UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DELAWARE COUNTY EMPLOYEES RETIREMENT SYSTEM, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. CABOT OIL & GAS CORPORATION, et al., Defendants.	Civil Action 4:21-cv-02045 District Judge Lee H. Rosenthal CLASS ACTION

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

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Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure ("Rule(s)"), Plaintiffs and Court-appointed Class Representatives Delaware County Employees Retirement System and Iron Workers District Council (Philadelphia and Vicinity) Retirement and Pension Plan (together, "Plaintiffs"), on behalf of themselves and the Court-certified Class, hereby respectfully move for: (i) final approval of the proposed settlement of this securities class action ("Litigation") on the terms set forth in the Stipulation of Settlement dated June 3, 2024 (ECF 207-2) ("Stipulation" or "Stip."); and (ii) approval of the proposed plan for allocating the net proceeds of the Settlement to the Class ("Plan of Allocation" or "Plan").[1]

I. NATURE AND STAGE OF THE PROCEEDINGS

This Litigation asserts claims under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 against Defendants Cabot Oil & Gas Corporation ("Cabot"),[2] Dan O. Dinges, and Scott C. Schroeder on behalf of a Court-certified Class of investors who purchased or otherwise acquired Cabot common stock between February 22, 2016, and June 12, 2020, inclusive, and were damaged thereby.

Subject to the Court's approval, Plaintiffs have agreed to settle all claims in the Litigation in exchange for a non-reversionary, all-cash payment of $40 million for the benefit of the Class.

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[1] All capitalized terms not defined herein have the meanings ascribed to them in the Stipulation and in the Joint Declaration of Darryl J. Alvarado and Andrew L. Zivitz ("Joint Declaration" or "Joint Decl."), filed herewith. The Joint Declaration is an integral part of this submission and, for the sake of brevity herein, Plaintiffs respectfully refer the Court to the Joint Declaration for a detailed description of, *inter alia*: the history of the Litigation; the nature of the claims asserted; the negotiations leading to the Settlement; and the risks of continued litigation. Citations to "¶ _" refer to paragraphs in the Joint Declaration and citations to "Ex. _" refer to exhibits to the Joint Declaration. All internal citations, quotation marks, and footnotes have been omitted and emphasis has been added unless otherwise indicated.

[2] Cabot merged with Cimarex Energy Co. on October 1, 2021, to form Coterra Energy Inc. For sake of simplicity, "Cabot" or the "Company" is used herein.

The Court granted preliminary approval of the Settlement on June 27, 2024. *See* ECF 211. Plaintiffs now move for final approval of the Settlement and approval of the Plan of Allocation.

II. STATEMENT OF ISSUES TO BE RULED UPON

1. Whether the Court should finally approve the proposed Settlement of this Litigation as fair, reasonable, and adequate under Rule 23(e)(2);

2. Whether the Court should approve the proposed Plan of Allocation as fair and reasonable; and

3. Whether notice to the Class satisfied the requirements of Rule 23, the Private Securities Litigation Reform Act of 1995 ("PSLRA"), and due process.

III. SUMMARY OF THE ARGUMENT

Plaintiffs respectfully submit that the proposed Settlement represents an excellent result for the Class and readily satisfies the standards for final approval under Rule 23(e)(2). As detailed in the Joint Declaration and summarized below, the Settlement: (i) is the culmination of more than three years of vigorous litigation efforts; (ii) results from formal mediation followed by continued arm's-length negotiations under the guidance of an experienced class-action mediator and, ultimately, the Settling Parties' acceptance of the mediator's recommendation to resolve the Litigation for the Settlement Amount; and (iii) represents a meaningful percentage of the Class's potentially recoverable damages.

At the time of settlement, the Litigation was at an advanced stage—fact discovery had concluded and opening and rebuttal expert reports had been exchanged. ¶¶ 5, 37-54, 60-76. In addition to reviewing the over 4.4 million pages of documents produced by Defendants and nonparties and deposing 15 fact witnesses, Plaintiffs and Class Counsel also conducted a wide-ranging investigation into the Class's claims, prepared four detailed complaints, opposed two rounds of motions to dismiss, briefed a motion to amend the Complaint based on new evidence

uncovered during discovery, and exchanged expert reports. ¶¶ 18-24, 37-76. The Settling Parties also engaged in contested class certification proceedings, including related discovery and briefing on Defendants' Rule 23(f) petition to the Fifth Circuit Court of Appeals. ¶¶ 25-36. As a result of these and other extensive litigation efforts, Plaintiffs and Class Counsel had a well-developed understanding of the strengths and weaknesses of the Class's claims when they agreed to resolve the Litigation.

The $40 million Settlement is a particularly beneficial result for Class Members in light of the risks of further litigation. While Plaintiffs believe the Class's claims are meritorious and supported by Class Counsel's investigative efforts and evidence developed during discovery, they also recognize that there were substantial risks to taking this case to trial. To this day, Defendants adamantly deny any wrongdoing and would have continued to assert strong defenses to the Class's claims had the Settlement not been reached.

