SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

ERIE COUNTY EMPLOYEES' RETIREMENT SYSTEM, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. NN, INC., RICHARD D. HOLDER, THOMAS C. BURWELL, JR., ROBERT E. BRUNNER, WILLIAM DRIES, DAVID K. FLOYD, DAVID L. PUGH, STEVEN T. WARSHAW, J.P. MORGAN SECURITIES LLC, ROBERT W. BAIRD & CO. INCORPORATED, KEYBANC CAPITAL MARKETS INC., SUNTRUST ROBINSON HUMPHREY, INC., LAKE STREET CAPITAL MARKETS, LLC, STEPHENS INC., WILLIAM BLAIR & COMPANY, L.L.C., CJS SECURITIES, INC., and REGIONS SECURITIES LLC, Defendants.	Index No. 656462/2019 (Borrok, J.) Part 53 Motion Sequence No. 6

AFFIRMATION OF DEBORAH CLARK-WEINTRAUB IN SUPPORT OF MOTION FOR FINAL APPROVAL OF THE SETTLEMENT AND PLAN OF ALLOCATION, AND AWARD OF ATTORNEYS' FEES AND EXPENSES TO PLAINTIFF'S COUNSEL AND SERVICE AWARD TO PLAINTIFF

I, DEBORAH CLARK-WEINTRAUB, hereby affirm as follows:

1. I am an attorney duly licensed to practice law in the State of New York and am a partner of the law firm Scott+Scott Attorneys at Law LLP ("Scott+Scott"). Scott+Scott serves as counsel ("Plaintiff's Counsel") for Plaintiff Erie County Employees' Retirement System ("Erie County" or "Plaintiff"), in the above-captioned action (the "Action").[1] I am familiar with the proceedings in this Action and have personal knowledge of the matters set forth herein based upon my firm's and my own participation in this Action. If called as a witness, I could and would testify competently thereto.

2. I submit this affirmation pursuant to CPLR Article 9 in support of the accompanying Motion for Final Approval of the Settlement and Plan of Allocation, and Award of Attorneys' Fees and Expenses to Plaintiff's Counsel and Service Award to Plaintiff. The purpose of this affirmation is to set forth the reasons Plaintiff and Plaintiff's Counsel believe: (i) the Settlement is fair, reasonable, and adequate and should be approved by this Court; (ii) the proposed Plan of Allocation is fair and reasonable and should be approved; and (iii) the requested attorneys' fees and expenses and service award to Plaintiff should be granted.

I. INTRODUCTION

3. After over two and a half years of hard-fought litigation, Plaintiff and Plaintiff's Counsel have succeeded in obtaining a substantial recovery for the Settlement Class of $9,500,000 in cash.

4. Plaintiff and Plaintiff's Counsel respectfully submit that this is an outstanding result. As explained herein and in the accompanying memorandum, despite significant litigation

[1] Capitalized terms not otherwise defined herein have the meanings given to them in the Stipulation of Settlement ("Stipulation"), filed with this Court on July 25, 2020. NYSCEF No. 116.

risk, Plaintiff and its Counsel have achieved an above-average recovery of investor losses for a case of this type based on objective data. Assuming Plaintiff "ran the table" on all liability issues at trial and any subsequent appeal, Plaintiff's expert estimated that maximum theoretically recoverable statutory damages applying the damages formula in Section 11(e) of the Securities Act were approximately $93 million, but that reasonably recoverable damages were closer to $47.6 million, and perhaps less, based on Defendants' likely negative causation arguments. Accordingly, the $9,500,000 Settlement represents the recovery, in a complex and high-risk case, of approximately 10% of the maximum theoretically recoverable statutory damages and 20% of Plaintiff's best estimate of reasonably recoverable damages. This compares very favorably to settlements in other securities class action cases. For example, NERA Economic Consulting's most recent annual survey of trends and recoveries in securities class action litigation reported that from December 2012 to December 2021, the median settlement value as a percentage of NERA-defined investor losses[2] was 5.2% and 4.2% in securities class-action cases with NERA-defined investor losses of $20 million to $49 million and $50 million to $99 million, respectively. *See* J. McIntosh & S. Starykh, *Recent Trends in Securities Class Action Litigation: 2021 Full-Year Review*, NERA ECONOMIC CONSULTING, at 23 (Jan. 25, 2022) (https://www.nera.com/content/dam/nera/publications/2022/PUB_2021_Full-Year_Trends_012022.pdf). The total Settlement Amount also represents an above-average recovery in absolute terms. *See* Laarni T. Bulan & Laura E. Simmons, *Securities Class Action Settlements 2021 Review and Analysis*, CORNERSTONE RESEARCH, at 7 (listing $8.9 million as the median Securities

[2] NERA-Defined Investor Losses is a proprietary variable constructed by NERA assuming that investors had invested in stocks during the class period whose performance was comparable to that of the S&P 500 Index.

Act settlement from 2012 through 2021) (https://www.cornerstone.com/wp-content/uploads/2022/03/Securities-Class-Action-Settlements-2021-Review-and-Analysis.pdf).

5. Importantly, at the time the Settlement was agreed to, Plaintiff and its Counsel had a clear understanding of the strengths and weaknesses of the claims and the defenses thereto. By the time the Settlement was reached, Plaintiff's motion for class certification was fully briefed and scheduled to be heard, the Appellate Division, First Department had denied Defendants' appeal of this Court's Decision and Order denying Defendants' motion to dismiss, merits discovery was complete, and the Parties had retained and designated testifying experts.

6. The Settlement was accomplished through hard-fought and extensive arm's-length settlement discussions facilitated by a highly skilled and experienced mediator, Gregory P. Lindstrom, Esq. of Phillips ADR. After exchanging mediation statements, the Parties and NN Inc.'s D&O carriers attended a mediation via video conference on March 29, 2022, but did not reach agreement. Thereafter, Mr. Lindstrom continued to engage with the Parties as merits discovery proceeded. Following the First Department's ruling and the completion of merits discovery, Mr. Lindstrom made a mediator's proposal that the Action be settled for a non-recourse cash payment of $9,500,000, which the Parties accepted.

