UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE NIELSEN HOLDINGS PLC SECURITIES LITIGATION	Civil Action No. 1:18-cv-07143-JMF

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

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Lead Plaintiff Public Employees' Retirement System of Mississippi ("MissPERS") and additionally named Plaintiff Monroe County Employees' Retirement System ("Monroe" and, together with MissPERS, "Plaintiffs"), individually and on behalf of all others similarly situated, respectfully submit this memorandum of law in support of their motion for: (i) preliminary approval of the proposed $73 million Settlement[1] with Defendants Nielsen Holdings plc ("Nielsen" or the "Company"), former CEO Dwight Mitchell Barns, former CFO Jamere Jackson and former Senior Vice President of Product Leadership Kelly Abcarian (collectively, "Defendants," and, together with Plaintiffs, the "Parties"); (ii) certification of the proposed Settlement Class for purposes of the Settlement only; (iii) approval of the form and manner of notice to be provided to the Settlement Class; and (iv) scheduling of a hearing (the "Settlement Hearing") on final approval of the Settlement, the proposed Plan of Allocation for distribution of the Net Settlement Fund, and Lead Counsel's application for an award of attorneys' fees and litigation expenses[2] and the deadlines related thereto. The Parties' agreed-upon proposed Order Granting Preliminary Approval of Class Action Settlement (the "Preliminary Approval Order") is filed concurrently herewith.

I. PRELIMINARY STATEMENT

The Parties have negotiated, at arm's-length and with the assistance of an experienced and neutral mediator, a proposed settlement of all claims in this Action, and related claims, for $73 million in cash. This resolution, which represents a substantial recovery falling well within the range of possible approval, involved three and one-half years of hard-fought litigation, including the preparation of several amended complaints (including the operative Second Amended Complaint for

[1] Unless otherwise stated or defined, all capitalized terms used herein have the meanings provided in the Stipulation and Agreement of Settlement, dated March 15, 2022 (the "Stipulation"). *See* Exhibit 1 to the Declaration of Christine M. Fox ("Fox Decl."), submitted herewith. All emphasis is added and all citations are omitted unless otherwise noted.

[2] Plaintiffs may also seek awards pursuant to 15 U.S.C. §78u-4(a)(4) in connection with their representation of the Settlement Class.

Violations of the Federal Securities Laws ("Second Amended Complaint")); Plaintiffs' opposition to Defendants' motion to dismiss the Second Amended Complaint (which the Court granted in part and denied in part on January 4, 2021); production and analysis of more than 920,000 pages of documents from Defendants, Plaintiffs and numerous nonparties; 21 depositions of fact and expert witnesses; a contested motion for class certification; two formal mediation sessions with an experienced mediator; and several follow-up consultations between the mediator and the Parties. The terms of the Settlement are set forth in the Stipulation, filed concurrently herewith. *See* Fox Decl., Ex. 1.

Plaintiffs and their counsel approve of the Settlement. Plaintiffs are institutional investors that actively oversaw the litigation and authorized the Settlement. Lead Counsel has substantial securities litigation experience and is a recognized leader in the field. *See* Fox Decl., Ex. 2 (firm resume of Labaton Sucharow LLP). Based upon their experience and evaluation of the facts and the applicable law, Plaintiffs and their counsel submit that the proposed Settlement is fair, reasonable, adequate and in the best interests of the Settlement Class. This is especially so in light of the risk that the Settlement Class might recover substantially less (or nothing) if the action were litigated through class certification, summary judgment, trial and the likely post-trial motions and appeals that would follow (a process that could last several years). Indeed, Plaintiffs faced the risk that the Court would not grant their motion for class certification or maintain certification through to judgment, and several risks with respect to establishing liability and damages, including the risk that Defendants' forthcoming motions for summary judgment or to exclude Plaintiffs' experts would be granted in whole or in part. Given these and other risks inherent in this complex securities class action, and the Settlement's substantial value, the Settlement represents a very favorable result for the Settlement Class.

At this preliminary approval stage, the Court need only make a preliminary evaluation of the Settlement's fairness such that the Settlement Class should be notified of the proposed Settlement. Plaintiffs respectfully request that the Court grant preliminary approval of the Settlement and enter the Preliminary Approval Order, which will, among other things: (i) preliminarily approve the Settlement on the terms set forth in the Stipulation; (ii) preliminarily certify the proposed Settlement Class for purposes of the Settlement; (iii) approve the form and content of the Notice of Pendency and Proposed Settlement of Class Action and Motion for Attorneys' Fees and Expenses (the "Notice"), Claim Form, and Summary Notice of Pendency and Proposed Settlement of Class Action and Motion for Attorneys' Fees and Expenses for publication (the "Summary Notice"), attached as Exhibits 1, 2, and 3 to the proposed Preliminary Approval Order, respectively; (iv) find that the procedures for distribution of the Notice and publication of the Summary Notice in the manner and form set forth in the Preliminary Approval Order constitute the best notice practicable under the circumstances and comply with the notice requirements of due process, Rule 23 of the Federal Rules of Civil Procedure and the Private Securities Litigation Reform Act of 1995 ("PSLRA"); and (v) set a schedule and procedures for: disseminating the Notice/Claim Form and publication of the Summary Notice; objecting to the Settlement, the Plan of Allocation or Lead Counsel's application for an award of attorneys' fees and expenses; seeking exclusion from the Settlement Class; submitting papers in support of final approval of the Settlement; and the Settlement Hearing.

