UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

IN RE RECONNAISSANCE ENERGY AFRICA LTD. SECURITIES LITIGATION	Case No. 1:21-cv-06176-NRM-RML Honorable Nina R. Morrison

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

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Court-appointed lead plaintiff Robert Partovy ("U.S. Lead Plaintiff"),[1] on behalf of himself and the Settlement Class, respectfully submits this memorandum of law in support of his unopposed motion for final approval of the proposed Settlement and Plan of Allocation.[2]

I. PRELIMINARY STATEMENT

After approximately three years of hard-fought litigation, U.S. Lead Plaintiff, through his counsel, obtained an all cash, non-reversionary settlement of nine million, four hundred twenty-five thousand Canadian dollars ($9,425,000 CAD, subject to certain exchange rate adjustments set forth in the Stipulation, the "U.S. Settlement Amount")[3] for the benefit of the Settlement Class. This is an extremely favorable result for the Settlement Class under the circumstances, and it was secured in a procedurally fair manner.

Substantively, the Settlement represents a recovery of approximately 12.4% of the U.S. Settlement Class's $56.3 million[4] in *potential maximum* recoverable damages related to the pending

[1] Unless otherwise defined herein, all capitalized terms are defined in the Global Stipulation and Agreement of Settlement, dated as of February 27, 2024 (the "Stipulation"; ECF No. 55-1), or in the concurrently filed Declaration of Garth A. Spencer in Support of: (I) Lead Plaintiff's 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 (the "Spencer Declaration"). Unless otherwise noted, all citations to "¶__" and "Ex." refer, respectively, to paragraphs in, and exhibits to, the Spencer Declaration.

[2] Reconnaissance Energy Africa Ltd. ("ReconAfrica" or the "Company") is also a named defendant in a factually related Canadian Action. The Canadian Action is pending in the Supreme Court of British Columbia and is brought on behalf of non-U.S. investors. The Effective Date of the Settlement is contingent on the Canadian Court granting approval of the Canadian Settlement, the U.S. Court granting approval of the U.S. Settlement, and the judgments in both cases becoming Final. Stipulation, ¶49. The order granting final approval of the Canadian Settlement was entered on June 20, 2024. *See* Ex. 8.

[3] In total, $9,524,433.75 Canadian dollars and $18,432.20 U.S. dollars have been paid into the U.S. Escrow Account. The Canadian dollars were converted, after conversion fees, into $6,991,327.28 U.S. dollars. Therefore, the total amount of U.S. dollars initially in the U.S. Escrow Account, after conversion fees and before receipt of interest, was $7,009,759.48. *See* ¶2.

[4] Unless otherwise indicated, all dollar amounts refer to United States dollars.

claims. Such a recovery is: (i) well above the 1.8% median recovery in securities class actions settled in 2023; and (ii) more than *three times greater* than the 3.8% median settlement recovery in securities class actions from 2014 to 2023, in cases with comparable estimated damages. *See* Ex. 4 (Edward Flores and Svetlana Starykh, Recent Trends in Securities Class Action Litigation: 2023 Full-Year Review, at 26 (Fig. 22) (NERA Jan. 24, 2024) ("NERA Report") (median recovery in securities class actions in 2023 was approximately 1.8% of estimated damages); at 25 (Fig. 21) (median recovery for securities class actions that settled between January 2014 and December 2023 was 3.8% for cases with estimated damages between $50-$99 million). When balanced against the many risks of continued litigation, including, but not limited to, the limited sources of recovery in the two Actions, there can be no doubt that the U.S. Settlement is substantively fair, reasonable, and adequate.

The U.S. Settlement is also the product of a procedurally fair process. It was negotiated by experienced securities class action litigators, after approximately three years of hard-fought litigation. Prior to reaching the U.S. Settlement, U.S. Lead Counsel, *inter alia*:

- moved for the appointment of U.S. Lead Plaintiff pursuant to the PSLRA;
- conducted a comprehensive investigation into Defendants' allegedly wrongful acts, which included, among other things: (i) reviewing and analyzing (a) ReconAfrica's filings with the Canadian Securities Administrators' SEDAR system, (b) research reports prepared by securities and financial analysts, and news articles about ReconAfrica, and (c) press releases and media reports issued and disseminated by ReconAfrica; (ii) retaining and working with private investigators who conducted an investigation that involved, *inter alia*, attempts to interview former ReconAfrica employees and other sources of relevant information; and (iii) consulting with an expert in the field of loss causation and damages;
- drafted the comprehensive 82-page (335-paragraph) Amended Class Action Complaint for Violations of the Federal Securities Laws ("U.S. Complaint") (ECF No. 31) based on this investigation;
- researched, drafted, and filed a response to Defendants' pre-motion to dismiss letter, and participated in oral argument before Judge Gujarati at the pre-motion conference (*see* ECF Nos. 34 and 37);
- researched, drafted, and filed an opposition to Defendants' motion to dismiss the Amended Complaint, and participated in oral argument on April 26, 2023, after which Judge Morrison denied Defendants' motion in its entirety (*see* ECF Nos. 44 and 45);

