COMMONWEALTH OF KENTUCKY
CLARK CIRCUIT COURT
DIVISION ONE
JUDGE WILLIAM G. CLOUSE
CONS. CASE NO. 17-CI-00175

IN RE DELTA NATURAL GAS COMPANY, INC. STOCKHOLDER LITIGATION	:	Cons. Case No. 17-CI-00175

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT, CERTIFICATION OF SETTLEMENT CLASS, APPROVAL OF CLASS NOTICE, AND FINAL APPROVAL HEARING SCHEDULING

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Plaintiffs Jacob Halberstam, Judy Cole, and Paul Parshall ("Plaintiffs"), by their undersigned counsel, respectfully submit this Memorandum of Law in support of their unopposed motion for preliminary approval of the proposed settlement (the "Settlement") of this class action litigation (the "Action"). Specifically, Plaintiffs seek entry of the proposed Scheduling Order (the "Preliminary Approval Order"), attached as Exhibit B to the Stipulation and Agreement of Compromise, Settlement, and Release dated August 28, 2018 (the "Stipulation"),[1] that will: (i) preliminarily approve the Settlement set forth in the Stipulation; (ii) preliminarily certify a non-opt-out class (the "Class") pursuant to Kentucky Rule of Civil Procedure 23 for purposes of effectuating the proposed Settlement, and designating Plaintiffs as the Class Representatives, WeissLaw LLP, Levi & Korsinsky LLP, and Rigrodsky & Long, P.A. as Class Counsel, and Gray & White Law and Strause Law Group, LLC as Class Liaison Counsel (together, "Plaintiffs' Counsel"); (iii) approve as to form and content the Notice of Pendency of Class Action, Class Action Determination, Settlement of Class Action, Settlement Hearing, and Right to Appear (the "Notice")[2] and order the direct mailing of the Notice to Class members; and (iv) schedule a hearing at which the Court will consider final approval of the Settlement (the "Final Approval Hearing").[3]

I. INTRODUCTION

The Settlement should be preliminarily approved because it provided meaningful benefits to Delta Natural Gas Company, Inc. ("Delta") and Delta's stockholders, and is based upon Plaintiffs' good faith assessment of the strengths and weaknesses of their claims.[4] Specifically, the Settlement

[1] The Stipulation is attached as Exhibit 1 hereto. To the extent not otherwise defined herein, capitalized terms shall have the same meaning as set forth in the Stipulation.

[2] The Notice is attached as Exhibit C to the Stipulation.

[3] The Order and Final Judgement is attached as Exhibit D to the Stipulation.

[4] Plaintiffs are filing this Brief and thus it contains Plaintiffs' views and characterizations, including those about the strengths and weaknesses of their claims and the disclosures at issue. Defendants do

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provided for significant supplemental disclosures of material information to Delta's stockholders so that they could make a fully informed decision on whether to vote for or against a merger (the "Merger" or "Transaction") of Delta with Peoples Natural Gas Company, LLC and PNG Companies, LLC (together, "PNG"), pursuant to which Delta's stockholders received $30.50 in cash for each Delta common share they owned. The supplemental disclosures generally provided stockholders with material information concerning: Delta's financial projections; the valuation analyses performed by Delta's financial advisor in connection with the Transaction, Tudor, Pickering, Holt & Co. Advisors, LLC ("TPH"); potential conflicts of interest of Delta management in connection with the Transaction; and the background process leading to the Transaction.

Preliminary approval is only an initial step in the process of approving the Settlement and resolving the litigation, and does not involve a full-blown consideration of the merits of the Settlement. Rather, in determining whether to preliminarily approve the Settlement, the Court need only determine whether the Settlement appears to fall within a range of reasonableness – *i.e.*, whether it was the product of arm's-length bargaining free from collusion – thereby justifying the Court to order that notice be provided to Delta's stockholders about the Settlement – advising the stockholders of a final fairness hearing before the Court, and their opportunity to object. The Court can then fully consider the merits of any objections to the Settlement at the Final Approval Hearing. For the reasons stated herein, the Settlement easily meets the preliminary approval standard.

Additionally, the Court should preliminarily certify a class of Delta stockholders for the period starting from the announcement of the Merger (February 21, 2017) through its consummation (September 20, 2017). As discussed in greater detail herein, the proposed Class satisfies the

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not share these views, and reserve all rights with respect to Plaintiffs characterizations. But Defendants support Plaintiffs' request for approval of the settlement, thus do not oppose this Motion.

certification requirements of Kentucky Rule of Civil Procedure 23 because, among other reasons, common questions of law and fact arising in the Action are applicable to all Class members and predominate over any individual issues; the Class was fairly and adequately represented by Plaintiffs and Lead Counsel; Delta stockholders are too numerous for joinder to be practical; and a class action is the superior method to adjudicate shareholder litigation of this nature. Accordingly, preliminary approval should be granted and notice of the Settlement and Final Settlement Hearing should be disseminated to the preliminarily certified Class.

II. SUMMARY OF THE LITIGATION

On February 21, 2017, Delta announced that it had entered into an Agreement and Plan of Merger dated February 20, 2017 (the "Merger Agreement") that provided for the acquisition of Delta by PNG. Under the terms of the Merger Agreement, PNG would acquire all outstanding shares of Delta for $30.50 per Delta common share in cash.

On April 12, 2017, plaintiff Jacob Halberstam commenced an action styled as *Halberstam v. Delta Natural Gas Company, Inc., et. al.*, Case No. 17-CI-00175 (the "*Halberstam* Action") in this Court by filing a Class Action Complaint. On May 5, 2017, plaintiff Judy Cole commenced an action styled as *Cole v. Delta Natural Gas Company, Inc., et al.*, Case No. 17-CI-00213 (the "*Cole* Action") in this Court by filing a Class Action Complaint. Each of the *Halberstam* Action and the *Cole* Action were filed putatively on behalf of the named plaintiff and the other public stockholders of Delta relating to the proposed acquisition of the Company by PNG.

On May 10, 2017, the parties to the *Halberstam* Action and the *Cole* Action filed a stipulation and proposed order consolidating those actions, styled as *In re Delta Natural Gas Company, Inc. Stockholder Litigation*, Cons. Case No. 17-CI-00175 (the "Consolidated Action"), and appointing co-lead counsel, which stipulation and order was entered on January 24, 2018.

