UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re Stericycle, Inc. Securities Litigation	Civ. A. No. 1:16-cv-07145 Hon. Andrea R. Wood CLASS ACTION **ECF CASE**

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

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Lead Counsel for Lead Plaintiffs the Public Employees' Retirement System of Mississippi and the Arkansas Teacher Retirement System

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Lead Plaintiffs, the Public Employees' Retirement System of Mississippi ("Miss. PERS") and the Arkansas Teacher Retirement System ("ATRS"), on behalf of themselves and the Settlement Class, respectfully submit this memorandum of law in support of their motion for final approval of the proposed settlement of this Action (the "Settlement") and the proposed plan of allocation of the net proceeds of the Settlement (the "Plan of Allocation").[1]

I. PRELIMINARY STATEMENT

Subject to Court approval, Lead Plaintiffs have agreed to settle all claims in the Action in exchange for a cash payment of $45 million, which Stericycle has caused to be deposited into an escrow account. Lead Plaintiffs respectfully submit that the proposed Settlement is an excellent result for the Settlement Class and satisfies all the standards for final approval under Rule 23 of the Federal Rules of Civil Procedure.

As detailed in the Browne Declaration,[2] the Settlement is the product of extensive, arm's-length settlement negotiations between experienced counsel. The negotiations included a full-day, in-person mediation session with Gregory P. Lindstrom, Esq. of Phillips ADR (the "Mediator"), an experienced mediator of securities class actions and other complex litigation. The mediation was followed by additional settlement negotiations with the assistance of Mr.

[1] Unless otherwise defined in this memorandum, all capitalized terms have the meanings defined in the Stipulation and Agreement of Settlement dated February 14, 2019 (ECF No. 108-1) (the "Stipulation") or the Declaration of John C. Browne in Support of (I) Lead Plaintiffs' Motion for Final Approval of Settlement and Plan of Allocation and (II) Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Browne Declaration" or "Browne Decl."). Citations to "¶ __" in this memorandum refer to paragraphs in the Browne Declaration and citations to "Ex. __" refer to exhibits to the Browne Declaration.

[2] The Browne Declaration is an integral part of this submission and, for the sake of brevity in this memorandum, Lead Plaintiffs respectfully refer the Court to it for a detailed description of, *inter alia* , the nature of the claims asserted (¶¶ 21-23), the history of the Action (¶¶ 23-53), the negotiations leading to the Settlement (¶¶ 54-59), the risks and uncertainties of continued litigation (¶¶ 6-11, 66-92), and the terms of the Plan of Allocation (¶¶ 99-105).

Lindstrom over the course of several months that culminated in a mediator's recommendation that the Action be settled for $45 million, which the Parties accepted.

Lead Plaintiffs and Lead Counsel believe that the proposed Settlement is in the best interest of the Settlement Class considering the range of possible outcomes of the litigation, including the real risk that there might be no recovery at all. At the time that the Parties agreed in principle to settle the Action, the Court had not yet decided Defendants' motion to dismiss the Complaint. Although Lead Plaintiffs believe that they had compelling arguments in response to Defendants' motion, there was a serious risk that the Court would have ruled in Defendants' favor, which would have dramatically reduced, or eliminated altogether, the Class's potential recovery.

As discussed below and in the Browne Declaration, Defendants put forth credible arguments that Lead Plaintiffs' securities fraud claims were time-barred by the statute of limitations, that Lead Plaintiffs did not adequately plead materially false and misleading statements or Defendants' scienter, and that Lead Plaintiffs failed to establish loss causation and Class-wide damages. Moreover, even if Lead Plaintiffs successfully defeated Defendants' motion to dismiss, which was far from certain, Defendants would likely make the same arguments at summary judgment and trial.

The proposed Settlement exceeds available insurance proceeds, which is a considerable achievement given the financial condition of Stericycle at the time the Settlement was reached. At that time, Stericycle's stock was trading at approximately $45 per share— a substantial decline from its $70 per share price in August 2018. In addition, the Company was engaged in a "business transformation" initiative that had resulted in the termination of hundreds of employees. Even more to the point, at the time of settlement Stericycle was reporting that it had only $52 million in free cash available (its latest Form 10-Q reports $48.2 million in available cash).

Lead Plaintiffs and Lead Counsel had a well-developed understanding of the strengths and weaknesses of the Action. Before the Parties agreed to the Settlement, Lead Counsel had: (i) conducted an extensive investigation into the alleged fraud, including a thorough review of SEC filings, analyst reports, conference call transcripts, press releases, media reports, information from government and private actions filed against Defendants, and other public information, and interviews with dozens of former employees of Stericycle and other witnesses; (ii) drafted a detailed consolidated Class Action Complaint and Amended Class Action Complaint; (iii) drafted and filed briefs in opposition to two rounds of Defendants' motions to dismiss; (iv) consulted with experts in loss causation and damages; and (v) engaged in extensive arm's-length settlement negotiations to achieve the Settlement. The settlement negotiations included the Parties' preparation of mediation statements and participation in a full-day mediation session with Mr. Lindstrom. Further, following the agreement-in-principle and prior to the execution of the Stipulation, Lead Counsel conducted substantial due diligence discovery to confirm the fairness, reasonableness, and adequacy of the proposed Settlement.

