Lee Albert (State Bar No. 26231986)
*lalbert@glancylaw.com*
GLANCY PRONGAY & MURRAY LLP
230 Park Ave, Suite 358
New York, New York 10169
(212) 682-5340

Garth A. Spencer (*pro hac vice*)
*gspencer@glancylaw.com*
GLANCY PRONGAY & MURRAY LLP
1925 Century Park East, Suite 2100
Los Angeles, California 90067
(310) 201-9150

*Attorneys for Plaintiff Richard Goodman and the Proposed Settlement Class*

**UNITED STATES DISTRICT COURT**
**DISTRICT OF NEW JERSEY**

RICHARD GOODMAN, *Individually And As Trustee of the Richard M. Goodman Revocable Living Trust, And On Behalf Of All Others Similarly Situated,*

Plaintiff,

vs.

UBS FINANCIAL SERVICES INC.,

Defendant.

Case No.: 2:21-cv-18123-KM-MAH

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION FOR: (I) PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; (II) CERTIFICATION OF THE SETTLEMENT CLASS; AND (III) APPROVAL OF NOTICE OF SETTLEMENT**

Hon. Michael A. Hammer

**Motion Day:** July 3, 2023

# TABLE OF CONTENTS

# TABLE OF AUTHORITIES

CASES

Plaintiff Richard Goodman ("Lead Plaintiff" or "Plaintiff"), on behalf of himself and all others similarly situated, respectfully submits this memorandum in support of his unopposed motion seeking: (i) preliminary approval of the proposed Settlement set forth in the Stipulation and Agreement of Settlement dated June 8, 2023 (the "Stipulation");[1] (ii) certification of the proposed Settlement Class; (iii) approval of the form and manner of giving notice of the proposed Settlement to Settlement Class Members; and (iv) the scheduling of a hearing date ("Settlement Hearing") at which the Court will consider (a) final approval of the proposed Settlement and entry of the proposed Final Judgment Approving Class Action Settlement, (b) the Plan of Allocation of settlement proceeds, and (c) Lead Plaintiff's Counsel's application for an award of attorneys' fees and Litigation Expenses.

## I. INTRODUCTION

The proposed Settlement will resolve all claims against defendant UBS Financial Services Inc. ("UBS" or "Defendant") in exchange for a non-reversionary, all cash payment of $2,500,000 (the "Settlement Amount") for the benefit of the

[1] Unless otherwise defined, all capitalized terms herein have the same meanings as set forth in the Stipulation, which is attached as **Exhibit 1** to the Declaration of Garth Spencer in Support of Plaintiff's Unopposed Motion for: (I) Preliminary Approval of Class Action Settlement; (II) Certification of the Settlement Class; and (III) Approval of Notice of Settlement ("Spencer Decl."), filed concurrently herewith. Internal citations and quotations are omitted and emphasis is added throughout this brief, unless otherwise noted.

Settlement Class. This is an excellent result for the Settlement Class and it is both substantively and procedurally fair. Accordingly, the Court should enter the Preliminary Approval Order.

Substantively, Lead Plaintiff's damages expert estimates that if Plaintiff overcame all obstacles to establishing liability, the $2.5 million Settlement would *exceed* the *maximum* damages attributable to Settlement Class Members' tax overpayments that are *potentially* recoverable in this case. However, if this Action continued to be litigated an adverse decision at class certification, summary judgment, trial, or appeal, could have substantially reduced or altogether eliminated any recovery for the Settlement Class.

Procedurally, this Settlement follows an arm's-length mediation before a highly experienced mediator, is the result of the mediator's recommendation, and was negotiated by counsel who possessed a thorough understanding of the strengths and weaknesses of the case based on hard-fought litigation. Indeed, prior to reaching the Settlement, Lead Plaintiff's Counsel, among other things:

- conducted an extensive investigation of the claims asserted in the Action, which included, *inter alia*: (i) reviewing and analyzing publicly available information concerning UBS, including SEC filings and information from FINRA; (ii) researching relevant tax laws relating to the reporting of amortizable bond premium; (iii) reviewing and analyzing documents UBS

had previously provided to Plaintiff including account opening documentation and annual tax forms; (iv) interviewing a former employee of UBS with first-hand knowledge of UBS's conduct at issue in this case; and (v) researching causes of action under which UBS may be held liable for the conduct at issue;