- prepared for and participated in a Rule 26(f) conference, filed with the Court a report related thereto (ECF No. 51), and participated in discovery conferences with Magistrate Judge Levy on May 18, 2023; September 14, 2023; and January 18, 2024;
- negotiated a protective order and ESI protocol, both of which were subsequently entered by the Court (ECF Nos. 49 and 50);
- engaged in substantial fact discovery, which entailed, *inter alia*, (i) exchanging initial disclosures; (ii) serving and responding document requests and interrogatories; (iii) identifying and issuing subpoenas *duces tecum* to eight service providers to ReconAfrica, including: (a) Core Laboratories Inc.; (b) Horizon Well Logging, Inc.; (c) Worldwide Geochemistry, LLC; (d) Earthfield Technology, LLC; (e) Sproule Incorporated; (f) Geomark Research, Ltd.; (g) Schlumberger Limited (Schlumberger N.V.); and (h) Netherland Sewell & Associates, Inc.; and (iv) conducting targeted review and analysis of over 80,000 documents (totaling over 540,000 pages) produced by Defendants and third parties;
- participated with Defendants' counsel and counsel for the plaintiff in the Canadian Action in a mediation process overseen by a highly experienced third-party mediator, Jed Melnick, Esq., of JAMS, which involved, *inter alia*: (i) an exchange of written submissions concerning the facts of the case, liability and damages; (ii) a full-day formal mediation session; (iii) consultation with Lead Plaintiff's expert on damages and loss causation; (iv) a mediator's recommendation to globally settle the Actions for a total of $14.5 million CAD, which was accepted by the Parties; and (v) continued negotiations between the Parties overseen by Mr. Melnick concerning the allocation of the settlement funds between the Canadian and U.S. Actions, that resulted in Mr. Melnick proposing—and the Parties ultimately accepting—that 65% of the $14.5 million CAD settlement amount ($9,425,000 CAD, subject to exchange rate adjustment) be allocated to the U.S. Settlement Class, and 35% ($5,075,000 CAD) to the Canadian Settlement Class;
- prepared the initial draft and then negotiated the detailed confidential settlement term sheet with counsel for Defendants and in the Canadian Action, which was executed on December 20, 2023;
- prepared the first draft of the Stipulation (other than the exhibits pertaining solely to the Canadian Action), and then negotiated the terms of the Stipulation and Supplemental Agreement; and
- worked with a damages expert to craft a plan of allocation that treats Lead Plaintiff and all other members of the proposed Settlement Class fairly. ¶¶5, 10-28.

The Settlement is, therefore, the result of arms-length negotiations, conducted by informed and experienced counsel, in conjunction with an experienced neutral.

As discussed in greater detail below and in the Spencer Declaration, U.S. Lead Plaintiff and U.S. Lead Counsel believe the proposed U.S. Settlement meets the standards for final approval and is in the best interests of the U.S. Settlement Class. Accordingly, U.S. Lead Plaintiff respectfully requests that the Court grant final approve to the U.S. Settlement.[5]

U.S. Lead Plaintiff also moves for approval of the proposed U.S. Plan of Allocation ("Plan of Allocation") of the U.S. Net Settlement Fund ("Net Settlement Fund"). The Plan of Allocation was developed in conjunction with U.S. Lead Plaintiff's consulting damages expert and is designed to distribute the proceeds of the Net Settlement Fund fairly and equitably to U.S. Settlement Class Members. No U.S. Settlement Class Member is favored over another under the proposed Plan; rather, all U.S. Settlement Class Members—including U.S. Lead Plaintiff—are treated in the same manner. *See* ¶¶60-67. Because the Plan of Allocation is fair and reasonable, it too should be approved.

II. FACTUAL AND PROCEDURAL HISTORY OF THE LITIGATION

The Spencer 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; the services U.S. Lead Counsel provided to the U.S. Settlement Class; and terms of the Plan of Allocation of the Net Settlement Fund.

III. STANDARDS FOR FINAL APPROVAL OF A CLASS ACTION SETTLEMENT

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). Rule 23(e)(2)—which governs final approval—requires courts to consider the following in determining whether a proposed settlement is fair, reasonable, and

[5] While the global Settlement is contingent upon the U.S. Settlement being approved by this Court, and the Canadian Settlement being approved by the Canadian Court (which has already occurred, *see* Ex. 8), it should be noted that neither U.S. Lead Plaintiff nor any other Party is asking this Court to make any determination concerning approval of the Canadian Settlement.

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.

Factors (A) and (B) "identify matters . . . described as procedural concerns, looking to the conduct of the litigation and of the negotiations leading up to the proposed settlement," while factors (C) and (D) "focus on . . . a substantive review of the terms of the proposed settlement" (*i.e.*, "[t]he relief that the settlement is expected to provide to class members"). Advisory Committee Notes to 2018 Amendments (324 F.R.D. 904, at 919); *see also In re 3D Sys. Sec. Litig.*, 2024 WL 50909, at *5 (E.D.N.Y. Jan. 4, 2024) ("In conducting this inquiry, courts consider the substantive and procedural fairness of a proposed settlement to determine whether the terms of the settlement and the negotiation process leading up to it are fair.").

These factors are not, however, exclusive. The four factors set forth in Rule 23(e)(2) are not intended to "displace" any factor previously adopted by the courts, but "rather to focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal." Advisory Committee Notes to 2018 Amendments (324 F.R.D. 904, at 919); *see also In re Payment Card Interchange Fee and Merchant Discount Antitrust Litig.*, 330 F.R.D. 11, 29 (E.D.N.Y. 2019) (Rule 23(e)(2) factors "add to, rather than displace, the *Grinnell* factors"). The Second Circuit's *Grinnell* factors (certain of which overlap with Rule 23(e)(2)) are, therefore, 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 (S.D.N.Y. Oct. 7, 2020) (evaluating settlement based on factors set forth in Fed. R. Civ. P. 23(e)(2) and *Grinnell*). As set forth below, the proposed U.S. Settlement satisfies the criteria for final approval under the Rule 23(e)(2) factors, as well as the relevant, non-duplicative *Grinnell* factors.

IV. ARGUMENT

A. The U.S. Settlement Is Fair, Reasonable, And Adequate In Light Of The Rule 23(e)(2) Factors And Remaining *Grinnell* Factors And Warrants Final Approval

1. U.S. Lead Plaintiff And U.S. Lead Counsel Adequately Represented The U.S. Settlement Class

Fed. R. Civ. P. 23(e)(2)(A) requires the Court to consider whether the "class representatives and class counsel have adequately represented the class." "Determination of adequacy typically 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." *Cordes & Co. Fin. Servs., Inc. v. A.G. Edwards & Sons, Inc.*, 502 F.3d 91, 99 (2d Cir. 2007); *GSE Bonds*, 414 F. Supp. 3d at 692; *see also Denney v. Deutsche Bank AG*, 443 F.3d 253, 268 (2d Cir. 2006) ("the proposed class representative must have an interest in vigorously pursuing the claims of the class, and must have no interests antagonistic to the interests of other class members.").