For example, Plaintiffs would have faced risks in establishing Defendants' liability had the Litigation not resolved. Defendants would continue to argue, as they did at the motion to dismiss stage and at mediation, that the statements at issue in the Litigation were not false at the time they were made and that Plaintiffs would be unable to prove that Defendants did not legitimately believe the truth of those statements. ¶¶ 96-99. In support, Defendants would likely point to the Court's recent ruling in the parallel Derivative Litigation which, for the second time, dismissed derivative allegations against the defendants in that case, several of which are defendants here. While easily distinguishable from the instant Litigation, this Court, in dismissing the Derivative Litigation, found, among other things, that the complaint failed to state a claim with respect to certain disclosures. *See In re Cabot Oil & Gas Corp. Deriv. Litig.*, 709 F. Supp. 3d 305 (S.D. Tex. 2024).

Plaintiffs would also face challenges to establishing loss causation and damages. Defendants would continue to assert that Plaintiffs would be unable to demonstrate that the misrepresentations alleged in the Litigation directly or proximately caused the economic losses claimed by the Class. ¶ 94. From the start, Defendants have taken the position that: (1) the price of Cabot common stock was not impacted by the alleged misrepresentations, and (2) the alleged misrepresentations concerning Cabot's remediation of ongoing violations of Pennsylvania environmental laws were "mismatched" with the alleged corrective disclosures. ¶ 95. Additionally, Defendants would assert that there was no statistically significant stock price decline following each of the alleged corrective disclosures. *Id*. In fact, Defendants have maintained that there are no damages associated with this case. *Id*.

Adverse determinations on any of these issues at summary judgment, trial, or in likely appeals could have reduced or entirely eliminated a recovery for the Class. The $40 million Settlement avoids these risks—as well as the delay and expense of continued litigation—while providing a substantial and certain near-term benefit to the Class. Moreover, the Settlement is not "claims-made." Rather, all Settlement proceeds, after deducting Court-approved fees and expenses, will be distributed to Class Members who submit valid Claims.

In June 2024, the Court preliminarily approved the Settlement, finding that it would "likely be able to finally approve the Settlement." ECF 211, ¶ 1. Nothing has changed since then to alter the Court's conclusion. The Settlement has the full support of Plaintiffs—sophisticated investors that took an active role in supervising the litigation--and the reaction of the Class to date has been positive. While the objection/exclusion deadline has not yet passed, following an extensive notice

campaign, there have been no objections to the Settlement or Plan of Allocation, and only two potential Class Members have requested exclusion from the Class.[3]

Given the foregoing considerations and the factors addressed below, Plaintiffs respectfully submit that: (i) the Settlement meets the standards for final approval under Rule 23, and is a fair, reasonable, and adequate result for the Class; and (ii) the Plan is a fair and reasonable method for equitably allocating the Net Settlement Fund to Class Members who submit valid Claims.

IV. THE SETTLEMENT WARRANTS FINAL APPROVAL

Rule 23(e)(2) requires judicial approval of any class action settlement. A class action settlement should be approved if the court finds it to be "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). In making this finding, a court should be guided by this Circuit's judicial policy favoring settling class action lawsuits. *See In re Deepwater Horizon*, 739 F.3d 790, 807 (5th Cir. 2014) (noting "overriding public interest in favor of settlement" in class action cases); *Jenkins v. Trustmark Nat. Bank*, 300 F.R.D. 291, 301 (S.D. Miss. 2014) (finding "Rule 23(e) analysis should be informed by the strong judicial policy favoring settlements").

Rule 23(e)(2) provides that, in determining whether a class action settlement is "fair, reasonable, and adequate," the Court should consider whether:

> (A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm's length; (C) the relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3); and (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2).

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[3] Any objections and additional requests for exclusions received after this submission, will be addressed in Plaintiffs' reply to be filed with the Court on October 17, 2024.

Consistent with this guidance, courts in the Fifth Circuit have long considered the following six factors in deciding whether to approve a class action settlement:

> (1) the existence of fraud or collusion behind the settlement; (2) the complexity, expense, and likely duration of the litigation; (3) the stage of the proceedings and the amount of discovery completed; (4) the probability of plaintiffs' success on the merits; (5) the range of possible recovery; and (6) the opinions of the class counsel, class representatives, and absent class members.

Reed v. Gen. Motors Corp., 703 F.2d 170, 172 (5th Cir. 1983) (the "*Reed* factors"); *see also Newby v. Enron Corp*., 394 F.3d 296, 301 (5th Cir. 2004).[4]

At the preliminary approval stage, this Court considered the Rule 23(e)(2) factors in assessing the Settlement, and found it to be "fair, reasonable, and adequate to the Class, subject to further consideration at the Settlement Hearing." *See* ECF 211, ¶ 1. As noted above, nothing has changed to alter this finding, and the factors supporting the Court's determination to preliminarily approve the Settlement remain applicable. Accordingly, Plaintiffs and Class Counsel respectfully submit that the Settlement is fair, reasonable, and adequate, and warrants final approval under the Rule 23(e)(2) factors and Fifth Circuit law.[5]

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[4] The Advisory Committee Notes to the 2018 amendments to Rule 23 explain that the four Rule 23(e)(2) factors are not intended to "displace" any factor previously adopted by the courts, but "rather to focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal." Fed. R. Civ. P. 23(e)(2) advisory committee's note to 2018 amendment. Accordingly, Plaintiffs discuss below the fairness, reasonableness, and adequacy of the Settlement principally in relation to the four Rule 23(e)(2) factors, but also discuss the application of the non-duplicative factors articulated by the Fifth Circuit in *Reed*. *See O'Donnell v. Harris Cty., Tex.*, 2019 WL 6219933, at *9 (S.D. Tex. Nov. 21, 2019) (observing that "courts in this circuit often combine [the Rule 23 and *Reed* factors] in analyzing class settlements.").