- utilized its comprehensive investigation and additional research to draft and file the Class Action Complaint ("Complaint");
- researched, drafted, and filed an opposition to Defendant's motion to dismiss the Complaint, which led to the Court sustaining the Complaint in substantial part;
- drafted, negotiated, and filed a joint discovery plan, confidentiality order, and discovery protocol, and prepared for and participated in telephonic scheduling conferences with the Court;
- drafted and served comprehensive requests for the production of documents and proposed search terms for electronically stored information on UBS, and responded and objected to UBS's requests for the production of documents to Plaintiff;
- Drafted and issued a subpoena for documents to FINRA relating to UBS's tax information reporting practices, and reviewed and analyzed FINRA's document production;

- engaged in numerous communications and meet and confer discussions with Defendant's Counsel concerning, *inter alia*, discovery, scheduling, UBS's motion to dismiss, and the potential resolution of this Action;
- negotiated for Defendant to produce, prior to the Parties' mediation, substantial data reflecting UBS clients' transactions in taxable municipal securities during the relevant period, reviewed and analyzed the data produced by Defendant, and used that data to estimate recoverable damages;
- obtained copies of Plaintiff's tax returns from his accountants, and redacted and produced relevant tax returns and other relevant documents to UBS as part of the pre-mediation exchange of information;
- engaged in a mediation process overseen by a highly experienced third-party mediator, Robert A. Meyer, Esq., of JAMS, which involved an exchange of written submissions concerning the facts of the case, liability and damages, a full-day in-person mediation session, and weeks of further negotiations that culminated in a mediator's recommendation to resolve the Action for $2.5 million in cash;
- negotiated with Defendant's Counsel to obtain additional data from UBS concerning UBS clients' transactions in taxable municipal securities during the relevant period, and worked with a damages expert to analyze

that data and craft a plan of allocation that treats Lead Plaintiff and all other members of the proposed Settlement Class fairly;

- conducted an interview, arranged with Defendant's Counsel, of a UBS employee with relevant knowledge, to confirm the fairness and reasonableness of the Settlement; and
- drafted and negotiated the terms of the Stipulation (including the exhibits thereto) and Supplemental Agreement with Defendant's Counsel.

The Settlement is, therefore, the result of arm's-length negotiations, conducted by informed and experienced counsel, and does not favor Plaintiff over other Settlement Class Members. In short, it is procedurally fair.

As discussed in greater detail below, Plaintiff and his counsel believe the proposed Settlement meets the standards for preliminary approval and is in the best interests of the Settlement Class. Consequently, Plaintiff respectfully requests that the Court grant the Settlement preliminary approval.[2]

## II. NATURE OF THE ACTION

This is a putative class action asserting common law claims for breach of

[2] The Parties' proposed agreed-upon Order Preliminarily Approving Settlement and Providing for Notice ("Preliminary Approval Order") is attached to the Stipulation as **Exhibit A**.

contract and negligence.[3] Lead Plaintiff alleges that Defendant UBS provided inaccurate tax information concerning amortizable bond premium for certain taxable municipal securities to its brokerage clients, including Plaintiff, causing them in the aggregate to incur millions of dollars in tax overpayments.

## III. FACTUAL AND PROCEDURAL BACKGROUND OF THE LITIGATION

### A. Plaintiff's Complaint

On October 5, 2021, Plaintiff filed the Complaint in the United States District Court for the District of New Jersey, styled *Goodman v. UBS Financial Services Inc.*, Case No. 2:21-cv-18123-KM-MAH. Dkt No. 1. The Complaint asserted common law claims against UBS for breach of contract, breach of the implied covenant of good faith and fair dealing, breach of fiduciary duty, negligence, negligent misrepresentation, negligence per se, and punitive damages.

Among other things, the Complaint alleged that "[b]eginning with the 2014 tax year, Defendant incorrectly reported certain tax information to its clients relating to interest paid on taxable municipal bonds, in violation of clear Treasury Regulations and in violation of Defendant's own representations to its clients

[3] Judge McNulty granted UBS's motion to dismiss Plaintiff's claims for breach of the implied covenant of good faith and fair dealing, breach of fiduciary duty, negligent misrepresentation, and punitive damages. *See Goodman v. UBS Fin. Servs., Inc.*, 2022 WL 2358403 (D.N.J. June 30, 2022). Plaintiff previously determined not to pursue the Complaint's cause of action for negligence per se.

regarding its practices and policies for such tax information reporting." Complaint ¶2. The Complaint further alleged that "Defendant failed to report amortizable bond premium for taxable municipal bonds as required by applicable Treasury Regulations," which "had the effect of substantially overstating the clients' taxable income costing money to plaintiff and the Class." Complaint ¶3.