Here, U.S. Lead Plaintiff has no interests antagonistic to other class members; rather, his interest in obtaining the largest possible recovery is aligned with other Settlement Class Members' interests since they all suffered the same injuries—monetary losses resulting from Defendants' alleged violations of the federal securities laws. *See GSE Bonds*, 414 F. Supp. 3d at 692; *Lea v. Tal Educ. Grp.*, 2021 WL 5578665, at *6 (S.D.N.Y. Nov. 30, 2021) ("Plaintiffs interests are directly aligned with the interests of the Settlement Class as they all involved purchased TAL's ADSs during the Class Period and allegedly suffered harm as a result of Defendants' alleged misdeeds."). "Because of these injuries, plaintiffs have an interest in vigorously pursuing the claims of the class." *GSE Bonds*, 414 F. Supp. 3d at 692. Furthermore, U.S. Lead Plaintiff has *proven* his commitment to the litigation by, *inter alia*: moving to serve as the lead plaintiff; overseeing the litigation and communicating with his counsel; providing written responses to document requests and producing documents; responding to interrogatories; and participating in settlement discussions with Lead Counsel. Ex. 2 (Partovy Decl.), at ¶¶3-6.

U.S. Lead Plaintiff has also "demonstrated [his] commitment to this litigation by retaining qualified and experienced counsel." *Tal Educ. Grp.*, 2021 WL 5578665, at *6. Lead Counsel has substantial experience in securities class actions and has diligently litigated on behalf of the putative class throughout the litigation. *See* Ex. 3 (GPM firm résumé); *see also* ¶¶5, 10-28 (detailing Lead Counsel's extensive investigation, work with experts and investigators, drafting of the Amended Complaint, briefing and arguing of the motion to dismiss, significant discovery efforts, and hard-fought mediation efforts). U.S. Lead Plaintiff and U.S. Lead Counsel have, therefore, adequately represented the proposed Settlement Class. *See Mild v. PPG Industries, Inc.*, 2019 WL 3345714, at *3 (C.D. Cal. July 25, 2019) (finding adequacy where "Plaintiff's … interest in obtaining the largest possible recovery is aligned with the interests of the rest of the Settlement Class members"; and "Lead Counsel [GPM] are highly experienced in securities litigation and have vigorously prosecuted the Settlement Class's claims by expending significant time and effort on the case.").

2. The U.S. Settlement Is The Result Of Good Faith Arm's-Length Negotiations By Informed And Experienced Counsel Aware Of The Risks Of The Litigation

Rule 23(e)(2)(B) evaluates whether the proposed settlement "was negotiated at arm's length." FED. R. CIV. P. 23(e)(2)(B).

Here, before the Parties engaged in mediation, discovery was well underway. U.S. Lead Plaintiff had analyzed substantial evidence from Defendants and third parties, and the U.S. Settlement was negotiated at arm's-length by capable and experienced counsel, all of which supports the conclusion that the U.S. 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"); *see also In re Metro. Life Derivative 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.").

The involvement of Mr. Melnick—a mediator with substantial experience mediating complex securities class actions—also supports the conclusion that the U.S. Settlement is fair and was achieved free of collusion. *See D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (a "mediator's involvement in . . . settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure"); *Yang v. Focus Media Holding Ltd.*, 2014 WL 4401280, at *5 (S.D.N.Y. Sept. 4, 2014) ("The participation of this highly qualified mediator [Jed D. Melnick, Esq.] strongly supports a finding that negotiations were conducted at arm's length and without collusion."); *In re China Med. Corp. Sec. Litig.*, 2014 WL 12581781, at *4 (C.D. Cal. Jan. 7, 2014) ("Mr. Melnick's involvement in the settlement supports the argument that it is non-collusive.").[6] And, finally, "[t]he fact … that the Settlement is based on a mediator's proposal further supports a finding that the settlement agreement is not the product of collusion." *Lusk v. Five Guys Enters. LLC*, 2022 WL 4791923, at *9 (E.D. Cal. Sept. 30, 2022).

3. The U.S. Settlement Is A Fair And Reasonable Result For The U.S. Settlement Class In Light Of The Benefits Of The U.S. Settlement And The Risks 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 factors. FED. R. CIV. P. 23(e)(2)(C).[7] As discussed below, each supports final approval.

(a) Complexity, Expense And Duration Of Litigation

The U.S. Action involved alleged violations of the federal securities laws, and U.S. Lead Plaintiff and U.S. Lead Counsel believe the claims asserted against Defendants have merit. They acknowledge, however, the expense and duration of continued proceedings necessary to pursue their claims against Defendants through trial and appeals, as well as the substantial risks they would face in establishing liability, loss causation, and damages (as discussed below). Assuming U.S. Lead Plaintiff's claims were certified under Rule 23 (and not successfully reversed on a Rule 23(f)

[6] *See also Brightk Consulting Inc. v. BMW of North America, LLC*, 2023 WL 2347446, at *6 (C.D. Cal. Jan. 3, 2023) (noting that Mr. Melnick is "an experienced complex business litigation mediator who has resolved over 1,000 disputes in his career.").

[7] Rule 23(e)(2)(C)(i) essentially incorporates six of the *Grinnell* factors: complexity, expense, and likely duration of the litigation (first factor); risks of establishing liability and damages (fourth and fifth factors); risks of maintaining class action status through trial (sixth factor); and 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).").

interlocutory appeal), and survived summary judgment, litigating the U.S. Action through trial and post-trial appeals would have undoubtedly been a long and expensive endeavor.