The Consolidated Action alleged claims of breach of fiduciary duties by the members of the

Delta board of directors (the "Board" or "Individual Defendants"[5]), and claims for aiding and abetting against Delta, PNG, Drake Merger Sub, Inc. ("Merger Sub"), and SteelRiver Infrastructure Fund North America, LP ("SteelRiver") (collectively, "Defendants"). The Consolidated Action alleged, among other things, that the Individual Defendants failed to take reasonable steps to ensure that Delta stockholders receive adequate and fair value for their shares, that Delta, PNG and Merger Sub aided and abetted the alleged breaches of fiduciary duty, and that the Preliminary Proxy Statement (the "Preliminary Proxy") filed by Delta on Schedule 14A with the Securities and Exchange Commission ("SEC") on March 24, 2017, was misleading and incomplete and failed to provide Delta stockholders with material information in connection with the Transaction, including information regarding (i) Delta management's projections, utilized by Delta's financial advisor TPH; (ii) Delta insiders' potential conflicts of interest; (iii) TPH's potential conflicts of interest; (iv) the sale process leading up to the Transaction; and (v) the valuation and other financial analyses prepared by TPH.

On April 27, 2017, the parties to the *Halberstam* Action filed an agreed order extending Defendants' time to July 13, 2017 to answer or otherwise respond to the complaint in the *Halberstam* Action.

Also on April 27, 2017, Delta filed the Definitive Proxy Statement on Schedule 14A with the SEC ("Definitive Proxy"), which set a special meeting of Delta stockholders for June 1, 2017 (the "Shareholder Vote Date") at 10:00 a.m. to vote on the Transaction.

On April 28, 2017, plaintiff Paul Parshall commenced an action styled as *Parshall v. Delta Natural Gas Company, Inc., et al.*, Case No. 5:17-cv-00194 in the United States District Court for

[5] The Individual Defendants are Glenn R. Jennings, Linda K. Breathitt, Jacob P. Cline, III, Sandra C. Gray, Edward J. Holmes, Michael J. Kistner, Fred N. Parker, Rodney L. Short, and Arthur E. Walker, Jr.

the Eastern District of Kentucky (the "Federal Action"), putatively on behalf of himself and the other public stockholders of Delta relating to the proposed acquisition of the Company by PNG. The Federal Action alleged that Delta and the Individual Defendants violated Section 14(a) of the Securities Exchange Act of 1934 ("1934 Act") and Rule 14a-9 promulgated thereunder, by disseminating a false and misleading Preliminary Proxy which failed to provide Delta stockholders with material information in connection with the Transaction, including information regarding: (i) Delta management's projections, utilized by Delta's financial advisor TPH; (ii) Delta insiders' potential conflicts of interest; (iii) TPH's potential conflicts of interest; (iv) the sale process leading up to the Transaction; and (v) the valuation and other financial analyses prepared by TPH. The Parshall complaint also alleged that the Individual Defendants and PNG violated Section 20(a) of the 1934 Act because as "controlling persons" of Delta within the meaning of Section 20(a), they are liable for Delta's dissemination of a materially misleading Preliminary Proxy.

On April 25, 2017, Plaintiffs' counsel sent to Defendants' counsel discovery requests, which included requests for production of certain confidential, nonpublic internal Company documents concerning the Transaction, including minutes from relevant Board meetings and presentations made by TPH to the Board, and requests to take the depositions of Delta's Chairman of the Board, President, and Chief Executive Officer, Glenn R. Jennings ("Jennings"), and the person(s) most knowledgeable at TPH concerning the Transaction.

Following Plaintiffs' initial discovery requests, the parties conducted arm's length negotiations concerning the expedited production of confidential, nonpublic internal Company documents. Between May 3 and May 10, 2017, the parties negotiated a Stipulated Protective Order for the Exchange of Confidential Information. On May 8, 2017, Delta began a rolling production of responsive documents ("the Agreed-Upon Discovery").

Plaintiffs' counsel, in conjunction with their financial expert, reviewed and analyzed the

Preliminary Proxy, the Definitive Proxy, other publicly-filed documents, and the confidential nonpublic expedited discovery with respect to, among other things, the fairness of the merger consideration, the adequacy of the process undertaken by the Board leading up to the execution of the Merger Agreement, and whether the Board satisfied its duty to fully disclose all material information concerning the Transaction to permit Delta stockholders to make a fully informed voting decision regarding the Transaction.

Following the review and analysis of Delta's internal documents and further analysis of the Definitive Proxy, in conjunction with Plaintiffs' retained financial expert, Plaintiffs identified certain additional information that they believe had been improperly omitted from the Definitive Proxy, and that in their view required disclosure prior to the Shareholder Vote Date to permit Delta stockholders to make a fully informed decision as to whether to vote in favor of the Transaction or seek appraisal.

On May 9, 2017, Plaintiffs, by and through their counsel, made a written settlement demand on Defendants, which was supplemented on May 15, 2017 (the "Demand"), which, among other things, demanded that Defendants cure the disclosure deficiencies identified by Plaintiffs in the pleadings and in conjunction with their financial expert by issuing supplemental disclosures to stockholders, and informed Defendants of their intention to enjoin the Proposed Transaction until such alleged disclosure deficiencies were cured.

On May 19, 2017, Plaintiffs' counsel shared with counsel for Defendants a complete draft of a brief in support of their anticipated motion to preliminarily enjoin the stockholder vote on the Transaction for discussion purposes relating to potential resolution. Following continued arm's-length negotiations, Plaintiffs' counsel and Defendants' counsel reached an agreement on the supplemental disclosures that Plaintiffs' counsel demanded for dissemination to Delta stockholders sufficiently in advance of the Shareholder Vote Date. The parties executed a memorandum of understanding ("MOU") on May 25, 2017, which provided for an agreement in principle to settle the

Action, subject to additional confirmatory discovery and approval of the Court, on the basis of the public disclosure of additional information concerning the Merger.

On May 25, 2017, pursuant to the MOU, the Company filed a supplement to the Definitive Proxy on Form 8-K containing the additional disclosures (the "Supplemental Disclosures") that are the basis of the resolution of the Consolidated Action and the Federal Action.

On June 1, 2017, Delta's stockholders voted to approve the previously announced Merger Agreement, dated February 20, 2017, by and among Delta, PNG and Merger Sub. On June 5, 2017, pursuant to the MOU, plaintiff Paul Parshall filed a Notice of Voluntary Dismissal without prejudice in the Federal Action. On September 20, 2017 (the "Closing Date"), PNG completed its previously announced acquisition of Delta.

