B. The Plan Of Allocation Is Fair And Reasonable 20

IV. THE SETTLEMENT CLASS SHOULD BE FINALLY CERTIFIED 22

V. THE NOTICE PROGRAM SATISFIES RULE 23, THE PSLRA AND DUE PROCESS 22

VI. CONCLUSION 24

TABLE OF AUTHORITIES

CASES

Ark. Tchr. Ret. Sys. v. Goldman Sachs Grp., Inc.,
77 F.4th 74 (2d Cir. 2023) 14

Baffa v. Donaldson, Lufkin & Jenrette Sec. Corp.,
222 F.3d 52 (2d Cir. 2000) 5

Basic Inc. v. Levinson,
485 U.S. 224 (1988) 14

Beach v. JPMorgan Chase Bank, N.A.,
2020 WL 6114545 (S.D.N.Y. Oct. 7, 2020) 4

Burger v. CPC Int'l, Inc.,
76 F.R.D. 183 (S.D.N.Y. 1977) 8

Chatelain v. Prudential-Bache Sec., Inc.,
805 F. Supp. 209 (S.D.N.Y. 1992) 14

Christine Asia Co., Ltd. v. Yun Ma,
2019 WL 5257534 (S.D.N.Y. Oct. 16, 2019) 18, 20, 22

City of Detroit v. Grinnell Corp.,
495 F.2d 448 (2d Cir. 1974) 4, 9

City of Providence v. Aéropostale, Inc.,
2014 WL 1883494 (S.D.N.Y. May 9, 2014) 7

Dura Pharms., Inc., v. Broudo,
544 U.S. 336 (2005) 12

Fishoff v. Coty Inc.,
2010 WL 305358 (S.D.N.Y. Jan. 25, 2010) 12

Goldman Sachs Grp. Inc. v. Ark. Tchr. Ret. Sys.,
141 S.Ct. 1951 (2021) 14

In re "Agent Orange" Prod. Liab. Litig.,
597 F. Supp. 740 (E.D.N.Y. 1984) 15

In re Advanced Battery Tech., Inc. Sec. Litig.,
298 F.R.D. 171 (S.D.N.Y. 2014) 19, 23

In re American Intern. Group, Inc. Sec. Litig.,
689 F.3d 229 (2d Cir. 2012) ... 14

In re Citigroup Inc. Bond Litig.,
296 F.R.D. 147 (S.D.N.Y. 2013) ... 7

In re Citigroup, Inc. Sec. Litig.,
965 F. Supp. 2d 369 (S.D.N.Y. 2013) ... 18

In re EVCI Career Colls.,
2007 WL 2230177 (S.D.N.Y. July 27, 2007) ... 6

In re Facebook, Inc. IPO Sec. & Deriv. Litig.,
2015 WL 6971424 (S.D.N.Y. Nov. 9, 2015) ... 7

In re FLAG Telecom Holdings, Ltd. Sec. Litig.,
2010 WL 4537550 (S.D.N.Y. Nov. 8, 2010) ... 9

In re Flag Telecom Holdings, Ltd. Sec. Litig.,
574 F.3d 29 (2d Cir. 2009) ... 12

In re GSE Bonds Antitrust Litig.,
414 F. Supp. 3d 686 (S.D.N.Y. 2019) ... 9, 10, 14

In re Heritage Bond Litig.,
2005 WL 1594403 (C.D. Cal. June 10, 2005) ... 22

In re IMAX Sec. Litig.,
283 F.R.D. 178 (S.D.N.Y. 2012) ... 20

In re Marsh & McLennan Cos., Inc. Sec. Litig.,
2009 WL 5178546 (S.D.N.Y. Dec. 23, 2009) ... 13, 20

In re Marsh ERISA Litig.,
265 F.R.D. 128 (S.D.N.Y. 2010) ... 18

In re Merrill Lynch & Co., Inc. Rsch. Reps. Sec. Litig.,
246 F.R.D. 156 (S.D.N.Y. 2007) ... 3, 22

In re Metlife Demutualization Litig.,
689 F. Supp. 2d 297 (E.D.N.Y. 2010) ... 19

In re Metro. Life Deriv. Litig.,
935 F. Supp. 286 (S.D.N.Y. 1996) ... 8

In re Patriot Nat'l, Inc. Sec. Litig.,
828 F. App'x 760 (2d Cir. 2020) 5

In re Payment Card Interchange Fee and Merchant Discount Antitrust Litig.,
330 F.R.D. 11 (E.D.N.Y. 2019) 4

In re WorldCom, Inc. Sec. Litig.,
388 F. Supp. 2d 319 (S.D.N.Y. 2005).. 20

Maley v. Del Global Techs. Corp.,
186 F. Supp. 2d 358 (S.D.N.Y. 2002).. 16, 17, 19

Margulis v. Stryker Corp.,
2019 WL 6830209 (D.N.J. Nov. 12, 2019) 9

Monsanto Intern. Sales Co., Inc. v. Hanjin Container Lines, Ltd.,
770 F.Supp. 832 (S.D.N.Y. 1991) 9

Shapiro v. JPMorgan Chase & Co.,
2014 WL 1224666 (S.D.N.Y. Mar. 24, 2014) 6, 8

Too v. Rockwell Medical, Inc.,
2020 WL 1023435 (E.D.N.Y. Feb. 26, 2020).. 22

Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.,
396 F.3d 96 (2d Cir. 2005).. 5, 7, 22

STATUTES

15 U.S.C. § 78u-4(a)(7) 24

RULES

FED. R. CIV. P. 23.. 22

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, Court-appointed lead plaintiffs Jeffrey Lynn Sanders and Starr Sanders (collectively, "Lead Plaintiffs"), on behalf of themselves and all other members of the Settlement Class, respectfully submit this memorandum of law in support of their motion for final approval of the proposed Settlement and Plan of Allocation.[1]

I. INTRODUCTION[2]

After more than four and half years of hard-fought litigation, Lead Plaintiffs and Defendants[3] have agreed to settle all claims in the Action in exchange for a non-reversionary cash payment of $9,500,000 (the "Settlement Amount") for the benefit of the Settlement Class. The proposed Settlement represents approximately 4-5% of the maximum recoverable damages related to the pending claims. This percentage is well above the 1.8% median recovery in securities class actions settled in 2022, is significantly higher than the 2.4%-2.9% median recovery in securities cases with similar damages that settled between December 2011-December 2022 (*see* Ex. 4), and is a fair and adequate result when balanced against the many risks of continued litigation.