The Settlement has the full support of the Court-appointed Lead Plaintiffs, which are sophisticated institutional investors of the type Congress favored when it passed the Private Securities Litigation Reform Act of 1995 ("PSLRA"). Lead Plaintiffs were actively involved in the litigation and the settlement negotiations, and they recommend approval of the Settlement. *See* Declaration of Donald L. Kilgore submitted by Miss. PERS, Ex. 2, at ¶¶ 5-7; Declaration of Rod Graves submitted by ATRS, Ex. 3, at ¶¶ 6-8. Further, while the deadline to object to the Settlement has not yet passed, to date, no Class Members have objected to the Settlement.[3]

[3] The deadline for the submission of objections is July 1, 2019. Should any objections be received, Lead Plaintiffs will address them in their reply papers, due on July 15, 2019.

In light of these considerations and all other factors discussed below, Lead Plaintiffs and Lead Counsel respectfully submit that the Settlement is fair, reasonable, and adequate and warrants final approval by the Court. In addition, Lead Plaintiffs request that the Court approve the Plan of Allocation, which is set forth in the Notice mailed to Class Members. The Plan of Allocation, which Lead Plaintiffs' damages expert developed in consultation with Lead Counsel, provides a reasonable method for allocating the Net Settlement Fund among Class Members who submit valid claims based on damages they suffered on purchases of Stericycle Securities during the Class Period that were attributable to the alleged fraud.

II. ARGUMENT

A. The Proposed Settlement Warrants Final Approval

"Federal courts naturally favor the settlement of class action litigation." *Isby v. Bayh*, 75 F.3d 1191, 1196 (7th Cir. 1996); *see also Equal Emp't Opportunity Comm'n v. Hiram Walker & Sons, Inc.*, 768 F.2d 884, 888-89 (7th Cir. 1985); *Metro. Hous. Dev. Corp. v. Vill. of Arlington Heights*, 616 F.2d 1006, 1013 (7th Cir. 1980). "Settlement 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 Prods. Liab. Litig.*, 2016 WL 772785, at *6 (N.D. Ill. Feb. 29, 2016).

The Court should approve a class action settlement if it finds it "fair, reasonable, and adequate," Fed. R. Civ. P. 23(e)(2). This involves a consideration of whether:

> (A) the class representatives and counsel adequately represented the class;
>
> (B) the proposed settlement was negotiated at arm's length;
>
> (C) the relief provided for the class is adequate, taking into account, [among other things,] the costs, risks, and delay of trial and appeal . . .; and
>
> (D) the proposal treats class members equitably relative to each other.

Id. In addition, the Seventh Circuit has held that district courts should consider the following six

factors in evaluating the fairness of a class action settlement:

> (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 v. Accretive Health, Inc., 773 F.3d 859, 863 (7th Cir. 2014); *see also Synfuel Techs., Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 653 (7th Cir. 2006).[4]

Although the Settlement here confers a substantial benefit upon the Settlement Class, approval does not require that a settlement be "the 'best possible deal' for plaintiffs" or that "the class has received the same benefit from the settlement as they would have recovered from a trial." *Sears, Roebuck*, 2016 WL 772785, at *7 (citing *In re Mex. Money Transfer Litig.*, 164 F. Supp. 2d 1002, 1004 (N.D. Ill. 2000)). Approval proceedings should not be transformed into an abbreviated trial on the merits. *See, e.g., Mars Steel Corp. v. Cont'l Ill. Nat'l Bank & Tr. Co.*, 834 F.2d 677, 684 (7th Cir. 1987).

1. Lead Plaintiffs and Lead Counsel Have Adequately Represented the Class

In determining whether to approve a class action settlement, the Court should first consider whether "the class representatives and class counsel have adequately represented the class." Fed. R. Civ. P. 23(e)(2)(A).

Here, Lead Plaintiffs and Lead Counsel have adequately represented the Class in both their prosecution of the Action and in the negotiation and achievement of the Settlement. Lead

[4] The Advisory Committee Notes to the 2018 amendments to the Federal Rules of Civil Procedure indicate that the four factors provided in Rule 23(e)(2) are not intended to "displace" any factor previously adopted by the courts, but "rather to focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal." Advisory Committee Notes to 2018 Amendments. Accordingly, Lead Plaintiffs discuss below the fairness, reasonableness, and adequacy of the Settlement principally in relation to the four factors provided in Rule 23(e)(2) but also discuss the application of relevant, non-duplicative factors identified by the Seventh Circuit in *Wong*.