Following the Closing Date, the parties negotiated additional discovery in order to confirm the fairness and reasonableness of the settlement, which included additional internal, confidential documents from the Company that Plaintiffs' Counsel believe were highly relevant, and depositions of two witnesses who played a central role in the consummation of the Transaction ("Confirmatory Discovery").

On January 25, 2018, Plaintiffs' Counsel conducted the deposition of Jonathan Sherman, Executive Director of TPH, the Company's financial advisor in connection with the Transaction. On January 30, 2018, Plaintiffs' Counsel conducted the deposition of Jennings, Chairman of the Board, President, and Chief Executive Officer of Delta during the relevant time period.

Based on their review and analysis, Plaintiffs' Counsel concluded that the additional document discovery and deposition testimony further confirmed that the proposed Settlement is fair, reasonable, and in the best interests of, Delta's former stockholders.

On August 28, 2018, after extensive arms' length settlement negotiations, the parties entered into the Stipulation which sets forth the terms and conditions of the proposed Settlement.

III. THE COURT SHOULD GRANT PRELIMINARY APPROVAL OF THE SETTLEMENT

A. Legal Standard for Preliminary Approval

Determining whether to approve a class action settlement is left to the sound discretion of the trial court and will not be overturned absent a clear showing of abuse of that discretion. *See Olden v. Gardner*, 294 F. App'x 210, 217 (6th Cir. 2008).[6] In addition, the court's judgment is informed by the strong judicial policy favoring settlement as well as by the realization that compromise is the essence of settlement. *See, e.g.*, *Wehr Constructors, Inc. v. Assurance Co. of Am.*, 384 S.W.3d 680, 689 (Ky. 2012) (noting the "important public policy of encouraging settlements by the parties to a lawsuit"); *Dozier v. Dozier*, No. 2006-CA-002541-MR, 2008 WL 344184, at *4 (Ky. Ct. App. Feb. 8, 2008) ("As a general rule, 'the court encourages voluntary, arms-length negotiated settlement, as opposed to protracted litigation . . . .'").

Courts considering a proposed class action settlement typically engage in a three-step process. First, the Court determines whether the proposed settlement merits preliminary approval and, if it does, the Court preliminarily certifies a settlement class. Second, the Court directs that notice of the proposed settlement be distributed to the settlement class, thereby providing class members with the opportunity to object to the settlement. Third, after the notice has been distributed, the Court will evaluate at a hearing whether final approval of the settlement is warranted and, if so, grants final approval. *See* Manual for Complex Litigation, Fourth Ed. ("MCL 4th") §§ 21.632-

[6] Kentucky courts may look to federal law in interpreting its own class action statute. *See Stewart Title Guar. Co. v. Finney*, No. 2011-CA-000499-ME, 2012 WL 5378813, at *2 n.1 (Ky. Ct. App. Nov. 2, 2012) ("It is well established that Kentucky courts rely upon Federal case law when interpreting a Kentucky rule of procedure that is similar to its federal counterpart. Fed.R.Civ.P. 23 is the federal counterpart of CR 23, and is similar. Thus, federal case law is persuasive in interpreting CR 23.") (quotation and citation omitted); *Hughes v. UPS Supply Chain Solutions, Inc.*, No. 2012-CA-001353-ME, 2013 WL 4779746, at *4 n.2 (Ky. Ct. App. Sept. 6, 2013), reh'g denied (Oct. 28, 2013), review denied (Feb. 12, 2014).

21.634; *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 622 (1997).

Thus, the preliminary approval process is merely the Court's initial assessment of the proposed settlement, the purpose of which is to determine (1) whether the proposed settlement is within the range of reasonableness; (2) whether it is worthwhile to provide notice to the class of the terms and conditions of the settlement; and (3) whether to schedule a formal fairness hearing. 4 Alba Conte & Herbert Newberg, *Newberg on Class Actions* §11.25 (4th ed. 2002).

The Settlement here falls within the range of reasonableness and was the product of contentious, arm's-length bargaining. Thus, the Court should direct that notice of a formal fairness hearing be given to class members. Then, at the Final Approval Hearing, the Court can fully consider any arguments and evidence presented in support of the Settlement, and to the extent there are any objectors, consider their positions at that time. MCL 4th §§ 21.632, 21.633; CR 23.05(2) ("If the proposal would bind class members, the court may approve it only after a hearing and on finding that it is fair, reasonable, and adequate.").

B. The Proposed Settlement Meets the Standard for Preliminary Approval

1. The Benefits Conferred in the Settlement

The Settlement provided Delta's stockholders with significant additional information, enabling them to make a fully informed vote on the Transaction. "Kentucky courts have long recognized that corporate directors owe fiduciary duties to the corporation and its shareholders, duties emanating from common law." *Baptist Physicians Lexington, Inc. v. New Lexington Clinic, P.S.C.*, 436 S.W.3d 189, 194 (Ky. 2013). Moreover, pursuant to KRS 271B.8-300, directors of Kentucky corporations "shall discharge his duties as a director, including his duties as a member of a committee: (a) In good faith; (b) On an informed basis; and (c) In a manner he honestly believes to be in the best interests of the corporation."

"A combination of the fiduciary duties of care and loyalty gives rise to the requirement that

'a director disclose to stockholders all material facts bearing upon a merger vote.'" *Cinerama, Inc. v. Technicolor, Inc.*, 663 A.2d 1156, 1163 (Del. 1995) (citation omitted); *Stroud v. Grace*, 606 A.2d 75, 84 (Del. 1992).[7] The determination of whether a board breached its duty of disclosure turns on the materiality of the alleged non-disclosures and omissions. *See Rosenblatt v. Getty Oil Co.*, 493 A.2d 929, 944 (Del. 1985). The "materiality standard is an objective one, measured from the point of view of the reasonable investor," not from "the subjective views of the directors." *See Zirn v. VLI Corp.*, 621 A.2d 773, 779 (Del. 1993). An omitted fact is deemed material when it "would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available." *Rosenblatt*, 493 A.2d at 944 (citing *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976)). Consequently, "'it need not be shown that an omission or distortion would have made an investor change his overall view of a [merger].'" *Zirn*, 621 A.2d at 779 (citation omitted).

