COHN LIFLAND PEARLMAN HERRMANN & KNOPF LLP
Peter S. Pearlman (Atty. No. 243551970)
Audra DePaolo (Atty. No. 020321995)
Park 80 West – Plaza One
250 Pehle Avenue, Suite 401
Saddle Brook, New Jersey 07663
Tel.: (201) 845-9600
Fax: (201) 845-9423
psp@njlawfirm.com
ad@njlawfirm.com

(Additional Counsel on Signature Page)

Attorneys for Plaintiff

OKLAHOMA FIREFIGHTERS PENSION AND RETIREMENT SYSTEM, Individually and on Behalf of All Others Similarly Situated, Plaintiff, v. NEWELL BRANDS INC., MICHAEL B. POLK, JOHN K. STIPANCICH, SCOTT H. GARBER, BRADFORD R. TURNER, MICHAEL T. COWHIG, THOMAS E. CLARKE, KEVIN C. CONROY, SCOTT S. COWEN, DOMENICO DE SOLE, CYNTHIA A. MONTGOMERY, CHRISTOPHER D. O'LEARY, JOSE IGNACIO PEREZ-LIZAUR, STEVEN J. STROBEL, MICHAEL A. TODMAN, and RAYMOND G. VIAULT, Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: HUDSON COUNTY DOCKET NO.: HUD-L-003492-18 Civil Action

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

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I. INTRODUCTION

Plaintiff and certified Class Representative Oklahoma Firefighters Pension and Retirement System ("Plaintiff" or "Class Representative") has reached a proposed Settlement of $102,500,000 in cash for all claims asserted in this Action[1] against Defendants Newell Brands Inc. ("Newell" or the "Company"), Michael B. Polk, John K. Stipancich, Scott H. Garber, Bradford R. Turner, Michael T. Cowhig, Thomas E. Clarke, Kevin C. Conroy, Scott S. Cowen, Domenico De Sole, Cynthia A. Montgomery, Christopher D. O'Leary, Jose Ignacio Perez-Lizaur, Steven J. Strobel, Michael A. Todman, and Raymond G. Viault (collectively, "Defendants"). The proposed Settlement represents an exceptional result for the Class. If approved, the Settlement will provide a substantial, certain, and immediate recovery while avoiding the significant risks and expense of continued litigation, including the risk that the Class could recover nothing or substantially less than the Settlement Amount after additional litigation that could last years.

As explained in the accompanying Certification of Deborah Clark-Weintraub submitted herewith (the "Weintraub Certification"), which is incorporated herein by reference,[2] the

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[1] All capitalized terms not otherwise defined herein have the same meaning as those set forth in the Stipulation of Settlement dated October 19, 2022 (the "Stipulation").

[2] The Court is respectfully referred to the Weintraub Certification for a detailed description of the factual and

Settlement was achieved after four years of fiercely-contested litigation. Specifically, the Parties disputed whether the registration statement and joint proxy prospectus (the "Offering Documents"), filed in connection with Newell's issuance of new shares as partial payment for its acquisition of Jarden Corporation ("Jarden"), misled investors with respect to Newell's core sales growth and the risks to its ability to successfully integrate Jarden. ¶¶15-17.[3]

The Settlement represents a well above-average recovery compared with similar cases of this nature. ¶¶4-8. Indeed, it is Class Counsel's belief that in absolute terms, this is one of the largest settlements obtained to date in an action arising solely under the Securities Act of 1933 – that is, with no fraud claim. Moreover, the proposed Settlement would have been the largest class action settlement arising solely under the Securities Act in 2021, the fifth largest securities class action settlement of any kind that year, and is more than twelve times greater than the median securities class action settlement that year, which was $8,000,000. *See* Janeen McIntosh & Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2021 Full-Year Review*,

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procedural history of the litigation, the claims and defenses asserted, settlement negotiations, and the numerous risks and uncertainties presented in this litigation.

[3] Citations to "¶__" are to the accompanying Weintraub Certification submitted herewith.