Plaintiffs' claims are typical of and coextensive with those of other Class Members, and they lack any interests that are antagonistic to the interest of other members of the Settlement. Therefore, Lead Plaintiffs—like all other Class Members—have an interest in obtaining the largest possible recovery from Defendants. *See 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."). The institutional investor Lead Plaintiffs have also diligently supervised and participated in the litigation on behalf of the Class. *See* Kilgore Decl. ¶¶ 5-6; Graves Decl. ¶¶ 6-7.

Moreover, Lead Plaintiffs have retained counsel who are highly experienced in securities litigation and have successfully prosecuted many complex class actions throughout the United States. *See* BLB&G Firm Resume, Ex. 5A-3. Lead Counsel has vigorously pursued the claims on behalf of Stericycle investors and aggressively negotiated a favorable Settlement for the Class through mediation. *See 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").

2. The Settlement Is the Product of Good-Faith, Arm's-Length Negotiations Among Experienced Counsel and a 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";[5] (ii) "stage of the proceedings and the amount of discovery completed";[6] and (iii) the involvement of a mediator. All these considerations support approval of the Settlement here.

The Parties reached the Settlement only after protracted, arm's-length negotiations between experienced and informed counsel and with the assistance of Mr. Lindstrom, an experienced mediator in complex litigation. In April 2018, the Parties conducted a formal, all-day, in-person mediation session before Mr. Lindstrom. In advance of the mediation session, the Parties made lengthy and substantive submissions, and the mediation itself involved exchanges of the Parties' respective views on the merits of Lead Plaintiffs' claims, Defendants' defenses, and issues related to damages and Stericycle's ability to pay. Although the Parties were unable to reach a settlement at the end of the mediation session, they continued to engage in additional subsequent negotiations under the supervision of the Mediator. These negotiations ultimately culminated in a Mediator's "double-blind" recommendation that the Parties settle the Action for $45 million, which the Parties accepted. Mr. Lindstrom has submitted a declaration describing his experience and the Parties' mediation efforts, including his opinion that the Settlement "represents a recovery and outcome that is reasonable and fair for the Settlement Class and all parties involved." Lindstrom Declaration (Ex. 1) at ¶ 10.

As courts in this Circuit have found, the fact that the Parties reached the proposed Settlement after arm's-length negotiations between experienced and informed counsel creates a presumption of its fairness. *See Mangone v. First USA Bank*, 206 F.R.D. 222, 226 (S.D. Ill. 2001) ("a settlement proposal arrived at after arm's-length negotiations by fully informed, experienced

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

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

and competent counsel may be properly presumed to be fair and adequate") (citing *Susquehanna Corp. v. Korholz*, 84 F.R.D. 316, 320 (N.D. Ill. 1979)); *In re Mexico Money Transfer Litig. (W. Union & Orlandi Valuta)*, 164 F. Supp. 2d 1002, 1020 (N.D. Ill. 2000) ("The court places significant weight on the unanimously strong endorsement of these settlements by [Settling] Plaintiffs' well-respected attorneys.") (citing *Isby*, 75 F.3d at 1200).

The assistance of an experienced mediator like Mr. Lindstrom in the settlement process further supports that the Settlement is fair and that the Parties achieved it free of collusion. *See In re Career Educ. Corp. Sec. Litig.*, 2008 WL 8666579, at *3 (N.D. Ill. June 26, 2008) (settlement "resulted from arms-length negotiations and voluntary mediation between experienced counsel"); *Wong*, 773 F.3d at 864 (7th Cir. 2014) (settlement "was proposed by an experienced third-party mediator after an arm's-length negotiation where the parties' positions on liability and damages were extensively briefed and debated"); *Roberti v. OSI Sys. Inc.,* 2015 WL 8329916, at *3 (C.D. Cal. Dec. 8, 2015) (approving settlement reached through mediator's "double-blind Mediator's Recommendation").

Moreover, at the time the Parties reached the Settlement, the knowledge of Lead Plaintiffs and Lead Counsel, and the proceedings themselves, had reached a stage where the Parties could make a well-founded evaluation of the claims and propriety of settlement. As discussed above and in the Browne Declaration, Lead Counsel conducted a detailed, substantive investigation by, among other things, reviewing SEC filings, analyst research reports, investor conference calls, press releases, media reports, information from government and private actions filed against Defendants, and other public material, consulting with experts, and speaking with dozens of potential witnesses. ¶¶ 30-33. Lead Counsel also performed extensive legal research in preparing the CAC and Amended CAC and the briefing in opposition to Defendants' two rounds of motions

to dismiss. ¶¶ 34, 38-44, 52. In addition, the Parties' extensive settlement negotiations, which included the exchange of information concerning Class-wide damages and other merits-based considerations, further informed the Parties of the strength of each side's arguments.

