UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

PHILIP FRYMAN, et al., Plaintiffs, v. ATLAS FINANCIAL HOLDINGS, INC., SCOTT D. WOLLNEY, and PAUL A. ROMANO, Defendants.	Case No. 1:18-cv-01640 Hon. Franklin U. Valderrama United States District Judge Hon. Sheila M. Finnegan United States Magistrate Judge

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

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

RULES

Court-appointed Lead Plaintiffs Philip Fryman and Aram Hovasapyan (together, "Lead Plaintiffs") and additional named plaintiff Ji Chuan (collectively, "Plaintiffs"), on behalf of themselves and the Settlement Class, respectfully submit this memorandum of law in support of their motion, pursuant to Rule 23 of the Federal Rules of Civil Procedure, for final approval of the proposed settlement ("Settlement") of the above-captioned action (the "Action"), and for approval of the proposed plan of allocation of the net proceeds of the Settlement (the "Plan of Allocation").[1]

I. PRELIMINARY STATEMENT

After over four and a half years of hard-fought litigation, Plaintiffs, through their counsel, obtained a $5,000,000 (the "Settlement Amount") all cash, non-reversionary settlement for the benefit of the Settlement Class. As described below and in the Wolke Declaration,[2] the proposed Settlement is a fair and adequate result for the Settlement Class, providing a significant and certain recovery in a case that presented numerous hurdles and risks. Plaintiffs estimate that the Settlement represents approximately 7.3% of the ***maximum*** damages potentially available in this Action, which is well above the median recovery in securities class action settlements. *See* Ex. 7 at p. 18, Fig. 19 (median recovery in securities class actions in 2022 was approximately 1.8% of estimated damages). The Settlement is, therefore, substantively fair, reasonable and adequate.

Moreover, the process by which the Settlement was obtained evidences an arms-length

[1] All capitalized terms used herein that are not otherwise defined have the meanings ascribed to them in the Stipulation and Agreement of Settlement, dated November 28, 2022 (ECF No. 141-1) (the "Stipulation"), or the concurrently filed Declaration of Kara M. Wolke in Support of: (I) Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation; and (II) Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Wolke Declaration"). Citations herein to "¶__" and "Ex. __" refer, respectively, to paragraphs in and exhibits to, the Wolke Declaration.

[2] The Wolke Declaration is an integral part of this submission and, for the sake of brevity in this memorandum, the Court is respectfully referred to it for a detailed description of, *inter alia*: the procedural history of the Action; the prosecution of the claims at issue; the negotiations leading to the proposed Settlement; the risks and uncertainties of continued litigation; and a description of the services Plaintiffs' Counsel provided for the benefit of the Settlement Class.

process that supports a finding of procedural fairness. As described in detail in the Wolke Declaration, prior to reaching the Settlement, Plaintiffs' Counsel, *inter alia*:

- Conducted a thorough investigation of the claims asserted in the Action, which included: (a) a review and analysis of (i) Atlas's SEC filings, press releases, investor conference calls, and other public statements; (ii) publicly available documents, announcements, and news articles concerning Atlas; and (iii) research reports prepared by securities and financial analysts regarding Atlas; (b) interviews with former employees and other potential witnesses with relevant information; and (c) consultations with accounting, loss causation and damages experts;
- Drafted four comprehensive and detailed complaints—including the 91-page Fourth Amended Complaint (excluding exhibits) (the "Complaint")—based on Plaintiffs' Counsel's extensive investigation;
- Engaged in substantial briefing related to Defendants' three motions to dismiss and Defendants' Motion for Clarification of Rulings on Loss Causation and Standing ("Motion for Clarification"), which resulted in the Court partially sustaining the Complaint and denying the Motion for Clarification in its entirety;
- Engaged in discovery, which included, *inter alia*: (a) researching and drafting initial disclosures; (b)propounding and responding to discovery requests; (c) negotiating an agreed confidentiality order and a protocol to govern the production of electronically stored information and other documents; (d) serving two subpoenas *duces tecum* on third-parties as well as Freedom of Information Act ("FOIA") requests for documents to Atlas's insurance regulators in Illinois, Missouri, and New York; (e) meeting and conferring with counsel for Defendants and third-parties; (f) conducting a targeted review and analysis the more than 320,900 pages of documents produced by Defendants and third parties; and
- Exchanged documents and mediation briefs containing detailed analyses of the strengths, risks, and potential issues in the litigation with Defendants, participated in a full-day mediation session with an experienced neutral, and engaged in several days of further negotiations that culminated in a mediator's recommendation to resolve the Action for $5,000,000 in cash for the benefit of the Settlement Class. *See* ¶¶39-61.