7. The Settlement has the full support of Plaintiff. Erie County Aff., ¶8.[3]

8. Pursuant to the Order Preliminarily Approving Settlement and Providing for Notice ("Preliminary Approval Order"), dated September 1, 2022 (NYSCEF No. 119), the Notice and the Proof of Claim form (the "Notice Packet") were mailed to potential Settlement Class Members

[3] "Erie County Aff." refers to the Affirmation of Dr. Kyle Foust on behalf of Erie County Employees' Retirement System in Support of Motions for: (1) Final Settlement Approval; (2) Attorneys' Fees and Payment of Litigation Expenses; and (3) Plaintiff's Service Award, dated November 1, 2022, submitted herewith.

who could be identified with reasonable effort; the Notice Packet was posted on the Internet at www.NNIncSecuritiesLitigation.com; and the Summary Notice was published once over a national newswire service. *See* Affirmation of Justin R. Hughes Regarding Notice Dissemination, Publication, and Requests for Exclusion Received to Date ("Hughes Aff."), submitted herewith.

9. The Court-ordered deadline for filing objections to the Settlement or requesting exclusion from the Settlement Class is November 15, 2022. To date, no objections to any aspect of the Settlement have been filed by Settlement Class Members nor have any Settlement Class Members requested exclusion from the Settlement Class.[4]

10. For all of the reasons set forth herein, and in light of the excellent result obtained, notwithstanding the significant risks of the litigation detailed below, Plaintiff and Plaintiff's Counsel respectfully submit that the proposed Settlement is fair, reasonable, and adequate in all respects and that the Court should grant final approval.

11. In addition to seeking final approval of the Settlement, Plaintiff also seeks approval of the proposed Plan of Allocation, which is consistent with allocation plans that courts have approved in similar cases. The Plan of Allocation was developed by Plaintiff's expert Scott D. Hakala of ValueScope, Inc. and provides for the fair and equitable distribution of the Net Settlement Fund to Settlement Class Members who submit valid Claim Forms and, therefore, is fair and reasonable.

12. Plaintiff's Counsel seek an award of attorneys' fees of 33 and 1/3% of the Settlement Amount (or $3,166,666.67) and payment of their litigation expenses for costs necessary to prosecute the Action totaling $170,217.76 with interest on both amounts earned at the same rate

[4] Plaintiff will address any objection(s) and/or request(s) for exclusion in its Reply Brief In Support of Final Approval of the Settlement to be filed by November 23, 2022.

earned on the Settlement Fund. *See* accompanying Affirmation of Daryl F. Scott Filed on Behalf of Scott+Scott Attorneys at Law LLP in Support of Application for Award of Attorneys' Fees and Expenses ("Scott+Scott Aff."), ¶5. As discussed below, Plaintiff's Counsel's requested fees amount to a modest 1.1 multiple of Plaintiff's Counsel's "lodestar" (*i.e.*, Plaintiff's Counsel's hourly rates multiplied by the hours spent on prosecuting and settling this Action). *Id.* Plaintiff's Counsel respectfully submits that the requested fee is fair and reasonable given the excellent result obtained here and the extensive work performed by Plaintiff's Counsel. As set forth in the accompanying Memorandum, it is also consistent with awards in similar securities class action cases under both the percentage and lodestar methodologies. Memorandum of Law in Support of Motion for Final Approval of Settlement and Plan of Allocation and Award of Attorneys' Fees and Expenses to Plaintiff's Counsel and Service Award to Plaintiff ("Memo.") at §§IV.A, IV.B. Again, Plaintiff supports this request.

13. In addition, Plaintiff requests an award in the amount of $15,000 for its time and expenses representing and serving the best interests of the Settlement Class, an amount within the range typically granted to plaintiffs in securities and other similar class actions. Memo. at §IV.D.

II. BACKGROUND

A. NN & the SPO

14. This is an action for violation of Sections 11, 12(a)(2), and 15 of the Securities Act of 1933 arising out of alleged material, untrue statements, and omissions in the Registration Statement and Prospectus (the "Offering Documents") issued in connection with NN, Inc.'s ("NN" or the "Company") September 14, 2018 secondary public offering (the "Offering" or "SPO"). NN sold 14.375 million shares in the SPO at a price of $16 per share for gross proceeds of $230 million to repay a $200 million second-lien credit facility that had been utilized to acquire Paragon Medical ("Paragon") in May 2018, a portion of the more than $1 billion in debt NN had accumulated in

completing several strategic acquisitions between 2014 and 2018. Following these acquisitions, NN reorganized itself into three business segments focused on discreet end markets – Mobile Solutions (general industrial and automotive), Life Sciences (medical), and Power Solutions (electrical, aerospace, and defense). ¶¶3, 35-36, 40.[5]

15. The Action, which was filed on November 1, 2019, alleged that the stated goal of the acquisitions and the reorganization was to diversify NN's business away from its focus on the cyclical automotive end market and transform the Company into a global diversified industrial business that was less vulnerable to a downturn in any one geographic or product market and accelerate growth by creating multiple revenue streams across a global series of end markets. *Id.* Plaintiff alleged that the Offering Documents for the SPO touted this purported transformation, describing the Company as a "diversified industrial business with a comprehensive geographic footprint in attractive high-growth market segments" that possessed a "[l]ong-term blue-chip customer base" of predominantly non-retail customers that "limit[ed] volatility" and "provide[d] enhanced sales visibility." ¶¶59-61. Additionally, Plaintiff alleged that the Offering Documents emphasized NN's "significant exposure to emerging markets in Asia" with "significant growth potential" and assured investors that "[t]he diverse nature, size and reach of [its] customer base [has] provide[d] resistance to localized market and geographic fluctuations and help[ed] stabilize[] overall product demand." ¶¶60-61.

16. Plaintiff alleged that in fact, NN's revenue remained volatile, unpredictable, and sensitive to changes in individual geographic and product markets in particular, China's automotive market. ¶6. Specifically, Plaintiff alleged that NN's Mobile Solutions business

[5] All "¶_" and "¶¶__" references are to the Amended Complaint for Violations of the Securities Act of 1933 ("Amended Complaint") (Jan. 24, 2020), attached hereto as Exhibit 1.

segment, which accounted for 40% of the Company's revenue, was being adversely impacted by a downturn in China's automotive market, including due to increased regulation of the peer-to-peer ("P2P") lending that had helped fuel the spectacular growth in auto sales in that country. ¶¶42, 45-50. Additionally, Plaintiff alleged that at the same time, Power Solutions' earnings were also stagnating throughout 2018 due to a loss of orders from two large customers. ¶¶6, 55. Plaintiff alleged that by the time of the SPO, which occurred just two weeks before the end of the third quarter of 2018, these undisclosed events were already adversely impacting NN's financial results. ¶7.