While Lead Plaintiffs and their counsel believe the claims are meritorious, they recognize the substantial challenges to establishing liability, proving damages, and achieving (and collecting

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[1] Unless otherwise noted, all capitalized terms have the meanings ascribed to them in the Stipulation and Agreement of Settlement, dated March 3, 2023 (the "Stipulation," ECF No. 111-1) or the concurrently-filed Declaration of Kara M. Wolke in Support of: (I) Lead Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation; and (II) Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses ("Wolke Decl." or "Wolke Declaration"). All citations to "¶__" and "Ex. __" in this memorandum refer, respectively, to paragraphs in, and exhibits to, the Wolke Declaration.

[2] The Wolke Declaration is an integral part of this submission and, for the sake of brevity, the Court is respectfully referred to it for a detailed description of, *inter alia*: the factual background and procedural history of the Action; the nature of the claims asserted; the negotiations leading to the Settlement; the risks and uncertainties of continued litigation; and the terms of the Plan of Allocation of the Net Settlement Fund.

3 Defendants are Tenaris S.A. ("Tenaris" or the "Company") and Paolo Rocca.

upon) a greater recovery. For example, completing fact discovery would have been difficult and expensive given that key third-party witnesses were located outside of the United States. ¶¶38-39. Furthermore, Defendants would have continued to contest each element of Lead Plaintiffs' claims, including liability, loss causation, and damages. In fact, even if Lead Plaintiffs succeeded at trial there is a risk that collecting any judgment would require Lead Plaintiffs to separately enforce a judgment in one or more foreign jurisdictions because Defendants are based outside of the United States. These risks are further exacerbated by Defendants lack of insurance coverage for the claims at issue in this litigation. In contrast, the Settlement removes significant risks that lay ahead at class certification, summary judgment, trial, and any eventual appeal(s). An adverse decision at any of these litigation milestones could result in a zero—or substantially reduced—recovery.

Lead Counsel's substantial efforts and well-developed understanding of the strengths and weaknesses of the Action informed the decision to settle. These efforts included, among other things: (i) conducting a comprehensive and thorough factual investigation into the allegedly wrongful acts; (ii) drafting a comprehensive 56-page Consolidated Class Action Complaint (the "Complaint") based on this investigation; (iii) engaging in substantial briefing in opposition to Defendants' motions to dismiss, notices of supplemental authority, as well as their motion for partial reconsideration; (iv) engaging in substantial fact discovery, including, *inter alia*, the exchange of initial disclosures, service of requests for production of documents, interrogatories, and admissions; (v) reviewing and analyzing 116,046 of pages of documents, the many of which were in written in Spanish; and (vi) engaging in extensive settlement negotiations with Defendants' Counsel. ¶¶10-34.

The Settlement is, therefore, the result of arms-length negotiations, conducted by informed and experienced counsel with sufficient knowledge of the strengths and weaknesses of the case.

As discussed in greater detail below and in the Wolke Declaration, Lead Plaintiffs and Lead Counsel believe that the proposed Settlement meets the standards for final approval and is in the best interests of the Settlement Class. Accordingly, Lead Plaintiffs respectfully request the Court grant the Settlement final approval.

Lead Plaintiffs also request approval of the proposed Plan of Allocation of the Net Settlement Fund. The Plan of Allocation was developed in conjunction with Lead Plaintiffs' damages consultant and is designed to distribute the proceeds of the Net Settlement Fund fairly and equitably to Settlement Class Members. As such, Lead Plaintiffs respectfully submit that the Plan of Allocation should be approved.

Finally, the notice program constituted "best notice…practicable under the circumstances" and thus satisfies Rule 23 and due process. *In re Merrill Lynch & Co., Inc. Rsch. Reps. Sec. Litig.*, 246 F.R.D. 156, 166 (S.D.N.Y. 2007). The Claims Administrator mailed a total of 87,306 Postcard Notices to potential Settlement Class Members, published the Summary Notice, and made the Notice, Claim Form, and other important documents available on a dedicated website. Ex. 1 ("Walter Decl.") at ¶¶8, 9, 11-13. While the deadline to request exclusion or object to the Settlement has not yet passed, it is indicative of the high quality of the Settlement that no objections or requests for exclusion have been received to date. *Id.* at ¶¶14-15.

In sum, the Settlement is both procedurally and substantively fair, reasonable, and adequate. Accordingly, Lead Plaintiffs respectfully request that the Court grant final approval of the Settlement and Plan of Allocation.

II. STANDARDS FOR FINAL APPROVAL UNDER RULE 23(E) AND *GRINNELL*

Rule 23(e) of the Federal Rules of Civil Procedure provides that a class action settlement must be presented to the Court for approval, and should be approved if the Court finds it "fair,

reasonable, and adequate." FED. R. CIV. P. 23(e)(2).[4] Rule 23(e)(2)—which governs final approval—requires courts to consider the following questions in determining whether a proposed settlement is fair, reasonable, and adequate:

> (A) have the class representatives and class counsel adequately represented the class;
> (B) was the proposal negotiated at arm's length;
> (C) is the relief provided for the class 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) does the proposal treat class members equitably relative to each other.

These Rule 23(e)(2) factors add to, rather than displace, the factors previously adopted by the courts. *See In re Payment Card Interchange Fee and Merchant Discount Antitrust Litig.*, 330 F.R.D. 11, 29 (E.D.N.Y. 2019). Thus, the Second Circuit's traditional factors used to evaluate the propriety of a class action settlement (certain of which overlap with Rule 23(e)(2)) are still relevant:

> (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.

City of Detroit v. Grinnell Corp., 495 F.2d 448, 463 (2d Cir. 1974); *see also Beach v. JPMorgan Chase Bank, N.A.*, 2020 WL 6114545, at *2 (S.D.N.Y. Oct. 7, 2020) (evaluating a settlement based on factors set forth in FED. R. CIV. P. 23(e)(2) and *Grinnell*). As set forth below, the proposed Settlement satisfies the criteria for final approval under the four Rule 23(e)(2) factors, as well as

[4] Unless otherwise indicated, all emphasis is added, and citations and quotations omitted.

the relevant, non-duplicative *Grinnell* factors.