[5] The second part of the settlement approval process is to determine whether the Litigation may be maintained as a class action for settlement purposes under Rule 23. *See* Fed. R. Civ. P. 23(e)(1)(B)(ii).Here, the Court certified a class on September 27, 2023, finding that the Class satisfied Rule 23(a)'s numerosity, commonality, typicality, and adequacy requirements as well as Rule 23(b)(3)'s requirement that questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. ECF 173. Accordingly,

A. Plaintiffs and Class Counsel Have Adequately Represented the Class in the Litigation

The first Rule 23(e)(2) factor—whether Plaintiffs and Class Counsel "have adequately represented the class"—favors approval of the Settlement. This factor looks at: (1) "the zeal and competence of the representative[s'] counsel" and (2) "the willingness and ability of the representative[s] to take an active role in and control the litigation and to protect the interests of absentees[.]" *Berger v. Compaq Comput. Corp.,* 257 F.3d 475, 479 (5th Cir. 2001) (alterations in original).

In certifying the Class in September 2023, the Court found Class Representatives and Class Counsel had satisfied Rule 23(a)(4)'s adequacy requirement. ECF 173 at 11-12 ("The Plans and their counsel are adequate. The Plans' interests are aligned with those of the class and there are no conflicts between the Plans and the class members. . . . Finally, the Plans' counsel is competent and experienced."). Since this time, Plaintiffs and Class Counsel have continued to adequately represent the Class in their aggressive prosecution of the Litigation and in negotiating the Settlement.

Here, Plaintiffs diligently supervised and participated in the Litigation on behalf of the Class and through their efforts have provided valuable and meaningful assistance to Class Counsel. Plaintiffs' efforts included, *inter alia*, filing the complaints; communicating regularly with Class Counsel about case developments and strategy; reviewing court filings; responding to Defendants' discovery requests, including by reviewing and verifying interrogatory responses and searching for and producing potentially relevant documents; preparing for and providing testimony at their

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because there is no difference between the previously-certified class and the class seeking settlement approval, the Court need not determine whether, pursuant to Rule 23(e)(1)(B) it "will likely be able to" certify the Class, as it has already certified a class in this Litigation.

depositions, and keeping abreast of the Settling Parties' settlement discussions. *See* Ex. 1, ¶ 3; Ex. 2, ¶¶ 5-6. Moreover, Plaintiffs—whose claims are based on a common course of alleged wrongdoing by Defendants and are typical of other Class Members—have no interests antagonistic to the Class. *See Matson v. NIBCO Inc.*, 2021 WL 4895915, at *5 (W.D. Tex. Oct. 20, 2021) (noting in adequacy analysis that "named Plaintiffs' legal and remedial theories are substantially similar to those of other members of the Class, and they are further united in asserting a common right, such as achieving the maximum possible recovery for the class"), *aff'd sub nom. Garcia v. Matson*, 2022 WL 6935303 (5th Cir. Oct. 12, 2022).

Likewise, Plaintiffs retained counsel who are highly experienced in complex securities litigation. *See* Exs. 4-F; 5-F. Class Counsel actively pursued the Class's claims against seasoned and well-regarded defense counsel, and ultimately negotiated a favorable Settlement on behalf of the Class. *See Marcus v. J.C. Penney Co., Inc.*, 2017 WL 6590976, at *3 (E.D. Tex. Dec. 18, 2017) ("Significant weight is given to the opinion of class counsel concerning whether the settlement is in the best interest of the class[.]"), *R&R adopted*, 2018 WL 307024 (E.D. Tex. Jan 4, 2018).

B. The Settlement Was Negotiated at Arm's Length and There Was No Fraud or Collusion

Rule 23(e)(2)(B) and the first *Reed* factor also support final approval because the Settlement was negotiated at arm's length after extensive fact and expert discovery and there is no evidence of fraud or collusion. *See In re Heartland Payment Sys., Inc. Cust. Data Sec. Breach Litig.,* 851 F. Supp. 2d 1040, 1063 (S.D. Tex. 2012) ("A presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm's-length negotiations between experienced, capable counsel after meaningful discovery."). Indeed, the Settlement was reached only after two in-person mediation sessions (eleven months apart) with David M. Murphy, Esq. of Phillips ADR, followed by continued negotiations with Mr. Murphy's assistance. ¶¶ 77-82.