As alleged by Plaintiffs, by failing to fully and accurately disclose all material facts concerning the Transaction, the Individual Defendants breached their fiduciary duty of disclosure (and thus duties of care and loyalty) owed to the Company and its stockholders. In curing these alleged breaches of fiduciary duties, the Settlement thus has benefited the Company and its stockholders.

Specifically, pursuant to the Settlement, the Board provided the stockholders with the Supplemental Disclosures, which disclosed certain material information relating to (a) Delta's financial projections; (b) TPH's valuation analyses; (c) potential conflicts of Delta management in connection with the Transaction; and (d) the background process leading to the Transaction.

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[7] Kentucky courts have relied upon Delaware case law regarding corporate law issues. *See, e.g., 2815 Grand Realty Corp. v. Goose Creek Energy, Inc.*, 656 F. Supp. 2d 707, 716 (E.D. Ky. 2009); *Bacigalupo v. Kohlhepp*, 240 S.W.3d 155, 157 (Ky. Ct. App. 2007) ("Delaware has long been a bastion for corporate law and its development. . . . [T]his court has previously adopted Delaware case law when examining corporate statutes . . .").

a. Delta's Financial Projections

The Supplemental Disclosures provided stockholders with important information about the Company's future standalone prospects. Specifically, stockholders were provided with Delta's projections of unlevered free cash flows and dividends per share for years 2017 through 2024.[8] The full disclosure of a company's financial projections is plainly material information to stockholders because the projections are among the most significant factors relied upon by investors in valuing their stock.[9] This information was particularly important to stockholders in this case because the Transaction was an all-cash merger. As the Delaware Court of Chancery, which regularly presides over corporate cases such as this, has explained, when "[f]aced with the question of whether to accept cash now in exchange for forsaking an interest in [the Company's] future cash flows, [the Company's] stockholders would obviously find it important to know what management and the company's financial advisor's best estimate of those future cash flows would be." *Netsmart*, 924 A.2d at 202-04.[10] Indeed, the Delaware Court of Chancery has enjoined merger transactions when a

[8] Although the Definitive Proxy already purported to disclose the Company's dividends per share for years 2017 through 2026, the dividends per share disclosed in the Supplemental Disclosures, which were the projections used by TPH in its Dividend Discount Model Analysis, were slightly higher than those projections initially disclosed in the Definitive Proxy. Thus, this Supplemental Disclosure was necessary to cure a misleading disclosure. *In re Pure Res., Inc. S'holders Litig.*, 808 A.2d 421, 448 (Del. Ch. 2002) ("When a document ventures into certain subjects, it must do so in a manner that is materially complete and unbiased by the omission of material facts.").

[9] *See Brown v. Brewer*, Case No. CV 06-3731-GHK, 2010 U.S. Dist. LEXIS 60863, at *71 (C.D. Cal. June 17, 2010) ("A reasonable shareholder would have wanted to independently evaluate management's internal financial projections to see if the company was being fairly valued."); *Marx v. Computer Scis. Corp.*, 507 F.2d 485, 489 (9th Cir. 1974); *Smith v. Robbins & Myers*, 969 F. Supp. 2d 850, 874 (S.D. Ohio 2013).

[10] *See also David P. Simonetti Rollover IRA v. Margolis*, C.A. No. 3694, 2008 Del. Ch. LEXIS 78, at *30 (Del. Ch. June 27, 2008) ("The key assumptions made by a banker in formulating his opinion are of paramount importance to the stockholders because any valuation analysis is heavily dependent upon the projections utilized."); *Maric Capital Master Fund, Ltd. v. Plato Learning, Inc.*, 11 A.3d 1175, 1178 (Del. Ch. 2010) ("[M]anagement's best estimate of the future cash flow of a corporation that is proposed to be sold in a cash merger is clearly material information."); *In re PNB Holding Co.*

company has failed to disclose its projected free cash flows. *See, e.g.*, *id.* at 203 ("Indeed, projections of this sort are probably among the most highly-prized disclosures by investors. . . . What [stockholders] cannot hope to do is replicate management's inside view of the company's prospects."); *Maric Capital*, 11 A.3d at 1178. Not only are these previously undisclosed projections material on their own for the reasons stated above, but because they were the basis of what are considered two of the most valuable valuation analyses, the Discounted Cash Flow and Dividend Discount Model (since these are both valuation analyses that utilize management's best estimates of the future prospects of the company in order to derive an estimated present standalone value of the Company's stock) as discussed more fully below.

b. TPH's Valuation Analyses

The financial advisor's analyses "usually address the most important issue to stockholders – the sufficiency of the consideration being offered to them for their shares in a merger or tender offer." *In re Pure Res., Inc. S'holders Litig.*, 808 A.2d 421, 449 (Del. Ch. 2002). For this reason, "stockholders are entitled to a fair summary of the substantive work performed by the investment bankers" when the bankers' financial analyses are relied upon by boards to approve merger transactions. *Id*. Thus, "when a banker's endorsement of the fairness of a transaction is touted to shareholders, the valuation methods used to arrive at that opinion as well as the key inputs and range of ultimate values generated by those analyses must also be fairly disclosed." *In re Netsmart Techs., Inc. S'holders Litig.*, 924 A.2d 171, 203-04 (Del. Ch. 2007). "Only providing some of that information is insufficient to fulfill the duty of providing a fair summary of the substantive work performed by the investment bankers upon whose advice the recommendations of the board as to

S'holders Litig., 2006 Del. Ch. LEXIS 158, at *59 (Del. Ch. Aug. 18, 2006) ("In the context of a cash out merger, reliable management projections of the company's future prospects are of obvious materiality to the electorate.").

how to vote . . . rely." *Id*. at 204 (citation omitted).