Were the litigation to continue, a potential recovery—if any—would occur years from now, substantially delaying payment to the U.S. Settlement Class. *GSE*, 414 F. Supp. 3d at 693 ("even if plaintiffs were to prevail at trial, posttrial motions and the potential for appeal could prevent the class members from obtaining any recovery for several years, if at all."). By contrast, the U.S. Settlement provides an immediate and substantial recovery for the U.S. Settlement Class, without exposing the U.S. Settlement Class to the risk, expense, and delay of continued litigation. *See In re OCA, Inc. Sec. & Deriv. Litig.*, 2009 WL 512081, at *11 (E.D. La. Mar. 2, 2009) (noting continued litigation, including through discovery, class certification, trial and appeals, "would consume substantial judicial and attorney time and resources, and avoiding such costs weighs in favor of settlement").

(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 U.S. Lead Counsel believes U.S. Lead Plaintiff's 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 U.S. Settlement, these risks militate against further litigation and support final approval.

Establishing Liability: This Action is premised on Defendants' alleged materially misleading statements and half-truths concerning the results of ReconAfrica's first two test wells in Namibia, and regarding the Company's plans to use hydraulic fracturing. While U.S. Lead Plaintiff was able to successfully survive the pleading stage, he still needed to *prove* his case. U.S. Lead Plaintiff strongly believes the evidence supports his version of events, however, a jury may nevertheless agree with

Defendants' narrative 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 the federal securities laws. More specifically, Defendants argued that: (i) they fully disclosed to investors the risky nature of oil and gas exploration, and the uncertainty surrounding the regulatory approval process; (ii) that their statements were not misleading because they concerned uncertain future events, such as whether oil or gas would be discovered, and whether Namibia would authorize ReconAfrica to extract any discovered resources; (iii) Namibia's laws and regulations applicable to fracking were public information, which Defendants had no duty to disclose; and (iv) they fully and accurately disclosed results from their test wells as the data became available.

While U.S. Lead Plaintiff was able to overcome these challenges with his Amended Complaint, as the Court noted in denying the motion to dismiss, many of the disputed issues are either questions for the trier of fact or involve fact specific inquiries. *See* Ex. 10 (Transcript of MTD Hearing), at 61:21-25 ("under Second Circuit case law, a company may be required to disclose alternate approaches to its announced business goals, but whether consideration of the alternate approach constitutes material information remains a question for the trier of fact."); 62:12-17 ("While the defendants have argued that much of the information at issue was publicly available, concerned future facts, or was covered by risk disclosures, I find those questions to be highly fact-specific inquires that make dismissal inappropriate at this time and that plaintiff's allegations meet the pleading requirements of the PLSRA.").[8]

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[8] *See also id*., at 62:6-11 ("the issue of whether the defendants were required to disclose these plans throughout the class period as material information about their alternate approaches to petroleum exploration is a question that's inappropriate for dismissal at this stage of the litigation."); 63:2-4 ("But these arguments are appropriate for summary judgment or trial, after further development of the record.").

There was simply no guarantee that Lead Plaintiff would have obtained the evidence necessary to survive summary judgment and prevail at trial and on appeal. This risk was heightened by the fact that many witnesses reside abroad (Defendants' interrogatory responses identified witnesses in the U.S., Canada, the U.K., France, Germany, Namibia, and Angola), making discovery substantially more difficult and its outcome uncertain. *See* ¶37. Had U.S. Lead Plaintiff failed to obtain the necessary evidence, or had the trier of fact taken a different view of the allegedly misleading statements and half-truths, U.S. Lead Plaintiff and the U.S. Settlement Class would have recovered nothing. Indeed, Lead Counsel know from painful experience that surviving a motion to dismiss on the issues of materiality and falsity—even under the heightened pleading standard of the PSLRA—does not guarantee a recovery. *See Gross v. GFI Grp., Inc.*, 784 F. App'x. 27, 29 (2d Cir. Sept. 13, 2019) (affirming grant of summary judgment on the alternative ground that Defendant's "statement did not, as a matter of law, amount to a material misrepresentation or omission actionable under section 10(b)," despite the trial court ***twice*** finding the statement actionable); *see also In re Facebook, Inc., IPO Sec. and Derivative Litig.*, 343 F.Supp.3d 394, 409 (S.D.N.Y. Nov. 26, 2018) ("securities class actions are recognized by courts as notably difficult and notoriously uncertain to litigate.").

In addition to contesting falsity, Defendants would no doubt continue to dispute that they acted with the requisite scienter. This posed a major risk because scienter is notoriously "complex and difficult to establish at trial." *In re Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1172 (S.D. Cal. 2007). Juries cannot read minds and evidence of a mental state is rarely direct; rather, the jurors must infer it. *See, e.g., Smith v. Dominion Bridge Corp.*, 2007 WL 1101272, at *5 (E.D. Pa. Apr. 11, 2007) ("Since stockholders normally have little more than circumstantial and accretive evidence to establish the requisite scienter, proving scienter is an uncertain and difficult necessity for plaintiffs.").

While Plaintiffs believe that they would ultimately be able to demonstrate scienter, "Defendants would have marshalled substantial evidence in opposition." *Christine Asia Co., Ltd. v. Yun Ma*, 2019 WL 5257534, at *12 (S.D.N.Y. Oct. 16, 2019). For example, Defendants argued, among other things: (i) that there were no specific facts pled showing that any Individual Defendant possessed non-public information demonstrating the allegedly omitted facts were true or that they contradicted the alleged misstatements; (ii) Defendants had no plausible motive to mislead investors; (iii) U.S. Lead Plaintiff did not identify any evidence showing the results of the first two test wells proved conventional production is not viable at those sites; and (iv) personnel changes are not evidence of scienter. Although the Court found that U.S. Lead Plaintiff had sufficiently alleged scienter when looking at the allegations on a holistic basis (*see* Ex. 10 at 63:15-19), it also recognized that Defendants might be able to adduce facts or evidence that would negate such a finding. *See id.* 65-25-66:2 ("The defendants challenges are appropriately reserved until after the record has been fully developed, and do not entitle them to an order of dismissal at this stage."); 66:23-67:4 ("While the defendants are, of course, free to develop and present evidence as the litigation progresses, that there were other factors which promoted these resignations, retirements, and stock trades, at this stage of the litigation, these well-pled facts, raise a strong inference of scienter that is at least as strong as any opposing inference."); 64:17-22.

