STATE OF WISCONSIN **CIRCUIT COURT** **DANE COUNTY**
BRANCH 3

PLYMOUTH COUNTY RETIREMENT ASSOCIATION, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. SPECTRUM BRANDS HOLDINGS, INC., DAVID M. MAURA, JOSEPH S. STEINBERG, GEORGE C. NICHOLSON, CURTIS GLOVIER, FRANK IANNA, GERALD LUTERMAN, ANDREW A. MCKNIGHT, ANDREW WHITTAKER and HRG GROUP, INC., Defendants.	Case No. 2019-CV-000982 Case Code: 30301 (Money Judgment) Hon. Valerie L. Bailey-Rihn

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

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Pursuant to Wis. Stat. §803.08, Plaintiff Plymouth County Retirement Association, individually and on behalf of the proposed Settlement Class,[1] respectfully submits this memorandum of law in support of its motion for orders, *inter alia*, granting final approval to the proposed $9,000,000 Settlement of this class action, as set forth in the Settlement Agreement; granting final class certification for Settlement purposes; and approving the proposed plan of allocation for distributing the proceeds of the Settlement to eligible claimants.

The Settlement is an excellent recovery for the Settlement Class in light of the risks, costs, and duration of continued litigation, including Defendants' pending motion to dismiss the Amended Complaint. The Settlement was reached after well-informed negotiations, including formal mediation, among sophisticated and informed counsel, and reflects a carefully crafted compromise based on the Parties' knowledge of the strengths and weaknesses of the claims and defenses.

PRELIMINARY STATEMENT

As detailed in the Settlement Agreement, the Parties have agreed to settle the Action and related claims, for a payment of $9,000,000. The terms of the Settlement are set forth in the Settlement Agreement. This recovery is a favorable result for the Settlement Class and avoids the substantial risks and expenses of continued litigation, including the risk of recovering less than the Settlement Amount, or nothing at all.

The Settlement was reached only after Plaintiff and Lead Counsel had a well-developed understanding of the strengths and weaknesses of the claims. As more fully described in the

[1] All capitalized terms not otherwise defined herein have the meanings set forth in the Stipulation and Agreement of Settlement dated as of May 1, 2020 (the "Settlement Agreement") (Dkt. 110).

Gardner Declaration,[2] the decision to settle was well informed by hard-fought litigation involving a thorough and wide-ranging factual investigation, which included a careful review of publicly available information concerning Defendants, interviews with 18 confidential witnesses, drafting the Initial Complaint and Amended Complaint; opposing Defendants' motion to dismiss the Amended Complaint; consulting with accounting and damages experts; a review of a core set of documents produced by Defendants in connection with the mediation; and an extensive mediation process overseen by a well-respected mediator affiliated with JAMS, Jed D. Melnick, Esq.,[3] including preparing detailed mediation briefs and attending a full-day mediation session. *See generally* Gardner Decl. at §III-IV.

While Plaintiff and Lead Counsel believe that the claims asserted against Defendants have merit, they recognize that continuing to litigate the Action presented a number of substantial risks. Plaintiff's motion to dismiss the Amended Complaint was pending at the time the Parties agreed to resolve the Action and there is no way to know how the Court would

[2] The Declaration of Jonathan Gardner in Support of (I) Plaintiff's Motion for Final Approval of Class Action Settlement and Plan of Allocation and (II) Lead Counsel's Motion for an Award of Attorneys' Fees and Payment of Expenses (the "Gardner Declaration" or "Gardner Decl."), filed herewith, is an integral part of this submission and, for the sake of brevity in this memorandum, the Court is respectfully referred to it for a detailed description of, *inter alia*: the history of the Action; the nature of the claims asserted; the negotiations leading to the Settlement; and the risks and uncertainties of continued litigation. Citations to "¶" in this motion refer to paragraphs in the Gardner Declaration. All exhibits herein are annexed to the Gardner Declaration. For clarity, citations to exhibits that themselves have attached exhibits will be referenced as "Ex. ___ - ___." The first numerical reference is to the designation of the entire exhibit attached to the Gardner Declaration and the second reference is to the exhibit designation within the exhibit itself.