Finally, in agreeing in principle to settle the Action, Lead Plaintiffs expressly conditioned the Settlement on their ability to conduct due diligence discovery into the fairness, reasonableness, and adequacy of the Settlement. In connection with the due diligence discovery, Stericycle produced 25 confidential deposition transcripts of Stericycle executives (and related exhibits) from the related Customer Case and additional internal Company documents. The Company documents included Board of Director Meeting minutes and presentations, Compensation Committee meeting minutes, Audit Committee meeting minutes, Corporate Update presentations, Director and Officer stock ownership information, compensation plans, incentive stock plans, stock option grant information, equity grant information, officer bonus measurement calculations, income statements, and budgets. The due diligence discovery undertaken by Lead Counsel before entering into the Stipulation provided Lead Plaintiffs and Lead Counsel with a more thorough understanding of the facts and risks of the case and Defendants' arguments. Accordingly, when the Parties ultimately executed the Stipulation, Lead Plaintiffs and Lead Counsel had sufficient information to evaluate their case and the adequacy of the proposed Settlement. *See Schulte v. Fifth Third Bank*, 805 F.Supp.2d 560, 587-589 (N.D. Ill. 2011) (approving settlement where settlement agreement entitled class counsel to conduct confirmatory discovery that confirmed the fairness of the settlement); *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (even absent extensive formal discovery, class counsel's significant investigation and research supported settlement approval).

3. The Relief that the Settlement Provides for the Settlement Class is Adequate, Taking Into Account the Costs and Risks of Further Litigation and All Other Relevant Factors

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 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).

a. The Strength of Lead Plaintiffs' Case Compared to the Amount of Settlement

When deciding whether to approve a proposed class action settlement under *Wong* and Seventh Circuit precedent, the primary consideration is "the strength of the plaintiff's case on the merits balanced against the amount offered in settlement." *Snyder*, 2019 WL 2103379, at *6 (citing *Wong*, 773 F.3d at 864). Under this factor, courts consider whether the proposed settlement is reasonable in light of the risks of proceeding with the litigation. *In re AT&T Mobility Wireless Data Servs. Sales Tax Litig.,* 789 F. Supp. 2d 935, 959, 961, 963-64 (N.D. Ill. 2011). The $45 million cash recovery obtained for the benefit of the Settlement Class here is well within the range of reasonableness considering the legal, factual, and practical risks of continued litigation.

In considering whether to enter into the Settlement, Lead Plaintiffs, represented by experienced counsel, weighed the $45 million Settlement Amount against the strength of Lead Plaintiffs' claims, taking into consideration the risks inherent in proving materiality, scienter, loss causation, and recoverable damages, as well as the expense and likely duration of the Action and Stericycle's ability to pay. At the time that the Parties agreed in principle to settle the Action, the

Court had not yet decided Defendants' motion to dismiss the Complaint. While Lead Plaintiffs and Lead Counsel believed in the merits of the claims they asserted, they also recognized the serious risk that the Court would have ruled in Defendants' favor on the motion to dismiss, which would have dramatically reduced, or eliminated altogether, the Class's potential recovery.

For example, Lead Plaintiffs and the Settlement Class faced a real risk that the Court might dismiss their securities fraud claims as untimely if it found plaintiffs brought them after the expiration of the two-year statute of limitations. In their motion to dismiss the Complaint, Defendants argued that news of Stericycle's alleged API fraud reached the market more than two years before plaintiffs filed suit in July 2016, based on: (i) the January 8, 2013 announcement of the New York Attorney General's $2.4 million settlement with Stericycle and the contemporaneous unsealing of the Perez *qui tam* complaint; and (ii) Stericycle's customers filing a separate customer case against the Company on March 12, 2013 alleging the API fraud. ¶ 74-76. Although Lead Plaintiffs argued that these disclosures were not sufficient to trigger the statute of limitations, Defendants put forth credible arguments that might have convinced the Court or a jury that Lead Plaintiffs' claims were time-barred. ¶¶ 75-76.

Lead Plaintiffs also faced significant challenges in establishing any actionable false or misleading statements or omissions. Among other things, Defendants contended that Stericycle's reported financials were accurate, and that Lead Plaintiffs are trying to impose a duty on Stericycle to disclose that those financial results were unsustainable into the future, where no such duty exists. ¶¶ 78-79. Defendants also argued that many of the alleged false statements were inactionable opinions, forwarding-looking statements, and/or puffery. ¶ 79. *See Cornielsen v. Infinium Capital Holdings, LLC*, 168 F. Supp. 3d 1033, 1041 (N.D. Ill. 2016) (Wood, J.) (holding

that defendant's disclosures revealed certain facts that they allegedly failed to disclose, and plaintiff failed to allege a duty to disclose other allegedly omitted information).