III. ARGUMENT

A. The Settlement Is Fair, Reasonable, And Adequate In Light Of The Factors Outlined By Rule 23(E)(2) And The Remaining *Grinnell* Factors

1. Plaintiffs And Counsel Adequately Represented The Settlement Class

Federal Rule of Civil Procedure 23(e)(2)(A) requires the Court to consider whether the "class representatives and class counsel have adequately represented the class." In assessing adequacy, "the primary factors are whether the class representatives have any interests antagonistic to the interests of other class members and whether the representatives have an interest in vigorously pursuing the claims of the class." *In re Patriot Nat'l, Inc. Sec. Litig.*, 828 F. App'x 760, 764 (2d Cir. 2020); *see also Baffa v. Donaldson, Lufkin & Jenrette Sec. Corp.*, 222 F.3d 52, 60 (2d Cir. 2000) ("Generally, adequacy of representation entails inquiry as to whether: 1) plaintiff's interests are antagonistic to the interest of other members of the class; and 2) plaintiff's attorneys are qualified, experienced and able to conduct the litigation.").[5]

Here, Lead Plaintiffs' claims are typical and coextensive with the claims of the Settlement Class, and they have no antagonistic interests. Lead Plaintiffs, like all other Settlement Class Members, are investors who purchased Tenaris American Depositary Shares ("ADS") during the Settlement Class Period and suffered damages as a result of Defendants' allegedly wrongful conduct. Their interest in obtaining the largest possible recovery is, therefore, aligned with the other Settlement Class Members. *See Patriot*, 828 F. App'x 760, 764 (finding adequacy where "lead plaintiffs were sufficiently motivated to recover as much as possible for each class member"). In addition, Lead Plaintiffs diligently oversaw the litigation, communicated with their

[5] *Accord Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 106–07 (2d Cir. 2005) ("Adequate representation of a particular claim is established mainly by showing an alignment of interests between class members, not by proving vigorous pursuit of that claim.").

counsel on a regular basis, reviewed court filings and orders, and were fully engaged in the settlement process. Ex. 2 ("Sanders Joint Decl.") at ¶5. Lead Plaintiffs' active participation in the Action reinforces the reasonableness of the Settlement. *See In re EVCI Career Colls.*, 2007 WL 2230177, at *4 (S.D.N.Y. July 27, 2007) ("[U]nder the PSLRA, a settlement reached under the supervision of appropriately selected Lead Plaintiffs is entitled to an even greater presumption of reasonableness.").

Lead Plaintiffs also retained counsel who are highly experienced in securities litigation, and who have long and successful track records representing investors in such cases. *See* Ex. 3 (Lead Counsel's firm resumé); *see also Shapiro v. JPMorgan Chase & Co*., 2014 WL 1224666, at *2 (S.D.N.Y. Mar. 24, 2014) (judgment of counsel "who have extensive experience in prosecuting complex class actions" is entitled to "great weight"). Lead Counsel vigorously prosecuted the Settlement Class's claims, and were acutely aware of the case's strengths and weakness prior to entering the Settlement, including the limited sources of recovery. *See* ¶¶11-50. The Wolke Declaration details Lead Counsel's substantial work in this case, including: (i) extensive investigation of Defendants and the conduct at issue, which included retaining and working with (a) an Argentinian lawyer who assisted in obtaining information from the pending criminal cases and advising on various issues of Argentine law, and (b) a bilingual private investigator who conducted an investigation in Argentina; (ii) drafting the Complaint; (iii) working with loss causation/damages experts; (iv) researching and briefing an omnibus opposition to two separate motions to dismiss, responses to notices of supplemental authority, and successfully opposing Defendants' motion for partial reconsideration; and (v) substantial fact discovery efforts, including (a) the exchange of initial disclosures; (b) propounding two sets of requests for production of documents, two sets of written interrogatories, and one set of written requests for

admission upon Defendants, (c) serving three third-party subpoenas *duces tecum* on relevant third parties, (d) submitting three Freedom of Information Act ("FOIA") requests to the SEC and two FOIA requests to the U.S. Department of Justice, (e) filing three motions to compel discovery from Defendants, and (e) reviewing and analyzing approximately 116,046 pages of documents produced by Defendants, including many of which were in Spanish. Based on their expertise, experience, and the work done in this case, Lead Counsel, with a thorough understanding of the strengths and weaknesses of the Action, submit that the proposed Settlement is in the best interests of the Settlement Class.

2. The Settlement Was Reached After Substantial Litigation And Arm's-Length Negotiations Between Experienced Counsel

The Court must also consider whether the settlement was "negotiated at arm's-length" in weighing approval of a class action settlement. FED. R. CIV. P. 23(e)(2)(B).[6] Courts apply a presumption of fairness when a class settlement is the product of "arms-length negotiations between experienced, capable counsel." *In re Citigroup Inc. Bond Litig.*, 296 F.R.D. 147, 155 (S.D.N.Y. 2013) (quoting *Wal-Mart*, 396 F.3d at 116); *see also City of Providence v. Aéropostale, Inc.*, 2014 WL 1883494, at *4 (S.D.N.Y. May 9, 2014) ("Absent fraud or collusion, the court should be hesitant to substitute its judgment for that of the parties who negotiated the settlement."), *aff'd sub nom. Arbuthnot v. Pierson*, 607 F. App'x 73 (2d Cir. 2015).

Here, the Parties began exploring the possibility of resolving this Action only after the motions to dismiss and reconsideration motion had been briefed and decided, discovery was well

[6] This "procedural" fairness determination also encompasses the third *Grinnell* factor, which assesses "whether the parties had adequate information about their claims such that their counsel can intelligently evaluate the merits of plaintiff's claims, the strengths of the defenses asserted by defendants, and the value of plaintiffs' causes of action for purposes of settlement." *In re Facebook, Inc. IPO Sec. & Deriv. Litig.*, No. MDL 12-2389, 2015 WL 6971424, at *4 (S.D.N.Y. Nov. 9, 2015), *aff'd sub nom. In re Facebook, Inc.*, 674 F. App'x 37 (2d Cir. 2016).