[3] Mr. Melnick has been involved in the resolution of thousands of disputes, with aggregate values in the billions of dollars, including matters related to the Adelphia and Lehman Brothers bankruptcies, as well as hundreds of securities class actions like this one. *See, e.g.*, *In re Longwei Petroleum Inv. Holding Ltd. Sec. Litig.*, No. 13 cv 214, 2017 WL 2559230, at *7 (S.D.N.Y. May 22, 2017) (approving settlement of securities class action mediated by Mr. Melnick); *In re American Apparel, Inc. S'holder Litig.*, No. 10-06352, 2014 WL 10212865, at *3 (C.D. Cal. July 28, 2014) (same).

ultimately decide that motion. Even if Plaintiff prevailed on the motion to dismiss, Defendants would have continued to vigorously challenge the claims were the Action to continue to summary judgment, trial, and through appeals.

In light of these risks, as discussed below and in the Gardner Declaration, Plaintiff respectfully submits that the Settlement is fair, reasonable, and adequate, and warrants final approval by the Court. *See* Declaration on Behalf of Plymouth County Retirement System, dated June 29, 2020. *See* Ex. 1 at ¶ 5. Plaintiff also requests that the Court approve the proposed Plan of Allocation for the distribution of the Net Settlement Fund, which was set forth in the Notice sent to Settlement Class Members. The Plan of Allocation, which was developed by Lead Counsel in consultation with Plaintiff's consulting damages expert, provides a reasonable and equitable method for allocating the Net Settlement Fund among Settlement Class Members who submit valid claims.

PRELIMINARY APPROVAL AND THE NOTICE PROGRAM

On May 20, 2020, the Court entered an order preliminarily approving the Settlement and approving the proposed forms and methods of providing notice to the Settlement Class (the "Preliminary Approval Order," Dkt. 126). Pursuant to and in compliance with the Preliminary Approval Order, through records provided by Defendants' transfer agent and information provided by brokerage firms and other nominees, beginning on June 4, 2020, the Court-appointed Claims Administrator, A.B. Data, Ltd. ("A.B. Data"), caused the Notice and Claim Form (together, the "Notice Packet") to be mailed by first-class mail to potential Settlement Class Members. *See* Declaration of Adam D. Walter, dated July 14, 2020 (the "Mailing Declaration"), Ex. 2 at ¶¶2-9. To date, 31,154 Notice Packets have been mailed. *Id*. at ¶9. On June 15, 2020, the Summary Notice was published in *Investor's Business Daily* and transmitted over the PR Newswire. *Id*. at ¶10 and Exhibits B and C attached thereto. The Notice and Claim

Form were also posted, for review and easy downloading, on the website established for purposes of this Settlement, as well as Labaton Sucharow's website. *Id*. at ¶12; ¶103.

The Notice described, *inter alia*, the claims asserted in the Action, the contentions of the Parties, the course of the litigation, the terms of the Settlement, the maximum amounts that would be sought in attorneys' fees and expenses, the Plan of Allocation, the right to object to the Settlement, and the right to seek to be excluded from the Settlement Class. *See generally* Ex. 2-A. The Notice also gave the deadlines for objecting, seeking exclusion, submitting claims, and advised potential Settlement Class Members of the scheduled Settlement Hearing before this Court. *Id*. To date, the Settlement Class's reaction to the proposed Settlement has been positive. While the deadline (July 30, 2020) for requesting exclusion or objecting to the Settlement has not yet passed, to date there have been no requests for exclusion, no objections to the proposed Settlement, and no objections to the Plan of Allocation.[4]

For all the following reasons, Plaintiff respectfully requests that the Court approve the proposed Settlement and Plan of Allocation, and finally certify the Settlement Class.

ARGUMENT

I. THE PROPOSED SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE UNDER THE APPLICABLE STANDARDS AND SHOULD BE APPROVED

A. Standards for Final Settlement Approval

Wisconsin courts have a "long-standing policy in favor of settlements." *Wisconsin Patients Comp. Fund v. Wisconsin Health Care Liab. Ins. Plan*, 200 Wis. 2d 599, 615 n.13 (1996) (quoting *State ex rel. Collins v. Am. Family Mut. Ins. Co.*, 153 Wis. 2d 477, 490 (1990)); *see also Radlein v. Indus. Fire & Cas. Ins. Co.*, 117 Wis. 2d 605, 622 (1984) ("Wisconsin courts look with great favor upon settlements of litigation.").