NERA Econ. Consulting, at 23 (Jan. 25, 2022), https://www.nera.com/content/dam/nera/publications/2022/PUB_2021_Full-Year_Trends_012022.pdf.

Further, whereas most securities cases with comparable damages settle for between roughly 1% and 2.5% of losses (¶8), the recovery here was far above that range. Although Class Representative alleged that risks concealed by untrue statements and omissions in the Offering Documents materialized on five dates following the merger resulting in substantial investor losses, Defendants maintained that even if the Offering Documents contained material untrue statements and omissions, they caused no damages, and so damages were zero. They also argued in the alternative that even if there were material untrue statements or omissions, there were many other factors that limited damages. Class Representative's expert calculated that if the jury accepted Defendants' views of those factors, the maximum recoverable damages would be $333,600,000. Viewed from this perspective, the recovery here represents 30.7% of the maximum recoverable damages.

In addition, the Settlement is also above average when considered in relation to the more favorable opinions of Class Representative's expert with respect to causation and damages. Based on all possible outcomes that might result from the experts' differing opinions on causation with respect to each of the five relevant dates, Class Representative's expert calculated that the

median recoverable damages were $1,292,400,000, which Class Representative submits is the high-end of reasonably recoverable damages at trial. ¶¶6-7. Viewed from this perspective, the $102,500,000 Settlement represents a still above-average recovery of 8% of investor losses.

Importantly, when the Settlement was reached, Class Representative and Class Counsel were well-informed of the strengths and weaknesses of their claims. Notably, the Settlement was reached only after: (i) the Court denied Defendants' motion to dismiss and a motion to reconsider that ruling; (ii) the Class was certified; (iii) the Parties had completed comprehensive fact and expert discovery; (iv) briefing with respect to three summary judgment motions and eight motions to strike expert witnesses were fully briefed; and (v) the Parties had engaged in three mediations over the course of a year under the auspices of a distinguished and experienced mediator, Hon. Daniel Weinstein (Ret.) of JAMS, and his assistant, former Ambassador David Carden – the last of which resulted in a mediator's proposal that the Action be settled for $102,500,000, which was accepted by the Parties. ¶10. The Settlement is a particularly impressive result when viewed against the uncertainty of summary judgment proceedings and the myriad risks, delays, and hurdles of a trial, and inevitable appeals, had the litigation continued.

In view of the foregoing, and for the reasons set forth in the accompanying Weintraub Certification, and as summarized herein, Class Representative respectfully submits that the Settlement is fair, reasonable, and adequate and meets the standards of R. 4:32-2(e)(1)(C). Accordingly, Class Representative respectfully requests that the Court grant final approval of the Settlement, find the Plan of Allocation a fair and reasonable method for distributing the Net Settlement Fund, and find the Notice program undertaken pursuant to the Preliminary Approval Order satisfies due process.

II. BACKGROUND OF THE LITIGATION

This Action, which was filed in September 2018, alleges that Defendants violated Sections 11, 12(a)(2), and 15 of the Securities Act of 1933 by issuing Offering Documents in connection with its acquisition of Jarden that contained untrue and misleading statements and omissions. ¶¶15-16. In this regard, the Amended Complaint alleged that while touting Newell's history of increasing "core sales growth," the Offering Documents omitted to disclose that by the time of the Offering, Newell's core-sales growth, its key performance metric, was actually stalling, not enjoying record growth as Defendants claimed. ¶16. That purported growth was allegedly dependent on so-called "period end buys," or sales that Newell offered to customers with special incentives so that they would take additional product they did not need, which

in turn also limited the customers' willingness to take more products in the future. *Id.* In addition, the Amended Complaint alleged that the Offering Documents misleadingly touted Newell's ability to integrate Jarden while omitting to disclose that its own executives had determined that Newell's limited resources and talent created a substantial risk that it could not successfully undertake that integration. *Id.*