II. HISTORY OF THE LITIGATION

In the late summer of 2018, putative class actions were filed in this Court and in the Northern District of Illinois on behalf of purchasers of Nielsen common stock alleging violations of §§10(b) and 20(a) of the Securities Exchange Act of 1934 ("Exchange Act") and United States Securities and Exchange Commission Rule 10b-5 promulgated thereunder. On December 17, 2018, the Northern District of Illinois transferred the putative class action to this Court; thereafter, the parties consented

to the stipulated consolidation of the putative class actions. On April 22, 2019, the Court: (1) approved the consolidation of the cases; (2) appointed MissPERS as Lead Plaintiff; and (2) approved Labaton Sucharow as Lead Counsel. ECF No. 54.

Plaintiffs filed the operative Second Amended Complaint on September 27, 2019 (ECF No. 72), alleging that Defendants violated §§10(b) and 20(a) of the Exchange Act during the period from February 11, 2016 through July 25, 2018, inclusive (the "Class Period"), by making materially false and misleading statements and/or failing to disclose adverse information regarding the Company's business and operations. Specifically, Plaintiffs allege that: (a) Defendants made material misrepresentations about the Company's "Buy" business in 2016, including the alleged failure to disclose a trend of declining discretionary spending by customers in the Buy Developed Market business; (b) Defendants made material misrepresentations about the value of Buy segment goodwill in 2017 and 2018; and (c) Defendants made material misrepresentations in 2018 about the Company's readiness for the European Union's General Data Protection Regulation ("GDPR"), the Company's access to data needed for its products and the impact of the GDPR and data access on the Company's Watch Marketing Effectiveness business. Plaintiffs allege that, as a result of Defendants' material misrepresentations and omissions, Nielsen common stock traded at artificially inflated prices and that, when the true facts regarding the state of the Company's Buy business and the impact of the GDPR and data access on the Watch Marketing Effectiveness business (and Audience Measurement business) were revealed, the price of the Company's stock dropped, causing damage to members of the class.

Defendants deny all of Plaintiffs' allegations. They contend they did not violate §§10(b) or 20(a) of the Exchange Act. Specifically, Defendants deny, *inter alia*, that they made any allegedly false or misleading statements, that any of the allegedly false and misleading statements were

material or made with scienter and that class members, including Plaintiffs, suffered any damages whatsoever.

The Parties have litigated motions to dismiss and for class certification and have discussed numerous discovery issues. They have also conducted extensive fact, class certification and expert discovery, including 14 fact depositions taken by Plaintiffs, seven class certification depositions taken by Defendants, the production and analysis of more than 920,000 pages of documents, propounding and responding to interrogatories and the exchange of affirmative and rebuttal expert reports related to market efficiency.

III. SETTLEMENT NEGOTIATIONS

On December 14, 2021, the Parties engaged in a confidential mediation session before the Hon. Layn R. Phillips (Ret.), an experienced mediator and former federal judge. In advance of that mediation, the Parties provided to Judge Phillips (and exchanged) detailed mediation material. The Parties engaged in good faith negotiations but did not reach a settlement, and the Action continued. On January 5, 2022, the Parties met again for a second mediation session with Judge Phillips, but did not reach an agreement. After continuing arm's-length negotiations over the next three weeks, the Parties reached an agreement in principle to resolve the case for $73 million. A confidential Term Sheet memorializing their agreement was executed on February 21, 2022.

In light of the substantial benefit to the Settlement Class and the significant costs and risks of further litigation – and in recognition of the fact that the proposed Settlement is the result of arm's-length negotiations by experienced counsel overseen by a well-respected mediator – Plaintiffs respectfully submit that the proposed Settlement warrants preliminary approval so that notice can be provided to the Settlement Class.

IV. SETTLEMENT TERMS

The Settlement provides that Defendants will pay, or cause to be paid, $73 million (the "Settlement Amount") into an Escrow Account, which, together with any accrued interest, is the Settlement Fund. Stipulation, ¶5. In exchange for this payment, Plaintiffs and the Settlement Class will release all claims in the Action and related claims (the "Released Claims") against Defendants and the other Released Defendant Parties. Stipulation, ¶¶3-5. Notice to the Settlement Class and the costs of settlement administration ("Notice and Administration Expenses") will be funded by the Settlement Fund. *Id.*, ¶8. Plaintiffs propose that a nationally recognized class action settlement administrator, Epiq Class Action & Claims Solutions ("Epiq"), be appointed, subject to the Court's approval. Preliminary Approval Order, ¶8, *see also* Fox Decl. Ex. 3.

Once Notice and Administration Expenses, Taxes, Court-approved attorneys' fees and expenses have been paid from the Settlement Fund, the remaining amount – the Net Settlement Fund – will be distributed pursuant to the Court-approved Plan of Allocation to eligible claimants who are entitled to a distribution of at least $10.00, given the costs associated with making payments. Any amount remaining following the distribution as a result of uncashed or returned checks will be redistributed in an economically feasible manner, until it is no longer economical to make distributions. The Plan of Allocation treats all Settlement Class Members equitably based on the timing of their Nielsen common stock purchases, acquisitions and sales. The proposed Plan of Allocation, which is set forth in the Notice, is comparable to plans of allocation approved in numerous other securities class actions.