Here, the Supplemental Disclosures provided Delta's stockholders with material information relating to TPH's: (i) Discounted Cash Flow and Dividend Discount Model Analyses; and (ii) Selected Comparable Company Multiples and Selected Comparable Transaction Analyses.

i. TPH's Discounted Cash Flow and Dividend Discount Model Analyses

The Supplemental Disclosures provided Delta's stockholders with material information relating to TPH's Discounted Cash Flow and Dividend Discount Model Analyses. First, the unlevered free cash flows disclosed in the Supplemental Disclosures were used by TPH to perform its Discounted Cash Flow Analysis, and the dividends per share disclosed in the Supplemental Disclosures were used by TPH to perform its Dividend Discount Model Analysis. Generally speaking, the Delaware Court of Chancery has repeatedly held that financial projections of companies that are used in the banker's analyses "are probably among the most highly-prized disclosures by investors." *Netsmart*, 924 A.2d at 203.[11] Additionally, it is well established that a discounted cash flow analysis is the most significant analysis upon which a fairness opinion can

[11] *See also In re BioClinica, Inc. S'holder Litig.*, 2013 Del. Ch. LEXIS 52, at *18 (Del. Ch. Feb. 25, 2013) ("Generally, the failure of a company to disclose management's financial projections in its proxy materials, when those projections have been relied on by a financial advisor to render a fairness opinion, is a material omission that will sustain injunctive relief if not corrected."); *In re Staples, Inc. S'holders Litig.*, 792 A.2d 934, 958 n.44 (Del. Ch. 2001) ("One suspects that the projections are the information that most stockholders would find the most useful to them.").

rest.[12] Similarly, when a dividend discount model analysis[13] also is the basis of a fairness opinion (as it is here) such analysis is equally critical and requires the same transparency of disclosure.

In addition to providing stockholders with important information about the Company's future prospects, the Supplemental Disclosure of Delta's projected unlevered free cash flows and dividends per share was material to stockholders because they were the key inputs that were discounted at a specific rate to determine the present value of the dividend stream or cash flows in order to derive an implied price per share range of the stock on a standalone basis in TPH's Discounted Cash Flow and Dividend Discount Model Analyses.Thus, stockholders were entitled to this information in evaluating the fairness of the merger consideration offered in the Transaction. Joshua Rosenbaum and Joshua Pearl, *Investment Banking: Valuation, Leveraged Buyouts, and Mergers & Acquisitions*, 127 (2d ed. 2013) (hereafter, "Rosenbaum & Pearl, *Investment Banking*") ("The projection of the target's *unlevered* FCF forms the core of a DCF." (emphasis in original)); *In re Appraisal of the Orchard Enters*., C.A. No. 5713-CS, 2012 Del. Ch. LEXIS 165, at *43 (Del. Ch. July 18, 2012) ("Put simply, the DCF method involves three basic components: (i) cash flow projections; (ii) a terminal value; and (iii) a discount rate."); *see also Netsmart*, 924 A.2d at 203-04 (enjoining the merger pending the disclosure of free cash flows and stating that, "when a banker's endorsement of the

[12] Steven M. Davidoff, *Fairness Opinions*, 55 Am. U.L. Rev. 1557, 1575-76 (Aug. 2006) ("in the corporate control transaction paradigm the most important analysis is, absent unusual circumstances, the discounted cash flow calculus."). Courts have recognized that the discounted cash flow analysis "is the approach that merits the greatest confidence within the financial community." *In re Appraisal of Dell Inc*., 2016 Del. Ch. LEXIS 81, at *148 (Del. Ch. May 31, 2016) ; *Laborers Local 235 Benefit Funds v. Starent Networks, Corp.*, 2009 Del. Ch. LEXIS 210, at *1-2 (Del. Ch. Nov. 18, 2009) ("the discounted cash flow analysis [is] arguably the most important valuation metric" for a company's stockholders).

[13] The *Dividend Discount Model Analysis* performed by TPH here discounted projected *dividend* streams back to current value rather than projected *cash flows* but, the function of the respective valuation analyses are virtually identical, whereby a key Company financial metric is discounted at a specific rate to determine the present value of the dividend stream or cash flows in order to derive an implied price per share range of the stock on a standalone basis.

fairness of a transaction is touted to shareholders, the valuation methods used to arrive at that opinion as well as the key inputs and range of ultimate values generated by those analyses must also be fairly disclosed.").

Second, the Supplemental Disclosures provided stockholders with the terminal growth rates that were implied from TPH's use of terminal EBITDA multiples of 8.0x to 12.0x in its Discounted Cash Flow Analysis. Specifically, the Supplemental Disclosures informed stockholders that the implied terminal growth rates ranged from 0.4% to 0.7%. This information was material because the perpetuity growth rate generally should be based on a "company's expected long-term industry growth rate, which generally tends to be within a range of 2% to 4% (i.e., nominal GDP growth)." Rosenbaum & Pearl, *Investment Banking*, at 149. Thus, stockholders could observe for the first time that TPH used lower terminal multiples to calculate Delta's terminal value, which "typically accounts for a substantial portion of a company's value in a DCF, sometimes as much as three-quarters or more." *Id*. at 148. Accordingly, these Supplemental Disclosures were material to stockholders and support the approval of the Settlement.

ii. TPH's Selected Comparable Company Multiples and Selected Comparable Transaction Analyses

The Supplemental Disclosures also provided Delta stockholders with the previously undisclosed multiples and benchmarking metrics observed by TPH in its Selected Comparable Company Multiples and Selected Comparable Transaction Analyses. As a general matter, courts have held that the multiples underlying a banker's comparable companies and transactions analyses are material information.[14] The disclosure of the observed multiples and benchmarking metrics is

[14] *See e.g.*, *In re Celera Corp. S'holder Litig*., 2012 Del. Ch. LEXIS 66, at *122 (Del. Ch. Mar. 23, 2012), *rev'd in part on other grounds*, 2012 Del. LEXIS 658 (Del. Dec. 27, 2012) ("[A] fair summary of a comparable companies or transactions analysis probably should disclose the market multiples derived for the comparable companies or transactions."); *Turberg v. ArcSight*, C.A. No. 5821-VCL,

necessary because the comparable companies and precedent transactions analyses are fundamentally based on comparison and relative valuation. *See In re Radiology Assocs., Inc.*, 611 A.2d 485, 490 (Del. Ch. 1991) ("The utility of the comparable company approach depends on the similarity between the company the court is valuing and the companies used for comparison. At some point, the differences become so large that the use of the comparable company method becomes meaningless for valuation purposes."); Rosenbaum Pearl, *Investment Banking* at 13 (stating that trading comps are "built upon the premise that similar companies provide a highly relevant reference point for valuing a given target"). With this information, stockholders were able to meaningfully assess the efficacy of TPH's analyses. *See Prescott Small Cap, L.P. v. Coleman Co.,* C.A. No. 17802, 2004 Del. Ch. LEXIS 131, at *82 (Del. Ch. Sept. 8, 2004) (rejecting comparable company analysis where "none of [the defendant's expert's] 'comparables' was truly comparable to [the subject company] in any meaningful sense, and none of them had economics similar to [the subject company's]").

c. Potential Conflicts of Delta Management

The Supplemental Disclosures provided stockholders with material information relating to potential conflicts of interest of Delta management in connection with the Transaction. In particular, the Supplemental Disclosures informed stockholders that:

> Buyer indicated that it was interested in exploring the possibility of hiring some of Delta's executive officers when Buyer submitted its confidential nonbinding expression of interest to TPH in connection with the September 21, 2016 First Round Bidder deadline (the "Nonbinding Expression of Interest") and in its written offer letter dated January 30, 2017 to acquire Delta for an all cash acquisition price of $30.50 per share ("Offer Letter").