underway, and Lead Plaintiffs had an opportunity to analyze evidence from Defendants. Armed with this knowledge, Lead Plaintiffs served a confidential settlement demand on Defendants in August 2022. ¶31 Following negotiations, however, the Parties were unsuccessful in trying to resolve the case and continued with discovery. *Id.* Months later, the Parties then revisited the possibility of settlement and following prolonged negotiations conducted by counsel through numerous telephonic and video conferences, the Parties were ultimately able to agree to the Settlement Amount. ¶32. The Parties then proceeded to negotiate and document the long-form Stipulation and supporting Settlement documentation. ¶¶33-34. The arm's-length nature of the extensive settlement negotiations between capable counsel with substantial experience in securities class actions supports the conclusion that the Settlement is fair and was achieved free of collusion. *Shapiro v. JPMorgan Chase & Co.*, 2014 WL 1224666, at *7 (S.D.N.Y. Mar. 24, 2014) ("highly experienced counsel on both sides, all with a strong understanding of the strengths and weaknesses of each party's respective potential claims and defenses, vigorously negotiated the Settlement at arm's-length").[7]

3. The Settlement Is A Fair And Reasonable Result For The Settlement Class In Light Of The Benefits Of The Settlement And The Rusks Of Continued Litigation

Under Rule 23(e)(2)(C), when evaluating the fairness, reasonableness, and adequacy of a settlement, the Court must also consider whether "the relief provided for the class is adequate, taking into account…the costs, risks, and delay of trial and appeal" along with other relevant

[7] *See also In re Metro. Life Deriv. Litig.*, 935 F. Supp. 286, 294 (S.D.N.Y. 1996) ("Counsel have thoroughly investigated and evaluated plaintiffs' claims. Accordingly, their recommendation for approval of the Proposed Settlement is entitled to 'considerable weight.'"); *Burger v. CPC Int'l, Inc.*, 76 F.R.D. 183, 186 (S.D.N.Y. 1977) (finding "no hint of collusion" where settlement reached after "intensive, vigorous and arm's-length negotiations conducted over a three and one-half month period.").

factors. FED. R. CIV. P. 23(e)(2)(C).[8] As discussed below, each supports the Settlement's approval.

(a) Complexity, Expense, And Duration Of Litigation

"[I]n evaluating the settlement of a securities class action, federal courts, including this Court, 'have long recognized that such litigation is notably difficult and notoriously uncertain." *In re FLAG Telecom Holdings, Ltd. Sec. Litig.*, 2010 WL 4537550, at *15 (S.D.N.Y. Nov. 8, 2010). This case was no exception, and the cost, risk, and complexity has been, and would be, significantly magnified by, for example, key third-party witnesses residing in foreign countries. Indeed, Argentina, Italy, and Luxembourg have each declared reservations to the Hague Evidence Convention's Article 23 stating that they "will not execute Letters of Request issued for the purpose of obtaining pre-trial discovery of documents."[9] Moreover, even if Lead Plaintiffs could successfully compel testimony from third-party fact witnesses located abroad, such testimony would almost certainly take place at significant expense. *See Monsanto Intern. Sales Co., Inc. v. Hanjin Container Lines, Ltd.*, 770 F.Supp. 832, 836 (S.D.N.Y. 1991) (describing the necessary but "significant cost" associated with translating foreign language records, "[b]ecause English-

[8] Rule 23(e)(2)(C)(i) essentially incorporates six of the traditional *Grinnell* factors: the complexity, expense, and likely duration of the litigation (first factor); the risks of establishing liability and damages (fourth and fifth factors); the risks of maintaining class action status through trial (sixth factor); and the range of reasonableness of the settlement fund in light of the best possible recovery and the attendant risks of litigation (eighth and ninth factors). *See Grinnell*, 495 F.2d at 463; *see also In re GSE Bonds Antitrust Litig*., 414 F. Supp. 3d 686, 693 (S.D.N.Y. 2019) ("This inquiry overlaps significantly with a number of *Grinnell* factors, which help guide the Court's application of Rule 23(e)(2)(C)(i).").

[9] *See* https://www.hcch.net/en/instruments/conventions/full-text/?cid=82 (convention text); https://www.hcch.net/en/states/authorities/details3/?aid=484 (Argentina practical information including Article 23 reservation); https://www.hcch.net/en/states/authorities/details3/?aid=503 (Italy); https://www.hcch.net/en/states/authorities/details3/?aid=507 (Luxembourg); *see also Margulis v. Stryker Corp.*, 2019 WL 6830209, at *6 (D.N.J. Nov. 12, 2019), report and recommendation adopted, 2019 WL 6828175 (D.N.J. Dec. 12, 2019) (noting the "significant difficulties" parties to a U.S. action face in obtaining evidence from Argentina due to Argentina's Article 23 reservation to the 1961 Hague Convention).

speaking lawyers would try the case…[and] the parties would have to translate far more documents and deposition testimony in order for trial attorneys to ascertain what they should or should not offer at trial").

Although numerous obstacles have been overcome to get to this point, prevailing in continued litigation would require Lead Plaintiffs to surmount many more. These obstacles would have included: (i) establishing liability, loss causation, and damages; (ii) obtaining class certification under Rule 23 (in addition to surviving Defendants' potential Rule 23(f) interlocutory appeal or potentially a later decertification motion); (iii) surviving summary judgement; and (iv) litigating the Action through trial and post-trial appeals. ¶¶37-50. Were litigation to continue, a potential recovery—if any—would occur years from now, substantially delaying payment to the Settlement Class. *See GSE*, 414 F. Supp. 3d at 693 ("even if plaintiffs were to prevail at trial, post-trial motions and the potential for appeal could prevent the class members from obtaining any recovery for several years, if at all"). By contrast, the Settlement provides an immediate and substantial recovery for the Settlement Class, without exposing the Settlement Class to the risk, expense, and delay of continued litigation. In short, the complexity, cost and potential duration of continued litigation strongly favors final approval.

(b) Risks Of Establishing Liability And Damages

In considering these factors, "a court should balance the benefits afforded the Class, including immediacy and certainty of recovery, against the continuing risks of litigation." *GSE*, 414 F. Supp. 3d at 694. While Lead Counsel believes Lead Plaintiffs' claims have merit, they also recognize substantial obstacles to proving liability and class-wide damages. When compared to the certainty of the significant benefit conferred by the Settlement, these risks militate against further litigation and support preliminary approval.