The proposed Settlement is a very good recovery on the claims asserted in this Action and is in all respects fair, adequate, reasonable and in the best interests of the Settlement Class.

V. PRELIMINARY APPROVAL IS WARRANTED AND WILL ALLOW PLAINTIFFS TO NOTIFY THE SETTLEMENT CLASS

In the Second Circuit, there is a "'strong judicial policy in favor of settlements, particularly in the class action context.'" *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 116-17 (2d Cir. 2005); *see also In re Prudential Sec. Inc. Ltd. P'ships Litig.*, 163 F.R.D. 200, 209 (S.D.N.Y. 1995) ("It is well established that there is an overriding public interest in settling and quieting litigation, and this is particularly true in class actions.").

Rule 23(e) of the Federal Rules of Civil Procedure requires judicial approval of a class action settlement. Fed. R. Civ. P. 23(e) ("The claims . . . [of] a class proposed to be certified for purposes of settlement . . . may be settled . . . only with the court's approval."). The approval process typically takes place in two stages. *See Deangelis v. Corzine*, 151 F. Supp. 3d 356, 357 (S.D.N.Y. 2015). In the first stage, a court provides preliminary approval of the settlement and authorizes notice of the settlement be given to the class. *Id.* at 357, Fed. R. Civ. P. 23(e)(1). In the second stage, which will only come if the Court grants this motion, "the court holds a fairness hearing to 'determine whether the settlement's terms are fair, adequate, and reasonable.'" *Dover v. British Airways, PLC (UK)*, No. 12 CV 5567 (RJD) (CLP), 2018 U.S. Dist. LEXIS 174513, at *8 (E.D.N.Y. Oct. 9, 2018).

Pursuant to recently amended Rule 23(e)(1), the preliminary approval of a settlement is appropriate where "the parties . . . show[] that the court will likely be able to: (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal." Fed. R. Civ. P. 23(e)(1)(B). Rule 23(e)(2), which governs final approval, identifies factors that courts must consider in determining whether a class action settlement is "fair, reasonable, and adequate":

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

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

(C) the relief provided for the class is adequate, taking into account:

(i) the costs, risks, and delay of trial and appeal;

(ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;

(iii) the terms of any proposed award of attorney's fees, including timing of payment; and

(iv) any agreement required to be identified under Rule 23(e)(3);[3] and

(D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2).[4]

The Rule 23(e) factors are not intended to "displace" any previously adopted factors but "rather to focus the court and the lawyers on the core concerns of procedure and substance that

[3] Here, on February 21, 2022, the Parties entered into a settlement term sheet and on March 15, 2022, they entered into the Stipulation and a confidential Supplemental Agreement Regarding Requests for Exclusion, (the "Supplemental Agreement"). *See* Stipulation, ¶39. The Supplemental Agreement sets forth the conditions under which Defendants have the right to terminate the Settlement in the event that requests for exclusion from the Settlement Class exceed a certain agreed-upon threshold. As is standard in securities class actions, the Supplemental Agreement is kept confidential in order to avoid incentivizing the formation of a group of opt-outs for the sole purpose of leveraging a larger individual settlement. *See, e.g.,* Manual for Complex Litigation, §21.631 at 319 (4th ed. 2004) ("Opt-out agreements, in which a defendant conditions its agreement on a limit on the number or value of opt outs, that will vitiate a settlement might encourage third parties to solicit class members to opt out. A common practice is to receive information about such agreements *in camera*."); *In re HealthSouth Corp. Sec. Litig*., 334 F. App'x. 248, 250 n.4 (11th Cir. 2009) ("The threshold number of opt outs required to trigger the blow provision is typically not disclosed and is kept confidential to encourage settlement and discourage third parties from soliciting class members to opt out."). Pursuant to its terms, the Supplemental Agreement may be submitted to the Court *in camera* or under seal. The Supplemental Agreement, Stipulation, and Term Sheet are the only agreements concerning the Settlement entered into by the Parties.

[4] In assessing these core factors at the final approval stage, the Court may also consider the Second Circuit's long-standing approval factors, many of which overlap with the Rule 23 factors: (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability and damages; (5) the risks of maintaining the class action through the trial; (6) the ability of the defendants to withstand a greater judgment; and (7) the range of reasonableness of the settlement fund in light of the best possible recovery and the attendant risks of litigation. *See Detroit v. Grinnell Corp*., 495 F.2d 448, 463 (2d Cir. 1974).

should guide the decision whether to approve the proposal." Advisory Committee's Notes to the 2018 Amendments to the Federal Rules of Civil Procedure. Likewise, "[i]n finding that a settlement is fair, not every factor must weigh in favor of settlement, 'rather the court should consider the totality of these factors in light of the particular circumstances.'" *In re Glob. Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 456 (S.D.N.Y. 2004).

Here, Plaintiffs are requesting only that the Court take the first step in the settlement approval process and grant preliminary approval of the proposed Settlement. As stated above, the proposed Settlement is unquestionably beneficial to the Settlement Class and plainly "within the range of possible approval." *In re Initial Pub. Offering Sec. Litig.*, 243 F.R.D. 79, 87 (S.D.N.Y. 2007).