The Supplemental Disclosures also provided stockholders with the language from PNG's two

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at 43 (Del. Ch. Sept. 20, 2011) (TRANSCRIPT) ("[I]f you were to consider what really constitutes a fair summary, then the background multiples should be on there, just like they're in there when you give them to the board . . . . [Y]ou would never see a board book that would go to the board without the background multiples.").

offer letters that indicated an interest in retaining Jennings following the close of the Transaction, as well as the details of certain verbal discussions on May 12, 2017 regarding Jennings' future employment and the appointment of a member of the Board to the PNG Board.

This information was material to stockholders because promises of future employment and its resulting economic benefits could cause members of management to agree to a lower merger consideration,[15] or steer the Company towards their favored bidder and against other interested parties to the detriment of the Company's stockholders.[16] Notably, there is no requirement that the acquiror and management have reached an agreement with respect to post-merger employment; rather, it is sufficient that Company management is aware that post-merger employment is a possibility.[17] This is because the potential conflict of interest arises when management becomes aware that they might continue in a lucrative management position, as opposed to being out of a job. Indeed, the "relevant inquiry is not whether an actual conflict of interest exists, but rather whether full disclosure of potential conflicts of interest has been made." *Millenco L.P. v. meVC Draper Fisher Jurvetson Fund I, Inc*., 824 A.2d 11, 15 (Del. Ch. 2002) (quotation omitted). Accordingly,

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[15] *In re Lear Corp. S'holder Litig.*, 926 A.2d 94, 114 (Del. Ch. 2007) ("Put simply, a reasonable stockholder would want to know an important economic motivation of the negotiator singularly employed by a board to obtain the best price for the stockholders, when that motivation could rationally lead that negotiator to favor a deal at a less than optimal price, because the procession of a deal was more important to him, given his overall economic interest, than only doing a deal at the right price.").

[16] *Netsmart*, 924 A.2d at 194 ("If management had an incentive to favor a particular bidder (or type of bidder), it could use the due diligence process to its advantage, by using different body language and verbal emphasis with different bidders. . . . One obvious reason for concern is the possibility that some bidders might desire to retain existing management or to provide them with future incentives while others might not.").

[17] *In re Atheros Commc'ns, Inc. S'holder Litig.*, 2011 Del. Ch. LEXIS 36, at *41-42 (Del. Ch. Mar. 4, 2011) ("Knowledge that, even though specific terms were not elicited until later in the process, Barratt was aware that he would receive an offer of employment from Qualcomm at the same time he was negotiating, for example, the Transaction's offer price, would be important to a reasonable shareholder's decision regarding the Transaction.")

this information was material to stockholders.

d. The Background Process Leading to the Transaction

The Supplemental Disclosures also provided stockholders with material information relating to the terms of the confidentiality agreements that the Company entered into with interested parties. "Stockholders are entitled to a balanced and truthful recitation of events, not a sanitized version that is materially misleading." *In re Pure Res., Inc. S'holders Litig.*, 808 A.2d 421, 451 (Del. Ch. 2002). Moreover, "once defendants traveled down the road of partial disclosure of the history leading up to the Merger," they have an "obligation to provide the stockholders with an accurate, full, and fair characterization of those historic events." *Arnold v. Soc'y for Sav. Bancorp*, 650 A.2d 1270, 1280 (Del. 1994). Significantly, "the disclosure of even a non-material fact can, in some instances, trigger an obligation to disclose additional, otherwise non-material facts in order to prevent the initial disclosure from materially misleading the stockholders." *Zirn v. VLI Corp*., 681 A.2d 1050, 1056 (Del. 1996).

Specifically, the Supplemental Disclosures informed stockholders that the confidentiality agreements contained standstill provisions with the following terms:

> (a) standstill periods of up to two (2) years, (b) prohibitions against acquiring Delta securities or assets, (c) prohibitions against making proposals for any type of business combination or acquisition involving Delta without the consent of Delta's Board, (d) prohibitions against obtaining representation on Delta's Board, (e) prohibitions against asking for waivers of the standstill provisions, and (e) "fall-away" termination provisions providing that the standstill provisions would terminate effective upon Delta's execution of a transaction agreement or public announcement of a transaction.

This information was material because stockholders would find it important whether the parties that expressed an interest in acquiring Delta were free to make acquisition proposals without the permission of the Board, and that those parties could only make such a proposal when Delta entered into the Merger Agreement, which contained several deal protection devices that have the effect of deterring alterative offers.

2. The Settlement is Within the Range of Reasonableness

A monetary benefit to the class "is not the sole touchstone of reasonableness when reviewing the settlement of claims for equitable and injunctive relief challenging a corporate merger." *In re Wm. Wrigley Jr. Co. S'holders Litig.,* 2009 Del. Ch. LEXIS 12, at *22-23 (Del. Ch. 2009).[18] When corporate disclosure of material information to stockholders is made as a result of a lawsuit, courts have held that this disclosure provides a significant non-monetary benefit.[19] Approval of the Settlement is appropriate because courts have "often approved settlements of merger class litigation that entail only non-monetary relief" such as additional disclosures. *Wm. Wrigley Jr.*, Consol. C.A. No. 3750-VCL, 2009 Del. Ch. LEXIS 12, at *18-19.[20] The sort of relief obtained in the instant Settlement has frequently provided the basis for the resolution of stockholders' claims.[21]

The Settlement here conferred substantial benefits on Delta and Delta's stockholders by allowing them to determine on the basis of full material information whether to approve the Merger or vote against it. Plaintiffs' actions demonstrate the requisite probable cause to approve the Settlement preliminarily. Plaintiffs did not agree to the Settlement until their counsel (who possess extensive experience in complex shareholder class action litigation) had analyzed non-public

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[18] *See also In re Talley Indus., Inc. S'holders Litig.*, No. 15961, 1998 Del. Ch. LEXIS 53 (Del. Ch. Apr. 13, 1998) (approving settlement of merger class litigation that entailed nonpecuniary relief).