Lead Plaintiffs also faced significant hurdles in establishing Defendants' scienter, or intent to defraud. A defendant's state of mind in a securities case "is the most difficult element of proof and one that is rarely support by direct evidence" such as an admission. *In re Amgen Inc. Sec. Litig.*, 2016 WL 10571773, at *3 (C.D. Cal. Oct. 25, 2016). Here, Defendants argued that the allegations in the Complaint concerning Defendants' knowledge of the API fraud rely heavily on confidential witnesses whose reliability should be discounted under Seventh Circuit law. ¶ 81. Defendants also argued that mere knowledge of the APIs does not establish that Defendants knowingly or recklessly misled investors and committed a *securities fraud*. ¶ 82. If Defendants successfully convinced the Court or a jury that they did not act with scienter, this would have resulted in zero recovery under the Exchange Act. *See, e.g., Petri v. GeaCom, Inc.*, 2018 WL 1695367, at *8 (N.D. Ill. Apr. 6, 2018) (Wood, J.) (plaintiffs failed to plead the required scienter); *Rossbach v. VASCO Data Sec. Int'l*, 2018 WL 4699796, at *7-10 (N.D. Ill. Sept. 30, 2018) (Wood, J.) (same).

Even if Lead Plaintiffs were successful in proving liability, their ability to establish loss causation and damages also presented a significant risk to recovery in the Action. *See Goldsmith v. Tech. Solutions Co.*, 1995 U.S. Dist. LEXIS 15093, at *13 (N.D. Ill. Oct. 10, 1995); *In re Tyco Int'l, Ltd.,* 535 F. Supp. 2d 249, 260-61 (D.N.H. 2007) ("Proving loss causation would be complex and difficult. Moreover, even if the jury agreed to impose liability, the trial would likely involve a confusing 'battle of the experts' over damages."). In the motion to dismiss, Defendants put forth substantial arguments that Lead Plaintiffs' alleged corrective disclosures did not relate to any of the alleged misstatements or omissions, and, therefore, the price declines in Stericycle Securities

were unrelated to the alleged fraud. ¶ 83. According to Defendants, certain of the disclosures said nothing about the fraud, while those that did discuss decelerated SQ growth and/or general pricing pressure also included many other negative pieces of information unrelated to Lead Plaintiffs' allegations. ¶ 84. Indeed, many of the alleged corrective disclosures are open to attack by Defendants as including the disclosure of other non-API fraud-related information. Thus, Defendants would have put forth significant arguments challenging the amount of damages attributable to the allegedly false statements.

Further, even if Lead Plaintiffs successfully defeated Defendants' motion to dismiss, which was far from certain under the PSLRA's heightened pleading standard, the continued prosecution of the Action would have required Lead Plaintiffs to overcome similar arguments by Defendants to prevail at class certification, summary judgment, and trial, and on the inevitable appeals. There is obviously no guarantee that they would have cleared each of these hurdles. *See Alaska Elec. Pension Fund v. Flowserve Corp.*, 572 F.3d 221, 235 (5th Cir. 2009) ("To be successful, a securities class-action plaintiff must thread the eye of a needle made smaller and smaller over the years by judicial decree and congressional action.").[7]

Finally, even if Lead Plaintiffs prevailed at trial and on appeal, there was no guarantee that Stericycle could sustain a large litigation judgment in this case, further proving the reasonableness of the Settlement Amount. At the time the Parties reached the agreement to settle

[7] *See also In re Northfield Labs., Inc. Sec. Litig.*, 267 F.R.D. 536, 549 (N.D. Ill. May 18, 2010) (denying class certification); *Levie v. Sears Robebuck & Co.*, 676 F. Supp. 2d 680, 689-90 (N.D. Ill. Dec. 18, 2009) (granting defendants' motion for summary judgment); *Hubbard v. BankAtlantic Bancorp, Inc.*, 688 F.3d 713, 729-30 (11th Cir. 2012) (jury issued verdict on liability in favor of plaintiffs, but the Eleventh Circuit affirmed judgment as a matter of law against plaintiffs for lack of proof of loss causation); *Robbins v. Koger Props.*, 116 F.3d 1441, 1449 (11th Cir. 1997) (Eleventh Circuit reversed $81 million jury verdict for securities fraud); *In re Vivendi Universal, S.A. Secs. Litig.*, 765 F. Supp. 2d 512, 524, 533 (S.D.N.Y. 2011) (after a verdict for class plaintiffs, district court granted judgment for defendants following change in law).

on December 6, 2018, Stericyle's stock was trading at approximately $45 per share. ¶ 85. This represented a substantial decline during the course of the litigation. *Id.* For instance, the Company's stock had been trading at over $70 per share in August 2018. Furthermore, the Company was engaged in a massive "business transformation" initiative that had, among other things, resulted in massive layoffs and restructurings, including the termination of hundreds of employees. *Id.*

Moreover, at the time the Settlement was reached, Stericycle was reporting that it had only $52 million in free cash available (its latest Form 10-Q reports $48.2 million in available cash). ¶ 86. Thus, it is highly unlikely that Stericycle would be able to pay any judgment that potentially could be achieved in this litigation, further proving the reasonableness of the Settlement.