In view of the foregoing, and as discussed in greater detail below, the Settlement was negotiated by well-informed Parties at arm's-length, and represents an excellent outcome for the Settlement Class. This is especially true when the recovery is juxtaposed against the many risks of continued litigation, including the very real risk of a substantially smaller recovery, or no recovery at all. *See* ¶¶69-84; *see also In re Xcel Energy, Inc. Sec., Deriv. & "ERISA" Litig.,* 364 F. Supp. 2d 980, 1003 (D. Minn. 2005) ("The court needs to look no further than its own order

dismissing the...litigation to assess the risks involved."). Accordingly, Plaintiffs respectfully request that the Court grant final approval of the Settlement.

Plaintiffs also move for approval of the proposed Plan of Allocation of the Net Settlement Fund. The Plan of Allocation was developed in conjunction with Plaintiffs' damages expert and is designed to distribute the proceeds of the Net Settlement Fund fairly and equitably to Settlement Class Members. ¶¶86-91. Plaintiffs and their counsel believe that the Plan of Allocation is fair and reasonable and, as such, that it too should be approved.

II. STANDARDS GOVERNING APPROVAL OF CLASS ACTION SETTLEMENTS

Rule 23(e) of the Federal Rules of Civil Procedure requires judicial approval of the settlement of claims brought on a class-wide basis. The standard for determining whether to grant final approval to a class action settlement is whether the settlement is "fundamentally fair, adequate, and reasonable." Fed. R. Civ. P. 23(e)(2). "Federal courts naturally favor the settlement of class action litigation." *Isby v. Bayh*, 75 F.3d 1191, 1196 (7th Cir. 1996).[3] This is because "[s]ettlement of the complex disputes often involved in class actions minimizes the litigation expenses of both parties and also reduces the strain such litigation imposes upon already scarce judicial resources." *In re: Sears, Roebuck & Co. Front-loading Washer Prod. Liab. Litig.*, 2016 WL 772785, at *6 (N.D. Ill. Feb. 29, 2016).

Rule 23(e)(2), as amended on December 1, 2018, requires courts to consider the following factors in determining whether a proposed settlement is fair, reasonable, and adequate:

(A) whether the class representatives and class counsel have adequately represented the class;
(B) whether the proposal was negotiated at arm's length;
(C) whether 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;

[3] Unless otherwise noted, all emphasis is added and all internal quotations and citations are omitted.

iii. the terms of any proposed award of attorneys' fees, including timing of payment;
iv. any agreement required to be identified under Rule 23(e)(3); and

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

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

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"). *See* Advisory Committee Notes to 2018 Amendments (324 F.R.D. 904, 919 (2018)).

The Rule 23(e)(2) 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 should guide the decision whether to approve the proposal." *Id.* For this reason, the traditional Seventh Circuit factors in *Wong v. Accretive Health, Inc.*, 773 F.3d 859 (7th Cir. 2014), for evaluating whether a class action settlement is fair, reasonable and adequate under Rule 23—certain of which overlap with Rule23(e)(2)—are still relevant to the analysis. Those factors are:

> (1) the strength of the case for plaintiffs on the merits, balanced against the extent of settlement offer; (2) the complexity, length, and expense of further litigation; (3) the amount of opposition to the settlement; (4) the reaction of members of the class to the settlement; (5) the opinion of competent counsel; and (6) stage of the proceedings and the amount of discovery completed.

Wong, 773 F.3d at 863.

As discussed below, application of the factors set forth in Rule 23(e)(2), and the relevant, non-duplicative Seventh Circuit factors, confirm that the Settlement merits final approval.

III. THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE

A. Plaintiffs And Their Counsel Adequately Represented The Settlement Class

Rule 23(e)(2)(A) requires the Court to consider whether the "class representatives and class

counsel have adequately represented the class." Here, there can be no dispute that Plaintiffs and Plaintiffs' Counsel adequately represented the Settlement Class.