The Complaint's allegations were based on a thorough pre-filing investigation and diverse sources of information including, *inter alia*: review of the contracts and account opening documents provided by UBS to Plaintiff; review of the Form 1099 annual tax information reporting forms initially provided by UBS to Plaintiff; review of "corrected" Form 1099 annual tax information reporting forms later provided by UBS to Plaintiff; review of relevant tax laws and Treasury Regulations; research regarding the market for taxable municipal securities; review of prior FINRA actions against UBS relating to its tax information reporting; and an interview with a UBS former employee who is knowledgeable about UBS's conduct at issue.

Plaintiff brought the Complaint on behalf of himself and a proposed class of UBS clients who, like him, had purchased taxable municipal securities in a UBS account, and received a Form 1099 from UBS that Plaintiff alleged incorrectly reported the amounts of their amortizable bond premium. Complaint ¶5.

### B. UBS's Motion To Dismiss And The Court's Opinion

UBS moved to dismiss the Complaint, Plaintiff opposed, and UBS filed a

reply. Dkt Nos. 13, 16, 21. On June 30, 2022, Judge McNulty granted in part and denied in part UBS's motion. *Goodman v. UBS Fin. Servs., Inc.*, 2022 WL 2358403 (D.N.J. June 30, 2022). Judge McNulty upheld the claims for breach of contract and negligence, while dismissing the claims for breach of the implied covenant of good faith and fair dealing, breach of fiduciary duty, negligent misrepresentation, and punitive damages. *Id.* at *8.[4] Judge McNulty further noted that "Goodman may eventually be forced to choose between [his contract and negligence] theories, but that point has not yet been reached," and that "[i]t is entirely possible that information revealed in discovery will make either Count 1 [breach of contract] or 5 [negligence] untenable, but for now both claims will go forward." *Id.* at *2.

As to the breach of contract claim, Judge McNulty ruled that "Goodman has plausibly alleged that UBS violated two interrelated implied terms of the CRA [UBS Client Relationship Agreement]," because "it is implied in the CRA that UBS will provide *accurate* tax forms and that UBS will follow its stated policies in providing tax forms." *Id.* at *3 (emphasis in original). Judge McNulty dismissed Plaintiff's claim for breach of the covenant of good faith and fair dealing as failing to allege conduct by UBS beyond that at issue in the breach of contract claim. *Id.* at *5.

With regard to Plaintiff's breach of fiduciary duty claim, Judge McNulty

[4] In his opposition to UBS's motion to dismiss, Plaintiff stated that he would no longer pursue the claim for negligence per se. Dkt No. 16.

dismissed, holding that Plaintiff "has not plausibly alleged that there was a fiduciary relationship between him and UBS related to tax information reporting." *Id.* at *6. Similarly, Judge McNulty dismissed the negligent misrepresentation claim for failing to allege a "special relationship" between UBS and its clients requiring "a closer degree of trust than an ordinary business relationship." *Id.*

Judge McNulty allowed Plaintiff's negligence claim to proceed, finding that "whether UBS had a duty to accurately report tax information on the forms it provides to its clients," was a factual issue not appropriate for resolution on a motion to dismiss. *Id.* at *7. Judge McNulty dismissed Plaintiff's punitive damages claim, on the grounds that "punitive damages are a remedy, not a cause of action." *Id.* *2.

**C. Discovery**

While UBS's motion to dismiss was pending, the Parties submitted their joint discovery plan, which included competing proposals regarding the case schedule and certain other matters. Dkt No. 22. For example, UBS proposed to stay all discovery pending the resolution of its motion to dismiss, and Plaintiff opposed such a stay. *Id.* On February 22, 2022 the Court held a telephonic scheduling conference, and after hearing argument adopted a modified stay of discovery, under which the Parties would proceed with their initial disclosures, serve initial requests for production of documents, file a proposed confidentiality order and ESI protocol, and serve objections and responses to the initial requests for production, while all other

discovery was stayed pending resolution of the UBS's motion. *See* Dkt Nos. 23-25.