Establishing Liability: This Action is premised on purported wrongdoing that first came to light in August 2018, when the Argentine press reported bribes allegedly paid approximately a decade earlier to Argentine government officials and recorded in notebooks by the driver of one official—the resulting Argentine criminal investigation is known as the "Notebooks Case." While Lead Plaintiffs survived the pleading stage, the Court substantially narrowed their case and permitted only two alleged false and/or misleading statements to remain—one in Tenaris's Code of Conduct and one statement in its risk disclosures. ¶¶21. Moreover, Lead Plaintiffs' claims were sustained only as against Defendants Tenaris and Rocca. *Id.*

Moreover, Lead Plaintiffs still needed to ***prove*** their case. While Lead Plaintiffs have built a strong circumstantial case, a jury may nevertheless agree with Defendants' scaffolding of the case. Indeed, Defendants forcefully argued in their motion to dismiss, and would undoubtedly continue to assert at summary judgment and/or trial, that Defendants made no actionable misrepresentations under federal securities laws. More specifically, Defendants would argue that the Company's optimistic statements concerning its compliance with the law and its code of conduct were too general to cause a reasonable investor to rely on them. ¶42. Defendants would further argue that they made no actionable omissions by failing to disclose their potential exposure to liability from instances of purported illicit payments to Argentine officials because—according to Defendants—companies do not have a duty to disclose uncharged, unadjudicated wrongdoing. *Id.* And finally, Defendants would likely argue that there was no actionable misrepresentation here because the Argentine courts adjudicating the facts and claims underlying the alleged misrepresentation in this Action have now held that there was no criminal wrongdoing, under Argentine criminal law, on the part of Defendants in the Notebooks Case. *Id.*

Defendants would no doubt also contest scienter. ¶43. While Lead Plaintiffs believe that they could establish scienter after the development of the evidentiary record, they also recognize the difficulties in proving scienter. *See Fishoff v. Coty Inc.*, 2010 WL 305358, at *2 (S.D.N.Y. Jan. 25, 2010) ("the element of scienter is often the most difficult and controversial aspect of a securities fraud claim") *aff'd*, 634 F.3d 647 (2d Cir. 2011).

Loss Causation and Damages: Even if Lead Plaintiffs established liability, they faced significant risks in proving loss causation and damages. *See Dura Pharms., Inc., v. Broudo*, 544 U.S. 336, 345-46 (2005) (plaintiffs bear "the burden of proving that the defendant's misrepresentations caused the loss for which the plaintiff seeks to recover"); *see also In re Flag Telecom Holdings, Ltd. Sec. Litig.*, 574 F.3d 29, 35 (2d Cir. 2009) ("It is well-established that plaintiffs alleging claims under Section 10(b) of the '34 Act must prove loss causation.").

For example, Defendants would have argued that neither of the alleged corrective disclosures were connected to any of the alleged misleading statements about Tenaris's compliance with its code of conduct and the law. ¶44. For example, Defendants would have argued that there was no new fraud-related news revealed on December 5, 2018, and thus it could not be considered a corrective disclosure. *Id.* Had Defendants prevailed on this loss causation argument regarding the second alleged price drop, potential class-wide damages would have been reduced to $189.6 million. ¶50.

Of course, in order to resolve all disputed issues regarding damages and loss causation, the Parties would have relied on expert testimony. ¶45. This creates further litigation risk because Lead Plaintiffs could not be certain whether a jury would accept the view of their experts or of the well-qualified experts that Defendants would no doubt be able to present at trial. *See In re Facebook*, 2015 WL 6971424, at *5 ("[D]amages would be subject to a battle of the experts, with

the possibility that a jury could be swayed by experts for Defendants, who could minimize or eliminate the amount Plaintiffs' losses. Under such circumstances, a settlement is generally favored over continued litigation."); *see also In re Marsh & McLennan Cos., Inc. Sec. Litig.*, 2009 WL 5178546, at *6 (S.D.N.Y. Dec. 23, 2009) ("If there is anything in the world that is uncertain when a case like [a securities class action] is taken to trial, it is what the jury will come up with as a number for damages.").

Collection Risk: Even if Lead Plaintiffs were successful in establishing liability and damages at trial, and were awarded a substantial monetary verdict, there would have been additional risks related to the collection of any monetary judgement. Tenaris did not have insurance coverage for the claims at issue in this litigation, which means that any payment Defendants were to make to satisfy a judgement in Lead Plaintiffs' favor would need to come from the Company's own coffers. ¶49. Consequently, given that Tenaris has few domestic assets, Lead Plaintiffs' collection of a favorable judgement would likely involve enforcing a U.S. judgement in one or more foreign jurisdictions, increasing the expense and risks associated with the Action. *See* GONZALO GARCÍA DELATOUR AND VICTORIA RABASA, ESTUDIO BECCAR VARELA, LITIGATION AND ENFORCEMENT IN ARGENTINA: OVERVIEW, § 12, Westlaw (database updated Sep. 2022) (describing several factors that need to be overcome in order to enforce a U.S. judgement in Argentina, and noting that Argentine "[c]ourts have rejected the recognition of foreign judgments on the grounds, for example, that: the judgement affected legal principles of public order under Argentinian law…[and] it was not proved that the [U.S.] judgement was final").

(c) Risk Of Maintaining Class Action Status

While Lead Plaintiffs and Lead Counsel are confident that the Settlement Class meets the requirements for certification, *see* Sec. IV, *infra*, a class has not yet been certified, and Lead

Plaintiffs are aware that there is a risk that the Court could disagree. ¶37. Moreover, this risk has substantially increased in cases that—like this one—are premised on so-called "generic" misrepresentations. Under the Supreme Court's recently decided *Goldman Sachs Grp. Inc. v. Ark. Tchr. Ret. Sys.*, 141 S.Ct. 1951 (2021) case, when a defendant seeks to rebut the presumption of reliance established under *Basic Inc. v. Levinson*, 485 U.S. 224 (1988) at the class certification stage, courts must now consider ***all*** evidence relevant to price impact, including the "generic" nature of an alleged misrepresentation. While this is not a factor in the settlement context (*see In re American Intern. Group, Inc. Sec. Litig.*, 689 F.3d 229, 232 (2d Cir. 2012)), it does pose a significant risk in cases such as this, and Defendants had already indicated they intended to litigate the issue. *See Ark. Tchr. Ret. Sys. v. Goldman Sachs Grp., Inc.*, 77 F.4th 74, 105 (2d Cir. 2023) ("Defendants have demonstrated, by a preponderance of the evidence, that the misrepresentations did not impact Goldman's stock price, and, by doing so, rebutted *Basic*'s presumption of reliance."); *see also* ECF No. 54 (Motion to Dismiss) at 24 & 25 (arguing that the stock price drops were unconnected to the allegedly false statements: "[t]o the extent that the market reacted to [the news that Defendant Rocca be detained], it was reacting to the news that the CEO of the company might be jailed in Argentina today—not to years-old supposed misstatements about an even older transaction at another company.").