17. The SPO closed on September 18, 2018, just 12 days before the end of NN's third quarter. ¶57. Shortly thereafter, on November 7, 2018, the Company revealed deeply disappointing revenue and adjusted earnings per share, both below analysts' consensus expectations and at the low-end of the Company's own guidance range, driven by lower-than-expected sales in Mobile and Power Solutions. ¶69. NN also lowered its full year 2018 guidance for every financial metric, including revenue, adjusted operating margin, adjusted EBITDA margin, adjusted diluted EPS, and free cash flow ("FCF"). *Id.*

18. On the next trading day, November 8, 2018, NN's stock price fell sharply, closing at $8.07 per share, a 35% drop against the closing price from the previous day before the disappointing earnings were released. ¶73.

B. Procedural History

1. Plaintiff's Pre-Filing Investigation and Preparation of the Complaints

19. Plaintiff's Counsel undertook an extensive investigation before filing the initial complaint and the Amended Complaint that included a review of U.S. Securities and Exchange Commission ("SEC") filings made by NN, analyst and media reports about the Company, and Company press releases. In addition, Plaintiff's Counsel conducted research with respect to

China's automotive market, including relevant trends in monthly production and sales, and factors influencing these metrics, including recent developments with respect to the country's P2P lending platforms. Further, Plaintiff's Counsel identified, located, and interviewed persons having knowledge of the Company's operations.

20. Plaintiff's Counsel also reviewed and researched the relevant legal precedents concerning Plaintiff's claims. All of the foregoing culminated in Plaintiff's filing of the initial complaint on November 1, 2019, and then an even more detailed operative Amended Complaint on January 24, 2020. *See* NYSCEF Nos. 7, 18.

2. Plaintiff Successfully Opposed Defendants' Motion to Dismiss

21. On May 4, 2020, Defendants filed a motion to dismiss the Amended Complaint arguing, among other things, that Plaintiff had failed to state a claim for relief because (i) the Offering Documents had warned of the very risks Plaintiff claimed had materialized; (ii) the alleged untrue statements and omissions were not actionable; (iii) Plaintiff failed to allege sufficient facts to establish that it purchased NN shares from any Defendant in the Offering and, therefore, lacked standing to assert a claim under Section 12(a)(2) of the Securities Act; (iv) Plaintiff failed to allege loss causation; (v) Plaintiff failed to allege that Defendants had an affirmative duty to disclose under Items 105 and 303 of Regulation S-K; and (vi) Plaintiff could not assert control person liability under Section 15 of the Securities Act against any Defendant because its underlying Section 11 and 12(a)(2) claims failed. NYSCEF Nos. 20-30. In addition, notwithstanding earlier decisions of this Court rejecting the argument, Defendants also argued that the Securities Act claims pled in the Amended Complaint were subject to the heightened pleading standard of CPLR 3016(b).

22. On May 22, 2020, Plaintiff filed an opposition to the motion to dismiss. NYSCEF No. 31. As an initial matter, citing prior decisions of this Court, Plaintiff responded that the

Securities Act claims at issue in the Action were subject to notice pleading because they were based on an alleged breach of duty. In addition, Plaintiff argued that NN had a clear duty to disclose the omitted facts with respect to Mobile and Power Solutions' businesses because Defendants had chosen to speak with respect to these topics and the Offering Documents were materially misleading absent disclosure. Plaintiff further argued that the market reaction in response to disclosure of the omitted information was persuasive evidence of its materiality and contradicted Defendants' arguments that the alleged untrue statements and omissions were puffery, inactionable opinions, or protected by the PSLRA safe harbor. Plaintiff also argued that the risk warnings in the Offering Documents cited by Defendants were themselves false and misleading because the relevant risks had already occurred. Further, Plaintiff argued that Defendants had an independent duty to disclose the downturn in China's automotive market and the loss of orders from Power Solutions customers under Items 105 and 303 of Regulation S-K because they were known uncertainties that existed at the time of the SPO. Plaintiff also argued that it had no duty to plead or prove loss causation with respect to the Securities Act claims asserted and that it had sufficiently alleged the Defendants were statutory sellers under Section 12(a)(2). Finally, Plaintiff argued that it had adequately alleged control person liability under Section 15, having properly pleaded violations of Sections 11 and 12(a)(2). However, in the event the Court agreed that the Action should be dismissed, Plaintiff requested leave to amend pursuant to CPLR 3025(b).

23. Defendants filed a reply in support of their motion to dismiss on June 22, 2020, reiterating the arguments made in their opening brief. NYSCEF No. 32.

24. On May 14, 2021, the Court denied Defendants' motion to dismiss in its entirety holding that (i) the heightened pleading standard of CPLR 3016(b) did not apply, but even if it did,

the Amended Complaint satisfied that standard; (ii) there was "no question" Defendants had a duty to disclose the omitted facts concerning the Mobile and Power Solutions businesses because Defendants' affirmative statements on these topics had triggered a duty to disclose the "whole truth" with respect to these issues; (iii) the alleged misstatements were not immaterial puffery; (iv) the Offering Documents' risk disclosures were generic in nature and did not warn investors of the risks Plaintiff claimed materialized; (v) the Amended Complaint adequately alleged that Defendants were statutory sellers of the common stock sold in the SPO; and (vi) Plaintiff adequately alleged control person liability because the Amended Complaint alleged primary violations of the Securities Act. NYSCEF No. 41.