On February 7, 2019, Defendants moved to dismiss the Action in its entirety. ¶20. Among other things, Defendants argued that the claims asserted were time-barred based on other previous litigation, and because Newell's use of incentivized sales and its declining core sales growth were publicly disclosed more than a year before the Action was filed. *Id.* In addition, Defendants contended that the challenged statements were not actionable as a matter of law on a variety of grounds. *Id.* Further, Defendants argued that Class Representative had not adequately alleged standing under Sections 11 and 12(a)(2) of the Securities Act. *Id.*

Class Representative opposed the motion, and after several months of briefing, on August 1, 2019, the Court entered an Order denying the motion to dismiss in its entirety holding that the claims were timely asserted, rejecting Defendants' contention that the challenged statements were not actionable as a matter of law, and concluding that Plaintiff had adequately alleged standing.

¶¶20–21. On August 21, 2019, Defendants filed a motion requesting that the Court reconsider its decision, which Class Representative opposed. ¶22. The Court denied the motion on November 1, 2019. ¶23. Defendants then filed an answer denying the allegations and asserting numerous affirmative defenses. *Id.*

Thereafter, fact discovery commenced and continued through April of 2021. ¶¶24-40. Negotiations over the production of documents were contentious and took place in various phases over approximately one year. ¶¶26-30. In all, over 2,400,000 pages of documents were produced by the Parties and subpoenaed non-parties, and fourteen fact witnesses were deposed by Class Representative. ¶¶32-33, 41. In addition, Defendants deposed Class Representative and its investment manager, Fred Alger. ¶¶36, 46. On several occasions, the Parties sought the Court's intervention to resolve discovery disputes. ¶¶27, 30, 42-44.

Further, while fact discovery was ongoing, Class Representative won class certification and a Notice of Pendency of Class Action was disseminated to potential Class Members and published in *Investor's Business Daily* and over *PR Newswire*. ¶¶49-51.

Expert discovery was equally arduous and nearly as time-consuming as fact discovery, stretching from May 2021 to March 2022. ¶¶52–70. Each side designated four experts and a total of fifteen expert reports were eventually exchanged. *Id.* All experts

were deposed at least once, and the Parties' experts on causation and damages were each deposed twice, with all of the depositions taking the better part of a day. ¶¶68-70. Expert discovery was paused briefly from July 21, 2021 to September 30, 2021 to allow the Parties to engage in two mediations, which were unsuccessful. ¶¶59, 62-67.

Thereafter, from May 4, 2022 to September 2, 2022, the Parties fully briefed three summary judgment motions and eight motions to strike experts. ¶¶71-78. Thousands of pages of briefs, declarations, statements of purportedly disputed and undisputed material facts, and exhibits were submitted to the Court in connection with those motions. ¶78. With briefing completed on those dispositive motions, the Parties agreed to attend a third mediation. ¶79. That mediation ended with the mediator, the Hon. Daniel Weinstein (Ret.) of JAMS, making a mediator's proposal that the Action be settled for $102,500,000, which was accepted by the Parties. ¶80.

On November 18, 2022, this Court granted Class Representative's unopposed motion for preliminary approval of the proposed Settlement and directed that the Settlement Notice be disseminated to Class Members. ¶82. As set forth in the accompanying Declaration of Alexander P. Villanova, more than 200,000 Settlement Notices have been mailed or emailed to potential Class Members and their nominees, and the Summary Notice has been

published in *Investor's Business Daily* and disseminated over *PR Newswire*. ¶90. Although the objection deadline has not yet passed, to date, no objections have been received to the Settlement, Plan of Allocation, Class Counsel's Fee and Expense Application or Class Representative's request for a service award in this hard-fought litigation. *Id.*

III. ARGUMENT

A. The Standards for Judicial Approval of Class Action Settlements

There is a strong "public policy in this state favoring [the] settlement of litigation." *Herrera v. Twp. of S. Orange Vill.*, 270 N.J. Super. 417, 424 (App. Div. 1993). "Settlement spares the parties the risk of an adverse outcome[,] . . . the time and expense . . . of protracted litigation," and "also preserves precious and overstretched judicial resources." *Willingboro Mall, Ltd. v. 240/242 Franklin Ave., L.L.C.*, 215 N.J. 242, 253-54 (2013).