Following these negotiations, Mr. Murphy issued a mediator's proposal to resolve the Litigation, which both sides accepted on April 29, 2024. ¶ 82. *See In re Chinese-Manufactured Drywall Prod. Liab. Litig.*, 424 F. Supp. 3d 456, 486 (E.D. La. 2020) ("arms-length negotiations between sophisticated parties with the guidance of an experienced, professional mediator" provides strong presumption of fairness); *Billitteri v. Sec. Am., Inc.*, 2011 WL 3586217, at *10 (N.D. Tex. Aug. 4, 2011) (finding no fraud or collusion in settlement reached through arm's length negotiations before neutral mediator). The Settling Parties then spent an additional month negotiating the specific terms of the Stipulation. ¶ 82.

Further, Plaintiffs and their counsel possessed a deep understanding of the strengths and weaknesses of the case before reaching the Settlement. As detailed in the Joint Declaration, Class Counsel conducted a thorough investigation, including interviews with former Cabot employees; prepared four detailed complaints (including the operative Second Amended Complaint following a successful motion to amend); opposed two rounds of motions to dismiss; participated in substantial discovery efforts (including the review of over 4.4 million pages of documents and taking/defending 19 fact and expert depositions); successfully moved for certification of the Class and defended that certification in the Fifth Circuit against Defendants' Rule 23(f) petition; and consulted with expert witnesses at various stages of the case. ¶¶ 5, 18-76. As a result, Plaintiffs and Class Counsel were well informed of the strengths and risks of the case when they agreed to resolve the Litigation. *See* 4 William B. Rubenstein, *Newberg & Rubenstein on Class Actions* § 13:49 (6th ed. 2023) (approval warranted "[w]here a court can conclude that the parties had sufficient information to make an informed decision about settlement").

C. The Settlement Provides the Class Adequate Relief, Considering the Costs, Risks, and Delay of Litigation and Other Relevant Factors

Rule 23(e)(2)(C) and many of the remaining *Reed* factors entail "a substantive review of the terms of the proposed settlement" and the "relief that the settlement is expected to provide to" the Class, and weigh strongly in favor of the Settlement. *See* Fed. R. Civ. P. 23(e)(2) (C) & (D) advisory committee's note to 2018 amendment.

1. The Complexity, Expense, and Likely Duration of the Litigation

Rule 23(e)(2)(C)(i) and the second *Reed* factor support approval of the Settlement, as continued litigation would involve complex pre-trial, trial, and post-trial proceedings that would delay the ultimate resolution of the Litigation without any guarantee of recovery. As here, when "ongoing litigation threatens to impose high costs of time and money on the parties, the reasonableness of approving a mutually-agreeable settlement is strengthened." *Klein v. O'Neal, Inc.*, 705 F. Supp. 2d 632, 651 (N.D. Tex. 2010); *see also Heartland Payment Sys.*, 851 F. Supp. 2d at 1064 (approving settlement and noting that litigating case to trial would be "time consuming, and inevitable appeals would likely prolong the litigation, and any recovery by class members, for years") (alteration omitted).

Courts consistently recognize that securities class actions are "notoriously difficult and unpredictable," *see In re Dell Inc. Sec. Litig.*, 2010 WL 2371834, at *7 (W.D. Tex. June 11, 2010), *aff'd sub nom. Union Asset Mgmt. Holding A.G. v. Dell, Inc.*, 669 F. 3d 632 (5th Cir. 2012), and this case was no exception.[6] In addition to the complexities involved in securities class actions generally, this Litigation involved highly technical concepts regarding Cabot's drilling and natural

[6] *See also Celeste v. Intrusion Inc.*, 2022 WL 17736350, at *4 (E.D. Tex. Dec. 16, 2022) ("Securities claims are particularly difficult to prove because of the high bar for establishing falsity and scienter.").

gas production operations, necessitating regular consultation with industry experts, including experts in natural gas production and the environmental laws and regulations that govern the fracking industry as well as the processes underpinning the development of natural gas production guidance. ¶¶ 47, 50. Further, as discussed in the Joint Declaration and below, Plaintiffs' ability to establish liability and damages was also far from certain. ¶¶ 92-99. Moreover, continuing to prosecute the Litigation through the completion of expert discovery and depositions, anticipated summary judgment motions, trial, and potential post-trial appeals would have required substantial additional time and expense.[7] In contrast, the Settlement avoids the risk, expense, and delay of continued litigation while providing a substantial, near-term recovery for the Class, underscoring the Settlement's fairness.

2. The Stage of the Proceedings and Discovery Completed

Courts in this Circuit also look to "the stage of the proceedings and the amount of discovery completed" when determining the adequacy of a class action settlement. *See Reed*, 703 F.2d at 172. Under the third *Reed* factor, courts consider "whether the parties and the district court possess ample information with which to evaluate the merits of the competing positions." *See Matson*, 2021 WL 4895915, at *10.