A. The Rule 23(e)(2) Factors Are Satisfied

1. Plaintiffs and Their Counsel Have Adequately Represented the Settlement Class

Plaintiffs' interests in this case are directly aligned with those of the other Settlement Class Members. Plaintiffs have demonstrated their ability and willingness to pursue the Action on the Settlement Class's behalf through their active involvement, including by searching for and producing documents, sitting for depositions, reviewing numerous filings, and approving the Settlement. Plaintiffs and their counsel zealously advocated for the interests of Settlement Class Members and have obtained an excellent result. Plaintiffs' decision to settle this case was informed by a thorough investigation of the relevant claims; robust fact and expert discovery; extensive briefing on the motions to dismiss and for class certification; and participation in a robust and arm's-length mediation process. The Settlement is demonstrably the product of well-informed and vigorous advocacy on behalf of Settlement Class Members. Accordingly, this factor weighs in favor of approval.

2. The Proposed Settlement Is the Result of Good Faith, Arm's-Length Negotiations

Courts presume a proposed settlement is fair and reasonable when it is the result of arm's-length negotiations among counsel. *See Wal-Mart*, 396 F.3d at 116. As described above, the Settlement was reached only after extensive, arm's-length negotiations before Judge Phillips, a nationally recognized mediator experienced in securities class actions and former federal judge. *See, e.g.*, *D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (stating that a "mediator's involvement in . . . settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure"); *In re Delphi Corp. Sec., Derivative & ERISA Litig.*, 248 F.R.D. 483, 498 (E.D. Mich. 2008) ("[T]he Court and the parties have had the added benefit of the insight and considerable talents of a former federal judge who is one of the most prominent and highly skilled mediators of complex actions."). The Parties engaged in good faith negotiations at two mediation sessions that included the exchange of evidentiary material. After three additional weeks of arm's-length negotiations, the Parties reached an agreement in principle to settle the Action.

In addition, the Parties and their counsel were knowledgeable about the strengths and weaknesses of the case prior to deciding to settle. Plaintiffs agreed to settle after fact discovery was nearly complete and expert discovery was underway. Plaintiffs' Counsel analyzed more than 880,000 pages of documents produced by Defendants and third parties and also reviewed and analyzed privilege logs provided by Defendants. Plaintiffs took 14 fact depositions and received and reviewed Defendants' responses and objections to interrogatories. Plaintiffs also produced 40,000 pages of documents to Defendants, responded to Defendants' interrogatories and provided deposition testimony. Plaintiffs and their counsel therefore had an adequate basis for assessing the strength of the Settlement Class's claims and Defendants' defenses when they agreed to the Settlement. These circumstances confirm the presumption of fairness of the proposed Settlement.

3. The Relief Provided by the Settlement Is Adequate When Weighed Against the Risks of Litigation

In assessing a settlement, courts consider the range of reasonableness in light of both the best possible recovery and litigation risks, assessing "not whether the settlement represents the best possible recovery, but how the settlement relates to the strengths and weaknesses of the case." *City of Providence v. Aeropostale, Inc*., No. 11 Civ. 7132(CM)(GWG), 2014 WL 1883494, at *9 (S.D.N.Y. May 9, 2014), *aff'd sub nom*. *Arbuthnot v. Pierson*, 607 F. App'x. 73 (2d Cir. 2015). A court thus need only determine whether the settlement falls within a range of reasonableness that "'recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion.'" *Pantelyat v. Bank of Am., N.A.*, No. 16-cv-8964 (AJN), 2019 WL 402854, at *7 (S.D.N.Y. Jan. 31, 2019).

If approved, the Settlement will provide Settlement Class Members with $73 million in cash less reasonable attorneys' fees, litigation expenses, Notice and Administration Expenses, and Taxes. The amount obtained for the Settlement Class far exceeds the median and average recoveries in PSLRA cases recently. As reported by NERA Economic Consulting, the median settlement amount for non-merger objection cases with settlements of more than $0 ranged from $7 million to $14 million from 2012 through 2021 and was $8 million in 2021. *See* Janeen McIntosh & Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2021 Full-Year Review* (NERA Jan. 25, 2022), at 20 (Figure 20), Fox Decl. Ex. 4. The average settlement value in 2021 was $21 million for non-merger objection cases with settlements of more than $0 and $47 million in 2020. *Id*. at 17 (Figure 17).

Additionally, although Plaintiffs and their counsel believe their case against Defendants is strong, they acknowledge that Defendants have put forth substantial arguments concerning falsity, scienter, loss causation and damages. For example, Defendants argued that Plaintiffs could not

establish the material falsity of the alleged misstatements because Defendants' statements concerning the Company's Buy business were known and disclosed to the market, with Nielsen having updated its projections and guidance appropriately. Likewise, Defendants argued that their statements and disclosures regarding the negative impact of privacy regulations and actions from data providers were timely and appropriate in an uncertain and changing business environment. Defendants argued that Nielsen did not disbelieve any of its goodwill valuations and that it used standard valuation techniques guided by an accounting firm. They also maintained that Plaintiffs faced intractable problems in proving that any losses are attributable to the three categories of allegations. If any of these arguments were to be accepted by the Court or a jury, any potential recovery could be eliminated or dramatically reduced. Further, to secure a recovery absent a settlement, Plaintiffs would have to attain class certification and prevail against Defendants at summary judgment and at trial. Even if Plaintiffs prevailed at each of those stages, they would also have to prevail on the appeals that would likely follow.