In light of all of the above considerations, the $45 million recovery achieved by the Settlement represents a very favorable result for the Settlement Class.

b. The Complexity, Length, and Expense of Further Litigation Support Approval of the Settlement

In determining the fairness of a settlement, courts also consider the likely "complexity, length, and expense of the litigation." *Wong*, 773 F.3d at 863; *Isby,* 75 F.3d at 1199. There is no doubt that this securities class action—like virtually all others—involves complex factual and legal issues. *Retsky Family Ltd. P'ship v. Price Waterhouse LLP*, 2001 WL 1568856, at *2 (N.D. Ill. Dec. 10, 2001) ("Securities fraud litigation is long, complex and uncertain"); *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."). Continued litigation would also have been lengthy and expensive. *See Strougo v. Bassini,* 258 F. Supp. 2d 254, 258 (S.D.N.Y. 2003) ("[i]t

is beyond cavil that continued litigation in this multidistrict securities class action would be complex, lengthy, and expensive, with no guarantee of recovery by the class members").

The claims asserted in this Action raise many complex issues, as evidenced by the 163-page, 462-paragraph Complaint and the extensive briefing dedicated to Defendants' multiple motions to dismiss. Furthermore, to achieve a litigated verdict in the Action, Lead Plaintiffs would have needed to devote a substantial amount of additional time and expense to the case. As noted above, the Parties reached their agreement-in-principle to settle prior to the Court's decision on Defendants' motion to dismiss the Complaint and prior to fact discovery. ¶¶ 55-58, 73. In the absence of the Settlement, continued litigation of the Action would have required extensive fact discovery, including interrogatories, depositions, and an enormous production of documents; substantial expert discovery on complicated issues pertaining to loss causation and damages; motion practice relating to fact and expert discovery; a litigated motion for class certification; a likely motion for summary judgment; pre-trial evidentiary motions, including concerning the admissibility of expert testimony; a trial; and appeals. *See Amgen*, 2016 WL 10571773, at *3 ("A trial of a complex, fact-intensive case like this could have taken weeks, and the likely appeals of rulings on summary judgment and at trial could have added years to the litigation."). And, even with a verdict at trial affirmed on appeal, the Settlement Class would have faced a potentially complex, lengthy, and (almost certainly) contested claims-administration process.[8] The foregoing

[8] In other securities-fraud class actions that have gone to trial, the time from a verdict to a final judgment has been as long as seven years. *See Jaffe Pension Plan v. Household Int'l, Inc.*, No. 1:-02-cv-05893, Verdict Form, ECF No. 1611 (N.D. Ill. May 7, 2009) & Final Judgment and Order of Dismissal with Prejudice, ECF No. 2267 (N.D. Ill. Nov. 10, 2016); *see also In re Vivendi Universal, S.A. Sec. Litig.*, Civ. No. 02-5571 (RJH/HBP), Verdict Form, ECF No. 998 (S.D.N.Y. Feb. 2, 2010) (jury verdict issued on Jan. 29, 2010) & Final Judgment Approving Class Action Settlement of All Remaining Claims, ECF No. 1317 (S.D.N.Y. May 9, 2017).

would pose substantial expense for the Settlement Class and delay the Class's ability to recover—assuming, of course, that Lead Plaintiffs and the Class were ultimately successful on their claims.

Thus, the risk, expense, complexity, and likely duration of further litigation support approval of the Settlement. The present value of a certain recovery now, as opposed to the mere chance for a possibly greater one years later, supports approval of a Settlement that eliminates the expense and delay of continued litigation and the risk that the Class could receive no recovery.

c. All Other Factors Established by Rule 23(e)(2)(C) Support Approval of the Settlement

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

First, the procedures for processing Class Members' claims and distributing the proceeds of the Settlement to eligible claimants are well-established, effective methods that have been widely used in securities class action litigation. Here, the proceeds of the Settlement will be distributed to Class Members who submit eligible Claim Forms with required documentation to the Court-approved Claims Administrator, JND Legal Administration ("JND"). JND, an independent company with extensive experience administering securities class actions, will review and process the claims under Lead Counsel's supervision, provide claimants with an opportunity to cure any deficiencies in their claims or request review of the denial of their claims by the Court, and then mail or wire claimants their *pro rata* share of the Net Settlement Fund (as

calculated under the Plan of Allocation) upon approval of the Court.[9] This type of claims processing is standard in securities class actions and has long been used and found to be effective. This claim procedure is necessary because neither Lead Plaintiffs nor Defendants possess individual investors' trading data that would allow the Parties to create a claims-free process to distribute Settlement funds.