First, Plaintiffs' claims are typical of, and coextensive with, the claims of the Settlement Class. Plaintiffs' interest in obtaining the largest possible recovery in this Action is aligned with the interests of other Settlement Class Members. *See In re Northfield Labs., Inc. Sec. Litig.*, 2012 WL 366852, at *3 (N.D. Ill. Jan. 31, 2012) (finding adequacy where lead plaintiffs and class members shared the same interest—obtaining the maximum amount of recovery); *see also In re Polaroid ERISA Litig.*, 240 F.R.D. 65, 77 (S.D.N.Y. 2006) ("Where plaintiffs and class members share the common goal of maximizing recovery, there is no conflict of interest between the class representatives and other class members."). Additionally, Plaintiffs significantly contributed to the Action by overseeing the litigation, communicating regularly with counsel, producing documents to their attorneys, and participating in settlement discussions with Lead Counsel. *See* Exs. 4-6.

Second, Plaintiffs retained counsel highly experienced in securities litigation with a long and successful track record of representing investors in such cases. *See* Exs. 2-C & 3-C (firm résumés). As described above and in the Wolke Declaration, Plaintiffs' Counsel vigorously prosecuted the claims, and the Parties were acutely aware of the strengths and weaknesses of the case prior to settling the Action. *See* ¶¶39-60 (detailing counsel's extensive investigation into Atlas, substantial briefing at the pleading stage, discovery efforts, and hard-fought mediation efforts); *see also Snyder v. Ocwen Loan Servicing, LLC*, 2019 WL 2103379, at *4 (N.D. Ill. May 14, 2019) (finding adequacy of representation of the class under 23(e)(2)(A) where named plaintiffs "participated in the case diligently" and class counsel "fought hard throughout the litigation and pursued mediation when it appeared to be an advisable and feasible alternative").

B. The Settlement Is The Result Of Arm's-Length Negotiations Between Experienced Counsel Under The Auspices Of A Well-Respected Mediator

In reviewing a class action settlement, the court should next consider whether the settlement was "negotiated at arm's-length." Fed R. Civ. P. 23(e)(2)(B). This includes the court's consideration of other related circumstances to ensure the "procedural" fairness of a settlement, including (i) "the opinion of competent counsel";[4] (ii) "stage of the proceedings and the amount of discovery completed";[5] and (iii) the involvement of a mediator. All of these considerations support approval of the Settlement.

Here, the Settlement was negotiated by counsel with extensive experience in securities litigation, who were well versed in the strengths and weaknesses of their respective positions, under the auspices of an experienced mediator who ultimately made a mediator's recommendation that the Parties accepted. *See Mangone v. First USA Bank*, 206 F.R.D. 222, 226 (S.D. Ill. 2001) ("a settlement proposal arrived at after arms-length negotiations by fully informed, experienced and competent counsel may be properly presumed to be fair and adequate"); *see also Yang v. Focus Media Holding Ltd.*, 2014 WL 4401280, at *5 (S.D.N.Y. Sept. 4, 2014) (noting that "[t]he participation of this highly qualified mediator [Mr. Melnick] strongly supports a finding that negotiations were conducted at arm's length and without collusion.").

C. The Relief Provided For The Settlement Class Is Adequate

The Court next considers whether "the relief provided for the class is adequate, taking into account . . . the costs, risks, and delay of trial and appeal," as well as other relevant factors. Fed. R. Civ. P. 23(e)(2)(C). Rule 23(e)(2)(C) encompasses two of the factors traditionally considered by the Seventh Circuit when evaluating a proposed class action settlement: (1) the strength of the

[4] *See Wong*, 773 F.3d at 863 (fifth factor).

[5] *See id.* (sixth factor).

case for plaintiffs on the merits, balanced against the extent of settlement offer; and (2) the complexity, length, and expense of further litigation. *See Wong*, 773 F.3d at 863-64. As demonstrated below, these factors support approval of the Settlement under Rule 23(e)(2)(C).

1. The Strength Of Plaintiffs' Claims Compared To The Settlement Amount

The $5,000,000 cash Settlement Amount is well within the range of reasonableness under the circumstances to warrant final approval of the Settlement. Plaintiffs' damages expert estimates that if Plaintiff had fully prevailed at both summary judgment and after a jury trial, and if the Court and jury accepted Plaintiffs' damages theory, including proof of loss causation—*i.e.*, the ***best-case scenario***—the total ***maximum*** damages would be approximately $68.6 million for purchasers of Atlas Common Stock. Thus, the $5 million Settlement Amount represents approximately 7.3% of the total ***maximum*** damages ***potentially*** available to Atlas shareholders in this Action. ¶67. A recovery of 7.3% is well above the 1.8% median recovery in securities class actions settled in 2022, and significantly higher than the 3.8% median recovery in securities cases with similar damages that settled between December 2011-December 2022.[6] *See also Shah v. Zimmer Biomet Holdings, Inc.*, 2020 WL 5627171, at *5 (N.D. Ind. Sept. 18, 2020) (noting that a settlement recovering 8% of maximum damages was a "superb result for the class").