3. Plaintiff Successfully Opposed Defendants' Appeal of This Court's Decision and Order

25. Thereafter, on June 9, 2021, Defendants filed a notice of appeal in the First Department (NYSCEF No. 45) and perfected the appeal from this Court's Decision and Order on September 7, 2021 (App.-Div. NYSCEF No. 7).[6] Defendants' appellate brief continued to press the argument that Plaintiff's Securities Act claims were subject to CPLR 3016(b)'s heightened pleading standard notwithstanding an intervening decision of the First Department which had held, consistent with this Court's prior rulings, that Securities Act claims were subject to notice pleading. In addition, Defendants argued that this Court's Decision and Order was erroneous because it (i) relied on "unpled allegations" of knowledge with respect to the business issues allegedly impacting Mobile and Power Solutions, (ii) treated inactionable puffery and forward-looking statements as actionable misrepresentations of fact, (iii) misinterpreted SEC regulations,

[6] All references to "App.-Div. NYSCEF No. _" are to filings on the Appellate Division docket for this case, Case No. 2021-02102.

(iv) relied on "conclusory" control person allegations, and (v) wrongly decided that the complaint had adequately alleged that Plaintiff purchased securities in the SPO from Defendants.

26. On October 6, 2021, Plaintiff filed a brief in response to Defendants' appeal. App.-Div. NYSCEF No. 8. As an initial matter, Plaintiff argued that the First Department had already held that CPLR 3016(b)'s heightened pleading standard did not apply to the Securities Act claims in the Action because fraud was not an element of the claims, and Defendants had presented no compelling circumstances to depart from that ruling. In addition, Plaintiff argued that the alleged omissions concerning Mobile and Power Solutions' businesses were material and required to be disclosed in order to make the statements in the Offering Documents not misleading. Addressing Defendants' contention that this Court had relied on unpled allegations of knowledge, Plaintiff argued that it was not required to plead knowledge on the part of Defendants, only the existence of the undisclosed facts at the time of the SPO, which it had, and that even if required, Defendants' knowledge of the undisclosed facts could be inferred from the surrounding circumstances. Plaintiff also argued that the alleged misstatements were not puffery or protected forward-looking statements and that the risk warnings cited by Defendants did not adequately apprise investors of the omitted events adversely impacting Mobile and Power Solutions at the time of the SPO. Further, Plaintiff argued that this Court had correctly interpreted Items 105 and 303 in holding that the Offering Documents omitted disclosures required by these provisions. Finally, Plaintiff argued that this Court had correctly concluded that the Amended Complaint adequately alleged Section 12(a)(2) claims and control person liability.

27. On November 12, 2021, Defendants filed a reply in support of their appeal, repeating the arguments in their opening brief. App.-Div. NYSCEF No. 12.

28. The First Department heard oral argument on Defendants' appeal on May 10, 2022. On May 31, 2022, the First Department issued an order unanimously affirming this Court's Decision and Order denying Defendants' motion to dismiss. App.-Div. NYSCEF No. 22.

29. Following this Court's denial of Defendant's motion to dismiss, on June 17, 2021, Defendants filed answers denying the allegations in the Amended Complaint and asserting, in the aggregate, 70 affirmative defenses. NYSCEF Nos. 53-54.

4. Plaintiff Completed Merits Discovery

30. On July 9, 2021, Plaintiff served its First Request for Production of Documents to the NN Defendants and its First Request for Production of Documents to the Underwriter Defendants. Defendants served their responses and objections on July 30, 2021. Thereafter, the Parties negotiated search terms and custodians to be used to locate responsive electronically stored documents, as well as a Confidentiality Stipulation and Protective Order and ESI Protocol. Collectively, Defendants produced approximately 34,000 documents (totaling approximately 170,000 pages) in response to Plaintiff's initial and later follow-on requests for production.

31. Defendants also served initial requests for production on Plaintiff and Plaintiff filed responses and objections thereto on July 30, 2021. Plaintiff's Counsel identified and collected responsive documents using search terms and custodians agreed to by the Parties. In total, Plaintiff produced 61 documents (totaling over 3,300 pages) in response to Defendants' requests for production.

32. After conducting a thorough review of Defendants' production, between May 4, 2022 and June 15, 2022, Plaintiff deposed nine current and former NN officers, directors, and employees, including Defendants Richard D. Holder, NN's former CEO, Thomas Burwell, NN's former CFO, and Robert E. Brunner, the Chairman of NN's Board of Directors at the time of the

SPO. Plaintiff also deposed a representative from J.P. Morgan Securities LLC ("JPM"), the lead underwriter of the SPO.

33. Plaintiff's representative, Dr. Kyle Foust, the Erie County, Pennsylvania controller responsible for the administration of the Erie County Employees' Retirement System, was deposed by Defendants on January 20, 2022.

34. On May 12, 2022, Plaintiff served its First Set of Interrogatories on Defendants. Defendants served Responses and Objections on June 1, 2022. On May 18, 2022, Defendants served their First Set of Interrogatories on Plaintiff. Plaintiff served its Responses and Objections thereto on May 7, 2022.

35. The documents and depositions discussed above provided Plaintiff and Plaintiff's Counsel with a strong foundation from which to assess the risks and strengths of the claims.

5. Plaintiff's Contested Motion for Class Certification

36. On November 15, 2021, Plaintiff filed its Motion for Class Certification, arguing that the Action's strict liability claims under the Securities Act easily satisfied the prerequisites for class certification under CPLR §§901 and 902. NYSCEF No. 64. On February 7, 2022, Defendants opposed the motion arguing that (i) the proposed Class definition improperly included persons who suffered no damages because it did not contain a temporal limitation tied to corrective disclosures; (ii) Plaintiff was atypical because its investment advisers had complete authority to make investment decisions on its behalf; (iii) Plaintiff was subject to a unique defense because it did not purchase NN stock directly from any Defendant and, therefore, did not have standing to bring a claim under Section 12(a)(2); and (iv) Plaintiff was an inadequate class representative because "it [was] little more than a figurehead" and had a portfolio monitoring agreement with Plaintiff's Counsel. NYSCEF No. 72.