As contemplated by the Court's scheduling order, Plaintiff: served his initial disclosures on UBS; served initial requests for production of documents; drafted, negotiated, and filed a stipulated confidentiality order and ESI protocol (see Dkt Nos. 26-29); and served objections and responses to UBS's initial requests for production of documents. Plaintiff also raised a discovery dispute with the Court concerning whether the confidentiality order should allow for redaction of sensitive tax and financial information, which the Parties addressed by letter briefs, and the Court ruled against allowing such redactions. *See* Dkt Nos. 26-28.

After Judge McNulty granted in part and denied in part UBS's motion to dismiss, the Court held another telephonic scheduling conference on July 7, 2022, and issued an amended scheduling order governing discovery, class certification, and other matters. Dkt Nos. 32-34. Discovery then began in full. On July 11, 2022, Plaintiff served a subpoena on FINRA, relating to two prior FINRA enforcement actions relating to UBS's alleged mishandling of tax information reporting for municipal bonds. *See* Complaint ¶¶76-85.[5] The Parties held a meet and confer on July 20, 2022, to discuss their respective responses and objections to requests for

[5] On September 20, 2022, FINRA produced documents to Plaintiff, which Plaintiff then shared with UBS. FINRA produced 134 documents spanning 948 bates numbers.

production, and continued to discuss this and other discovery topics thereafter. On July 26, 2022, Plaintiff sent UBS a list of proposed search terms for UBS's electronically stored information. UBS answered the Complaint on July 28, 2022. Dkt No. 37.

### D. Mediation And The Settlement

As Plaintiff pressed discovery, the Parties agreed to pursue private mediation before Robert Meyer, Esq. of JAMS. Dkt No. 38. The Parties "agreed to engage in a pre-mediation exchange of information focused on particular issues intended to facilitate a productive mediation, while waiting for the conclusion of their mediation to continue their formal party discovery," and accordingly requested a continuation of certain scheduled dates, which the Court granted. *Id.*; Dkt No. 39.

In advance of the mediation, at UBS's request, Plaintiff produced relevant portions of his tax returns, and the 1099 Forms he had previously received from UBS. Also in advance of the mediation, and at Plaintiff's request, UBS produced data reflecting its clients' relevant securities transactions, sufficient to allow Plaintiff to calculate class-wide damages. Such data reflected thousands of transactions over the 2014-2019 period, and included, *inter alia*: encrypted account numbers; purchase and sale dates, quantities, and prices; and CUSIP numbers identifying the relevant securities. Plaintiff insisted on receiving such information in order to ascertain class-wide damages prior to engaging in mediation.

Plaintiff then analyzed the data produced by UBS, and incorporated his conclusions into a mediation statement shared with UBS and the mediator on November 10, 2022. Plaintiff also reviewed and analyzed UBS's mediation statement. On November 17, 2022, the Parties participated in a full day, in-person[6] mediation with Mr. Meyer in Los Angeles. The session ended without an agreement to settle. Over the next several weeks, however, Mr. Meyer conducted further discussions with the Parties, which culminated in a mediator's proposal to resolve the Action for $2,500,000. The Parties accepted Mr. Meyer's recommendation, and on December 29, 2022, jointly filed a notice informing the Court that they had "preliminarily agreed in principle upon a resolution of this action on a classwide basis." Dkt No. 44.

Over the following months, the Parties drafted and negotiated the Stipulation, and related documents, to carry out the Settlement. At Plaintiff's request, UBS produced additional data to allow him to further refine his damages calculations in connection with the proposed Plan of Allocation. Plaintiff worked with a damages expert to analyze the data produced by UBS, and to draft a proposed Plan of Allocation that will fairly distribute the Net Settlement Fund to Settlement Class Members. Also at Plaintiff's request, UBS produced an employee with relevant

[6] Counsel for UBS and for Plaintiff attended the mediation session in person. Plaintiff participated remotely by phone and videoconference.

knowledge to sit for an interview with Lead Plaintiff's counsel, in order to confirm that the Settlement and Plan of Allocation are fair and reasonable to the Settlement Class. That interview took place on April 21, 2023. On June 8, 2023, the Parties executed the Stipulation.