Pursuant to R. 4:32-2(e)(1)(C), "[t]he court may approve a settlement . . . that would bind class members only after a hearing and on finding that the settlement . . . is fair, reasonable, and adequate." Rule 4:32 mirrors Fed. R. Civ. P. 23 and, therefore, New Jersey courts have held that "it is appropriate to seek guidance in federal case law in determining the . . . standards for approval of settlements [in class] actions." *Morris Cnty. Fair Hous. Council v. Boonton Township*, 197 N.J. Super. 359, 369

(Law Div. 1984), *aff'd*, 209 N.J. Super. 108 (App. Div. 1986). For this reason, New Jersey courts apply the factors identified in *Girsh v. Jepson*, 521 F.2d 153 (3d Cir. 1975), in determining whether a class action settlement is fair, reasonable, and adequate. *See, e.g.*, *Strougo v. Ocean Shore Holding Co.*, 457 N.J. Super. 138, 150 (2017). Those factors are:

> (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

Girsh, 521 F.2d at 157 (ellipses omitted).[4]

The Third Circuit has further held that a presumption of fairness attaches to settlement agreements if the court finds: "(1) the negotiations occurred at arm's length; (2) there was sufficient discovery; (3) the proponents of the settlement are experienced in similar litigation; and (4) only a small fraction of the class objected." *In re Gen. Motors Corp. Pick-up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 785 (3d Cir. 1995);

[4] Unless otherwise indicated, citations are omitted and emphasis is added.

see also In re Valeant Pharm. Int'l, Inc. Sec. Litig., 2020 WL 3166456, at *7 (D.N.J. June 15, 2020).

As demonstrated in the Weintraub Certification and summarized below, the proposed Settlement is presumptively fair and the *Girsh* factors strongly support final approval of the proposed Settlement.

B. The Settlement Is Entitled to a Presumption of Fairness

The Court should apply an initial presumption of fairness to the Settlement. The Settlement negotiations were conducted over the course of a year, including three mediation sessions, with the assistance of a well-respected and experienced mediator, the Hon. Daniel Weinstein (Ret.) of JAMS, and was only reached after both sides agreed to accept the mediator's proposal. ¶¶62-70, 79-80. The Settlement was thus negotiated at arm's length. *See Shapiro v. Alliance MMA, Inc.*, 2018 WL 3158812, at *2 (D.N.J. Jun. 28, 2018) ("The participation of an independent mediator in settlement negotiations virtually [e]nsures that the negotiations were conducted at arm's length and without collusion between the parties." (alteration in original)).

In addition, the Parties completed extensive fact and expert discovery (¶¶24-42, 52-61, 68), and Class Representative is a sophisticated institutional investor and retained highly skilled counsel with considerable experience in complex securities class action cases to litigate this Action. ¶¶115-18; Declaration of

Chase Rankin ¶¶5, 11; *see Valeant*, 2020 WL 3166456, at *7 (applying presumption of reasonableness when Lead Plaintiff was a sophisticated investor, had analyzed millions of pages of documents, and was represented by experienced counsel).

Finally, although the objection deadline has not yet passed, to date, after an extensive notice program approved by the Court (¶¶100-05), no Class Member has objected to the Settlement. No or relatively few objections from class members is also compelling evidence that the Settlement is fair, reasonable and adequate and should be approved. *See, e.g., Strougo*, 457 N.J. Super. at 160 ("The overwhelming silence of the Class is deafening, and it is an indicator that the Class has reacted favorably to the . . . settlement."); *In re Gen. Pub. Utils. Sec. Litig.*, 1983 WL 22362, at *8 (D.N.J. Nov. 16, 1983) ("The lack of objection from the members of the class is one of the most important reasons leading the court to the conclusion that the settlement should be approved.").