[4] Should any objections or requests for exclusion be received, Plaintiff will address them in its reply papers, which are due to be filed with the Court on August 13, 2020.

Wis. Stat. §803.08, the recently revised class action rule, provides that "[t]he claims, issues, or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the court's approval." *Id.* §803.08(9).[5] The Court "may approve [the proposal] only after a hearing and on finding that it is fair, reasonable, and adequate." *Id.* §803.08(9)(a)-(b).

In *Kiser v. Jungbacker*, 312 Wis. 2d 621, 626 (Ct. App. 2008), the court noted that the fairness of a proposed class action settlement involves preliminary approval followed by final approval: "[t]he circuit court gave preliminary approval to the propose settlement, ordered that the class be notified, and set a hearing date for final approval of the settlement and to determine class counsel's attorney fees and costs"). Given the Court's preliminary approval of the Settlement, entry of the Preliminary Approval Order, and dissemination of the Notice, we are now at the second-step, the Court's consideration of final approval.

In making a determination on the fairness of a class action settlement, courts in Wisconsin consider the following factors, guided by the Seventh Circuit of the U.S. Court of Appeals: (1) the strength of the case for plaintiffs on the merits, balanced against the extent of the 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) the stage of the proceedings and the amount of discovery

[5] Effective July 1, 2018, Section 803.08 was repealed and recreated by Supreme Court Order to align with the federal class action rule, Federal Rule of Civil Procedure 23. The Supreme Court Order directs Wisconsin courts to look to federal cases for guidance. S. Ct. Order No. 17-03, 2017 WI 108 ("The Judicial Council's intent was to craft a Wisconsin class action rule that tracks as closely as possible federal practice so that Wisconsin courts and practitioners can look to the well-developed body of federal case law interpreting Rule 23 for guidance. . . . To the extent that the language of Section 803.08 differs from federal Rule 23, the Committee's intent was to conform the federal rule to Wisconsin statutory drafting standards without changing the substantive meaning of any provision.") (Judicial Council Committee Notes); *see also Harwood v. Wheaton Franciscan Servs., Inc.*, 388 Wis. 2d 546, 552-53 & n.4 (Ct. App. 2019).

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).[6]

B. Application of Relevant Factors Supports Final Approval of the Settlement

1. The Strength of the Case on the Merits, Balanced Against the Extent of the Settlement Offer

The Seventh Circuit has "deemed the first factor to be the most important." *Wong*, 773 F.3d at 864; *see also Synfuel*, 463 F.3d at 653. "The most important factor relevant to the fairness of a class action settlement is the strength of plaintiff's case on the merits balanced against the amount offered in the settlement." *Wong*, 773 F.3d at 864. In considering whether to enter into the Settlement, Plaintiff, represented by experienced counsel, weighed the $9 million Settlement Amount against the strength of Plaintiff's claims, taking into consideration the risks of prevailing on Defendants' pending motion to dismiss, and then, ultimately, proving materiality, falsity, and recoverable damages, and the difficulties in overcoming Defendants' negative causation defenses, among other things. *See Abrams v. Van Kampen Funds, Inc.*, No. 01 C 7538, 2006 WL 163023, at *2 (N.D. Ill. Jan. 18, 2006) (approving settlement and plan of allocation, and stating that "each side faced risks if the case went to trial," including liability and "issues . . . regarding damages"); *see also Retsky Family Ltd. P'ship v. Price Waterhouse LLP*, No. 97 C 7694, 2001 WL 1568856, at *2 (N.D. Ill. Dec. 10, 2001) (finding the first factor

[6] Federal Rule of Civil Procedure 23(e), to the extent its consideration is helpful to the Court, was amended on December 1, 2018 to, among other things, specify that in considering approval of a settlement, courts should assess whether: (i) the class representatives and class counsel have adequately represented the class; (ii) the settlement was negotiated at arm's-length; (iii) the relief is adequate given "the costs, risks, and delay of trial and appeal," "the effectiveness of distributing the relief to the class", "the terms of any proposed award of attorney's fees," and "any agreements required to be identified under Rule 23(e)(3); and whether (iv) the settlement treats class members equitably relative to each other. *See* amendments to Rule 23(e)(2)(A)-(D). Many of these considerations are already among the factors that courts weigh and each are readily satisfied here, as discussed below.

weighed in favor of approval in securities class action, noting that it is not certain that plaintiff would have been able to prevail at trial).