In short, establishing scienter was far from a *fait accompli*. *Christine Asia Co., Ltd. v. Yun Ma*, 2019 WL 5257534, at *12 (S.D.N.Y. Oct. 16, 2019) ("Proving scienter is hard to do.").

Loss Causation and Damages: Even if U.S. Lead Plaintiff established liability, he 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"); *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 argued, and would continue to assert, that loss causation was lacking because ReconAfrica experienced a long, gradual stock price decline not caused by the revelation of any fraud. *See* ECF No. 43 at pp. 24-26. Building on this argument, Defendants would also have likely asserted that the volatility in the Company's stock price during the alleged class period was due to an interplay of several factors, including: the high risk nature of oil and gas exploration generally; the challenges of conducting such efforts in an area that does not have a history of oil and gas exploration; concerted opposition to oil and gas exploration from environmental activists; and efforts by short sellers to depress the price of the Company's stock for financial gain.

In other words, Defendants would argue that the decline in ReconAfrica's stock price was due to factors other than fraud and, to prevail, U.S. Lead Plaintiff would need to disaggregate the fraudulent from the non-fraudulent causes of the decline. *See FLAG Telecom*, 574 F.3d at 36 ("to establish loss causation, *Dura* requires plaintiffs to disaggregate those losses caused by 'changed economic circumstances, changed investor expectations, new industry-specific or firm-specific facts, conditions, or other events,' from disclosures of the truth behind the alleged misstatements"). Had Defendants prevailed on these loss causation arguments, potential class-wide damages could have been greatly reduced or even altogether eliminated. *See Celeste Neely*, 2022 WL 17736350, at *6 (E.D. Tex. Dec. 16, 2022) (weighing towards settlement was the court's consideration that "it is likely that [Defendant] would vigorously dispute the connection between its alleged wrongdoing and the drop in its stock price.").

Of course, to resolve all disputed issues regarding damages and loss causation, the Parties would have relied on expert testimony. ¶¶40-41. This creates further litigation risk because U.S. Lead

Plaintiff could not be certain whether a jury would accept the views of his experts or of the well-qualified experts that Defendants would no doubt be able to present at trial. *See In re Facebook, Inc. IPO Sec. and Derivative Litig.*, 2015 WL 6971424, at *5 (S.D.N.Y. Nov. 9, 2015) ("[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."); *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.").

(c) Risk Of Maintaining Class Action Status

While U.S. Lead Plaintiff and U.S. Lead Counsel are confident that the U.S. Settlement Class meets the requirements for certification (*see* ECF No. 54, Sec. IV.B.), a class had not yet been certified, and U.S. Lead Plaintiff is aware that there was a risk the Court could disagree. Defendants would undoubtedly have raised vigorous challenges to class certification, and such disputes "could well devolve into yet another battle of the experts." *In re Bear Stearns Cos., Inc. Sec., Deriv., & ERISA Litig.*, 909 F. Supp. 2d 259, 268 (S.D.N.Y. 2012). For example, Defendants were likely to argue that ReconAfrica U.S. Stock did not trade in an efficient market based on the fact that ReconAfrica U.S. Stock was traded over-the-counter and experienced significant price volatility throughout the class period. Thus, according to Defendants, reliance cannot be presumed for class members under the fraud on the market doctrine, and individual issues predominate over common issues. While U.S. Lead Counsel believe they could successfully rebut such arguments through an expert report on market efficiency, this could create yet another risky "battle of the experts."

Even if the Court were to certify a class, there is always a risk that it could be decertified 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 final approval of the U.S. Settlement. *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) Collection Risk

"Courts must also consider the serious risk that even if Plaintiffs were successful in all aspects of their claims they may be unable to collect a judgment." *In re Stable Road Acquisition Corp. Sec. Litig.*, 2024 WL 3643393, at *8 (C.D. Cal. Apr. 23, 2024) (cleaned up). Here, even if U.S. Lead Plaintiff was successful in certifying the class, establishing liability and damages at trial, and were awarded a substantial monetary verdict, there would have been additional risks related to the collectability of any monetary judgment. ReconAfrica is a startup company based in Canada in the risky industry of oil and gas exploration, its exploration efforts are limited to Namibia and Botswana, it has never reported an operating profit, and there is no guarantee that it would have sufficient funds to pay a judgment years in the future. ReconAfrica's financial statements for the quarter ended June 30, 2024, report only $9.2 million CAD of cash on its balance sheet as of that date, as compared to a $6.7 million CAD loss for the quarter, and note "the existence of material uncertainties that may cast significant doubt on the Company's ability to continue as a going concern." *See* Ex. 9 at 3-4 and 7.[9]

[9] In July 2024, after the period covered by this most recent quarterly report, ReconAfrica raised approximately $60 million CAD through equity sales. *See* Ex. 9 at 17 (note 15 titled "Subsequent Events"). However, even with this added funding, obtained by ReconAfrica well after the Parties entered into the Stipulation, there is still substantial risk concerning ReconAfrica's ability to fund a

Similarly, there is no guarantee that the Individual Defendants, many of whom reside outside of the United States, would have sufficient funds to pay a substantial judgment. While ReconAfrica has insurance policies that may contribute to payment of a judgment, the amounts available under those policies were being continually reduced by Defendants' expenses from the ongoing litigation of both the U.S. and Canadian Actions. As a result, there were very real collectability issues. *See Cullen v. Whitman Med. Corp*., 197 F.R.D. 136, 149 (E.D. Pa. 2000) ("[t]he risk of nonpayment in this case was acute" where, *inter alia*, the corporate defendant "lacked significant unencumbered hard assets against which plaintiffs could levy had a judgment been obtained" and there was "the risk that the wasting policy would run out by the time a trial was over"); *see also infra* Sec. IV.A.6.