## IV. THE SETTLEMENT

### A. The Settlement Terms

The Settlement requires Defendant to pay, or cause to be paid, $2.5 million in cash into an interest-bearing Escrow Account for the benefit of the Settlement Class.[7] The Net Settlement Fund is defined as the Settlement Amount, plus accrued interest, less: (i) Taxes; (ii) Notice and Administration Costs; (iii) Litigation Expenses awarded by the Court; and (iv) attorneys' fees awarded by the Court. The Net Settlement Fund will be distributed among Settlement Class Members pursuant to the proposed Plan of Allocation. If the Settlement is approved, the Settlement Amount is non-reversionary.

### B. The Plan Of Allocation

Plaintiff's damages expert, in consultation with Lead Plaintiff's Counsel, has developed a Plan of Allocation, the objective of which is to equitably distribute the Settlement proceeds to those Settlement Class Members who suffered economic

[7] In exchange for the Settlement Amount, Settlement Class Members will release the "Released Plaintiff's Claims." *See* Stipulation at ¶¶ 5 (release) and 1(ee) (defining "Released Plaintiff's Claims").

losses as a proximate result of UBS's alleged wrongdoing. The Plan of Allocation generally weighs the claims of Settlement Class Members against one another for the purposes of making *pro rata* allocations of the Net Settlement Fund. *See* Spencer Decl., **Exhibit 1** at A-1 (Notice) at ¶¶34-36 (describing Plan of Allocation); Spencer Decl., **Exhibit 3** (Declaration of Zachary Nye, Ph.D. In Support Of The Proposed Settlement And Plan Of Allocation) ("Nye Decl.").

The formula for determining each Authorized Claimant's Recognized Claim is based on Plaintiff's allegations, and reflects applicable IRS guidelines and Treasury Regulations, and the relevant Settlement Class Member transaction data produced by UBS. *See id.* Generally, the Plan of Allocation calculates a Recognized Claim for each Authorized Claimant based on the estimated amount of amortizable bond premium that Plaintiff alleges should have been reported to the Authorized Claimant with respect to their purchases of At-Issue Taxable Municipal Securities[8] during the Settlement Class Period (*i.e.*, between January 1, 2014 and December 31, 2019, inclusive). *See id*. Under the Plan of Allocation, the Net Settlement Fund is

[8] "At-Issue Taxable Municipal Securities" means Build America Bonds and certain other bonds created under the American Recovery and Reinvestment Act of 2009 (ARRA), consisting of TED (Tribal Economic Development Bonds); QZA (Qualified Zone Academy Bonds); QEC (Qualified Energy Conservation Bonds); QSC (Qualified School Construction Bonds); RZF (Recovery Zone Facility Bonds); RZE (Recovery Zone Economic Development Bonds); RZP (Recovery Zone Private Activity Bonds); and CRE (Clean Renewable Energy Bonds).

to be distributed to Authorized Claimants in proportion to their Recognized Claims. *See id.*

## V. THE SETTLEMENT WARRANTS PRELIMINARY APPROVAL

Rule 23(e) requires court approval for any settlement of a class action, and courts within this circuit have a "strong judicial policy in favor of class action settlement." *Ehrheart v. Verizon Wireless*, 609 F.3d 590, 593-95 (3d Cir. 2010); *see also In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 535 (3d Cir. 2004). "Settlement agreements are to be encouraged because they promote the amicable resolution of disputes and lighten the increasing load of litigation faced by the federal courts." *Ehrheart*, 609 F.3d at 594. This is particularly true for class actions involving complex litigation. *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 784 (3d Cir. 1995) ("The law favors settlements, particularly in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation.").

Rule 23(e)(1) provides that preliminary approval should be granted where "the parties show[] that the Court will likely be able to: (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal." With respect to Rule 23(e)(2)—which governs final approval—courts now consider the following factors in determining whether a proposed settlement is fair, reasonable, and adequate:

(A) have the class representatives and class counsel adequately represented the class;

(B) was the proposal negotiated at arm's-length;

(C) is the relief provided for the class 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 attorneys' fees, including timing of payment; and

(iv) any agreement required to be identified under Rule 23(e)(3); and

(D) does the proposal treat class members equitably relative to each other.