C. The *Girsh* Factors Strongly Support Final Approval of the Settlement

1. The Complexity Expense and Duration of the Litigation

The first *Girsh* factor – the complexity, expense, and duration of the litigation "captures 'the probable costs, in both time and money, of continued litigation.'" *In re Cendant Corp. Litig.*, 264 F.3d 201, 233 (3d Cir. 2001). It weighs in favor of approval when

"continuing litigation through trial would have required additional discovery, extensive pretrial motions addressing complex factual and legal questions, and ultimately a complicated, lengthy trial." *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 536 (3d Cir. 2004).

As an initial matter, securities fraud class actions, such as this one, are notably complex, lengthy, and expensive. *See Kanefsky v. Honeywell Int'l Inc.*, 2022 WL 1320827, at *4 (D.N.J. May 3, 2022); *In re Lucent Techs. Inc., Sec. Litig.*, 307 F. Supp. 2d 633, 642 (D.N.J. 2004). Although an enormous amount of litigation had already occurred in this Action by the time the Settlement was reached, this case was far from finished. Significant, complex, expensive, and lengthy litigation remained ahead including argument on the Parties' three summary judgment motions and eight motions to strike experts,[5] pre-trial proceedings, trial, post-trial motions, and appeals. Thus, even if Class Representative had survived summary judgment, "necessary delay through a trial, post-trial motions, and the appellate process would likely deny the Class any recovery for years, an

[5] Although these motions had been withdrawn during the telephonic conference the court held on September 12, 2022, they were scheduled to be refiled in the event the Parties' third mediation on September 14, 2022 was unsuccessful. *See* Letter from T. Scrivo, Esq. to Hon. Christine M. Vanek (Sept. 22, 2022) (Trans. ID LCV20223411993).

unfavorable result for all parties." *Lucent*, 307 F. Supp. 2d at 642.

Given the complexities in securities class actions, and the time and expense necessary to fully adjudicate the Action, this factor weighs in favor of approving the Settlement.

2. The Reaction of the Class to the Settlement

The deadline for filing objections is January 30, 2023. As noted above, to date, no objections to the Settlement have been received. It is well-settled that no or relatively few objections to a proposed class action settlement is strong evidence that the settlement is fair and reasonable. *See Strougo*, 457 N.J. Super. at 160; *Gen. Pub. Utils.*, 1983 WL 22362, at *8.

Importantly, Class Representative, an experienced institutional investor that has supervised and monitored the work of Class Counsel throughout the Action, strongly supports the Settlement as providing an excellent recovery in light of the risks of the litigation. This too supports approval of the Settlement. *See, e.g., City of Providence v. Aeropostale, Inc.*, 2014 WL 1883494, at *4 (S.D.N.Y. May 9, 2014) ("[T]he recommendation of Lead Plaintiff, a sophisticated institutional investor, also supports the fairness of the Settlement."), *aff'd sub nom. Arbuthnot v. Pierson*, 607 F. App'x 73 (2d Cir. 2015).

3. The Stage of the Proceedings and Amount of Discovery Completed

The third *Girsh* factor "captures the degree of case development that class counsel have accomplished prior to settlement. Through this lens, courts can determine whether counsel had an adequate appreciation of the merits of the case before negotiating." *Cendant*, 264 F.3d at 235 (quoting *Gen. Motors Corp.*, 55 F.3d at 813).

As set forth in the Weintraub Certification, the Settlement was only reached following four years of fiercely-contested litigation that included a motion to dismiss, a motion for reconsideration, class certification proceedings, extensive fact and expert discovery, three mediations, and full briefing on three summary judgment motions and eight motions to strike experts. As a result, "[b]y the time the Settlement was reached, the parties had ample opportunity to develop thoughtful and thorough evaluations of the relative strengths and weaknesses of their claims or defenses." *Kanefsky*, 2022 WL 1320827, at *5. Consequently, this factor also strongly supports final approval of the Settlement.