The proposed Settlement balances the risks, costs and delays inherent in complex securities class action cases such as this one. When viewed in the context of these risks and the uncertainty of any later recovery from Defendants, the Settlement is extremely beneficial to the Settlement Class.

4. The Proposed Method for Distributing Relief Is Effective

The proposed notice and claims administration process includes well established, effective procedures for obtaining and processing claims submitted by potential Settlement Class Members and efficiently distributing the Net Settlement Fund to eligible claimants. The notice plan includes direct mailing of the Notice to all those who can be identified with reasonable effort, supplemented by the publication of the Summary Notice in *The Wall Street Journal* and dissemination using a national newswire service. A settlement-specific website will be created for the Settlement and key documents will be posted, including the Stipulation, Notice, Claim Form, Preliminary Approval

Order, Second Amended Complaint, and all briefs and declarations in support of the Settlement and an award of fees and expenses.

The claims process includes a standard claim form that requests the information necessary to calculate a claimant's claim pursuant to the Plan of Allocation. The Plan of Allocation will govern how claims will be calculated and how money will be distributed to Authorized Claimants. The Plan of Allocation was prepared with the assistance of Plaintiffs' damages expert and is based primarily on the expert's damages analysis estimating the amount of alleged artificial inflation in the prices of Nielsen common stock during the Class Period.

Based on the trade information provided by claimants, the Claims Administrator will determine each claimant's eligibility to participate by, among other things, calculating their respective "Recognized Claims" based on the Court-approved Plan of Allocation, and ultimately determine each eligible claimant's *pro rata* portion of the Net Settlement Fund. *See* Stipulation, ¶¶21-22. Plaintiffs' claims will be reviewed in the same manner. Claimants will be notified of any defects or conditions of ineligibility and be given the chance to contest the rejection of their claims. *Id*., ¶28 (d)-(e). Any claim disputes that cannot be resolved will be presented to the Court for a determination. *Id*.

After the Settlement reaches its Effective Date and the claims process is completed, Authorized Claimants will be issued payments. *Id*., ¶¶21-25. If there are unclaimed funds after the initial distribution, and it would be feasible and economical to conduct a further distribution, the Claims Administrator will conduct a further distribution of remaining funds (less the estimated expenses for the additional distribution, Taxes, and unpaid Notice and Administration Expenses). Additional distributions will proceed in the same manner until it is no longer economical to conduct further distributions. At this point, if there are unclaimed funds, Plaintiffs recommend that such

funds be contributed to the Investor Protection Trust ("IPT"), a private, non-profit, non-sectarian 501(c)(3) organization, or such other non-profit, non-sectarian organization approved by the Court. *See* Stipulation, ¶25.

The IPT is an investor education organization established in 1993 as part of a multi-state settlement. *See generally*, http://www.investorprotection.org/ipt-activities/?fa=about. Since 1993, the IPT has worked with states and at the national level to provide the independent, objective investor education needed by investors to enable them to make informed investment decisions. The IPT has also developed educational materials geared to preventing fraud, such as elder investment fraud and technology scams. http://www.investorprotection.org/protect-yourself/. The IPT operates programs under its own auspices and uses grants to underwrite important investor education and protection initiatives carried out by other organizations. *Id*.

Accordingly, it is respectfully submitted that the proposed method for distributing the relief provided by the Settlement supports it preliminary approval.

5. The Settlement Does Not Excessively Compensate Plaintiffs' Counsel

As an initial matter, the reasonableness of attorneys' fees will be decided by the Court after Lead Counsel files a motion, on behalf of all Plaintiffs' Counsel, for attorneys' fees and expenses. The Settlement does not contemplate any specific award. Plaintiffs' Counsel will be compensated out of the Settlement Fund, under the common fund doctrine, and will not be compensated by Defendants. As set forth in the Notice, Lead Counsel will apply for an award of attorneys' fees on behalf of all Plaintiffs' Counsel of up to 25% of the Settlement Fund, plus expenses incurred in connection with the prosecution and resolution of this Action in an amount not to exceed $1,100,000, plus accrued interest. The expense request may include a request for the costs and expenses (including lost wages) of Plaintiffs directly related to their participation in the Action,

pursuant to the PSLRA. *See* 15 U.S.C. § 78u-4(a)(4). This fee request is reasonable and within the range of fee awards in this District. *See, e.g.*, *In re BHP Billiton Ltd. Sec. Litig.*, No. 1:16-cv-01445-NRB, 2019 WL 1577313, at *1 (S.D.N.Y. Apr. 10, 2019) (awarding 30% of $50 million settlement plus expenses), *aff'd sub nom*. *City of Birmingham Ret. & Relief Sys. v. Davis*, 806 F. App'x. 17 (2d Cir. 2020); *Landmen Partners Inc. v. Blackstone Grp. L.P.*, No. 08-cv-03601-HB-FM, 2013 WL 11330936, at *3 (S.D.N.Y. Dec. 18, 2013) (awarding fees of 33-1/3% of $85 million settlement plus expenses); *In re Deutsche Telekom AG Sec. Litig*., No. 00-CV-9475 (NRB), 2005 WL 7984326, at *4 (S.D.N.Y. June 14, 2005) (awarding 28% of $120 million settlement).[5]