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[7] Additionally, even if Plaintiffs prevailed at trial, Defendants surely would have appealed the verdict. Post-trial motions and appellate proceedings would have added significantly to the expense of this Litigation and delayed, potentially for years, any recovery to the Class (with no assurance that Plaintiffs would ultimately prevail or recover more than the Settlement Amount). *See In re OCA, Inc. Sec. & Deriv. Litig.*, 2009 WL 512081, at *11 (E.D. La. Mar. 2, 2009) ("After trial, the parties could still expect years of appeals."); *Schwartz v. TXU Corp.*, 2005 WL 3148350, at *19 (N.D. Tex. Nov. 8, 2005) (noting that even "if Plaintiffs were to succeed at trial, they still could expect a vigorous appeal by Defendants and an accompanying delay in the receipt of any relief"). *See also, e.g.*, *In re BankAtlantic Bancorp, Inc. Sec. Litig.*, 2011 WL 1585605, at *1 (S.D. Fla. Apr. 25, 2011) (granting defendants' motion for judgment as a matter of law on the basis of loss causation and overturning jury verdict and award in plaintiff's favor), *aff'd on other grounds sub nom.*, *Hubbard v. BankAtlantic Bancorp, Inc.*, 688 F.3d 713 (11th Cir. 2012).

In the months leading up to the commencement of this Litigation in October 2020 (in the Middle District of Pennsylvania) through its resolution in April 2024, Plaintiffs and Class Counsel spent substantial time and resources researching, evaluating, and litigating the factual and legal issues in play. As noted above, Plaintiffs through Class Counsel conducted a thorough investigation of the claims and, before reaching the Settlement, engaged in substantial fact discovery—including serving numerous discovery requests and subpoenas on Defendants and 21 relevant nonparties, analyzing over 4.4 million pages of documents produced in response thereto; conferring with Defendants and nonparties on discovery disputes; preparing and exchanging class certification and merits expert reports; and taking/defending 19 depositions. ¶¶ 5, 18-76. Class Counsel also defeated in substantial part Defendants' motion to dismiss the Amended Complaint and Defendants' opposition to Plaintiffs' motion for leave to file the Second Amended Complaint; moved for, fully briefed, argued, and obtained class certification; and defended the Court's ruling on class certification against Defendants' Rule 23(f) petition. ¶¶ 23, 25-36, 58. In addition, Class Counsel prepared detailed mediation statements, and participated in painstaking settlement negotiations, including two in-person mediations with Mr. Murphy. ¶¶ 77-82. This substantial record demonstrates that, when the Settlement was reached, Plaintiffs and Class Counsel had ample information to make an informed decision about settlement.

3. The Probability of Plaintiffs' Success on the Merits

The fourth *Reed* factor looks at the risks of continued litigation and the probability of the plaintiff's success on the merits. *See Matson*, 2021 WL 4895915, at *11-12. In evaluating the likelihood of success, a court "must compare [the settlement's] terms with the likely rewards the class would have received following a successful trial of the case." *Reed*, 703 F.2d at 172. Plaintiffs recognize that, although they believed that substantial evidence supported their claims, there were significant risks to continued litigation, including challenging arguments by Defendants on all core

claim elements. Weighing these risks (as discussed herein and in the Joint Declaration) against the certain and substantial recovery obtained for the Class demonstrates that the Settlement is fair, reasonable, and adequate. *See, e.g.*, *Schwartz*, 2005 WL 3148350, at *18 ("plaintiffs' uncertain prospects of success through continued litigation" supported approval of securities class action settlement).

Plaintiffs would have faced challenges to proving both falsity and scienter. *First*, if the Litigation continued, Defendants would assert that the alleged misstatements regarding the state of Cabot's environmental compliance, including the statements that survived Defendants' motions to dismiss, were either factually accurate or generalized statements of opinion that would not result in liability under the securities laws. ¶ 97. Defendants would further argue that any falsity relating to the guidance statements was immunized by the risk warnings regarding production that Defendants included in the Company's SEC filings. *Id*. Additionally, Defendants would continue to assert that alleged guidance statements were forward-looking and protected by the PSLRA safe harbor. *Id*. *Second*, Defendants would continue to attack Plaintiffs' scienter allegations as insufficiently particularized and unable to support a strong inference that Defendants' statements were knowingly false or misleading. ¶ 98.

In support of their falsity and scienter arguments, Defendants would point to the Court's recent dismissal of the derivative allegations brought against Defendants in the parallel Derivative Litigation, and although this Litigation is distinguishable, Defendants surely would have argued that a dismissal by this Court in the Derivative Litigation warranted a finding of summary judgment in Defendants' favor. ¶¶ 92-93.

Finally, Plaintiffs also faced challenges in establishing loss causation and damages. Had the Litigation continued, Defendants would assert that Plaintiffs would be unable to demonstrate

that many (or all) of Defendants' alleged misrepresentations directly or proximately caused the economic losses incurred. More specifically, as demonstrated in their motions to dismiss and their opposition to Plaintiffs' motion for class certification, Defendants would continue to argue that any losses suffered by Class Members on their investments in Cabot common stock were not attributable to the alleged corrective disclosures. Defendants repeatedly claimed that the information in Cabot's alleged disclosures did not contain information corrective of the fraud—that there was a "mismatch" between the false statements alleged and the disclosures. Defendants would also assert that there was no statistically significant stock price decline following each of the alleged corrective disclosures. ¶¶ 94-95. Ultimately, resolution of these issues would come down to an uncertain "battle of experts." *See Buettgen v. Harless*, 2013 WL 12303143, at *8 (N.D. Tex. Nov. 13, 2013) ("One cannot predict which expert's testimony or methodology a jury would find reliable.").