Second, the relief provided for the Settlement Class in the Settlement is also adequate when the terms of the proposed award of attorneys' fees are taken into account. As discussed in the accompanying Fee Memorandum, the proposed attorneys' fees of 25% of the Settlement Fund, to be paid upon approval by the Court, are reasonable in light of the efforts of Plaintiffs' Counsel and the risks in the litigation. Most important with respect to the Court's consideration of the fairness of the Settlement is the fact that approval of the requested attorneys' fees is entirely separate from approval of the Settlement, and neither Lead Plaintiffs nor Lead Counsel may terminate the Settlement based on this Court's or any appellate court's ruling with respect to attorneys' fees. *See* Stipulation ¶ 16.

Lastly, Rule 23 asks the Court to consider the proposed Settlement's fairness in light of any agreements required to be identified under Rule 23(e)(3). *See* Fed. R. Civ. P. 23(e)(2)(C)(iv). Here, the only agreement so required to be identified (other than the Stipulation itself) is the confidential Supplemental Agreement entered into by Lead Plaintiffs and Stericycle, which establishes the conditions under which Stericycle would be able to terminate the Settlement if the number of Class Members who request exclusion from the Settlement Class reaches a specified

[9] The Settlement is not a claims-made settlement. If the Settlement is approved, Defendants will have no right to the return of any portion of the Settlement based on the number or value of claims submitted. *See* Stipulation ¶ 13.

threshold. This type of agreement is a standard provision in securities class actions and has no negative impact on the fairness of the Settlement.

4. The Settlement Treats Class Members Equitably Relative to Each Other

The proposed Settlement treats members of the Settlement Class equitably relative to one another. As discussed below in Part B, under the Plan of Allocation, eligible claimants approved for payment by the Court will receive their *pro rata* share of the recovery based on their transactions in Stericycle Securities. Lead Plaintiffs will receive precisely the same level of *pro rata* recovery (based on their Recognized Claims as calculated under the Plan of Allocation) as all other similarly situated Class Members.

5. The Amount of Opposition to the Settlement and Reaction of the Settlement Class to the Settlement

Two related final approval factors not included in Rule 23(e)(2) that should be considered in assessing the proposed Settlement's fairness and adequacy are "the amount of opposition to the settlement" and "the reaction of members of the class to the settlement." *See Wong*, 773 F.3d at 863.

In accordance with the Preliminary Approval Order, JND began mailing copies of the Notice Packet (consisting of the Notice and Claim Form) to potential Class Members and nominees on April 9, 2019. *See* Declaration of Luiggy Segura submitted by JND (Ex. 4) (the "Segura Decl."), at ¶¶ 3-4. Through June 14, 2019, JND mailed 304,811 Notice Packet to potential Class Members and nominees. *See id*. ¶ 7. In addition, the Summary Notice was published in *Investor's Business Daily* and transmitted over the *PR Newswire*. *See id*. ¶ 8. The Notice states the essential terms of the Settlement and informs potential Class Members of, among other things, their right to opt out of the Settlement Class or object to the Settlement, the Plan of Allocation, or Lead Counsel's fee and expense application. The deadline set by the Court for Class Members to

exclude themselves or object is July 1, 2019. To date, no objections and three requests for exclusion have been received (*see id.* ¶ 11), none of which were submitted by institutional investors. As provided in the Preliminary Approval Order, Lead Plaintiffs will file reply papers on or before July 15, 2019, after the deadline for requesting exclusion or objecting has passed, that will address all requests for exclusion and any objections received at one time.

* * *

In sum, all of factors to be considered under Rule 23(e)(2) support a finding that the Settlement is fair, reasonable, and adequate.

B. The Plan of Allocation Is Fair and Reasonable

Lead Plaintiffs also seek approval of the proposed Plan of Allocation for the Settlement proceeds. Approval of a plan of allocation in a class action is governed by the same standards of review applicable to the settlement as a whole—the plan must be "fair and reasonable." *See Retsky*, 2001 WL 1568856, at *3; *Great Neck*, 212 F.R.D. at 410. The plan of allocation need only have a reasonable basis, particularly if recommended by experienced class counsel. *See In re Heritage Bond Litig.*, 2005 WL 1594403, at *11 (C.D. Cal. June 10, 2005). Generally, a plan of allocation that reimburses class members based on the relative strength and value of their claims is reasonable. *In re IMAX Sec. Litig.*, 283 F.R.D. 178, 192 (S.D.N.Y. 2012).