(e) 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 U.S. Settlement provides a cash payment of approximately $7 million U.S. dollars for the benefit of the U.S. Settlement Class. This is a highly favorable result considering the significant risks of continued litigation. U.S. Lead Plaintiff's damages expert estimates that *if* U.S. Lead Plaintiff had fully prevailed on all his claims at summary judgment and after a jury trial, *if* the Court certified the same class period as the U.S. Settlement Class Period, and *if* the Court and jury accepted U.S. Lead Plaintiff's damages theory—*i.e.*, U.S. Lead Plaintiff's

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judgment years in the future. Indeed, ReconAfrica issued a July 30, 2024, press release in connection with filing its Annual Information Form with the Canadian Securities Administrators' SEDAR system, that disclosed, "[t]here is no certainty that any portion of the resources will be discovered. If discovered, there is no certainty that it will be commercially viable to produce any portion of the resources." https://www.reconafrica.com/news-media/news-releases/reconafrica-announces-annual-filings-and-corporate-update .

best case scenario—the total *maximum* damages *potentially* available in this U.S. Action would be approximately $56.3 million U.S. dollars. Therefore, the U.S. Settlement represents a recovery of approximately 12.4%, which is *more than three times greater* than the 3.8% median settlement recovery in securities class actions from 2014 to 2023, in cases with comparable estimated damages. *See* Ex. 4 (Svetlana Starykh and Edward Flores, *Recent Trends in Securities Class Action Litigation: 2023 Full-Year Review* (NERA Jan. 23, 2024 at p. 25 (Fig. 21))).

4. Rule 23(e)(2)(C)

Under Rule 23(e)(2)(C), courts also must consider whether the relief provided for the class is adequate in light of "the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;" "the terms of any proposed award of attorney's fees, including timing of payment;" and "any agreement required to be identified under Rule 23(e)(3)." FED. R. CIV. P. 23(e)(2)(C)(ii)-(iv). Each of these factors either supports final approval of the U.S. Settlement or is neutral and does not suggest any basis for inadequacy.

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

Fund on a claims-free basis.[10] *See Lea v. Tal Educ. Grp.*, 2021 WL 5578665, at *11 (S.D.N.Y. Nov. 30, 2021) (approving settlement with a nearly identical distribution process); *In re Stable Road Acquisition Corp. Sec. Litig.*, 2024 WL 3643393, at *7 (C.D. Cal. Apr. 23, 2024) (same).

Rule 23(e)(2)(C)(iii): The relief provided for the Settlement Class is also adequate when the terms of the proposed award of attorneys' fees is considered. As detailed in the accompanying fee and expenses memorandum, a proposed attorneys' fee of 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 Burks v. Gotham Process, Inc.*, 2023 WL 8440866, at *2-3 (E.D.N.Y. Nov. 16, 2023) (awarding attorneys' fees of one-third of the $1,350,000 monetary relief recovered) (Morrison, J.); *In re Tenaris S.A. Sec. Litig.*, 2024 WL 1719632, at *10 (E.D.N.Y. Apr. 22, 2024) (awarding "one third or 33⅓% of the $9,500,000 settlement fund, plus interest" and noting that "District courts within the Second Circuit routinely approve attorneys' fees awards of one third or 33 1/3% as reasonable."); *Maley v. Del Global Techs. 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."); *Anwar v. Fairfield Greenwich Ltd.*, 2012 WL 1981505, at *3 (S.D.N.Y. June 1, 2012) (33% fee request of the approximate $7.7 million settlement fund "is well within the percentage range that courts within the Second Circuit have awarded in other complex litigations"); *see also In re Akazoo S.A. Sec. Litig.*, 2021 WL 4316717, at *1 (E.D.N.Y. Sept. 10, 2021) (awarding one-third of the $4.9 million settlement fund). More importantly, approval of the requested attorneys'

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[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 ¶20.

fees is separate from approval of the U.S. Settlement, and the U.S. Settlement may not be terminated based on any ruling with respect to attorneys' fees. *See* Stipulation, ¶26.

Rule 23(e)(2)(C)(iv): Finally, in accordance with Rules 23(e)(2)(C)(iv) and 23(e)(3), and as provided to the Court pursuant to its request at the preliminary approval hearing (ECF No. 62), the Parties have entered into a confidential agreement that establishes certain conditions under which Defendants may terminate the U.S. Settlement if members of the U.S. Settlement Class and the Canadian Settlement Class in excess of a certain threshold request exclusion from the U.S. Settlement or the Canadian Settlement, respectively. "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); *In re Splunk Inc. Sec. Litig.*, 2024 WL 923777, at *6 (N.D. Cal. Mar. 4, 2024) ("The existence of a termination option triggered by the number of class members who opt out of the settlement does not by itself render the settlement unfair."). The Parties have also entered into an agreement under which Defendants' insurers made a supplemental payment of $18,432.20 U.S. dollars to the U.S. Escrow Account to compensate the Settlement Class for exchange rate fluctuations pursuant to ¶12 of the Stipulation. *See* Ex. 7.

5. The U.S. Settlement Treats All Members Of The U.S. 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 U.S. Settlement easily satisfies this standard. Under the proposed U.S. Plan of Allocation, each Authorized U.S. Claimant will receive his, her, or its *pro rata* share of the U.S. Net Settlement Fund. Specifically, an Authorized U.S. Claimant's *pro rata* share shall be the Authorized U.S. Claimant's Recognized Claim divided by the total of Recognized Claims of all Authorized U.S. Claimants, multiplied by the total amount in the U.S. Net Settlement Fund.