Factors (A) and (B) "identify matters . . . described as 'procedural' concerns, looking to the conduct of the litigation and of the negotiations leading up to the proposed settlement," while factors (C) and (D) "focus on . . . a 'substantive' review of the terms of the proposed settlement" (*i.e.*, "[t]he relief that the settlement is expected to provide to class members"). Advisory Committee Notes to 2018 Amendments (324 F.R.D. 904, at 919).

These factors are not, however, exclusive. The four factors set forth in Rule 23(e)(2) are not intended to "displace" any factor previously adopted by the courts,

but "rather to focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal." *Id*. at 918; *see also Swinton v. SquareTrade, Inc.*, 2019 WL 617791, at *5 (S.D. Iowa Feb. 14, 2019) ("The specific considerations in Rule 23(e)(2)(A)–(D) were part of the 2018 Amendments. However, they were not intended to displace the various factors that courts have developed in assessing the fairness of a settlement."). For this reason, the traditional factors that are utilized by courts in the Third Circuit—known as the "*Girsh* factors"—to evaluate the propriety of a class action settlement (certain of which overlap with Rule 23(e)(2)) are still relevant:

> (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement;[9] (3) stage of the proceedings and the amount of discovery completed; (4) risks of establishing liability; (5) risks of establishing damages; (6) risks of maintaining the class action through the trial; (7) 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.

*Singleton v. First Student Mgmt. LLC*, 2014 WL 3865853, at *5 (D.N.J. Aug. 6, 2014) (citing *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975)); *In re AT&T Corp.*

[9] Because notice to the Settlement Class has not yet been issued, this factor cannot be assessed. Plaintiff, however, supports the Settlement.

*Sec. Litig.*, 455 F.3d 160, 164-65 (3d Cir. 2006) (same).[10]

In sum, although under the 2018 Amendment to Rule 23 the specific factors by which a settlement is evaluated may have changed in some respects, what has not changed is that "[t]he central concern in reviewing a proposed class-action settlement is that it be fair, reasonable, and adequate." Advisory Committee Notes to 2018 Amendments (324 F.R.D. at 918).

### A. Plaintiff And His Counsel Adequately Represented The Settlement Class

Rule 23(e)(2)(A) requires the Court to consider whether the "class representatives and class counsel have adequately represented the class." Because this factor overlaps significantly with the class certification analysis on adequacy, to avoid duplicative briefing, it is discussed there. *See* § VI.D, *infra*.

### B. The Settlement Resulted From Arm's-Length Negotiations

Rule 23(e)(2)(B) evaluates whether the proposed settlement "was negotiated at arm's-length." Here, the Settlement was negotiated by counsel with extensive experience in class action litigation, who were well versed in the strengths and weaknesses of their respective positions, under the auspices of a highly respected mediator who ultimately made a mediator's recommendation that the Parties

[10] The *Girsh* factors "are a guide and the absence of one or more does not automatically render the settlement unfair." *In re Schering-Plough/Merck Merger Litig.*, 2010 WL 1257722, at *5 (D.N.J. Mar. 26, 2010).

accepted. *See* Spencer Decl. **Exhibit 2** (GPM firm résumé). Accordingly, this factor weighs in favor of preliminary approval. *See Alves v. Main*, 2012 WL 6043272, at *22 (D.N.J. Dec. 4, 2012) ("The participation of an independent mediator in settlement negotiations virtually insures that the negotiations were conducted at arm's-length and without collusion between the parties."); *Bernhard v. TD Bank, N.A.*, 2009 WL 3233541, at *2 (D.N.J. Oct. 5, 2009) (preliminarily approving settlement and noting that the proposed settlement, which was achieved with the assistance of a mediator, appears to be the result of serious negotiation between the parties).

### C. The Relief Provided To The Settlement Class Is Adequate

Rule 23(e)(2)(C)(i) overlaps significantly with *Girsh* (*e.g.*, factors 1, 4-9), and both sets of factors advise the Court to consider the adequacy of the settlement relief given the costs, risks, and delay that trial and appeal would inevitably impose. *Compare* Fed. R. Civ. P. 23(e)(2)(C)(i) *with Girsh*, 521 F.2d at 157. Thus, the *Girsh* factors, analyzed below, inform the Rule 23(e)(2)(C)(i) inquiry.