This was, however, Plaintiffs' best-case scenario. Defendants had raised a number of credible arguments concerning, among other things, liability, loss causation and damages that if accepted would have substantially reduced, or completely eliminated, recoverable damages. For example, Defendants argued and would have continued to argue that based on the opinions of

[6] *See* Ex. 7 (excerpt from Janeen McIntosh, Svetlana Starykh, and Edward Flores, *Recent Trends in Securities Class Action Litigation: 2022 Full-Year Review* (NERA Jan. 24, 2023 at p. 18 (Fig. 19)) (median recovery in securities class actions in 2022 was approximately 1.8% of estimated damages); *see also id.* at 17 (Fig. 18) (median recovery was 3.8% for securities class actions with estimated damages between $50-$99 million that settled between December 2011-December 2022).

Atlas's independent actuaries and predictive analytics, they reasonably believed that Atlas's reserves were appropriate when set throughout the Settlement Class Period, and that as a result, there was no basis to allege that they had any intent to commit, or that they had committed, securities fraud, contrary to Plaintiffs' allegations. If Defendants had prevailed on this liability issue, damages would have been eliminated.

Moreover, Defendants also argued or would have argued, *inter alia*, that: (i) the drop in Atlas's stock price following the alleged disclosures on March 1, 2018 and March 4, 2019, could be attributed to other confounding information unrelated to the reserve increases, including that Atlas expected to report a net loss for fiscal years 2017 and 2018, respectively, and; (ii) June 15, 2018 was not a valid disclosure date because the information that led to the A.M. Best ratings downgrade on that day was already in the public domain. While Plaintiffs were confident they would be able to overcome these loss causation/damages arguments, success was not guaranteed and a loss would have had significant negative consequences. *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 light of the aforementioned risks, there can be no doubt that the Settlement Amount is well within the range of reasonableness, weighing in favor of final approval. *See Great Neck Capital Appreciation Inc. P'ship v. PricewaterhouseCoopers L.L.P.*, 212 F.R.D. 400, 409 (E.D. Wis. 2002) ("Shareholder class actions are difficult and unpredictable, and skepticism about optimistic forecasts of recovery is warranted."); *see also* ¶¶69-84 (discussing risks).

2. The Cost, Risk, And Delay Of Trial And Appeal

In assessing whether the proposed Settlement is fair, reasonable, and adequate, the Court "must balance the continuing risks of continued litigation, including the strengths and weaknesses of plaintiff's case, against the benefits afforded to class members, including the immediacy and

certainty of recovery." *Knapp v. Art.com, Inc.*, 283 F. Supp. 3d 823, 831 (N.D. Cal. 2017); *accord Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 585-86 (N.D. Ill. 2011).

Here, continued litigation would have been costly, risky, and protracted. Indeed, even though Lead Plaintiffs had surmounted the PSLRA's heightened pleading standard and automatic stay of discovery and was in fact discovery, Plaintiffs' next major litigation hurdle was obtaining class certification. Although Plaintiffs believed a motion for class certification would be meritorious, Defendants planned to contest class certification, and thus it was not a foregone conclusion. *See* ¶75; *see also In re Northfield Labs., Inc. Sec. Litig.*, 267 F.R.D. 536, 549 (N.D. Ill. May 18, 2010) (denying class certification). Defendants argued in their Motion for Clarification that Lead Plaintiffs lacked standing to pursue claims for any alleged false statements made after March 2, 2018, the date of the Lead Plaintiffs' last purchase of Atlas common stock during the putative class period. While the Court denied Defendants' motion, the Court did not reject Defendants' argument on the merits; rather, it said it would consider "arguments on this issue in connection with class certification or summary judgment." ECF No. 126. Had Defendants prevailed on their standing argument, it would eliminate more than one year of the class period, as well as damages associated therewith. And, even assuming class certification was achieved, the Court could have revisited certification at any time—presenting a continuous risk that this case, or particular claims, might not be maintained on a class-wide basis through trial. *See, e.g.*, *In re Omnivision Tech., Inc.*, 559 F. Supp. 2d 1036, 1041 (N.D. Cal. 2008) (even if a class is certified, "there is no guarantee the certification would survive through trial, as Defendants might have sought decertification or modification of the class"). Thus, the risks of obtaining and maintaining class certification support approval of the Settlement. *See In re Marsh & McLennan Cos., Inc. Sec. Litig.*, 2009 WL 5178546, at *6 (S.D.N.Y. Dec. 23, 2009) ("the uncertainty surrounding class

certification supports approval of the Settlement").