Lead Plaintiffs' damages expert developed the proposed Plan of Allocation (the "Plan"), which is set forth at pages 13 to 18 of the mailed Notice, with the assistance of Lead Counsel. ¶ 100. The Plan provides for the distribution of the Net Settlement Fund to Class Members on a *pro rata* basis based on the extent of their injuries attributable to the alleged fraud. ¶ 103. In developing the Plan of Allocation, Lead Plaintiffs' damages expert calculated the estimated amount of artificial inflation in the per share closing prices of Stericycle Common Stock and Stericycle Depositary Shares during the Class Period that was allegedly proximately caused by

Defendants' alleged materially false and misleading statements and omissions. ¶ 102. To calculate the estimated artificial inflation, the expert considered the price changes in Stericycle Common Stock and Stericycle Depositary Shares in reaction to the public disclosures that allegedly corrected the alleged misrepresentations and omissions. *Id*.

Lead Plaintiffs and Lead Counsel believe that the proposed Plan of Allocation will result in a fair and equitable distribution of the Settlement proceeds among Class Members who suffered losses as a result of the conduct alleged in the Complaint. ¶ 104. Moreover, through June 14, 2019, more than 300,000 copies of the Notice, which contains the Plan of Allocation, and advises Class Members of their right to object to the Plan if they wish to do so, have been mailed to potential Class Members, *see* Segura Decl. ¶ 7, and, to date, no objections to the Plan of Allocation have been received. *See* ¶ 105. For all of these reasons, Lead Plaintiffs respectfully request that the Court approve the proposed Plan of Allocation.

C. The Settlement Class Should Be Certified

In connection with the Settlement, the Parties have stipulated to the certification of the Settlement Class for purposes of the Settlement. As set forth in detail in Lead Plaintiffs' memorandum of law in support of their motion for preliminary approval of the Settlement, the Settlement Class satisfies all the requirements of Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure. *See* ECF No. 110 at 16-20; *see also* Preliminary Approval Order (ECF No. 111) at ¶¶ 2-3 (finding that the Court will likely be able to certify the Settlement Class at final approval). None of the facts regarding certification of the Settlement Class have changed since Lead Plaintiffs submitted their motion for preliminary approval, and there has been no objection to certification. Accordingly, Lead Plaintiffs respectfully request that the Court certify the Settlement Class under Rules 23(a) and (b)(3) for the reasons set forth in their earlier memorandum. *See* ECF No. 110 at 16-20.

D. Notice to the Settlement Class Satisfies the Requirements of Rule 23 and Due Process

The Notice provided to the Settlement Class satisfies all the requirements of due process, the PSLRA, and Rule 23, which require that class members be given "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B); *see also Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173-75 (1974). Notice of a class action settlement is satisfactory if it generally describes "the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard." *See Luna v. Marvell Tech. Grp.*, 2018 WL 1900150, at *2 (N.D. Cal. Apr. 20, 2018).

Both the substance of the Notice and the method of its dissemination to potential members of the Settlement Class satisfy these standards here. As noted above, in accordance with the Court's Preliminary Approval Order, JND, the Court-approved Claims Administrator, began mailing copies of the Notice Packet to potential Class Members and nominees on April 9, 2019. *See* Segura Decl. ¶¶ 3-4. Through June 14, 2019, JND mailed 304,811 Notice Packet to potential Class Members and nominees. *See id*. ¶ 7. In addition, JND arranged for the Summary Notice to be published in *Investor's Business Daily* and transmitted over the *PR Newswire* on April 22, 2019. *See id*. ¶ 8. JND also established a dedicated Settlement website, www.StericycleSecuritiesLitigation.com, to provide potential Class Members with information concerning the Settlement and access to copies of the Notice and Claim Form, as well as copies of other documents such as the Stipulation, Preliminary Approval Order, and Complaint. *Id*. ¶ 10.

This combination of individual first-class mail to all Class Members who could be identified with reasonable effort, supplemented by notice in an appropriate publication, transmission over a newswire, and publication on internet websites, was "the best notice . . .

practicable under the circumstances." Fed. R. Civ. P. 23(c)(2)(B); *see, e.g.*, *Career Educ.*, 2008 WL 8666579, at *5 (approving similar notice program).

III. CONCLUSION

For the reasons stated in this memorandum and in the Browne Declaration, Lead Plaintiffs respectfully request that the Court grant final approval of the proposed Settlement and approve the Plan of Allocation.

Dated: June 17, 2019

Respectfully submitted,

By: */s/ John C. Browne*
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CERTIFICATE OF SERVICE

I, John C. Browne, an attorney, hereby certify that a copy of the foregoing **"Memorandum Of Law In Support Of Lead Plaintiffs' Motion for Final Approval of Settlement and Plan of Allocation"** was served on counsel for all parties electronically via the CM/ECF system on June 17, 2019.

Dated: June 17, 2019

By: */s/ John C. Browne*
John C. Browne