#### 1. The Complexity, Expense, And Likely Duration Of The Litigation Support Settlement

The first *Girsh* factor, the complexity, expense, and likely duration of the litigation, supports approval of the Settlement. Indeed, large class actions often involve complicated issues of fact and law, and this case is no different. If this litigation were to continue, Plaintiff would have to retain experts to opine on several

topics such as damages and brokerage industry tax information reporting practices. *See Goodman*, 2022 WL 2358403, at *7 ("there are a number of factors that are relevant to determining what duty, if any, UBS owed to Goodman. Federal statutes and Treasury regulations, FINRA investigations, and standard industry practices may all come into play."). This would have substantially increased the cost of litigation. As a result, the complexity, expense, and likely duration of these proceedings favor approval of the Settlement. *See Dartell v. Tibet Pharms., Inc*., 2017 WL 2815073, at *6 (D.N.J. June 29, 2017).

**2. The Stage Of The Proceedings And The Amount Of Discovery Completed**

"Courts in this Circuit frequently approve class action settlement despite the absence of formal discovery." *In re Ocean Power Techs., Inc.*, 2016 WL 6778218, at *17 (D.N.J. Nov. 15, 2016) (citing cases); *Yedlowski v. Roka Bioscience, Inc.*, 2016 WL 6661336, at *13 (D.N.J. Nov. 10, 2016) (same). This is because the relevant inquiry under the third *Girsh* factor is "whether Plaintiffs had an 'adequate appreciation of the merits of the case before negotiating' settlement." *In re Wilmington Tr. Sec. Litig.*, 2018 WL 6046452, at *5 (D. Del. Nov. 19, 2018). As such, "[e]ven settlements reached at a very early stage and prior to formal discovery are appropriate when there is no evidence of collusion and the settlement represents substantial concessions by both parties." *Little-King v. Hayt Hayt & Landau*, 2013 WL 4874349, at *10 (D.N.J. Sept. 10, 2013) (Hammer, J.).

Here, discovery was initially stayed in substantial part in accord with the Court's rulings on February 22, 2022, and subsequent scheduling order. *See* Dkt Nos. 23, 25. Following Judge McNulty's decision on UBS's motion to dismiss, Plaintiff pressed discovery, meeting and conferring with UBS concerning his requests for production, providing UBS with proposed ESI search terms, and issuing a document subpoena to FINRA. In advance of the Parties' November 17, 2022 mediation, Plaintiff obtained from UBS data reflecting its clients' relevant securities transactions, sufficient to allow Plaintiff to calculate class-wide damages.

In addition to the documents obtained in discovery, Plaintiff possessed substantial information with which to assess the merits of the case owing to his thorough pre-filing research that included, among other things: reviewing and analyzing publicly available information concerning UBS, including SEC filings and information from FINRA; researching relevant tax laws relating to the reporting of amortizable bond premium; reviewing and analyzing documents UBS had previously provided to Plaintiff, including account opening documentation and annual tax forms; and interviewing a former UBS employee with first-hand knowledge of UBS's conduct at issue in this case.

Therefore, Plaintiff was adequately informed of the relative strengths and weaknesses of his case. In addition to Plaintiff's discovery efforts and pre-filing investigation, Plaintiff responded to UBS's motion to dismiss, participated in a full-

day mediation during which the Parties debated the merits of the Action, and consulted with damages experts. These steps, among others, gave Plaintiff a clear and realistic understanding of the value of the case. *See supra* § III; *see also Vaccaro v. New Source Energy Partners L.P.*, 2017 WL 6398636, at *5 (S.D.N.Y. Dec. 14, 2017) ("Although the action did not proceed to formal discovery . . . [t]he Court finds that Lead Plaintiffs were well-informed to gauge the strengths and weaknesses of their claims and the adequacy of the settlement.").

**3. Plaintiff Faced Risks On The Merits**

The fourth, fifth, and sixth *Girsh* factors—the risks of establishing liability, establishing damages, and maintaining the class action through the trial—also support approval. While Plaintiff believes his claims to be meritorious, he also recognizes that UBS has potentially viable defenses, including arguments cutting against liability as to both of the remaining claims for breach of contract and negligence, as well as arguments against class certification and damages. Indeed, UBS achieved dismissal of most of Plaintiff's claims before Judge McNulty. *See Goodman*, 2022 WL 2358403 at *8.