6. All Settlement Class Members Are Treated Equitably Relative to One Another

Rule 23(e)(2)(D) requires courts to evaluate whether the settlement treats class members equitably relative to one another. Here, the proposed Plan of Allocation is fair, reasonable and adequate because it does not treat Plaintiffs or any other Settlement Class Member preferentially. The Plan of Allocation, which is set out in the Notice, explains how the Settlement proceeds will be distributed among Authorized Claimants. Each Authorized Claimant, including Plaintiffs, will receive a *pro rata* distribution pursuant to the Plan of Allocation. Plaintiffs, like all other Settlement Class Members, will be subject to the same formulas for distribution of the Settlement.

B. The Proposed Settlement Will Meet the *Grinnell* Factors

The Complexity, Expense and Likely Duration of the Litigation Support Approval of the Settlement. The first factor of the *Grinnell* analysis overlaps with the Rule 23(e)(2)(C)(i) factor of "the costs, risks, and delay of trial and appeal" addressed above. In addition, this case is a testament

[5] The motion for final approval of the Settlement, together with the motion for attorneys' fees and expenses, will be filed 35 calendar days before the Settlement Hearing. Lead Counsel will request that any fees awarded be paid when the Court enters the Judgment and an order awarding such fees and expenses.

to the complexity, expense and duration of securities class actions. The Parties advanced numerous complex legal and factual issues under the federal securities laws, especially with respect to falsity, scienter, loss causation and damages.

The Reaction of the Settlement Class to the Settlement. Plaintiffs have participated throughout the prosecution of the case, including by producing documents, sitting for depositions and reviewing numerous filings, and were actively involved in the decision to enter into the Settlement. After notice is issued to the Settlement Class, Plaintiffs will advise the Court of the class's reaction.

The Stage of the Proceedings. Plaintiffs' and their counsel's knowledge of the merits and potential weaknesses of the claims alleged are certainly adequate to support the Settlement, as discussed above. The voluminous discovery record of over 920,000 pages of documents and more than 21 depositions, and submissions during mediation, permitted Plaintiffs and their counsel to carefully weigh the strengths and weaknesses of their case and to engage in effective settlement discussions with Defendants. *See Glob. Crossing*, 225 F.R.D. at 458 ("Formal discovery is not a prerequisite; the question is whether the parties had adequate information about their claims."). This factor strongly supports preliminary approval of the Settlement.

The Risk of Establishing Liability and Damages. The fourth *Grinnell* factor is addressed above under Rule 23(e)(2)(C)(i) ("costs, risks, and delay of trial and appeal"). *See* §V.A.3.

The Risks of Maintaining the Class Action Through Trial. The class has not yet been certified and, even if it had been, the Second Circuit and Supreme Court routinely refine the law concerning class certification in securities cases. The Court could have revisited certification at any time prior to judgment. *See* Fed. R. Civ. P. 23(c)(1)(C) (authorizing a court to decertify a class at any time); *Christine Asia Co., Ltd. v. Yun Ma*, No. 1:15-md-02631 (CM) (SDA), 2019 WL 5257534,

at *13 (S.D.N.Y. Oct. 16, 2019) (this risk weighed in favor of final approval because "a class certification order may be altered or amended any time before a decision on the merits"). This presents a continuous risk that certification might not be maintained through trial. Thus, this factor weighs in favor of preliminary approval of the Settlement.

Defendants' Ability to Withstand a Greater Judgment. A court may also consider a defendant's ability to withstand a judgment greater than that secured by settlement, although it is not generally one of the determining factors. *See D'Amato*, 236 F.3d at 86. While Defendants here likely could withstand a judgment in excess of $73 million, courts generally do not find the ability of a defendant to withstand a greater judgment to be an impediment to settlement when the other factors favor the settlement. In fact, the ability of a defendant to pay more money does not render a settlement unreasonable. *See In re Vitamin C Antitrust Litig.*, No. 06-MD-1738 (BMC)(JO), 2012 WL 5289514, at *6 (E.D.N.Y. Oct. 23, 2012).

The Reasonableness of the Settlement in Light of the Best Possible Recovery and the 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). The Court need only determine whether the Settlement falls within a "range of reasonableness" – a range that "recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion." *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972); *see also Glob. Crossing*, 225 F.R.D. at 461 (noting that "the certainty of [a] settlement amount has to be judged in [the] context of the legal and practical obstacles to obtaining a large recovery"); *In re Indep. Energy Holdings PLC Sec. Litig.*, No. 00-cv-6689 (SAS), 2003

WL 22244676, at *3-4 (S.D.N.Y. Sept. 29, 2003) (noting few cases tried before a jury result in recovery of full amount of damages claimed).