4. The Risks of Establishing Liability and Damages

These factors consider "'what the potential rewards (or downside) of litigation might have been had class counsel decided to litigate the claims rather than settle them,'" and "attempt[]

to measure the expected value of litigating the action rather than settling it at the current time." *Cendant*, 264 F.3d at 237-38.

Class Representative faced formidable obstacles to proving its case and it was never certain it would ultimately prevail. Defendants have vigorously disputed liability throughout the litigation and continue to deny that they engaged in any wrongdoing. Defendants argued that the Offering Documents were free of material untrue statements and omissions and contained all disclosures required by law. In addition, they argued that many of the statements and omissions challenged by Class Representative were not actionable as a matter of law. Further, Defendants argued that the relevant evidence showed that the claims were time-barred and, in any event, that the Individual Defendants had conducted a reasonable investigation and, therefore, were exempt from liability under the Securities Act. Although Class Representative believed that it would survive summary judgment and that it had adduced evidence in discovery establishing Defendants' liability, it is impossible to predict what a jury would decide if the litigation continued to verdict. In short, establishing liability at trial was by no means a foregone conclusion and involved significant risks. Even a victory at trial did not guarantee success in connection with the inevitable appeals that would follow.

With respect to causation and damages, as in all complex securities cases such as this, Class Representative and Defendants were relying on expert testimony to assist the jury in determining those issues at trial. Section 11(e) of the Securities Act provides that a defendant is not liable for any diminution in the value of a security offered pursuant to a materially untrue and misleading registration statement that does not "result from" the alleged untrue statements and omissions. 15 U.S.C. §77k(e). Here, Defendants' expert insisted that the declines in Newell's stock price following the Offering did not correct any untrue statement or omission in the Offering Documents but, instead, resulted from new, unrelated events that arose after the Offering. Although Class Representative's expert was equally insistent that the declines in Newell's stock price followed disclosures that had revealed facts and risks that had been hidden by the alleged untrue statements and omissions, courts have repeatedly recognized that competing expert testimony presents significant risks to plaintiff's success in establishing damages. *Cendant*, 264 F.3d at 239 ("[E]stablishing damages at trial would lead to a 'battle of experts,' with each side presenting its figures to the jury and with no guarantee whom the jury would believe."); *Schuler v. Meds. Co.*, 2016 WL 3457218, at *7 (D.N.J. June 24, 2016) ("In this 'battle of experts,' it is virtually impossible to predict with any certainty which testimony would be credited, and ultimately,

which damages would be found to have been caused by actionable, rather than the myriad nonactionable factors such as general market conditions."). Moreover, Defendants had moved to exclude the testimony of Class Representative's damages expert, and if that motion were granted it would have made the damages issues even more difficult for the Class to win at trial.

In short, the risks of establishing liability and damages strongly weigh in favor of approving the Settlement.

5. The Risks of Maintaining the Class Action Through Trial

Although the Court has certified the Class, "[t]he decertification of a class, in whole or in part, is one of the remedies available to a trial court under Rule 4:32-2." *Little v. Kia Motors Am., Inc.*, 242 N.J. 557, 590 (2020). Thus, in any class action suit, there is always a risk that a class will be modified or decertified prior to a decision on the merits. Class Representative viewed the risk of decertification as minimal here and, therefore, this factor is neutral or, at best, weighs slightly in favor of approving the Settlement. *Cendant*, 264 F.3d at 239.

6. The Ability of Defendants to Withstand a Greater Judgment

This factor, which considers "whether the defendants could withstand a judgment for an amount significantly greater than the Settlement," *id.* at 240, also weighs in favor of approving the Settlement. Here, Defendants certainly could not have withstood

a verdict anywhere near $1 billion, which was consistent with the most favorable damages estimates of Class Representative's damages expert. *See supra*, pp. 2-3. Moreover, even the substantially lower maximum recoverable damages of $333,600,000 supported by Defendants' expert's opinions (¶7) would have threatened Newell's ability to operate. At the time the Settlement was reached, Newell's most recent Form 10-Q for the quarter ended June 30, 2022, reflected cash and cash equivalents of only $323 million and net current assets (current assets minus current liabilities) of only $127 million. ¶96. Significantly, the Settlement exhausted Newell's D&O insurance and required Newell to contribute to fund the Settlement.