Furthermore, even if Plaintiffs prevailed at the class certification stage, they would still have to ***prove*** their claims. This would be no small task, and Plaintiffs and their Counsel recognize the significant risk, time, and expense involved in prosecuting Plaintiffs' claims against Defendants through completion of fact and expert discovery, summary judgment, trial, and subsequent appeals, as well as the inherent difficulties and delays complex litigation like this entails. ¶¶81-84. Indeed, Defendants' expected motions for summary judgment would have to be successfully briefed and argued, and trials are by their very nature, expensive, risky, and uncertain. *See, e.g.*, *In re Mexico Money Transfer Litig. (W. Union & Valuta)*, 164 F. Supp. 2d 1002, 1019 (N.D. Ill. 2000) ("Defendants are highly motivated to defend these cases vigorously…. [C]ontinued litigation would require resolution of complex issues at considerable expense and would absorb many days of trial time."); *Wong*, 773 F.3d at 864 ("Further litigation [of securities action] almost certainly would have involved complex and lengthy discovery and expert testimony. Insurance proceeds to fund a settlement or judgment were a limited, wasting asset, *i.e.*, further defense costs would have reduced those funds").

In addition, any judgment favorable to the Settlement Class would be the subject of post-trial motions and appeal, which could prolong the case for years with the ultimate outcome uncertain. *See, e.g.*, *Glickenhaus & Co. v. Household Int'l, Inc.*, 787 F.3d 408 (7th Cir. 2015) (reversing and remanding jury verdict of $2.46 billion after 13 years of litigation on loss causation grounds and error in jury instruction).[7]

In sum, even if Plaintiffs prevailed after trial and appeals, there is no guarantee that he would have obtained a judgment greater than the $5 million Settlement. There was, as in any

[7] *See also Robbins v. Koger Props., Inc.*, 116 F.3d 1441 (11th Cir. 1997) (reversing jury verdict of $81 million for plaintiffs).

securities action, a very significant risk that continued litigation might yield a smaller recovery—or indeed no recovery at all—several years in the future. *See Trief v. Dun & Bradstreet Corp.*, 840 F. Supp. 277, 282 (S.D.N.Y. 1993) ("It is beyond cavil that continued litigation in this multi-district securities class action would be complex, lengthy, and expensive, with no guarantee of recovery by the class members."). By contrast, the Settlement provides a favorable, immediately realizable recovery and eliminates all of the risk, delay, and expense of continued litigation.

3. Other Factors Established By Rule 23(e)(2)(C) Support Final Approval

Under Rule 23(e)(2)(C), courts also 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 attorneys' fees, including timing of payment," and "any agreement required to be identified under Rule 23(e)(2)." Fed. R. Civ. P. 23(e)(2)(C)(ii)-(iv). Each of these factors supports approval of the Settlement or is neutral and does not suggest any basis to conclude the Settlement is inadequate.

First, the Net Settlement Fund will be allocated to Settlement Class Members who submit valid Claim Forms in accordance with the Plan of Allocation. *See* § V, *infra*. Epiq Class Action & Claims Solutions, Inc.—the Claims Administrator selected by Lead Counsel and approved by the Court—will process claims under Lead Counsel's guidance, allow claimants an opportunity to cure any deficiencies in their claims or request the Court to review a denial of their claims, and, lastly, mail or wire Authorized Claimants their *pro rata* share of the Net Settlement Fund (per the Plan of Allocation), after Court approval. Claims processing like the method proposed here is standard in securities class action settlements as it has been long found to be effective, as well as necessary insofar as neither Plaintiffs nor Defendants possess the individual investor trading data

required for a claims-free process to distribute the Net Settlement Fund.[8] *See New York State Teachers' Ret. Sys. v. Gen. Motors Co.*, 315 F.R.D. 226, 233-34 (E.D. Mich. 2016) (approving settlement with a nearly identical distribution process).