(a) Risks Concerning Liability

Overcoming Defendants' motion to dismiss, which was pending at the time the Parties agreed to settle, was a major risk for Plaintiff, had Plaintiff not agreed to settle. The claims in the Action arise from Sections 11, 12(a)(2), and 15 of the Securities Act. Even if Plaintiff prevailed on the motion to dismiss, in order to prevail at the summary judgment stage and at trial, Plaintiff would have to marshal evidence and prove that the Registration Statement contained a material omission or misrepresentation. As discussed in more detail in the Gardner Declaration, Defendants would likely argue, as they have throughout the litigation, that the Registration Statement did not contain materially false or misleading statements or omissions. Among other things, Defendants would argue that evidence would show that the goodwill impairment charge was taken at the appropriate time; that management's accounting judgments were honestly held and reasonable; and that the risk of inventory write-downs had been disclosed. ¶¶44-45.

Defendants would also likely argue that Plaintiff would not be able to show that Old Spectrum was required under relevant accounting rules to record an impairment of its goodwill before the disclosure in November 2018, and that goodwill is a subjective estimate that requires management to exercise judgment, and thus were not false, but rather honestly held by Spectrum. ¶46.

Regarding Items 303 and 105, there was a risk that the Court, on the motion to dismiss, or on summary judgment, would agree with Defendants that the Amended Complaint did not allege that any trend or uncertainty existed at the time of the Merger that should have been disclosed, that any Defendant actually knew of any undisclosed negative trend or uncertainty, or that the

alleged trend or uncertainty would have had a material effect on Spectrum's financial condition. ¶48.

(b) Risks Concerning Traceability of Shares

Defendants would also undoubtedly argue that Plaintiff would not be able to prove that shares purchased or acquired in the aftermarket were traceable to the Merger as required by Section 11. Defendants would argue that, because there were both pre-Merger HRG shares and shares issued in connection with the Merger in the aftermarket, it would be impossible to prove tracing. ¶51.

(c) Negative Causation and Damages Risks

Even if successful in proving liability, Plaintiff still faced substantial obstacles to overcoming Defendants' "negative-causation" defense and proving damages. Indeed, in connection with the mediation, Defendants provided Plaintiff with a detailed report from their consulting expert economist explaining their conclusion that, even assuming liability, the class would have no recoverable damages.

As set forth in the Gardner Declaration, in raising a negative causation defense, Defendants would likely argue that the alleged materially misleading statements in the Registration Statement did not cause a substantial portion of the damages Plaintiff's claimed, because most of the decline in the stock price after the Merger was not caused by the revelation of any alleged misstatements or omissions. Defendants would argue that after controlling for market and industry factors, using an event study, there would be little to no relation between the Company's stock decline after the Merger and the revelation of any allegedly false and misleading statements in the Registration Statement. Defendants would argue that the price declines were unrelated to the goodwill impairment charge and inventory write-down, and could be explained by other disclosures. In particular, among other things, Defendants would argue

that the Company's stock price only dropped in a statistically significant amount on November 19 and the disclosures conveyed to the market that day related principally to disappointing operating performance in the fourth quarter, and not the impact of the one-time goodwill impairment charge or any write-downs on fourth quarter EBITDA. ¶54.

Plaintiff's consulting damages expert analyzed Defendants' negative causation arguments and concluded, assuming the factfinder were to accept Defendants' negative causation argument and only the stock drop on November 19, 2018 is recoverable, maximum recoverable damages would be approximately $199 million. If Defendants were successful in establishing that only a portion of the stock drop on November 19 was attributed to revelation of the truth (as they argued throughout), damages would decrease. Further, if the Court were to accept Defendants' argument on tracing for aftermarket purchasers, aggregate damages would drop to $104.6 million (damages for only those who exchanged their shares in the Merger). Alternatively, if the Court were only to accept Defendants' argument that those who exchanged shares were not damaged, aggregate damages would be $94.4 million. The Settlement thus recovers approximately 9.5%, 8.6%, or 4.5% of these estimated aggregate damages. ¶¶55-56.