7. The Range of Reasonableness in Light of the Best Possible Recovery and the Risks of the Litigation

The final two *Girsh* factors are typically considered in tandem, and "ask whether the settlement is reasonable in light of the best possible recovery and the risks the parties would face if the case went to trial." *In re Prudential Ins. Co. Am. Sales Prac. Litig. Agent Actions*, 148 F.3d 283, 322 (3d Cir. 1998).

As set forth above, Class Representative faced substantial risks in proving liability and damages. Moreover, even if Class Representative prevailed on summary judgment and at trial, the

verdict might not have survived post-trial motions or appeal.[6] Despite these risks, Class Representative was able to secure an extraordinary $102,500,000 Settlement that represents from 8% to 30.7% of reasonably recoverable damages that might be proved at trial, based on the calculations of Class Representative's expert. ¶¶6-8. This is well within the range of reasonableness and, indeed, far exceeds the usual recovery in securities class action cases with similar investor losses. *Id.* Moreover, in absolute terms, the $102,500,000 Settlement Amount is twelve times larger than the $8 million median settlement value during the period 2012-2021 in securities class action cases. ¶8. Indeed, the proposed Settlement would have been the largest class action settlement involving only Securities Act claims in 2021, and the fifth largest securities class action settlement of any kind that year.[7] *Id.*

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[6] *See, e.g., In re Apple Computer Sec. Litig.*, 1991 WL 238298 (N.D. Cal. Sept. 6, 1991) (court entered judgment notwithstanding the verdict for the individual defendants and ordered a new trial); *In re BankAtlantic Bancorp, Inc. Sec. Litig.*, 2011 WL 1585605 (S.D. Fla. Apr. 25, 2011) (after jury verdict for plaintiff court granted defendants' motion for judgment as a matter of law and entered judgment for defendants); *Robbins v. Koger Props., Inc.*, 116 F.3d 1441, 1449 (11th Cir. 1997) (reversing on appeal an $81 million jury verdict and dismissing securities action with prejudice).

[7] The parties that compile and assess securities class actions have not yet completed their work for 2022, but based on years prior to 2021 and on information available to date regarding 2022, this Settlement would rank similarly in 2022 to how it would have ranked in 2021.

Accordingly, the last two *Girsh* factors strongly support approving the Settlement as it is well within the range of reasonableness in light of the best possible recovery and the risks of the litigation.

* * *

In sum, Class Representative and Class Counsel respectfully submit that the proposed $102,500,000 Settlement is an exceptional result that easily satisfies the *Girsch* factors and warrants final approval.

D. The Plan of Allocation Should Be Approved

"The '[a]pproval of a plan of allocation of a settlement fund in a class action is "governed by the same standards of review applicable to approval of the settlement as a whole: the distribution plan must be fair, reasonable and adequate."'" *In re Datatec Sys., Inc. Sec. Litig.*, 2007 WL 4225828, at *3 (D.N.J. Nov. 28, 2007) (alteration in original).

Here, the Plan of Allocation was developed with the assistance of Class Representative's damages expert, is based on the statutory damages formula provided in Section 11 of the Securities Act, and is materially similar to the plans approved in other securities cases. ¶107. Consistent with Section 11(e)'s statutory damages formula, a Recognized Claim Amount will be calculated for each Claimant based on their relevant transactions in Newell stock, and the Net Settlement Fund will then be distributed *pro rata* among

the Authorized Claimants based on their proportional share of the total Recognized Claims for all such claimants. ¶¶107-08.