Even if the Court were to certify a class, there is always a risk that it could be decertified by the Second Circuit under Rule 23(f) (*see Ark. Tchr. Ret. Sys.*, 77 F.4th at 105), or at a later stage in the proceedings. *See Chatelain v. Prudential-Bache Sec., Inc.*, 805 F. Supp. 209, 214 (S.D.N.Y. 1992) ("Even if certified, the class would face the risk of decertification."). Thus, the risks and uncertainty surrounding certification also support preliminary approval of the Settlement, as Defendants undoubtedly would have challenged class certification. *See GSE*, 414 F. Supp. 3d at

694 ("Although the risk of maintaining a class through trial is present in [every] class action … this factor [nevertheless] weighs in favor of settlement where it is likely that defendants would oppose class certification if the case were to be litigated.").

(d) Range Of Reasonableness In Light Of The Best Possible Recovery And Attendant Risks Of Litigation

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). Here, the proposed Settlement provides a non-reversionary payment of $9,500,000 for the benefit of the Settlement Class. This is a highly favorable result in light of the significant risks of continued litigation and lack of D&O insurance.

Lead Plaintiffs' damages consultant estimates that if Lead Plaintiffs had fully prevailed on all of their claims at summary judgment and after a jury trial, if the Court certified the same class period as the Settlement Class Period, and if the Court and jury accepted Lead Plaintiffs' damages theory—*i.e.*, Lead Plaintiffs' ***best-case scenario***—the total ***maximum*** damages ***potentially*** available in this Action would be approximately $236.4 million. ¶50. However, as detailed in Sec. III.A.3.(b), *supra*, if the trier of fact accepted Defendants' loss causation argument concerning the December 6, 2018 disclosure, damages would be reduced to $189.6 million. *Id*. Under these scenarios, the Settlement represents a recovery of 4.02%-5.01%, which is well above the 1.8% median recovery in securities class actions settled in 2022, and significantly higher than the 2.4%-2.9% median recovery in securities cases with similar damages that settled between December 2011-December 2022. *See* Ex. 4 (Janeen McIntosh, Svetlana Starykh, and Edward Flores, *Recent Trends in Securities Class Action Litigation: 2022 Full-Year Review* (NERA Jan. 24, 2023) at 18 (Fig. 19) (median recovery in securities class actions in 2022 was approximately 1.8% of estimated

damages); at 17 (Fig. 18) (median recovery in securities class actions that settled between December 2011-December 2022 was 2.4% where estimated damages were between $200-399 million and 2.9% where estimated damages were between $100-$199 million).

Moreover, weighing "[t]he 'best possible' recovery necessarily assumes Plaintiffs' success on both liability and damages covering the full Class Period alleged in the Complaint as well as the ability of Defendants to pay the judgment." *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 3365 (S.D.N.Y. 2002). While Tenaris would be capable of pay a substantial judgment, it has very few assets in the U.S., and there is no guarantee Lead Plaintiffs would be able to collect on a judgment in Argentina. Additionally, even if Lead Plaintiffs were successful at trial, Defendants could have challenged the damages of each and every large class member in post-trial proceedings, substantially reducing any aggregate recovery and dragging the case on for many more years. ¶48. The Settlement Amount is, therefore, fair and reasonable, especially when juxtaposed against the significant obstacles that Lead Plaintiffs would need to overcome in order to prevail in this complex securities fraud litigation. *See Facebook,* 343 F. Supp. 3d at 414 ("Because Plaintiffs face serious challenges to establishing liability, consideration of Plaintiffs' best possible recovery must be accompanied by the risk of non-recovery.").

4. Rule 23(e)(2)

Under Rule 23(e)(2)(C), courts also must consider whether the relief provided for the class is adequate in light of: (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)." FED. R. CIV. P. 23(e)(2)(C)(ii)-(iv). Each of these factors either

supports final approval of the Settlement or is neutral and does not suggest any basis for inadequacy of the Settlement.

Rule 23(e)(2)(C)(ii): The method for processing Settlement Class Members' claims and distributing relief to eligible claimants includes well-established, effective procedures for processing claims and distributing the Net Settlement Fund. The Claims Administrator will process claims, under Lead Counsel's guidance, allow Claimants an opportunity to cure claim deficiencies or request the Court to review their claim denial, and mail or wire Authorized Claimants their *pro rata* share of the Net Settlement Fund (per the Plan of Allocation) after Court approval. ¶¶65-68. Claims processing, like the method proposed here, is standard in securities class action settlements. It has long been found to be both effective, as well as necessary, insofar as neither Lead Plaintiffs nor Defendants possess the individual investor trading data required to distribute the Net Settlement Fund on a claims-free basis.[10]

Rule 23(e)(2)(C)(iii): As disclosed in the Postcard Notice and Notice, Lead Counsel will be applying for a percentage of the common fund fee award, in an amount not to exceed 33⅓%, to compensate them for the services they rendered on behalf of the Settlement Class. A proposed attorneys' fee of up to 33⅓% of the Settlement Fund (which, by definition, includes interest earned on the Settlement Amount) is reasonable in light of the work performed and the results obtained. It is also consistent with awards in similar complex class action cases. *See Del*, 186 F. Supp. 2d at 370 ("Petitioners' request [for 33⅓% of the Class Settlement Fund] falls comfortably within the range of fees typically awarded in securities class actions."); *see also* Fee Memorandum, § III.C.1.; Ex. 6 (collecting cases). More importantly, approval of the requested attorneys' fees is separate

[10] This is not a claims-made settlement. If the Settlement is approved, Defendants will not have any right to the return of a portion of the Settlement based on the number or value of the claims submitted. *See* Stipulation ¶14.

from approval of the Settlement, and the Settlement may not be terminated based on any ruling with respect to attorneys' fees. *See* Stipulation, ¶17.

Rule 23(e)(2)(C)(iv): The Parties entered into a confidential agreement establishing certain conditions under which Defendants may terminate the Settlement if Settlement Class Members who collectively purchased a specific percentage of Tenaris ADS properly request exclusion from the Settlement. "This type of agreement is standard in securities class action settlements and has no negative impact on the fairness of the Settlement." *Christine Asia Co., Ltd. v. Yun Ma*, 2019 WL 5257534, at *15 (S.D.N.Y. Oct. 16, 2019).