Second, the relief provided to the Settlement Class is also adequate when considering the proposed award of attorneys' fees. As discussed in the accompanying fee memorandum, the proposed attorneys' fee of up to 33⅓% of the Settlement Fund (which, by definition, includes interest earned on the Settlement Amount) is reasonable in light of the work performed and the results obtained. *See, e.g.*, *Hale v. State Farm Mut. Auto. Ins. Co.*, 2018 WL 6606079, at *10 (S.D. Ill. Dec. 16, 2018) ("Courts within the Seventh Circuit, and elsewhere, regularly award percentages of 33.33% or higher to counsel in class action litigation."). More importantly, approval of the requested attorneys' fees is separate from approval of the Settlement, and the Settlement may not be terminated based on any ruling with respect to attorneys' fees. *See* Stipulation ¶16.

Third, as noted in the preliminary approval papers, the Parties entered into a confidential agreement under which Atlas may terminate the Settlement if Settlement Class Members with a certain percentage of shares that calculate to a Recognized Loss Amount under the Plan of Allocation exclude themselves in accordance with the requirements for requesting exclusion provided in the Notice. This type of agreement is standard in securities class action settlements and has no negative impact on the fairness of the Settlement. *See, e.g.*, *In re Carrier IQ, Inc., Consumer Privacy Litig.*, 2016 WL 4474366, at *5 (N.D. Cal. Aug. 25, 2016) (approving class action settlement and noting that such "opt-out deals are not uncommon as they are designed to ensure that an objector cannot try to hijack a settlement in his or her own self-interest.").

[8] 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 ¶13.

D. All Settlement Class Members Are Treated Equitably

The Settlement "treats class members equitably relative to each other." Rule 23(e)(2)(D). As discussed in § V, *infra*, under the Plan of Allocation each Authorized Claimant will receive his, her, or its *pro rata* share of the Net Settlement Fund. Because the Plan of Allocation does not provide preferential treatment to any Settlement Class Member, segment of the Settlement Class, or the Plaintiffs, this factor supports final approval. *See Wong*, 773 F.3d at 865 (examining and affirming plan of allocation that compensated class members based on timing and price of class period stock purchases).[9]

E. The Remaining Factors Are Satisfied

1. The Extent Of Discovery Completed And The Stage Of The Proceedings At Which Settlement Was Achieved Strongly Supports Final Approval

The relevant inquiry under this factor is whether the plaintiff has obtained a sufficient understanding of the case to gauge the strengths and weaknesses of the claims and the adequacy of the settlement. *See In re AT & T Mobility Wireless Data Servs. Sales Tax Litig.*, 789 F. Supp. 2d 935, 966 (N.D. Ill. 2011). The parties need not have engaged in extensive discovery as long as they have engaged in sufficient investigation of the facts to enable an intelligent appraisal of the settlement. *See id.* at 967; *Wong*, 773 F.3d at 864 864 (affirming approval of settlement where formal discovery had not commenced, but plaintiff had access to extensive public documents and potential witness interviews); *Fifth Third Bank*, 805 F. Supp. 2d at 587 (finding the absence of formal pre-settlement discovery did not weigh against approval of settlement and noting that the "pertinent inquiry is what facts and information have been provided").

Here, as set forth above and in the Wolke Declaration, by the time the Settlement was

[9] Plaintiffs separately seeks reimbursement of costs (including lost wages) incurred as a result of his representation of the Settlement Class. *See* 15 U.S.C. § 78u-4(a)(4).

reached, Plaintiffs and their counsel possessed information sufficient to intelligently assess the strengths and weaknesses of the case and evaluate the merits of the Settlement. *See* ¶¶39-61. Accordingly, this factor weighs in favor of final approval.

2. Recommendations Of Experienced Counsel

Courts also give weight to the opinion of experienced and informed counsel supporting the settlement. *See Gautreaux v. Pierce*, 690 F.2d 616, 634 (7th Cir.1982) (courts are "entitled to rely heavily on the opinion of competent counsel"); *see also Wong*, 773 F.3d at 864 (counsel accepting mediator's proposal were highly experienced and weighed in favor of affirming district court's approval of securities settlement). Consequently, Lead Counsel's belief in the fairness and reasonableness of the Settlement supports final approval.