Here, the Settlement recovers between approximately 5% and 29.9% of Plaintiffs' expert's estimation of likely recoverable damages, depending on the types of alleged misstatements and omissions that were ultimately presented to the jury and the length of the class period presented at trial. For example, if liability were established with respect to all of the allegedly false statements and omissions sustained in the Second Amended Complaint, then estimated "disaggregated" damages, excluding any losses attributable to the disclosure of confounding or non-fraud related information, would be approximately $1.472 billion. In this scenario, a settlement of $73 million represents approximately 5% of the damages. However, Plaintiffs faced significant risks in proving all of the alleged misstatements and omissions across the theories of the case – *i.e.*, Buy Developed Market, Buy goodwill/trends, and GDPR. The goodwill/trends aspect of the case faced the most significant challenges, especially since, as Defendants would likely argue, Nielsen's auditors signed off on the Company's financial statements during the Class Period. If Plaintiffs only prevailed on the claims alleging false and misleading statements and omissions relating to (1) the Buy Developed Market (from July 2016 to October 25, 2016) (estimated damages of $181 million) and (2) the GDPR (from May 31, 2018 to the end of the Class Period) (estimated damages of $62.9 million) then estimated damages would be approximately $243.9 million. A $73 million settlement represents a recovery of approximately 29.9%. of these estimated damages. However, if Plaintiffs only prevailed on the claims alleging false and misleading statements and omissions relating to (1) the Buy Developed Market (from July 2016 to October 25, 2016) (estimated damages of $181 million) and (2) Plaintiffs could expand the Class Period for the GDPR statements (from February 2, 2018 to the end of the Class Period) (estimated damages of $188 million), then estimated

damages would be approximately $370 million. A $73 million settlement represents a recovery of approximately 19.7% of these damages. The damages scenarios which include only the Buy Developed Market and GDPR claims were a real possibility given the risks associated with the goodwill part of the case.

This range of recovery is well within the range of recoveries that have received approval within the Second Circuit. *See, e.g.*, *In re Merrill Lynch & Co. Research Reports Sec. Litig.*, No. 02 MDL 1484 (JFK), 2007 WL 313474, at *10 (S.D.N.Y. Feb. 1, 2007) (approving $40.3 million settlement representing approximately 6.25% of estimated damages and noting was at the "higher end of the range of reasonableness of recovery in class actions securities litigation"); *In re Merrill Lynch & Co. Research Reports Sec. Litig.*, 246 F.R.D. 156, 167 (S.D.N.Y. 2007) (approving settlement that was "between approximately 3% and 7% of estimated damages [and] within the range of reasonableness for recovery in the settlement of large securities class actions"); *In re Canadian Superior Sec. Litig.*, No. 09 Civ. 10087(SAS), 2011 WL 5830110, at *2 (S.D.N.Y. Nov. 16, 2011) (approving a $5.2 million settlement representing 8.5% of maximum damages which the court noted "exceed[s] the average recovery in shareholder litigation").[6] Accordingly, the $73 million cash settlement is an excellent recovery for the Settlement Class. This factor supports preliminary approval.

VI. PRELIMINARY CERTIFICATION OF THE PROPOSED SETTLEMENT CLASS FOR SETTLEMENT PURPOSES IS APPROPRIATE

Plaintiffs respectfully request that the Court certify the proposed Settlement Class for purposes of the Settlement pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure. *See Wal-Mart*, 396 F.3d at 116 (finding there is a "strong judicial policy in favor of settlements,

[6] The Settlement of course represents an even higher percentage of Defendants' estimate of maximum recoverable damages, which could be as low as $0.

particularly in the class action context."). Plaintiffs' Motion for Class Certification, Appointment as Class Representatives, and Appointment of Class Counsel is currently before the Court. *See* ECF Nos. 102-104, 109, 128-129. However, to facilitate the Settlement, the Parties have stipulated to certification of the following proposed Settlement Class:

> All persons and entities that purchased or otherwise acquired Nielsen publicly traded common stock during the period from February 11, 2016 through July 25, 2018, inclusive, and were damaged thereby.
>
> Excluded from the Settlement Class are: (i) Defendants; (ii) members of the Immediate Family of any Individual Defendant; (iii) any person who was an officer or director of Nielsen during the Class Period; (iv) any firm, trust, corporation, or other entity in which any Defendant has or had a controlling interest; (v) affiliates of Nielsen, including its employee retirement and benefit plan(s) and their participants or beneficiaries, to the extent they made purchases through such plan(s); (vi) the legal representatives, affiliates, heirs, successors-in-interest, or assigns of any such excluded person; and (vii) any persons or entities who or which exclude themselves by submitting a timely and valid request for exclusion that is accepted by the Court.

Stipulation, ¶1(hh). The proposed Class Period is the class period alleged in the Second Amended Complaint, rather than the class period that survived Defendants' motion to dismiss, in order to provide Defendants with a complete release of the alleged claims. *See* ECF Nos. 72 & 85. The Parties have further stipulated to the appointment of Plaintiffs as class representatives for the Settlement Class and Labaton Sucharow as class counsel for the Settlement Class.