Since the passage of the Private Securities Litigation Reform Act of 1995, courts have approved settlements that recovered a smaller percentage of maximum damages. *See, e.g.*, *Schuler v. Meds. Co.*, No. CV 14-1149 (CCC), 2016 WL 3457218, at *8 (D.N.J. June 24, 2016) (approving $4,250,000 securities fraud settlement that reflected approximately 4.0% of the estimated recoverable damages and noting percentage "falls squarely within the range of previous settlement approvals"); *In re Am. Bus. Fin. Servs. Inc. Noteholders Litig.*, No. 05 Civ. 232, 2008 WL 4974782, at *13 (E.D. Pa. Nov. 21, 2008) (approving $16,767,500 settlement representing 2.5% of damages); *see also In re Merrill Lynch & Co. Research Reports Sec. Litig.*,

No. 02 MDL 1484, 2007 WL 313474, at *10 (S.D.N.Y. Feb. 1, 2007) (characterizing settlement representing recovery of approximately 6.25% of estimated damages as "at the higher end of the range of reasonableness of recovery in class actions securities litigations").

As the case proceeded, the Parties' respective damages experts would strongly disagree with each other's assumptions and their respective methodologies. Accordingly, the risk that the jury would credit Defendants' damages position over that of Plaintiff had considerable consequences in terms of the amount of recovery for the class, even assuming liability was proven. *See Goldsmith v. Tech. Sols. Co.*, No. 92 C 4374, 1995 WL 17009594, at *4 (N.D. Ill. Oct. 10, 1995) (approving settlement and noting that "even if plaintiffs were to prevail in establishing liability, providing causation and the existence and amount of damages would be problematic"). Plaintiff's proposed damages calculation would have come under sustained attack by Defendants, and the correct measure of damages would likely have come down to an inherently unpredictable and hotly disputed "battle of the experts" where it would be impossible to predict with any certainty which arguments would find favor with a jury.

In contrast, the proposed Settlement provides a substantial and certain recovery of $9 million for the benefit of the Settlement Class, without the risk, delay and expense of continued litigation. The Settlement Amount is materially higher than the median value of securities class action settlements in actions asserting claims under the Securities Act. For the ten years from 2010 through 2019, the median settlement amount in such cases was $7.2 million. *See* Laarni T. Bulan & Laura E. Simmons, *Securities Class Action Settlements – 2019 Review and Analysis*, at 7 (Cornerstone Research 2020), Ex. 7.

(d) Risks Concerning Jurisdiction

There was also a risk that the claims against the Individual Defendants would have been dismissed for lack of personal jurisdiction, for lack of sufficient contacts with Wisconsin (to

establish long-arm jurisdiction), or for failure to establish that any act or omission occurred in Wisconsin (to establish specific jurisdiction). ¶49.

2. Complexity, Length, and Expense of Further Litigation

Courts also consider the likely "complexity, length, and expense of the litigation." *Wong*, 773 F.3d at 863; *Isby v. Bayh*, 75 F.3d 1191, 1199 (7th Cir. 1996). There can be no doubt that this securities class action concerning an accumulation of obsolete inventory at a company and its implication for the company's financial statements prior to a merger involves complex factual and legal issues. *See Great Neck Capital Appreciation Inv.. 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."); *Retsky*, 2001 WL 1568856, at *2 ("Securities fraud litigation is long, complex and uncertain."). The claims asserted in the Action raised difficult legal and factual issues that required creativity and sophisticated analysis.

In the absence of a settlement now, assuming the motion to dismiss was denied, the Parties would have continued through the completion of extensive fact discovery, expert discovery on complicated issues pertaining to negative causation and damages, briefing on summary judgment, class certification, pre-trial evidentiary motions, a trial, and appeals. Even if Plaintiff could recover a judgment greater than the Settlement Amount at trial, the additional delay of post-trial motions and the appellate process could last for years. Therefore, the expense, complexity, and likely duration of further litigation support approval of the Settlement.