4. The Range of Possible Recovery

The fifth *Reed* factor requires a court to determine the "value of the settlement in light of the potential for recovery." *Welsh v. Navy Fed. Credit Union,* 2018 WL 7283639, at *13 (W.D. Tex. Aug. 20, 2018). In making this determination, courts compare "the settlement amount to the relief the class could expect to recover at trial, i.e., the strength of the plaintiff's case." *Erica P. John Fund, Inc. v. Halliburton Co*., 2018 WL 1942227, at *5 (N.D. Tex. Apr. 25, 2018). In doing so, "a court should keep in mind that compromise is the essence of settlement." *Matson*, 2021 WL 4895915, at *12.

Here, Plaintiffs' damages expert has estimated the Class's reasonably recoverable damages in this Litigation (assuming success by Plaintiffs on all liability and loss causation issues) to be approximately $288 million. Accordingly, the Settlement represents approximately 14% of this

amount, which exceeds damages recoveries in similar cases. ¶ 100.[8] Indeed, as noted above, Defendants contended that Plaintiffs suffered no cognizable damages because there were no statistically significant price declines on the alleged corrective disclosure dates attributable to any of the alleged misrepresentations—demonstrating that the $40 million Settlement represents a very favorable resolution for the Class. This factor therefore supports final approval.

5. The Opinions of Class Counsel, Plaintiffs, and Absent Class Members

Class Counsel, Plaintiffs, and Class Members all support final approval of the Settlement, thereby satisfying the sixth *Reed* factor. Class Counsel conducted a thorough investigation into the claims against Defendants and, after more than three years of intense litigation and hard-fought settlement negotiations, have a firm understanding of the strengths and risks attendant to these claims. Based on this understanding, as well as their substantial experience litigating complex securities class actions like this one, Class Counsel have concluded that the Settlement is fair, reasonable, and adequate. *See Marcus*, 2017 WL 6590976, at *3 ("Significant weight is given to the opinion of class counsel concerning whether the settlement is in the best interest of the class"); *In re Oil Spill by Oil Rig Deepwater Horizon*, 295 F.R.D. 112, 150 (E.D. La. 2013) ("In evaluating

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[8] While each securities class action reflects its own unique risks, the recovery obtained in this Litigation compares favorably to recoveries achieved in other securities cases and approved by courts. *See, e.g.*, *Farrar v. Workhorse Grp., Inc.*, 2023 WL 5505981, at *7 (C.D. Cal. July 24, 2023) (approving securities class action settlement where recovery represented 3% of estimated damages); *Lea v. Tal Educ. Grp*., 2021 WL 5578665, at *10 (S.D.N.Y. Nov. 30, 2021) (approving securities class action settlement where recovery represented "5.3% of the Settlement's Class's maximum estimated damages"); *Howard v. Liquidity Servs. Inc.*, 2018 WL 4853898, at *5 (D.D.C. Oct. 5, 2018) (approving securities class action settlement "constitut[ing] approximately 4% of the ***maximum*** realistic recoverable damages") (emphasis in original). *See also* Laarni T. Bulan & Laura E. Simmons, *Securities Class Action Settlements: 2023 Review and Analysis* (2024), https://www.cornerstone.com/wp-content/uploads/2024/03/Securities-Class-Action-Settlements-2023-Review-and-Analysis.pdf, at 6 (finding median securities class action settlement amount to be 3.5% of estimated damages for cases with estimated damages ranging between $250 and $499 million in 2023, and 4.3% for the same estimated damages range for years 2014 to 2022).

a settlement, the Court should rely on counsel who know the strengths and weaknesses of their cases.").

Likewise, Plaintiffs—sophisticated institutional investors with hundreds of millions of dollars in collective assets under management and precisely the type of fiduciaries envisioned by Congress when enacting the PSLRA, also strongly endorse the Settlement. *See* Ex. 1, ¶¶ 2, 4; Ex. 2, ¶¶ 2, 7.[9] Plaintiffs actively supervised Class Counsel during the Action, and were kept apprised of the settlement negotiations with Defendants as well as developments in the underlying litigation. Plaintiffs' support for the Settlement further demonstrates its fairness. *See 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 72 (2d Cir. 2015).

The positive response of the Class to date also supports final approval. The Court-appointed Claims Administrator, JND Legal Administration ("JND"), has mailed or emailed 193,003 Postcard Notices and 4,443 Notice Packets to potential Class Members and nominees. *See* Ex. 3, at ¶ 12. The notices collectively describe the essential terms of the Settlement and inform Class Members of their rights in connection therewith. While the October 3, 2024 deadline for Class Members to request exclusion or object has not yet passed, to date, there have been no objections and just two requests for exclusion. ¶ 105; Ex. 3, ¶ 16.[10]

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[9] *See Netsky v. Capstead Mortg. Corp*., 2000 WL 964935, at *5 (N.D. Tex. July 12, 2000) ("Congress has expressed its preference for securities fraud litigation to be directed by large institutional investors").