5. The Settlement Treats All Members Of The Settlement Class Equitably Relative To Each Other

Rule 23(e)(2)(D) requires courts to evaluate whether the settlement treats class members equitably relative to one another. The Settlement easily satisfies this standard. Under the proposed Plan of Allocation, each Authorized Claimant will receive his, her, or its *pro rata* share of the Net Settlement Fund. Specifically, an Authorized Claimant's *pro rata* share shall be the Authorized Claimant's Recognized Claim divided by the total of Recognized Claims of all Authorized Claimants, multiplied by the total amount in the Net Settlement Fund. ¶65. Courts have repeatedly approved similar plans. *See In re Citigroup, Inc. Sec. Litig.*, 965 F. Supp. 2d 369, 386-87 (S.D.N.Y. 2013); *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 145-46 (S.D.N.Y. 2010).

6. The Settlement Class's Reaction To The Settlement Supports Final Approval

The second *Grinnell* factor—the reaction of the class—overlaps with Rules 23(e)(4), on the opportunity for exclusion, and 23(e)(5), on the opportunity to object. As required by Rule 23(e)(4) & (5), the Settlement affords Settlement Class Members the opportunity to request exclusion from, or object to, the Settlement. Walter Decl., Exs. 1-A (Postcard Notice); 1-B (Notice) at pp. 3, 16-19. A total of 87,306 Postcard Notices have been distributed to potential

Settlement Class Members. *Id.* ¶8. To date, not a single request for exclusion has been received, and no objections have been filed with the Court. *Id.* ¶¶14-15.[11] The Settlement Class's overwhelmingly positive reaction strongly supports final approval of the Settlement. *See, e.g.*, *Maley*, 186 F. Supp. 2d 358, 362 ("It is well-settled that the reaction of the class to the settlement is perhaps the most significant factor to be weighed in considering its adequacy.").

7. Defendants' Ability To Withstand A Greater Judgment

"Courts have recognized that the defendant's ability to pay is much less important than other factors, especially where 'the other *Grinnell* factors weigh heavily in favor of settlement approval.'" *In re Metlife Demutualization Litig.*, 689 F. Supp. 2d 297, 339 (E.D.N.Y. 2010). Here, collecting a large judgment after trial and appeals was not a foregone conclusion. Tenaris did not have insurance coverage for the claims at issue in this litigation, which meant that any payment to satisfy a judgment would need to come from Tenaris's own assets, most of which are located outside the United States. ¶49. Given the significant time required to get to trial and resolve all appeals in this Action, Lead Plaintiffs have no guarantee that the Company's financial condition would not deteriorate, potentially jeopardizing obtaining any significant recovery for the Settlement Class. Moreover, whether Lead Plaintiffs could collect on a judgment in Argentina was an open question. *See In re Advanced Battery Tech., Inc. Sec. Litig.*, 298 F.R.D. 171, 179 (S.D.N.Y. 2014) ("The settlement amount is sufficient when limited insurance coverage, minimal domestic assets, and significant risk of being unable to collect any judgment against the [] Defendants are taken into account."). Under these circumstances, the ability to pay weighs in favor of approval.

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[11] The deadline to request exclusion from, or to object to any aspect of, the Settlement is September 12, 2023. If objections or requests for exclusions are received after the date of this filing, they will be addressed on reply.

B. The Plan Of Allocation Is Fair And Reasonable

"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." *In re WorldCom, Inc. Sec. Litig*., 388 F. Supp. 2d 319, 344 (S.D.N.Y. 2005). "As numerous courts have held, a plan of allocation need not be perfect." *Christine Asia*, 2019 WL 5257534, at *15. Rather, "[w]hen formulated by competent and experienced counsel, a plan for allocation of net settlement proceeds need have only a reasonable, rational basis." *In re IMAX Sec. Litig.*, 283 F.R.D. 178, 192 (S.D.N.Y. 2012) *see also Christine Asia*, 2019 WL 5257534, at *15-16. Thus, "[i]n determining whether a plan of allocation is fair, courts look largely to the opinion of counsel." *Marsh & McLennan*, 2009 WL 5178546, at *13.

The proposed Plan of Allocation, developed by Lead Plaintiffs' damages consultant in conjunction with Lead Counsel, reflects an assessment of the damages that Lead Plaintiffs contend could have been recovered under the theories of liability asserted in the Action.[12] ¶64. More specifically, the Plan of Allocation reflects, and is based on, Lead Plaintiffs' allegation that the price of Tenaris's ADS were artificially inflated during the Settlement Class Period due to Defendant's alleged materially false and misleading statements and omissions. *Id.* The Plan of Allocation is based on the premise that the decrease in the price of Tenaris's ADS that followed the alleged corrective disclosures that occurred on November 27, 2018 and December 6, 2018, may be used to measure the alleged artificial inflation in the price of Tenaris ADS prior to the disclosures. *Id.*; Ex. 1-B (Notice) at ¶57. The same methodology would have been proffered by Lead Plaintiffs at summary judgment and trial had the Action not settled.

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[12] The Plan of Allocation is detailed in the Notice. *See* Walter Decl., Ex. 1-B (Notice) at pp. 12-16).

An individual Claimant's recovery under the Plan of Allocation will depend on a number of factors, including how many shares of Tenaris ADS the Claimant purchased, acquired, or sold during the Settlement Class Period, when that Claimant bought, acquired, or sold the ADS, and the number of valid claims filed by other Claimants. ¶66. If a Claimant has an overall market *gain* with respect to his, her, or its transactions in Tenaris ADS during the relevant period, the Claimant is not entitled to recover under the Plan of Allocation. *Id.*; Ex. 1-B (Notice) at ¶¶69-70. Moreover, if a Claimant purchased Tenaris ADS during the relevant period but did not hold any of those ADS through the alleged disclosure event, the Claimant is not a Settlement Class Member and would have no Recognized Loss under the Plan of Allocation, as any loss suffered would not have been caused by the revelation of the alleged fraud. *Id.*; Ex. 1-B (Notice) at ¶57.

Under the proposed Plan of Allocation, each Authorized Claimant will receive his, her, or its *pro rata* share of the Net Settlement Fund, subject to a $10.00 minimum distribution. ¶67; Ex. 1-B (Notice) at ¶¶62, 71. More precisely, an Authorized Claimant's *pro rata* share shall be the Authorized Claimant's Recognized Claim divided by the total of Recognized Claims of all Authorized Claimants, multiplied by the total amount in the Net Settlement Fund. ¶65; Ex. 1-B (Notice) at ¶65.