As the Plan of Allocation will result in an equitable distribution of the proceeds among Class members who submit valid claims, it is fair and reasonable and should be approved. Notably, to date, there have been no objections to the Plan of Allocation. ¶110.

E. The Notice Procedure Satisfied R. 4:32-2(B) and Due Process

Rule 4:32-2(b)(2) and the dictates of due process requires that class members be provided with "the best notice practicable under the circumstances, consistent with the due process of law." *See Goldberg v. Healthport Techs., LLC*, 2018 WL 4210846, at *3 (N.J. Super. Ct. App. Div. Sept. 5, 2018).

Here, the Notice program ordered by this Court in the Preliminary Approval Order met the requirements necessary to protect the due process rights of the Class. The Notice: (1) described the nature and status of the Action; (2) defined the Class, claims, and issues at the center of this Action; (3) explained the benefits of the proposed Settlement; (4) explained the procedure for objecting to the Settlement, the Plan of Allocation and the Fee and Expense Application; (5) provided the Settlement Administrator's contact information and included a link to the Settlement website; (6) provided

information on the Final Approval Hearing; and (7) provided information on how to file a claim. *See* Declaration of Alexander P. Villanova Ex. B (copy of Notice).

While Rule 4:32-2(b) requires that reasonable efforts be made to reach class members, it does not require that each individual class member actually receive notice. *See Goldberg*, 2018 WL 4210846, at *3 ("Due process imposes certain minimum notice requirements, but does not require individual notice to each party member."). The Notice program here was comprehensive and multi-pronged, fully satisfying the requirements of Rule 4:32-2(b) and due process, and is substantially similar to that approved in other securities cases.

Using the mailing information gathered from the earlier mailing of the Notice of Pendency, Epiq has (i) disseminated by first-class mail and email 207,223 Settlement Notice Packets to all Class Members who could be reasonably identified and located, and (ii) published the Summary Settlement Notice in *Investor's Business Daily* and transmitted the Summary Settlement Notice over *PR Newswire*. Villanova Decl. ¶12 & Ex. C. In addition, the Settlement Notice has also been posted on the settlement website established by the Claims Administrator. *Id.* ¶16.

Accordingly, the Settlement Notice was reasonably calculated under the circumstances – and did – fairly apprise the members of the Class of the terms of the Settlement and their right to object

to its terms, as well as the Plan of Allocation and the Fee and Expense Application, and readily satisfies all applicable requirements.

IV. CONCLUSION

For all of the foregoing reasons, and all of the reasons set forth in the accompanying Weintraub Certification, Class Representative respectfully requests that this Court enter (i) the [Proposed] Judgment and Order Granting Final Approval of Class Action Settlement, and (ii) the [Proposed] Order Approving Plan of Allocation, submitted herewith.

Dated: January 16, 2023

Respectfully submitted,

COHN LIFLAND PEARLMAN HERRMANN & KNOPF LLP

/s/ Peter S. Pearlman

PETER S. PEARLMAN
(Atty. No. 243551970)
AUDRA DEPAOLO
(Atty. No. 020321995)
Park 80 West – Plaza One
250 Pehle Avenue, Suite 401
Saddle Brook, New Jersey 07663
Tel.: (201) 845-9600
Fax: (201) 845-9423
psp@njlawfirm.com
ad@njlawfirm.com

SCOTT+SCOTT ATTORNEYS AT LAW LLP
DEBORAH CLARK-WEINTRAUB (*pro hac vice*)
MAX R. SCHWARTZ (*pro hac vice*)
The Helmsley Building
230 Park Avenue, 17th Floor
New York, NY 10169
Tel.: (212) 223-6444
Fax: (212) 223-6334
dweintraub@scott-scott.com
mschwartz@scott-scott.com

HEDIN HALL LLP
DAVID W. HALL (*pro hac vice*)
Four Embarcadero Center, Suite 1400
San Francisco, CA 94104
Tel.: (415) 766-3534
Fax: (415) 402-0058
dhall@hedinhall.com

Attorneys for Plaintiff