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. Remaining *Grinnell* Factors Weigh In Favor Of Final Approval

<u>The Reaction of the Settlement Class</u>: The second *Grinnell* factor—the reaction of the class—overlaps with Rules 23(c)(2)(B)(vi), on the opportunity for exclusion, and 23(e)(5)(A), on the opportunity to object. As required by Rule 23(c)(2)(B)(vi) and (e)(5)(A), the Settlement affords Settlement Class Members the opportunity to request exclusion from, or object to, the Settlement. Ex. 1-B (Notice) at ¶¶81-83, 87-93. In total, as of November 8, 2024, 17,844 potential U.S. Settlement Class Members and nominees were mailed the U.S. Postcard Notice. Ex. 1 (Declaration of Morgan Kimball Regarding: (A) Mailing of Notice; (B) Publication of the U.S. Summary Notice; and (C) Report on Requests for Exclusion and Objections ("Kimball Decl.")), ¶¶5-9. To date, not a single request for exclusion has been received, and no objections have been filed with the Court. ¶5.[11] The U.S. Settlement Class's extremely positive reaction strongly supports final approval of the U.S. Settlement. *See, e.g.*, *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 362 (S.D.N.Y. 2002) ("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."); *see also Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 118 (2d Cir. 2005) ("If only a small number of objections are received, that fact can be viewed as indicative of the adequacy of the settlement.").

<u>The Stage of the Proceedings and the Amount of Discovery Completed</u>: This factor examines "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

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[11] The deadline to request exclusion from, or to object to any aspect of, the Settlement is November 28, 2024. If any objections or opt-outs are received after the date of this filing, they will be addressed on reply.

defendants, and the value of plaintiffs' causes of action for purposes of settlement." *In re Bear Stearns Cos., Inc. Sec., Deriv., & ERISA Litig.*, 909 F. Supp. 2d 259, 267 (S.D.N.Y. 2012). Here, at the time the U.S. Settlement was reached, U.S. Lead Plaintiff had, among other things, conducted an extensive investigation into the alleged wrongdoing, drafted the Amended Complaint, successfully opposed Defendants' motion to dismiss under the heighted pleading standard of the PSLRA, and engaged in substantial discovery, which included: (i) propounding requests for production of documents and interrogatories, and responding to Defendants' requests for production and interrogatories; (ii) serving eight subpoenas for production of documents on service providers to ReconAfrica; and (iii) conducting a targeted review and analysis of over 80,000 documents (totaling over 540,000 pages) produced by Defendants and third parties.

Thus, U.S. Lead Plaintiff and his counsel had sufficient information to evaluate the strengths and weaknesses of the case at the time of settlement. There can be no question that this factor supports final approval. *See In re Tenaris S.A. Sec. Litig.*, 2024 WL 1719632, at *7 (E.D.N.Y. Apr. 22, 2024) ("Lead Plaintiffs' thorough investigation and witness interviews, the parties' settlement negotiations, and the interrogatories and document discovery obtained by Lead Plaintiffs provide the Court with sufficient assurance that Lead Plaintiffs are likely to have obtained adequate information about their claims.").

The Ability of Defendants 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, even if U.S. Lead Plaintiff overcame all the obstacles to prevailing through trial and appeals, collecting a large judgment would still not be a foregone conclusion. While ReconAfrica has Directors and Officers insurance policies that may have contributed toward a judgment in this U.S. Action, those policies potentially providing coverage for the U.S. and Canadian Actions were wasting and may not have been sufficient to cover the full amount of a judgment. ¶48.

Moreover, ReconAfrica's assets are located in other countries, and its most recent published financial statements show the Company operating at a loss, with limited cash on hand. ReconAfrica has yet to announce a commercially viable oil or gas discovery, and its stock price continues to trade substantially below the highs reached during the U.S. Settlement Class Period (*i.e.*, below USD $1.00 per share for most of the past year). ¶47. Given the significant time required to get to trial and resolve all appeals, U.S. Lead Plaintiff would have no guarantee that ReconAfrica's financial condition would not further deteriorate, potentially jeopardizing the ability to collect any significant recovery for the U.S. Settlement Class. Under these circumstances, the ability to pay weighs in favor of final approval. *See Maley*, 186 F. Supp. 2d at 365 (approving settlement where the individual defendants' D&O insurance "would be significantly depleted by defense costs"); *Teachers' Retirement Sys. of La. v. A.C.L.N., Ltd.*, 2004 WL 1087261, at *4 (S.D.N.Y. May 14, 2004) (approving settlement where, "[g]iven that the insurance policy was a 'wasting' asset that would be used to pay the defense costs of the four firms representing the Settling Defendants, it was clear that even if Plaintiffs were able to establish Settling Defendants' liability at trial and even if the jury accepted Plaintiffs' damage analyses, by that point the only meaningful source of recovery, the insurance policy, would in all likelihood have been substantially reduced or exhausted").[12]

* * *

[12] *See also In re Tenaris S.A. Sec. Litig.*, 2024 WL 1719632, at *8 (E.D.N.Y. Apr. 22, 2024) ("Importantly, Tenaris has very few assets within the United States, which would significantly complicate enforcement efforts and could result in continued litigation in foreign courts arising out of enforcement efforts even if Tenaris's international operations are able to withstand judgment.").

Accordingly, the aforementioned factors heavily favor final approval of the Settlement.

B. <u>The Notice Program Satisfies The Requirements Of Due Process And Rule 23</u>

The Court approved the proposed notice program in the Preliminary Approval Order (*see* ECF No. 60, ¶¶7-10), and U.S. Lead Plaintiff executed the notice program in accordance with the provisions therein. ¶¶50-58; Ex. 1 (Kimball Decl.), ¶¶2-18. Notice was given to potential Settlement Class Members via mail, the Settlement Website (www.ReconAfricaUSSecuritiesSettlement.com), and publication.[13] Kimball Decl. at ¶¶2-10, 16-17. As of November 8, 2024, a copy of the U.S. Postcard Notice was timely mailed to 17,844 potential Settlement Class Members or their nominees. *Id*. at ¶9.

On September 23, 2024, the Court-approved Summary Notice was published in *Investors' Business Daily* and transmitted once over the *PR Newswire*. Kimball Decl. ¶10 & Ex. 1-C. The published Summary Notice clearly and concisely provided information concerning the Settlement and the means to obtain a copy of the Notice. *See id*.