37. On April 15, 2022, Plaintiff filed its Reply Brief in further support of its motion for class certification. NYSCEF No. 82. Plaintiff argued that the proposed Class definition was standard in Securities Act cases and that Defendants' demand for a temporal limitation tied to corrective disclosures was contrary to the statutory damages formula contained in Section 11(e), which presumes that any diminution in the value of an offered security between the offering date and the date a Section 11 case is filed resulted from the alleged untrue statements and omissions, subject to a defendants' heavy burden to show negative causation. *See Akerman v. Oryx Commc'ns Inc.*, 810 F.2d 336, 341 (2d Cir. 1987). In addition, Plaintiff strenuously rejected Defendants' attack on its typicality, arguing that pension funds routinely rely on outside investment advisers to make investment decisions but are nonetheless routinely appointed as class representatives in securities class action cases such as this. Further, Plaintiff demonstrated that discovery had substantiated that it purchased shares in the SPO directly from lead underwriter JPM at the SPO price without paying a commission. Finally, Plaintiff argued that it was an adequate class representative as demonstrated by its high level of involvement in the Action and that courts have routinely rejected the contention that a portfolio monitoring agreement with counsel renders institutional investors like Plaintiff inadequate to serve as a class representative.

38. Plaintiff's motion for class certification was scheduled for oral argument on August 9, 2022.

6. Plaintiff Participated in Arm's Length Mediation Culminating in the Proposed Settlement

39. Following the completion of briefing in the First Department, the Parties agreed that it would be productive to engage a mediator to explore the possibility of reaching a negotiated resolution of the Action. To that end, in February 2022, the Parties engaged Mr. Lindstrom, a

nationally recognized mediator who has successfully mediated numerous securities class action cases.

40. The parties exchanged detailed opening and reply mediation statements (and voluminous exhibits thereto) in advance of the mediation highlighting the factual and legal issues in dispute. In advance of the mediation, Plaintiff's Counsel also consulted extensively with their expert, Mr. Hakala, to critically evaluate estimated recoverable damages and to test anticipated assertions by Defendants regarding the same.

41. On March 29, 2022, the parties attended a formal mediation with Mr. Lindstrom. The mediation occurred via video conference and was attended by counsel for the Parties and representatives of NN's D&O insurers. Although the Parties did not reach an agreement that day, Mr. Lindstrom remained in contact with the Parties. Following the First Department's ruling and the completion of merits discovery, Mr. Lindstrom made a mediator's proposal that the Action be settled for a non-recourse cash payment of $9,500,000 which was accepted by the Parties. Throughout the negotiations, Plaintiff and Plaintiff's Counsel were fully prepared to, and indeed did, continue litigating rather than accept a settlement that was not in the best interests of the Settlement Class.

7. Plaintiff Successfully Sought Preliminary Approval and Provided Notice of the Settlement

42. Following their acceptance of the Mediator's proposal the Parties negotiated formal settlement documentation, including the Stipulation, Class and Summary Notices, Proof of Claim Form, and proposed Orders, which were filed in connection with Plaintiff's Order to Show Cause on July 25, 2022. NYSCEF Nos. 114-117.

43. On September 1, 2022, the Court granted Preliminary Approval of the Settlement, directing Notice be disseminated to potential Settlement Class Members and nominees ahead of the final approval hearing. NYSCEF No. 121.

44. In accordance with the Preliminary Approval Order, on September 16, 2022, Plaintiff's Counsel, through the Claims Administrator, implemented a comprehensive Court-approved notice program whereby notice was given to the members of the Settlement Class by mail and by publication. Hughes Aff., ¶¶6, 11; *id.*, Exs. A, B. The Summary Notice was published on September 26, 2026, and the Notice has been, and continues to be, posted on the settlement website, www.NNIncSecuritiesLitigation.com, along with other Settlement-related documents. *Id.*, ¶11; *id.*, Ex. B. The Notice contained the information necessary for Settlement Class Members to evaluate the benefits of the Settlement and included directions for those Settlement Class Members wishing to: (a) exclude themselves from the Settlement Class; (b) object to the Settlement, the Plan of Allocation, the award of attorneys' fees and expenses to Plaintiff's Counsel or the requested service award to Plaintiff; (c) file a Proof of Claim; and (d) attend the Settlement Hearing.

45. While the November 15, 2022 deadline for objections and exclusions has not yet passed, to date, there have been no objections filed to any aspect of the Settlement, Plan of Allocation, requested award of attorneys' fees and expenses to Plaintiff's Counsel or requested service award to Plaintiff, and no requests for exclusion from the Settlement Class have been received.

46. Plaintiff's Counsel continues to manage the settlement process for the Action, including preparing the papers filed today and will present the Settlement to the Court at the final fairness hearing scheduled for December 1, 2022.

47. In sum, it is respectfully submitted that the procedural history of the Action detailed above demonstrates that Plaintiff and Plaintiff's Counsel have aggressively and diligently prosecuted the Action from its start, through successful motion practice and extensive discovery, until achieving an outstanding Settlement for the Settlement Class.

III. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE, AND PROVIDES A RECOVERY FOR CLASS MEMBERS BEYOND WHAT SIMILAR CASES TYPICALLY ACHIEVE

48. New York Courts have long evaluated whether a proposed class action settlement meets this standard by applying the following five factors articulated by the First Department *In re Colt Indus. S'holder Litig.*, 155 A.D.2d 154, 160 (N.Y. App. Div. 1990) – the likelihood of success, the extent of support from the parties, the judgment of counsel, the presence of bargaining in good faith, and the nature of the issues of law and fact. *Id*. at 160. Plaintiff and Plaintiff's Counsel respectfully submit that each of these factors strongly favors final approval of the proposed Settlement.

A. Plaintiff's Likelihood of Success

49. Plaintiff believes that it adduced substantial evidence in discovery supporting its claims that the Offering Documents contained materially untrue and misleading statements concerning NN's Mobile and Power Solutions businesses and was prepared to continue litigating. Plaintiff also understood, however, that success was not guaranteed. Simply put, there was no assurance that the Settlement Class would have recovered an amount equal to, let alone greater than, the proposed Settlement had the litigation continued.

50. Although the Action survived Defendants' motion to dismiss, that motion tested the sufficiency of the factual allegations in the Amended Complaint, which were presumed to be true. Throughout the litigation, Defendants consistently and vigorously denied that Plaintiff could prove that any of the challenged statements in the Offering Documents were materially untrue and

misleading. While Plaintiff had substantial responses to Defendants' arguments, the stages at which this Court would determine the existence of, and a jury would ultimately resolve, factual disputes in the Action – summary judgment and later trial – presented serious risks that weighed in favor of settlement. For example, among other things, Defendants disputed whether NN's Power Solutions segment had lost two large customers and whether China's automotive market was stagnating due to the decreased availability of P2P lending adversely impacting NN's Mobile Solutions business segment prior to the SPO. Although Plaintiff believed it had adduced compelling evidence in discovery with respect to these issues, there was no guarantee that a jury would have accepted Plaintiff's view of the evidence.