In the interest of brevity, the Court is respectfully referred to Plaintiffs' previously filed motion for class certification for a complete recitation of the arguments supporting class certification. *See* ECF Nos. 102-104, 109, 128-129. In summary, pursuant to Rule 23(a): (i) the Settlement Class is so numerous that joinder of all members would be impracticable (ECF No. 103 at 8); (ii) there are questions of law or fact common to the Settlement Class (*id*. at 9-10); (iii) the claims or defenses of Plaintiffs are typical of the claims or defenses of the Settlement Class (*id*. at 10-11); and (iv) Plaintiffs and Lead Counsel will fairly and adequately protect the interests of the Settlement Class (*id*. at 11-12).

Rule 23(b)(3) authorizes class certification if "the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." The proposed Settlement Class meets this standard: (i) common questions of both fact and law predominate, given the presumptions of reliance under *Basic Inc. v. Levinson*, 485 U.S. 224, 241-42 (1988) or *Affiliated Ute Citizens of Utah v. United States*, 406 U.S. 128 (1972) (ECF No. 103 at 13-23); and (ii) a class action would be superior to other methods for the fair and efficient adjudication of the claims (*id*. at 24).

Courts within the Second Circuit have long acknowledged the propriety of certifying settlement classes. "Certification of a settlement class has been recognized throughout the country as the best, most practical way to effectuate settlements involving large numbers of claims by relatively small claimants." *In re IMAX Sec. Litig.,* 283 F.R.D. 178, 186 (S.D.N.Y. 2012). For the foregoing reasons, Plaintiffs respectfully request that the Court preliminarily certify the Settlement Class for purposes of implementing the proposed Settlement.

VII. THE PROPOSED NOTICE PROGRAM SHOULD BE APPROVED

As outlined in the agreed-upon proposed Preliminary Approval Order and described above, Plaintiffs will notify Members of the Settlement Class by mailing the Notice and Claim Form to all Members of the Settlement Class who can be identified with reasonable effort. To do so, the Claims Administrator will use multiple sources of data, including: (i) Nielsen's transfer agent's lists of known purchasers during the Class Period; and (ii) a proprietary list maintained by the Claims Administrator of the largest and most common U.S. banks, brokers and other nominees. These nominees will provide names and addresses to the Claims Administrator or will request copies of the Notice/Claim Form that they will mail to their customers.

The Notice advises Members of the Settlement Class of: (i) the essential terms of the Settlement; and (ii) information regarding Lead Counsel's application for an award of attorneys' fees and expenses. The Notice also provides specifics on the date, time and place of the Settlement Hearing; and explains the procedures for submitting valid and timely Claim Forms, requesting exclusion from the Settlement Class, and objecting to the Settlement, the proposed Plan of Allocation and/or application for attorneys' fees and expenses.

In addition to mailing the Notice and Claim Form, the Claims Administrator will cause the publication of the Summary Notice in *The Wall Street Journal* and disseminate the Summary Notice using a national newswire service.

The form and manner of providing notice to the Settlement Class satisfy the requirements of due process, Rule 23 of the Federal Rules of Civil Procedure and the PSLRA. In short, the Notice and Summary Notice "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*, 396 F.3d at 114. The manner of providing notice represents the best notice practicable under the circumstances and satisfies the requirements of due process and Rule 23 of the Federal Rules of Civil Procedure. *See In re Warner Chilcott Ltd. Sec. Litig.*, No. 06 Civ. 11515(WHP), 2008 WL 5110904, at *3 (S.D.N.Y. Nov. 20, 2008).

VIII. PROPOSED SCHEDULE OF SETTLEMENT EVENTS

Plaintiffs respectfully propose the following schedule for Settlement-related events. The schedule revolves around the date that the Court enters the Preliminary Approval Order and the date on which the Court schedules the final Settlement Hearing—which Plaintiffs request be approximately 100 days from entry of the Preliminary Approval Order.

Event	Proposed Timing
Deadline for mailing the Notice and Claim Form to Settlement Class Members (the "Notice Date")	***No later than 10 business days after entry of Preliminary Approval Order.***
Deadline for publishing the Summary Notice	***Within 14 calendar days of the Notice Date.***
Deadline for filing motions in support of final approval of the Settlement, Plan of Allocation, and Lead Counsel's application for attorneys' fees and expenses	***No later than 35 calendar days before the Settlement Hearing.***
Deadline for receipt of requests for exclusion or objections	***Received no later than 21 calendar days before the Settlement Hearing.***
Deadline for filing reply papers	***No later than 7 calendar days before the Settlement Hearing.***
Deadline for submitting Claim Forms	***Five calendar days before the Settlement Hearing.***
Settlement Hearing	***At the Court's convenience, approximately 100 days from entry of the Preliminary Approval Order. The hearing can be held either in-person or remotely, in the discretion of the Court. Any scheduling updates will be posted on Settlement website and Lead Counsel's website.***

IX. CONCLUSION

Plaintiffs respectfully request that the Court: (i) preliminarily approve the Settlement; (ii) preliminarily certify the proposed Settlement Class for the purposes of Settlement; (iii) approve the proposed form and manner of notice to the Settlement Class; and (iv) schedule a hearing on Plaintiffs' motion for final approval of the Settlement and Lead Counsel's application for an award of attorneys' fees and expenses. The Parties' agreed-upon form of proposed Preliminary Approval Order and exhibits thereto are filed herewith.

Dated: March 15, 2022

Respectfully submitted,

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