If any funds remain after an initial distribution to Authorized Claimants, as a result of uncashed or returned checks or other reasons, subsequent distributions will be conducted as long as they are cost effective. ¶67 n.3; Ex. 1-B (Notice) at ¶71. At such time at which it is determined that the re-distribution of funds remaining in the Net Settlement Fund is not cost-effective, the remaining balance shall be contributed to non-sectarian, not-for-profit organization(s), to be recommended by Lead Counsel and approved by the Court. *Id.*

Lead Counsel believe the Plan of Allocation will result in a fair and equitable distribution

of the Settlement proceeds among Settlement Class Members who submit valid claims. *See Too v. Rockwell Medical, Inc.*, 2020 WL 1023435, at *1 (E.D.N.Y. Feb. 26, 2020) (approving substantially similar plan of allocation); *Christine Asia*, 2019 WL 5257534, at *15-16 (same). To date, no objections to the Plan of Allocation have been filed on this Court's docket. ¶69. Accordingly, Lead Plaintiffs respectfully request that the Court approve the proposed Plan of Allocation. *See In re Heritage Bond Litig.*, 2005 WL 1594403, at *12 (C.D. Cal. June 10, 2005) ("In light of the lack of objectors to the plan of allocation at issue, and the competence, expertise, and zeal of counsel in bringing and defending this action, the Court finds the plan of allocation as fair and adequate.").

IV. THE SETTLEMENT CLASS SHOULD BE FINALLY CERTIFIED

The Court's April 10, 2023, Preliminary Approval Order certified the Settlement Class for settlement purposes only under FED. R. CIV. P. 23(a) and (b)(3). *See* ECF No. 112 at ¶1. There have been no changes to alter the propriety of class certification for settlement purposes. Thus, for the reasons stated in Lead Plaintiffs' Preliminary Approval Brief (*see* ECF No. 110 at pp. 18-22), Lead Plaintiffs respectfully request that the Court affirm its determinations in the Preliminary Approval Order certifying the Settlement Class under Rules 23(a) and (b)(3).

V. THE NOTICE PROGRAM SATISFIES RULE 23, THE PSLRA AND DUE PROCESS

Rule 23(e) and due process together require that notice of a settlement be "reasonable"—*i.e.*, it must "fairly apprise the prospective 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." *Wal-Mart Stores*, 396 F.3d at 114 (further noting that "[t]here are no rigid rules to determine whether a settlement notice to the class satisfies constitutional or Rule 23(e) requirements"); *see also Merrill Lynch*, 246 F.R.D. at 166 ("Notice need not be perfect, but need be only the best notice practicable

under the circumstances, and each and every class member need not receive actual notice, so long as class counsel acted reasonably in choosing the means likely to inform potential class members.").

Courts routinely find that a combination of a mailed postcard directing the class to a more detailed online notice sufficient to satisfy due process requirements. *See Advanced Battery*, 298 F.R.D. at 183 n.3 (citing cases). In accordance with the Preliminary Approval Order, A.B. Data, mailed, via first-class mail, 87,306 individual copies of the Postcard Notice to all Settlement Class Members who could be identified with reasonable effort, as well as brokerage firms and other nominees who regularly act as nominees for beneficial purchasers of securities. Walter Decl. ¶8. The Postcard Notice directed potential Settlement Class Members to downloadable versions of the Notice and Claim Form posted online at the case-specific settlement website established by A.B. Data: www.TenarisSecuritiesSettlement.com. *Id.* at ¶11. In addition, A.B. Data arranged for the Summary Notice to be published in *Investor's Business Daily* and transmitted over the *PR Newswire* on May 29, 2023. *Id.* at ¶9. A.B. Data also posted downloadable versions of the Stipulation, Preliminary Approval Order, and Complaint on the Settlement Website (*id.* at ¶11), and established a toll-free number to respond to Settlement Class Member inquiries. *Id.* ¶10.

As required by Fed. R. Civ. P. 23(c)(2)(B), the Notice informs Settlement Class Members of, among other things: (a) the nature of the Action; (b) the Settlement Class definition; (c) the claims and defenses asserted; (d) a description of the terms of the Settlement; (e) the right of a Settlement Class Member to enter an appearance; (f) the right of a Settlement Class Member to request exclusion from the Settlement Class, and instructions, manner, and time for doing so; (g) the right of a Settlement Class Member to object to any aspect of the Settlement, and the instructions, manner, and time for doing so; (h) the binding effect of the Settlement on Settlement

Class Members that do not elect to be excluded; and (i) the date and time of the final Settlement Hearing.[13] *See* FED. R. CIV. P. 23(c)(2)(B); Walter Decl., Ex. 1-B.

The notice program also satisfies the requirements of the PSLRA, 15 U.S.C. § 78u-4(a)(7), by setting forth in plain, easily understandable language: (a) a cover page summarizing the information in the Notice; (b) a statement of plaintiff recovery, and the estimated recovery per damaged share; (c) a statement of potential outcomes of the case; (d) a statement of attorneys' fees or costs sought; (e) identification of lawyers' representatives; and (g) the reasons for settlement.

In sum, the notice program fairly apprises Settlement Class Members of their rights with respect to the Settlement, and is the best notice practicable under the circumstances.

VI. CONCLUSION

For the reasons stated herein and in the Wolke Declaration, Lead Plaintiffs respectfully request that the Court approve of the proposed Settlement and proposed Plan of Allocation as fair, reasonable, and adequate. Proposed orders will be submitted with Lead Plaintiffs' reply papers, after the deadlines for objections and seeking exclusion have passed.

Dated: September 14, 2023

GLANCY PRONGAY & MURRAY LLP

By: *s/ Kara M. Wolke*

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[13] Moreover, the Notice advises that Lead Counsel will apply to the Court for an award of attorneys' fees in an amount not to exceed 33⅓% of the Settlement Fund, as well as reimbursement of Litigation Expenses, including an application for reimbursement of the reasonable costs and expenses incurred by Lead Plaintiffs directly related to their representation of the Settlement Class, and explains that Settlement Class Members may object to any aspect of the fee and expenses request. Ex. 1-B (Notice) at ¶¶5, 74.

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PROOF OF SERVICE

I hereby certify that on this 14th day of September, 2023, a true and correct copy of the foregoing document was served by CM/ECF to the parties registered to the Court's CM/ECF system.

s/ Kara M. Wolke
Kara M. Wolke