51. Even if Plaintiff was able to establish liability, the risk of establishing damages and overcoming Defendants' affirmative defense of "negative causation" was a primary concern. Although Section 11(e) of the Securities Act creates a statutory presumption that any diminution in the value of an offered security between the offer date and the date a Section 11 claim is filed is due to the alleged untrue statements and omissions in the offering documents, a defendant may escape liability to the extent it can show that the declines were caused by matters unrelated to the matters that were allegedly misstated in or omitted from the offering documents. Here, as noted above, while Plaintiff's expert estimated that maximum theoretically recoverable statutory damages were approximately $93 million, he also estimated that reasonably recoverable damages were closer to $47.6 million, and perhaps less, based on Defendants' likely negative causation arguments. Defendants, of course, argued that damages were zero. Although Plaintiff believed that it had strong responses to Defendants' anticipated negative causation arguments, the outcome of a "battle of the experts" on these complex issues was uncertain and militates strongly in favor of approving the Settlement.

52. Further, even if Plaintiff had prevailed on liability, causation, and damages issues at trial, if the Parties' litigation experience in this hard-fought case is any guide, it is reasonably likely that Defendants would have then filed post-verdict motions and/or appeals. Thus, litigating this Action to finality would have required the Class to wait additional years and incur additional expense before being able to collect an uncertain recovery. By comparison, the Settlement represents an excellent recovery as well as a certain and immediate one.

B. Plaintiff's Counsel's Judgment Supports the Settlement

53. Given the stage of the proceedings at which the Settlement was achieved, Plaintiff and Plaintiff's Counsel had a strong understanding of the strengths and weaknesses of the Settlement Class' claims.

54. The Settlement was only reached after: (i) an extensive factual investigation described in paragraph 19 above; (ii) the parties briefed and the Court denied Defendants' motion to dismiss; (iii) the parties briefed and argued and the First Department rejected Defendants' appeal of this Court's Order denying Defendants' motion to dismiss; (iv) the completion of merits discovery; (v) the parties fully briefed Plaintiff's motion for class certification; (vi) Plaintiff retained and consulted with experts on issues including (a) causation and damages, and (b) due diligence of underwriters and corporate officers and directors in connection with a securities offering; and (vii) the parties engaged in a comprehensive arm's length mediation process.

55. Based on all of the foregoing, Plaintiff's Counsel has concluded that the Settlement is fair, reasonable, and adequate for the Settlement Class.

C. The Extent of Support from the Parties Supports the Settlement

56. As noted above and in its accompanying Affirmation, Erie County, which has been an active participant in and carefully monitored the Action since its inception, strongly supports the Settlement. Erie County Aff., ¶8.

57. In addition, the Court-ordered notice program informed Class Members of the Settlement's material terms, the Plan of Allocation, the potential amount of fees and expense reimbursement that Plaintiff's Counsel would seek, the potential amount of the service award Plaintiff would seek, and of the time and manner by which they could object to any of those points or exclude themselves from the Settlement Class altogether.

58. As set forth in the accompanying Affirmation of Justin Hughes, 7,839 copies of the Notice and Proof of Claim Form have been mailed to likely Settlement Class Members and nominees. Hughes Aff., ¶10. In addition, copies of the Notice were posted on the settlement website, and the Summary Notice was published in *PR Newswire*. *Id.*, ¶¶11, 13.

59. The deadline for submitting objections or requests for exclusion is November 15, 2022.

60. Although that deadline has not yet passed, as of the date of this Affirmation, the Claims Administrator has not received any objections or exclusion requests. This reaction of the Class indicates support for, and the reasonableness of, finally approving the Settlement and approving the fee and expense request and the service award to Plaintiff.

D. The Settlement Was the Result of an Arm's-Length Negotiation by Experienced Counsel with a Nationally Respected Mediator

61. In evaluating whether the settlement is fair, courts consider whether the settlement was the product of arm's-length negotiation, including whether a neutral mediator was involved or whether, by contrast, the plaintiffs appear to have rushed into settlement negotiations prematurely.

62. As described above, the Settlement is the product of a hard fought and considered negotiation process under the supervision of an experienced mediator following the completion of merits discovery. *Supra*, ¶¶39-41. The Settlement came after a mediator's proposal and the

parties' further negotiations over the details of the Stipulation in the several weeks that followed their agreement-in-principle.

63. Because this Action was hard-fought at every stage by experienced counsel and the Settlement was overseen by a reputable, experienced mediator, this strongly weighs in favor of a finding that the Settlement is fair, reasonable, and should be approved.

E. The Complexity of the Action Supports Final Approval of the Settlement

64. Given their nature, courts have recognized that, in general, securities class actions are highly complex. *See In re AOL Time Warner, Inc. Secs. & ERISA Litig.*, No. MDL 1500, 02 Civ. 5575(SWK), 2006 WL 903236, at *8 (S.D.N.Y. Apr. 6, 2006). This complexity makes the outcome of any securities class action case highly uncertain, notwithstanding the perceived strength of the claims, and supports final approval of a settlement such as the one here that recovers an above-average percentage of reasonably recoverable damages.

IV. THE PLAN OF ALLOCATION IS CUSTOMARY, FAIR, AND REASONABLE

65. To receive a distribution from the Net Settlement Fund, Settlement Class Members are required to submit a Proof of Claim form. The Claim Form was mailed with the Notice and is also available on the settlement website. The Claims Administrator will review the claim forms and supporting documents submitted, provide an opportunity to cure any deficiencies, and mail or wire Settlement Class Members their *pro rata* share of the Net Settlement Fund in accordance with the proposed Plan of Allocation.[7]

66. The proposed Plan of Allocation was formulated by Plaintiff's expert, Mr. Hakala. The Plan of Allocation follows the statutory framework adopted by Congress in Section 11(e) of the Securities Act and is similar to the plans approved in other Securities Act cases.