3. Amount of Opposition to the Settlement and the Reaction of Members of the Settlement Class to the Settlement

Pursuant to this Court's Preliminary Approval Order, the Court-approved Notice and Claim Form were mailed to potential Settlement Class Members who could be identified with

reasonable effort. *See* Ex. 2 at ¶¶2-9. To date, 31,154 Notice Packets have been mailed to potential Settlement Class Members and their nominees. *Id*. at ¶9. While the objection/exclusion deadline—July 30, 2020—has not yet passed, to date, no objection or exclusion requests have been received.[7] *Id*. at ¶¶13-14.

Moreover, Plaintiff—a sophisticated institutional investor—actively participated in both the prosecution of the Action and the settlement negotiations. Plaintiff's direct participation and approval of the Settlement is further evidence that the Settlement is fair, reasonable and adequate. *See In re Veeco Instruments Inc. Sec. Litig*., No. 05 MDL 01695 (CM), 2007 WL 4115809, at *5 (S.D.N.Y. Nov. 7, 2007) ("[U]nder the PSLRA, a settlement reached . . . under the supervision and with the endorsement of a sophisticated institutional investor . . . is 'entitled to an even greater presumption of reasonableness . . . .'").

4. The Opinion of Competent Counsel

Experienced counsel, negotiating at arm's-length, has weighed the factors discussed above and endorse the Settlement. The Court can consider the opinion of competent counsel in determining whether a settlement is fair, reasonable, and adequate. *See Great Neck,* 212 F.R.D. at 410 ("The opinion of competent counsel weighs in favor of approval of a settlement."). Lead Counsel firmly believes that the Settlement is fair, adequate, and reasonable, and particularly so in view of the risks, burdens, and expense of continued litigation. Further, it is respectfully submitted that Labaton Sucharow is among the most experienced and skilled firms in the securities litigation field, and has a long and successful track record in such cases. *See* Ex. 3-C. Accordingly, this factor strongly favors approval of the Settlement. *See Mangone v. First USA Bank,* 206 F.R.D. 222, 226 (S.D. Ill. 2001) ("a settlement proposal arrived at after arms-length

[7] If any objections or requests for exclusion are received, Plaintiff will address them in its reply submission to be filed with the Court on August 13, 2020.

negotiations by fully informed, experienced and competent counsel may be properly presumed to be fair and adequate").

5. Stage of the Proceedings and the Amount of Discovery Completed

At the time the Parties agreed to settle, Plaintiff and Lead Counsel had vigorously litigated the Action and had a well-founded and realistic understanding of the strengths and weaknesses of the claims and defenses asserted. The Action has been hotly contested from its inception in April 2019. As a result, the stage of the proceedings is adequate to support the Settlement. Their knowledge is based on, among other things, counsel's thorough and wide-ranging investigation before filing the Initial Complaint and the Amended Complaint including the review and analysis of 18 witness accounts (four of whom were relied on in the Amended Complaint); the briefing on Defendants' motion to dismiss; consultations with experts on accounting and damages issues; review and analysis of core documents produced by Defendants in connection with the mediation; and extensive settlement negotiations, including an all-day mediation session where the Parties' claims and defenses were fully vetted, preceded by the preparation of detailed mediation statements. *See* Gardner Decl. at §§III-IV.

In sum, Plaintiff had a firm understanding of the likelihood of success and the potential recovery at trial at the time the Settlement was entered into. *See Wong*, 773 F.3d at 864 (affirming approval of settlement and noting that although formal discovery had not commenced, plaintiff had access to extensive public documents and a number of potential witness interviews). This factor supports final approval of the Settlement.

II. THE COURT SHOULD GRANT FINAL CLASS CERTIFICATION

The Court previously granted preliminary certification to the Settlement Class for settlement purposes pursuant to Wis. Stat. §803.08(1) and (2)(c). *See* Preliminary Approval Order at ¶¶2-4. Nothing has occurred since then to cast doubt on whether the applicable

statutory prerequisites have been met. Accordingly for all the reasons stated in Plaintiff's Unopposed Motion for Preliminary Approval of Proposed Class Action Settlement, Plaintiff requests that the Court reaffirm its determinations and finally certify the Settlement Class for purposes of carrying out the Settlement pursuant to Wis. Stat. §803.08(1) and (2)(c), appoint Plymouth County Retirement System as Class Representative, and pursuant to Wis. Stat. §803.08(12), appoint Labaton Sucharow LLP as Class Counsel and Michael Best & Friedrich LLP as Liaison Counsel.