[10] Plaintiffs will address any requests for exclusion or objections received after the filing of this motion in their October 17, 2024 reply.

D. The Remaining Rule 23(e)(2) Factors Support Final Approval of the Settlement

In evaluating the Settlement, Rule 23(e)(2) instructs courts to also consider: (i) "the effectiveness of [the] proposed method of distributing the relief provided to the class, including the method of processing class-member claims;" (ii) "the terms of any proposed award of attorney's fees, including timing of payment;" (iii) any other agreement made in connection with the proposed settlement; and (iv) whether class members are treated "equitably relative to each other." Fed. R. Civ. P. 23(e)(2)(C)(ii)-(iv) & (e)(2)(D). These factors also support final approval.

First, the proposed method of distribution and claims processing ensures equitable treatment of Class Members. Class Members' Claims will be processed and the Net Settlement Fund distributed pursuant to a standard method routinely approved in securities class actions. The Claims Administrator, JND, will review and process all Claims received, provide each Claimant with an opportunity to cure any deficiency in their Claim or request judicial review of the denial of their Claim, if applicable, and will ultimately mail or wire Authorized Claimants their *pro rata* share of the Net Settlement Fund, as calculated under the Plan of Allocation. *See infra* § V; ¶¶ 106-110. Importantly, none of the Settlement proceeds will revert to Defendants. *See* Stip., ¶ 2.13.

Second, the relief provided by the Settlement remains adequate upon consideration of "the terms of the proposed award of attorneys' fees" and Litigation Expenses incurred in prosecuting this Action, including the timing of any such Court-approved payments. *See* Fed. R. Civ. P. 23(e)(2)(C)(iii). As shown in the Fee and Expense Memorandum, the requested attorneys' fees of 30% of the Settlement Fund, to be paid upon the Court's approval, are reasonable in light of Class Counsel's efforts over the past 3+ years and the $40 million cash recovery, as well as the significant

risks shouldered by Class Counsel.[11] Additionally, the request is fully supported by Fifth Circuit case law. *See Schwartz*, 2005 WL 3148350, at *27 ("courts throughout this Circuit regularly award fees of 25% and more often 30% or more of the total recovery under the percentage-of-the recovery method"); *Shaw v. Toshiba Am. Info. Sys., Inc.*, 91 F. Supp. 2d 942, 972 (E.D. Tex. 2000) ("attorneys' fees in the range from twenty-five percent (25%) to [33%] have been routinely awarded in class actions"). Additionally, the proposal that any Court-awarded fee be paid upon issuance of such a ruling is reasonable and consistent with common practice in similar cases, as the Stipulation dictates that if the Settlement were terminated or any fee award subsequently modified, Class Counsel must repay the subject amount with interest. Stip., ¶ 6.3. Most importantly, with respect to the Court's consideration of the Settlement's fairness, is the fact that approval of attorneys' fees is entirely separate from approval of the Settlement, and neither Plaintiffs nor Class Counsel may terminate the Settlement based on this Court's or any appellate court's ruling with respect to fees or expenses. *See id*., ¶ 6.4.

Lastly, as previously disclosed, the only agreement the Settling Parties entered into beyond the Stipulation was a confidential Supplemental Agreement regarding requests for exclusion. *See* Stip., ¶ 7.3; *see also* Fed. R. Civ. P. 23(e)(2)(C)(iv). The Supplemental Agreement provides Defendants with the right to terminate the Settlement in the event that Class Members who request exclusion meet certain conditions. *Id*. This type of agreement is standard in securities class actions and does not undermine the fairness of the Settlement. *See, e.g.*, *Hefler v. Wells Fargo & Co.*, 2018 WL 4207245, at *11 (N.D. Cal. Sept. 4, 2018) ("The existence of a termination option triggered

[11] Class Counsel also seek payment from the Settlement Fund of Plaintiffs' Counsel's expenses in the total amount of $1,515,974.05 and a request for payments to Plaintiffs in the aggregate amount of $12,454.32 in accordance with 15 U.S.C. § 78u-4(a)(4). ¶¶ 112, 129.

by the number of class members who opt out of the Settlement does not by itself render the Settlement unfair.").

For the reasons set forth above and in the Joint Declaration, the Settlement is fair, reasonable, and adequate under applicable standards, supporting final approval.

V. THE COURT SHOULD APPROVE THE PLAN OF ALLOCATION

A plan for allocating settlement proceeds under Rule 23 is evaluated under the same standard as the settlement—the plan must be "fair, adequate, and reasonable." *In re Chicken Antitrust Litig. Am. Poultry*, 669 F.2d 228, 238 (5th Cir. 1982). A plan of allocation need not be perfect—to be fair, reasonable, and adequate, "[t]he allocation formula need only have a reasonable, rational basis, particularly if recommended by experienced and competent class counsel." *Dell*, 2010 WL 2371834, at *10; *see also In re Waste Mgmt., Inc. Sec. Litig.*, 2002 WL 35644013, at *20 (S.D. Tex. May 10, 2002) (approving plan where class received proceeds "based on the size and strength of their claims"), *amended on other grounds*, 2003 WL 27380802 (S.D. Tex. July 31, 2003).