[7] To receive a distribution, the Authorized Claimant's payment amount must be $10.00 or more. *See* Hughes Aff., Ex. A, Notice at 5.

67. Specifically, the Plan of Allocation is based on the decline in value of NN's shares that occurred following the revelation of NN's earnings shortfalls on November 7, 2018 and March 13, 2019, which Plaintiff alleges disclosed the truth concerning the problems with NN and its Mobile and Power Solutions divisions (which, in turn, reduced the amount of artificial inflation in the stock price allegedly caused by the alleged misstatements and omissions at issue). The Plan of Allocation will apply in the same manner to all Class Members and, therefore, will result in an equitable distribution of the proceeds among Class Members who submit valid claims.

68. The Plan of Allocation in its entirety was set forth in the Notice that was distributed to all Settlement Class members. Hughes Aff., Ex. A, Notice at 4-6. To date, no objections to the Plan of Allocation have been filed. Plaintiff's Counsel respectfully submits that the Plan of Allocation is fair and reasonable and should be approved by the Court.

V. PLAINTIFF'S COUNSEL'S REQUEST FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND PLAINTIFF'S REQUEST FOR A SERVICE AWARD

A. The Requested Fee Is Reasonable Under the Factors Considered by New York Courts

69. As explained in the accompanying memorandum, New York courts have long recognized that attorneys who represent a class and achieve a benefit for class members are entitled to compensation for their services, and that attorneys who obtain a recovery for a class in the form of a common fund are entitled to an award of fees and expenses from that fund. Memo., §IV.A. Here, Plaintiff's Counsel seeks an attorneys' fees award of 33 and 1/3% of the Settlement for the 3,352.4 hours of total time they devoted to this Action. *See* Scott+Scott Aff., ¶4. The request is consistent with the noticed amount, the excellent result achieved, the complex and extensive work performed, and is fully supported by Plaintiff, who is a sophisticated institutional investor. *See* Hughes Aff., Ex. A, Notice at 7; Erie County Aff., ¶8. Plaintiff's Counsel believes such a fee is reasonable and appropriate in light of the result obtained and the resources Scott+Scott expended

in prosecuting the Action and the inherent risk of nonpayment from representing the Settlement Class on a contingent basis. As further detailed in the accompanying Memorandum, an award of 33 and 1/3% of the Settlement Amount is commonly granted by New York Courts, and other courts throughout the country, in similar securities cases. Memo., §IV.A.

70. New York Court's analyzing of attorneys' fees requests consider a number of factors, including: (i) the risks of the action; (ii) the existence of a precedential decision in a similar, prior litigation; (iii) counsel's experience; (iv) the magnitude and complexity of the action; (v) the amount recovered for the class; and (vi) the work done by counsel. *See, e.g., Fiala v. Metro. Life Ins. Co.*, 899 N.Y.S.2d 531, 540 (N.Y. Sup. Ct. 2010). Plaintiff's Counsel respectfully submits that the fee request is justified based on all of these factors.

1. The Risks of the Action

71. Plaintiff faced substantial challenges in proving its claims, including summary judgment, trial, and the likelihood of additional appeals. The specific risks Plaintiff faced in proving its claims, along with the risks of proceeding to trial, are detailed above at ¶¶49-52.

72. Moreover, Plaintiff's Counsel, who worked on a contingent basis, bore the risk that no recovery would be achieved. Plaintiff's Counsel understood that they were embarking on a complex, expensive, risky, and lengthy litigation with no guarantee of ever being compensated for the substantial investment of time and money the case would require. That risk was particularly pronounced here given the absence of any regulatory investigation or earnings restatement as noted below.

73. Plaintiff's Counsel's persistent efforts in the face of substantial risks and uncertainties is what resulted in a favorable result for the Settlement Class and supports the requested fee.

2. Plaintiff's Counsel Did Not Have the Benefit of a Prior Judgment

74. This Action was the only case filed and prosecuted arising from the allegedly false and misleading Offering Documents. There was no earnings restatement or government regulatory action to assist Plaintiff's Counsel's investigation. Plaintiff's Counsel was thus required to develop the facts and legal theories in an effort to obtain a recovery for the Settlement Class. In the face of this adversity, Plaintiff's Counsel secured an outstanding result, *i.e.*, the $9,500,000 cash recovery.

3. Plaintiff's Counsel Is Highly Experienced in Securities Class Action Cases

75. Plaintiff's Counsel, Scott+Scott, has a significant history of achieving successful results in securities class action cases. Moreover, Scott+Scott vigorously prosecuted this Action through merits discovery against skillful and experienced counsel representing Defendants, Simpson Thacher & Bartlett LLP and Sullivan & Cromwell LLP, and was able to use its substantial experience in securities class actions to obtain a favorable result for the Settlement Class in just two and a half years. Thus, this factor supports the requested fee.

4. The Magnitude and Complexity of the Action

76. As noted above, given their nature, courts have recognized that, in general, securities class actions are highly complex. This Action is no exception.

77. In addition, the magnitude of the Action was significant as the potential damages ranged in the tens of millions of dollars. Thus, Plaintiff's Counsel's ability to resolve the Action on such favorable terms further supports the requested fee.

5. The Amount Recovered

78. Perhaps the most important factor considered in making a fee award is the result obtained. Here, the Settlement Amount supports Plaintiff's Counsel's requested fee. As noted

above, while Plaintiff's expert estimated maximum, presumptive statutory damages of approximately $93 million under Section 11(e) of the Securities Act, he also estimated that reasonably recoverable damages were likely lower – $47.6 million or even less – in the event that Defendants succeeded in establishing some measure of negative causation. On the other hand, Defendants maintained that recoverable damages were zero. Thus, the Settlement represents a 20% recovery of Plaintiff's best estimate of reasonably recoverable damages.

79. Using either estimate, the Settlement represents a substantial, and as noted above, an above-average recovery, when compared against settlements achieved in similar cases. *Supra*, ¶4.

80. That the Settlement is an excellent outcome for the Class is also demonstrated by the significant obstacles Plaintiff's Counsel overcame in order to achieve it, including Defendants' motion to dismiss and Defendants' appeal of the Court's Decision and Order denying that motion.