III. THE PLAN OF ALLOCATION FOR DISTRIBUTING RELIEF TO THE SETTLEMENT CLASS IS FAIR, ADEQUATE, AND REASONABLE AND SHOULD BE APPROVED

At the Settlement Hearing, the Court will be asked to approve the proposed Plan of Allocation for distributing the proceeds of the Settlement to eligible claimants. The proposed Plan of Allocation, which is reported in full in the Notice, was drafted with the assistance of Plaintiff's consulting loss causation and damages expert. It is designed to equitably distribute the Settlement proceeds among the members of the Settlement Class who were allegedly injured by Defendants' alleged misrepresentations and who submit valid Claim Forms that are approved for payment. The plan is consistent with an assessment of the damages that Plaintiff and Lead Counsel believe were recoverable in the Action under the Securities Act.

Using the Plan of Allocation, the Claims Administrator will calculate a Recognized Loss Amount for each purchase of Spectrum common stock pursuant or traceable to the Registration Statement that is listed in the Claim Form and for which adequate documentation is provided. Purchases will be considered pursuant or traceable to the Registration Statement if: (i) on or about July 16, 2018, an investor exchanged shares of Old Spectrum common stock for an equal number of shares of newly issued Spectrum common stock as part of the Merger transaction (the "Exchanged Shares"); or (ii) if an investor purchased or acquired shares of publicly traded

Spectrum common stock on the open market between July 16, 2018, and April 9, 2019, inclusive (the "After Market Shares"). ¶68.

In Lead Counsel view, because of the difficulty in tracing aftermarket purchases back to the Merger, the claims based on the After Market Shares are significantly weaker than those related to the Exchanged Shares. In order to make the Plan of Allocation fair and reasonable, the recovery for After Market Shares is reduced (i) by 90% for shares acquired in the aftermarket through November 18, 2018 (the date prior to allegedly corrective information being disseminated to the market) and (ii) by 95% for shares acquired in the aftermarket from November 19, 2018 through April 19, 2019 (the date of suit) to reflect the further challenge posed by the truth being revealed before these acquisitions. ¶69.

The Claims Administrator will calculate claimants' Recognized Losses using the transactional information provided by claimants in their claim forms, which can be mailed to the Claims Administrator, submitted online using the settlement website, or, for large investors, with hundreds of transactions, via e-mail to the Claims Administrator's electronic filing team. Because most securities are held in "street name" by the brokers that buy them on behalf of clients, the Claims Administrator, Lead Counsel, and Defendants do not have Settlement Class Members' transactional data and a claims process is required. Because the Settlement does not recover 100% of alleged damages, the Claims Administrator will determine each eligible claimant's *pro rata* share of the Net Settlement Fund based upon each claimant's total Recognized Losses.

Once the Claims Administrator has processed all claims, notified claimants of deficiencies or ineligibility, processed responses, and made claim determinations, distributions will be made to eligible claimants in the form of checks and wire transfers. After an initial

distribution of the Net Settlement Fund, if there is any balance remaining in the Net Settlement Fund whether by reason of tax refunds, uncashed checks or otherwise after at least six (6) months from the date of initial distribution, the Claims Administrator will, if feasible and economical, redistribute the balance among eligible claimants who have cashed their checks. These redistributions will be repeated until the balance in the Net Settlement Fund is no longer feasible to distribute.

It is recommended that any balance that still remains in the Net Settlement Fund after re-distribution(s), which is not feasible or economical to reallocate, after payment of outstanding Notices and Administration Expenses, Taxes, and attorneys' fees, if any, be disposed of as follows: 50% of any such residual balance to be disbursed to the Wisconsin Trust Foundation, Inc. ("WisTAF"), to support direct delivery of legal series to persons of limited means in non-criminal matters; and 50% of the remainder of any residual balance to WisTAF for programs that assist consumers. *See* Stipulation at ¶54.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court finally approve the proposed Settlement, finally certify the Settlement Class for purposes of the Settlement only, and approve the Plan of Allocation. Proposed orders will be submitted with Plaintiff's reply papers, after the deadlines for seeking exclusion or objecting have passed.

Dated: July 16, 2020

Respectfully submitted,

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