Here, the Plan set forth in the Notice was developed by Lead Counsel in consultation with Plaintiffs' damages expert. ¶ 108. The Plan will equitably distribute the Net Settlement Fund to Class Members who timely submit valid Claims demonstrating they suffered economic losses as a proximate result of Defendants' alleged violations of the federal securities laws. ¶ 106.

The Plan is based upon the estimated amount of alleged artificial inflation in the price of Cabot common stock that was allegedly proximately caused by the misrepresentations and omissions alleged in the Litigation. ¶ 107. In calculating the estimated alleged artificial inflation, Plaintiffs' damages expert considered price changes in Cabot common stock in reaction to the public disclosures that allegedly corrected the respective alleged misrepresentations and omissions, adjusting the price changes for factors that were attributable to market or industry

forces, and for non-fraud related, Cabot-specific information. ¶ 109. To have a loss, a Claimant must have purchased and/or acquired shares of Cabot common stock during the Class Period and held these shares through at least one of the dates when the disclosure of alleged corrective information partially removed the alleged artificial inflation from the price of Cabot common stock. ¶ 110.[12]

Further, a Claimant's loss will depend upon several factors, including the date(s) when the Claimant purchased/acquired/sold their Cabot common stock during the Class Period and at what price(s), taking into account the PSLRA's statutory limitation on recoverable damages. *Id*. Authorized Claimants will recover their proportional "*pro rata*" amount of the Net Settlement Fund based on their calculated recognized loss. ¶ 110. *See Celeste*, 2022 WL 17736350, at *5 (approving allocation plan in which each class member would receive a pro rata share of loss). Plaintiffs' trading activity is treated in the same manner as that of all other Class Members.

The Plan will result in a fair and equitable distribution of the Settlement proceeds among Class Members who suffered losses as a result of Defendants' alleged conduct. The Plan was fully disclosed in the Notice and, to date, there have been no objections to the Plan. ¶ 111. For these reasons, the Plan should be approved.

VI. NOTICE OF THE SETTLEMENT SATISFIED RULE 23, THE PSLRA, AND DUE PROCESS

Plaintiffs have provided the Class with adequate notice of the Settlement. Notice satisfied both: (i) Rule 23, as it was "the best notice . . . practicable under the circumstances" and directed "in a reasonable manner to all class members who would be bound by the" Settlement (Fed. R.

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[12] In this case, Plaintiffs allege that Defendants made false statements and omitted material facts during the period from February 22, 2016, through and including the close of trading on June 12, 2020. As a result of the alleged corrective disclosures, artificial inflation was removed from the price of Cabot stock on July 26, 2019 and June 15, 2020. *See* Notice (Ex. B to Ex. 3), p. 15.

Civ. P. 23(c)(2)(B) & (e)(1)(B); *see also Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173-75 (1974)); and (ii) due process, as it was "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950); *see also In re Katrina Canal Breaches Litig.,* 628 F.3d 185, 197 (5th Cir. 2010) (notice must provide class members with "information reasonably necessary for them to make a decision whether to object to the settlement"). Collectively, the notices to the Class provide all information specifically required by Rule 23 and the PSLRA. *See* ECF 211, ¶ 4; Exs. A-D to Ex. 3.

JND has disseminated 193,003 Postcard Notices and 4,443 Notice Packets to potential Class Members and nominees through September 18, 2024. *See* Ex. 3, ¶ 12. In addition, JND caused the Summary Notice to be published in *The Wall Street Journal* and transmitted over *PR Newswire* on July 25, 2024, and maintains a dedicated Settlement website, www.CabotOilSecuritiesLitigation.com, to provide information about the Settlement and access to downloadable copies of the Notice, Claim Form, and other Settlement-related documents. *Id*., ¶¶ 13, 15. In accordance with the Stipulation, Defendants also issued notice pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715.

In sum, the notice campaign here provides sufficient information for Class Members to make informed decisions regarding the Settlement, fairly apprises them of their rights, represents the best notice practicable under the circumstances, and complies with the Preliminary Approval Order, Rule 23, the PSLRA, and due process. Comparable notice programs are routinely approved. *See, e.g.*, *Burnett v. CallCore Media, Inc.*, 2024 WL 3166453, at *3 (S.D. Tex. June 25, 2024); *Shen v. Exela Techs., Inc.*, 2023 WL 8527091, at *2 (N.D. Tex. Dec. 7, 2023); *Celeste*, 2022 WL 17736350, at *8.

VII. CONCLUSION

For the reasons herein, Plaintiffs respectfully request that the Court grant final approval of the Settlement and approve the Plan of Allocation.

Dated: September 19, 2024

Respectfully submitted,

s/ Darryl J. Alvarado

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CERTIFICATE OF SERVICE

I certify that on September 19, 2024, I caused a true and correct copy of the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system. Notice of this filing will be sent to counsel of record by operation of the Court's electronic filing system.

s/ Darryl J. Alvarado
Darryl J. Alvarado