Finally, the Claims Administrator posted the Notice, Claim Form, Stipulation, Amended Complaint, and other relevant documents online at the Settlement Website, and provided a toll-free telephone number for Settlement Class Members to call with any questions concerning the Settlement. *Id*. at ¶¶11-17. Courts routinely find that comparable notice programs meet the requirements of due process and Rule 23. *See In re Advanced Battery Techs., Inc. Secs. Litig.*, 298 F.R.D. 171, 182-83 n.3 (S.D.N.Y. 2014) (collecting cases and stating that "[t]he use of a combination of a mailed postcard directing class members to a more detailed online notice has been approved by courts"); *In re Mut.*

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[13] The Settlement Website was established on September 11, 2024. Ex. 1 (Kimball Decl.) at ¶17. From this website, potential Settlement Class Members can, *inter alia*, download copies of the U.S. Notice, U.S. Claim Form, Amended Complaint, Preliminary Approval Order, and Stipulation, as well as submit claims online. *Id*.

Funds Inv. Litig., 2010 WL 2342413, at *6-7 (D. Md. May 19, 2010) (approving combination of postcard notice, summary notice, and detailed notice available online as "the best notice practical").

C. Class Certification Remains Appropriate

The Court's August 13, 2024 Preliminary Approval Order certified the Settlement Class for settlement purposes only under Fed. R. Civ. P. 23(a) and (b)(3). *See* ECF No. 60, ¶¶1-3. There have been no changes to alter the propriety of class certification for settlement purposes. Thus, for the reasons stated in Plaintiffs' Preliminary Approval Motion (*see* ECF No. 54, at Sec. IV.B), 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). *See Fleming v. Impax Labs. Inc.*, 2022 WL 2789496, at *4 (N.D. Cal. July 15, 2022) (finally certifying the settlement class and "incorporat[ing] by reference the Court's prior analysis under Rules 23(a) and (b) as set forth in the order granting preliminary approval."); *In re Stable Road Acquisition Corp. Sec. Litig.*, 2024 WL 3643393, at *11 (C.D. Cal. Apr. 23, 2024) ("Since there have been no changes to alter the propriety of class certification for settlement purposes, the Court affirms its determinations in the Preliminary Approval Order certifying the Settlement Class under Rules 23(a) and (b)(3).").

D. The Plan Of Allocation Is Fair And Reasonable And Should Be Approved

"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 U.S. Lead Plaintiff's damages consultant in conjunction with U.S. Lead Counsel, reflects an assessment of the damages that U.S. Lead Plaintiff contends could have been recovered under the theories of liability asserted in the Action.[14] ¶63. More specifically, the Plan of Allocation reflects, and is based on, U.S. Lead Plaintiff's allegation that the price of ReconAfrica U.S. Stock was artificially inflated during the U.S. Settlement Class Period due to Defendants' 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 ReconAfrica U.S. Stock that followed the alleged corrective disclosures that occurred on June 24, 2021; June 25, 2021; July 14, 2021; July 15, 2021; August 5, 2021; August 6, 2021; August 9, 2021; August 16, 2021; August 17, 2021; and September 7, 2021; may be used to measure the alleged artificial inflation in the price of ReconAfrica U.S. Stock prior to the disclosures. *Id.*; Ex. 1-B (Notice) at ¶63. The same methodology would have been proffered by U.S. Lead Plaintiff at summary judgment and trial had the U.S. Action not settled.

An individual U.S. Claimant's recovery under the Plan of Allocation will depend on a number of factors, including how many shares of ReconAfrica U.S. Stock the U.S. Claimant purchased, acquired, or sold during the U.S. Settlement Class Period, when that U.S. Claimant bought, acquired, or sold the stock, and the number of valid claims filed by other U.S. Claimants. ¶65. If a U.S. Claimant has an overall market *gain* with respect to his, her, or its transactions in ReconAfrica U.S. Stock during the relevant period, the U.S. Claimant is not entitled to recover under the Plan of Allocation. *Id*.; Ex. 1-B (Notice) at ¶¶74-75. Moreover, if a U.S. Claimant purchased ReconAfrica U.S. Stock during the

[14] The Plan of Allocation is detailed in the Notice. *See* Kimball Decl., Ex. 1-B (Notice) at ¶¶61-79).

relevant period but did not hold any of those shares through an alleged disclosure event, the U.S. Claimant is not a U.S. 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 ¶63.

Under the proposed Plan of Allocation, each Authorized U.S. Claimant will receive his, her, or its *pro rata* share of the Net Settlement Fund, subject to a $10.00 minimum distribution. ¶¶64-66; Ex. 1-B (Notice) at ¶¶68, 76. More precisely, an Authorized U.S. Claimant's *pro rata* share shall be the Authorized U.S. Claimant's Recognized Claim divided by the total of Recognized Claims of all Authorized U.S. Claimants, multiplied by the total amount in the Net Settlement Fund. ¶64; Ex. 1-B (Notice) at ¶76.

If any funds remain after an initial distribution to Authorized U.S. Claimants, because 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 U.S. Lead Counsel and approved by the Court. *Id*.

U.S. Lead Counsel believe the Plan of Allocation will result in a fair and equitable distribution of the Settlement proceeds among U.S. 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, U.S. Lead Plaintiff respectfully requests 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.”).

V. CONCLUSION

For the foregoing reasons, U.S. Lead Plaintiff respectfully requests that the Court approve the proposed Settlement and Plan of Allocation as fair, reasonable, and adequate, and certify the Settlement Class for the purposes of settlement.[15]

Dated: November 14, 2024

GLANCY PRONGAY & MURRAY LLP

By: */s/ Garth A. Spencer*

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[15] A proposed Final Judgment and Order of Dismissal with Prejudice and a proposed Order Approving Plan of Allocation will be submitted with Plaintiffs’ reply papers on December 19, 2024, after the deadline for objecting to the motion and requesting exclusion from the Settlement Class has passed.

PROOF OF SERVICE

I hereby certify that on this 14th day of November, 2024, 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/ Garth A. Spencer
Garth A. Spencer