[19] *See Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375, 395-96 (1970); *In re Schering-Plough/Merck Merger Litig*., 2010 U.S. Dist. LEXIS 29121, *50 (D.N.J. Mar. 25, 2010) (stating that a substantial benefit was conferred by providing shareholders with "more complete, informative and material supplemental disclosures for the purpose of exercising their vote in accordance with the Merger"); *see also Wm. Wrigley Jr.,* 2009 Del. Ch. LEXIS 12, at *23; *Tandycrafts, Inc. v. Initio Partners*, 562 A.2d 1162, 1165 (Del. 1989).

[20] *In re Countrywide Corp. S'holders Litig.*, Consol. C.A. No. 3464-VCN, 2009 Del. Ch. LEXIS 44, at *53-54 (Del. Ch. Mar. 31, 2009)

[21] *See, e.,g., Countrywide*, 2009 Del. Ch. LEXIS 155; *In re Nat'l City Corp. S'holders Litig.*, No. 4123-CC, 2009 Del. Ch. LEXIS 138, at *2 (Del. Ch. July 31, 2009); *In re Golden State Bancorp Inc. S'holders Litig.*, No. 16175, 2000 Del. Ch. LEXIS 8 (Del. Ch. Jan. 7, 2000); *Tandycrafts, Inc.*, 562 A.2d at 1163-64, 1167.

documents produced by Defendants in expedited discovery and consulted with a financial expert to assess the significance of the facts uncovered. Plaintiffs and their counsel were therefore well-informed about the strengths and weaknesses of their claims. Moreover, Plaintiffs' Counsel only entered into the Stipulation after the completion of confirmatory discovery, which further informed their opinion regarding the reasonableness of the Settlement. While Plaintiffs believe that their claims in the litigation were meritorious when filed, through investigation, discovery, and consultation with their expert, Plaintiffs and their counsel have concluded that, except for the disclosure claims, their chances of success on the other claims asserted would be an uphill battle. Most courts recognize that the opinion of experienced counsel supporting the settlement is entitled to considerable weight. *See, e.g., Reed v. GMC*, 703 F.2d 170, 175 (5th Cir. 1983) ("In reviewing proposed class settlements, a trial judge is dependent upon a match of adversary talent because he cannot obtain the ultimate answers without trying the case.").

After considering the numerous defenses that Defendants had in the event that Plaintiffs pursued a post-closing damages claim against Defendants, Plaintiffs made the informed decision to pursue a Settlement that would provide Delta stockholders with full material information prior to the Shareholder Vote, which courts have recognized as the preferred form of relief when alleging breaches of the duty of disclosure.[22] The Supplemental Disclosures allowed the stockholders to determine whether to support the Merger based on complete and accurate information.

Accordingly, there is substantial evidence to suggest that the Settlement is within the range of reasonableness to be presented to the Class, and thus preliminary approval should be granted.

[22] *See In re Transkaryotic Therapies, Inc.*, 954 A.2d 346, 356-63 (Del. Ch. 2008); *In re Staples S'holders Litig.*, 792 A.2d 934, 960 (Del. Ch. 2001).

IV. PRELIMINARY CERTIFICATION OF THE CLASS IS PROPER AS THE PROPOSED CLASS MEETS THE REQUIREMENTS OF RULE 23

In reviewing the proposed Settlement, the Court must determine whether this Action may be maintained as a class action under Rule 23 of the Kentucky Rules of Civil Procedure. Pursuant to CR 23.01:

> Subject to the provisions of Rule 23.02, one or more members of a class may sue or be sued as representative parties on behalf of all only if (a) the class is so numerous that joinder of all members is impracticable, (b) there are questions of law or fact common to the class, (c) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (d) the representative parties will fairly and adequately protect the interests of the class.

In addition to satisfying the requirements of CR 23.01, a plaintiff must also satisfy a subsection of CR 23.02. As discussed below, plaintiff, the Class, and the Action readily satisfy the requirements of CR 23.01 and 23.02(a) and (b).

For settlement purposes only, Plaintiffs request that the Court preliminarily certify a Class consisting of:

> Any and all record holders and beneficial owners of common stock of Delta who held or owned such stock at any time during the period beginning on and including July 21, 2016 through and including March 11, 2017, the date of consummation of the Delta/F.N.B. merger, including any and all of their respective successors-in-interest, successors, predecessors-in-interest, predecessors, representatives, trustees, executors, administrators, estates, heirs, assigns and transferees, immediate and remote, and any person or entity acting for or on behalf of, or claiming under, any of them, and each of them, together with their predecessors-in-interest, predecessors, successors-in-interest, successors, and assigns, but excluding Defendants and their immediate family members, any entity in which any Defendant has a controlling interest, and any successors-in-interest thereto.

Here, all of the requirements necessary to certify this matter preliminarily as a class action for purposes of the Settlement have been satisfied, and there are no impediments to the Court's preliminary certification of the Class, and the designation of Plaintiffs as the Class Representatives, WeissLaw LLP, Levi & Korsinsky LLP and Rigrodsky & Long, P.A. as Class Counsel, and Gray & White Law and Strause Law Group, LLC as Class Liaison Counsel.

A. The Class Meets the Requirements of Kentucky Civil Rule 23.01

1. Numerosity

The members of the class must be so numerous that it is impractical for each of them to bring their claims individually before the court. *See Trabue v. Tichenor*, 695 S.W.2d. 432, 434 (Ky. App. 1985) (citing CR 23.01). As of March 24, 2017, there were 7,160,470 common shares of Delta outstanding and belonging to the members of the Class, owned by hundreds, if not thousands, of individual stockholders. The numerosity element is, therefore, easily satisfied. Indeed, courts have certified actions as class actions where there were far fewer class members. *See, e.g., Phila. Elec. Co. v. Anaconda Am. Brass Co.*, 43 F.R.D. 452 (E.D. Pa. 1968) (deeming a 25-member class sufficiently numerous under Fed. R. Civ. P. 23(a)(1)); *Fidelis Corp. v. Litton Ind., Inc.*, 293 F. Supp. 164 (S.D.N.Y. 1968) (35 sufficiently numerous); *Swanson v. Am. Consumer Indus., Inc.*, 415 F.2d 1326 (7th Cir. 1969) (40 sufficiently numerous).