IV. THE COURT SHOULD FINALLY CERTIFY THE SETTLEMENT CLASS

The Court's May 12, 2023 Amended Preliminary Approval Order certified the Settlement Class for settlement purposes only under Fed. R. Civ. P. 23(a) and (b)(3). *See* ECF No. 153, ¶¶2-4. There have been no changes to alter the propriety of class certification for settlement purposes. Thus, for the reasons stated in Plaintiffs' Preliminary Approval Brief (*see* ECF No. 140 at 17-19), Plaintiffs respectfully requests that the Court affirm its determinations in the Preliminary Approval Order certifying the Settlement Class under Rules 23(a) and (b)(3).

V. THE PLAN OF ALLOCATION IS FAIR AND REASONABLE

Plaintiffs also seek approval of the Plan of Allocation of settlement proceeds detailed in the Notice. *See* Ex. 1-A (Notice) at ¶¶52-60. Assessment of a plan of allocation of in a class action under Rule 23 is governed by "[t]he same standards of fairness, reasonableness and adequacy that apply to the settlement[.]" *Retsky Family Ltd. P'ship v. Price Waterhouse LLP*, 2001 WL 1568856, at *3 (N.D. Ill. Dec. 10, 2001). "When formulated by competent and experienced counsel, a plan for allocation of net settlement proceeds need have only a reasonable, rational basis

in order to be fair and reasonable." *Shah*, 2020 WL 5627171, at *6. Generally, an allocation method that "is tailored to the facts of [the] case [] is fair, reasonable, and adequate." *Fifth Third Bank*, 805 F. Supp. 2d at 590.

Here, the proposed Plan of Allocation, which was developed by Plaintiffs' damages expert in consultation with Lead Counsel, provides a fair and reasonable method of allocating the Net Settlement Fund among Settlement Class Members who submit valid Claim Forms. Under the Plan of Allocation, the Claims Administrator will calculate a Recognized Loss amount for each Settlement Class Member's purchases and/or sales of Atlas Securities during the Settlement Class Period for which adequate documentation is provided. *Id.* The Recognized Loss calculation will be based on several factors, including when the Atlas Securities were purchased and sold, the type of Atlas Securities purchased or sold, the purchase and sale price, and the estimated artificial inflation (or deflation in the case of put options) in the respective prices of the Atlas Securities at the time of purchase and sale as determined by Plaintiffs' damages expert. The Net Settlement Fund will be allocated to Authorized Claimants on a *pro rata* basis based on the relative size of their Recognized Loss. Similar plans have repeatedly been approved by courts in this District. *See Great Neck Capital*, 212 F.R.D. at 410 ("The plan is similar to those utilized in other securities class action cases and provides an equitable basis for distributing the fund to eligible class members."); *Shah*, 2020 WL 5627171, at *6 (approving substantially similar plan of allocation).

VI. CONCLUSION

For the reasons stated in this memorandum and in the Wolke Declaration, Plaintiffs respectfully request that the Court approve the proposed Settlement and Plan of Allocation as fair, reasonable, and adequate, and certify the Settlement Class for purposes of settlement.

Dated: August 2, 2023

Respectfully Submitted,

GLANCY PRONGAY & MURRAY LLP

By: *s/ Kara M. Wolke*

Kara M. Wolke
Kevin F. Ruf
Natalie S. Pang
1925 Century Park East, Suite 2100
Los Angeles, CA 90067
Telephone: (310) 201-9150
Email: kwolke@glancylaw.com
Email: kruf@glancylaw.com
Email: npang@glancylaw.com

Lead Counsel for Plaintiffs and the Settlement Class

LAWRENCE KAMIN LLC
Mitchell B. Goldberg
John S. Monical
Peter E. Cooper
300 S. Wacker Drive, Suite 500
Chicago, IL 60606
Telephone: (312) 372-1947
Email: mgoldberg@lawrencekaminlaw.com
jmonical@lawrencekaminlaw
pcooper@lawrencekaminlaw.com

Liaison Counsel for Plaintiffs and the Settlement Class

LAW OFFICES OF HOWARD G. SMITH
Howard G. Smith
3070 Bristol Pike, Suite 112
Bensalem, PA 19020
Telephone: (215) 638-4847
Facsimile: (215) 638-4867

Additional Counsel

CERTIFICATE OF SERVICE

I hereby certify that on August 2, 2023, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all registered ECF participants.

s/ Kara M. Wolke
Kara M. Wolke