81. Thus, this factor supports Plaintiff's Counsel's requested fee.

6. The Work Done by Plaintiff's Counsel

82. Since November 2019, Plaintiff's Counsel has expended a substantial amount of time and effort in prosecuting the Action and negotiating the Settlement. *See supra*, ¶¶19-47 and Scott+Scott Aff., ¶4. Plaintiff's Counsel's work included, among other things:

(a) Performing an extensive factual investigation with respect to NN's SPO and the Offering Documents;

(b) Preparing and filing two detailed complaints;

(c) Briefing Defendants' motion to dismiss the Action;

(d) Briefing and arguing Defendants' appeal from this Court's Decision and Order denying Defendants' motion to dismiss the Action;

(e) Issuing document requests to Defendants and meeting and conferring with respect to search terms and custodians to be used in connection with Defendants' search for relevant and responsive documents;

(f) Issuing interrogatories to Defendants;

(g) Negotiating an ESI Protocol and Confidentiality Order;

(h) Conducting a comprehensive review of the tens of thousands of pages of documents produced by Defendants;

(i) Drafting responses and objections to Defendants' discovery requests to Plaintiff, meeting and conferring with Defendants with respect to search terms and custodians, and searching for and producing relevant and responsive documents from Plaintiff's files;

(j) Deposing nine current and former officers and/or directors of NN and a representative of JPM, the lead underwriter in connection with the SPO;

(k) Briefing Plaintiff's motion for class certification;

(l) Interviewing and retaining expert witnesses on due diligence, causation, and damages;

(m) Preparing for and participating in a mediation with Mr. Lindstrom, submitting detailed opening and reply mediation statements, working with Mr. Hakala to analyze causation and damages issues, and participating in follow-up negotiations with the Mediator culminating in the Settlement; and

(n) Preparing the formal Settlement documentation, preliminary approval papers, and final approval papers.

83. Moreover, Plaintiff's Counsel's will continue to work through the final approval hearing and until any appeals have been exhausted. Thereafter, Plaintiff's Counsel will prepare a motion to distribute the Net Settlement Fund to Authorized Claimants once the work of the Claims Administrator is completed. Plaintiff's Counsel respectfully submits that this extensive and effective work supports the requested fee.

84. The Notice informed potential Settlement Class Members of Plaintiff's intent to request a fee award of up to 33 and 1/3% of the Settlement Amount and to date, there have been no objections to the requested award.

B. The Requested Expenses Are Fair and Reasonable

85. Plaintiff's Counsel seeks an award of $170,217.76 in expenses it incurred in the prosecution of the Action. *See* Scott+Scott Aff., ¶5.

86. The claimed expenses are reasonable and were necessary for the successful prosecution of this Action. From the beginning of the Action Plaintiff's Counsel was aware that it might not recover any of its expenses and, at the very least, would not recover anything until this Action was successfully resolved. Plaintiff's Counsel closely managed its expenses throughout the Action, including negotiating strict fee caps with its expert consultants, while always ensuring they took all steps necessary to aggressively prosecute Plaintiff's claims.

87. The requested expenses reflect typical expenditures incurred in the course of litigation, such as the costs of online legal and other research, electronic discovery and database fees, fees for court reporting and videography, expert-consultant fees, mediation fees, and travel. Additional detail with respect to these expenses are contained in the accompanying Scott+Scott Affirmation, ¶5.

88. Plaintiff's Counsel believes that all these expenses are reasonable and were necessary for the successful prosecution of the Action.

C. Plaintiff's Requested Service Award Is Reasonable

89. Plaintiff has requested a service award of $15,000 for its time and effort prosecuting the Action on behalf of the Settlement Class.

90. As discussed in Plaintiff's supporting Affirmation, Plaintiff Erie County has diligently fulfilled its obligations to the Settlement Class since it initiated the Action. *See* Erie County Aff., ¶¶6-7. Its efforts assisting and supervising Plaintiff's Counsel required Plaintiff to dedicate considerable time and resources to this Action and were of substantial assistance to both Plaintiff's Counsel and the Settlement Class. Among other things, Plaintiff's representative sat for a deposition, was involved in gathering and producing from Plaintiff's electronic and hard copy files documents responsive to Defendants' discovery requests, reviewed filings, regularly communicated with counsel, and assessed the proposed Settlement. These efforts required Plaintiff to dedicate time and resources to this Action that it would have otherwise devoted to Plaintiff's primary duties.

91. The Notice informed potential Settlement Class Members of Plaintiff's intent to request a service award of up to $15,000, and to date, there have been no objections to said award. The efforts expended by Plaintiff during the course of this Action are precisely the types of activities courts have found to support the award of a service award and the $15,000 sought is fair and reasonable. Such requests have been granted in similar cases and are supportive of the broad public policy that encourages institutional investors to take an active role in commencing and supervising private securities litigation.

VI. CONCLUSION

92. In light of the significant recovery to the Settlement Class and the substantial risks of the Action, as described above and in the accompanying memorandum of law, Plaintiff's

Counsel respectfully submits that the Settlement and Plan of Allocation should be approved as fair, reasonable, and adequate.

93. For the same reasons, and in light of the substantial work performed on a contingent basis, Plaintiff's Counsel respectfully submits that the Court should award attorneys' fees in the amount of 33 and 1/3% of the Settlement, plus $170,217.76 in expenses, plus the interest earned thereon at the same rate and for the same period as that earned on the Settlement Fund until paid, plus an award of $15,000 to the Plaintiff in connection with its representation of the Settlement Class.

I affirm under penalty of perjury under the laws of the State of New York that the foregoing is true and correct.

Executed this 1st day of November 2022.

s/ Deborah Clark-Weintraub
Deborah Clark-Weintraub

PRINTING SPECIFICATIONS STATEMENT

1. Pursuant to 22 N.Y.C.R.R. §202.70(g), Rule 17, the undersigned counsel certifies that the foregoing affirmation was prepared on a computer using Microsoft Word. A proportionally spaced typeface was used as follows:

Name of Typeface: Times New Roman
Point Size: 12
Line Spacing: Double

2. The total number of words in the memorandum, inclusive of point headings and footnotes and exclusive of the caption, signature block, and this Certification, is 8,238 words.

DATED: November 1, 2022

Respectfully submitted,

SCOTT+SCOTT ATTORNEYS AT LAW LLP

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