2. Commonality

Commonality is satisfied if there is at least one issue common to class members. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998). Here, there are questions of law and fact common to the Class including, but not limited to: (i) whether defendants breached their fiduciary duties of loyalty or due care with respect to Plaintiffs and the other members of the Class in connection with the Transaction; and (ii) whether the Preliminary and Definitive Proxy contained material misstatements or omissions concerning the Transaction. The commonality requirement is met.

3. Typicality

Typicality is satisfied when the plaintiff's claims share a common element with the class. Here, Plaintiffs' claims arise from the same course of conduct that gave rise to the claims of other Class members and, therefore, Plaintiffs' claims are typical of other Class members. *See Stout v. J.D.*

Byrider, 228 F.3d 709, 717 (6th Cir. 2000). The Plaintiffs and all Class members owned Delta common stock during the period they allege defendants violated their duties to such stockholders.

4. Adequacy

The adequacy requirement encompasses two separate inquiries: "(1) whether any substantial conflicts of interest exist between the representatives and the class; and (2) whether the representatives will adequately prosecute the action." *Valley Drug Co. v. Geneva Pharm., Inc*., 350 F.3d 1181, 1190 (11th Cir. 2003) (internal citations omitted). Here, no conflicts exist between Plaintiffs and members of the Class. As Delta stockholders, Plaintiffs stand in the same shoes as members of the Class with the same incentives to maximize the overall recovery. Moreover, Plaintiffs' Counsel are highly experienced class action attorneys, have been appointed as lead counsel in numerous nationwide class actions, and have long and successful track records in litigating major class actions of this nature. Therefore, the adequacy requirement is satisfied.

B. The Class Should Be Preliminarily Certified as a Non-Opt Out Class Under Kentucky Civil Rule 23.02

Certification of a class under Kentucky Civil Rule 23.02(b) is appropriate where the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole. Here, defendants are alleged to have breached their fiduciary duties of loyalty and due care in connection with the Transaction. This is a ground of general applicability to the entire class of former record and beneficial owners of Delta.

Further, pursuant to Rule 23.02(c), the questions of law or fact common to the Class must predominate over individual questions, and a class action must be superior to other available methods for the fair and efficient adjudication of the controversy. The common questions identified above are at the core of this litigation and there are no questions affecting individual members of the Class

that have been presented. Accordingly, the common questions by definition predominate over any questions affecting individual members of the Class.

Additionally, the class action procedure is superior to other available methods for the fair and efficient adjudication of this litigation. The alternatives to class treatment here would be a multiplicity of identical individual suits which would strain Kentucky's judicial resources; or wholesale intervention of all the parties which would be impracticable. The interest of members of the Class in individually controlling the prosecution of separate actions is not likely to be a grave concern due to the unified nature of the claims asserted and relief sought. The negligibility of each Class member's individual damages does not render certification inappropriate. Any difficulties likely to be encountered in the management of this case are not insurmountable. Therefore, the elements of Kentucky Civil Rule 23.02 are satisfied.

V. THE COURT SHOULD APPROVE THE PLAN OF NOTICE

Under Rule 23.05(1), prior to the final approval of the Settlement, "[t]he court must direct notice in a reasonable manner to all class members who would be bound by the proposal." The proposed Notice is attached to the Stipulation as Exhibit C. The proposed Notice is drafted in plain and easily understood language, and it clearly and concisely provides a description of the nature of the litigation; a summary of the Settlement terms; an explanation of the persons and claims being released under the Settlement; an explanation of reasons for the Settlement; a description of the Class; the date, time and place of the Final Settlement Hearing; a statement of the Class members' right to appear and object and the procedures which must be followed to be heard; a statement that Plaintiffs' Counsel intend to petition for a payment of attorneys' fees and expenses, and whom to contact for more information about the Settlement.

Further, the proposed Scheduling Order attached as Exhibit B to the Stipulation provides that, no later than fifteen (15) calendar days after the entry of the Scheduling Order, Delta shall cause a

copy of the Notice to be mailed by first-class mail, postage prepaid, to all persons who it has identified as potential Class members, and that, no later than five (5) calendar days prior to the date of the Settlement Hearing, counsel for Defendants shall file with the Court an affidavit or declaration stating their compliance with the notice procedures set forth in the Scheduling Order.

Accordingly, Plaintiffs respectfully submit that the form and method of notice herein is the best notice practicable and constitutes due and sufficient notice of the final approval hearing to all persons entitled to receive such notice, and fully satisfies the requirements of due process, CR 23.05(1), and applicable 1aw.

VI. PROPOSED SCHEDULE OF EVENTS

Plaintiffs propose the following schedule of events leading to the Final Approval Hearing, to which Defendants have agreed and which is consistent with the Settlement:

Item	Deadline
Dissemination of Notice to Class Members (Ex. C to the Stipulation)	No later than fifteen (15) calendar days after the entry of the Scheduling Order
Filing of Plaintiffs' opening brief in support of the Settlement and the application for attorneys' fees, costs, and expenses	No later than thirty (30) calendar days prior to the Settlement Hearing
Last day for Class members to object to the Settlement and the application for attorneys' fees, costs, and expenses	No later than twenty-one (21) calendar days prior to the Settlement Hearing
Filing of Plaintiffs' reply brief, and all responses to any Class member objections, if any	No later than seven (7) calendar days prior to the Settlement Hearing
Filing of Affidavit of Mailing of Notice	No later than five (5) calendar days prior to the date of the Settlement Hearing
Final Settlement Hearing	At the Court's convenience, but at least ninety (90) days after entry of the Scheduling Order.

VII. CONCLUSION

For all the above-stated reasons, Plaintiffs respectfully request that the Court enter the proposed Preliminary Approval Order attached as Exhibit B to the Stipulation that, among other things: (1) preliminarily approves the proposed Settlement set forth in the Stipulation; (2) preliminarily certifies a non-opt-out Class for purposes of the Settlement, and designates Plaintiffs as the Class Representatives, WeissLaw LLP, Levi & Korsinsky LLP and Rigrodsky & Long, P.A. as Class Counsel, and Gray & White Law and Strause Law Group, LLC as Class Liaison Counsel; (3) approves the form and manner of the Notice, and (4) schedules the Final Approval Hearing to finally approve the Settlement and corresponding interim deadlines for dissemination of the Notice, briefing on the Settlement, and for objections by Class members.

Dated: August 30, 2018

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