Plaintiff might not have been able to establish UBS's liability at summary judgment and trial. *See In re Lucent Techs., Inc., Sec. Litig.*, 307 F. Supp. 2d 633, 645 (D.N.J. 2004) (proving liability "would have been very difficult" and based on risks and contingencies, settlement is reasonable given risks involved in establishing

liability); *Ocean Power*, 2016 WL 6778218, at *19-20 (recognizing the difficulty of establishing liability class action and the added risk of establishing damages). UBS has consistently argued that its contracts with clients made no promise to report amortizable bond premium to them, and that its relationship with clients did not give rise to a duty of care so as to permit a negligence claim. *See* Dkt Nos. 13-1, 21. Indeed, even in allowing Plaintiff's negligence and breach of contract claims to proceed, Judge McNulty warned, "[i]t is entirely possible that information revealed in discovery will make either Count 1 [breach of contract] or 5 [negligence] untenable." *See Goodman*, 2022 WL 2358403 at *2.

Plaintiff also faced hurdles in obtaining class certification, as UBS would most likely argue that individual questions predominate over common questions, due to the differing circumstances of class members' securities transactions and tax positions. As such, while Plaintiff firmly believes that class certification is appropriate and that he would overcome UBS's arguments, class certification was not a forgone conclusion. *See In re Marsh & McLennan Cos., Inc. Sec. Litig.*, 2009 WL 5178546, at *6 (S.D.N.Y. Dec. 23, 2009) ("the uncertainty surrounding class certification supports approval of the Settlement").

UBS would also contest that the Plaintiff and the class suffered damages. For example, UBS has previously alluded to "questions concerning Plaintiff's standing and claims of injury," in light of the fact that UBS belatedly issued

"corrected" Form 1099s to him. *See* Dkt No. 22 at 6. Indeed, in class actions the issue of damages often turns into a "battle of the experts," with no guarantee as to who will prevail. *In re Prudential Insurance Co. of Am. Sales Practices Litig.*, 962 F. Supp. 450, 539 (D.N.J. 1997) (a "jury's acceptance of expert testimony is far from certain, regardless of the expert's credentials. And, divergent expert testimony leads inevitably to a battle of the experts."), *aff'd,* 148 F.3d 283 (3d Cir. 1998). Such a battle would not only increase the cost of litigation, but also the risk that a jury might credit UBS's experts and reject Plaintiff's claims. In contrast, the Settlement provides a favorable and immediate result for the Settlement Class while avoiding the significant risks of establishing liability and damages. *See In re Facebook, Inc. IPO Sec. and Derivative Litig.*, 2015 WL 6971424, at *5 (S.D.N.Y. Nov. 9, 2015) ("[D]amages would be subject to a battle of the experts, with the possibility that a jury could be swayed by experts for Defendants, who could minimize or eliminate the amount Plaintiffs' losses. Under such circumstances, a settlement is generally favored over continued litigation.").

**4. The Settlement Amount Is Within The Range Of Reasonableness In Light Of The Best Possible Recovery And Attendant Risks Of Litigation**

The seventh, eighth, and ninth *Girsh* factors—the ability of the defendant to withstand a greater judgment, and the range of reasonableness of the settlement fund given the best possible recovery and considering all the attendant risks of

litigation—strongly support approval. The proposed Settlement recovers $2.5 million in cash for the Settlement Class. This is an excellent result. Lead Plaintiff's damages expert estimates that ***if*** Lead Plaintiff had fully prevailed on his claims at both summary judgment and after a jury trial, ***if*** the Court certified the same class period as the Settlement Class Period, ***and if*** the Court and jury accepted Plaintiff's damages theory—*i.e.*, Plaintiff's best-case scenario—the $2.5 million Settlement would *exceed* the *maximum* damages attributable to Settlement Class Members' tax overpayments that are *potentially* recoverable in this case.[11] This is an excellent result compared to the range of recoveries routinely approved by courts in class action settlements. *See, e.g.*, *AT & T*, 455 F.3d at 170 (affirming District Court determination that recovery of 4% of maximum damages was an "excellent" result); *Lincoln Adventures LLC v. Those Certain Underwriters at Lloyd's, London Members*, 2019 WL 4877563, at *5 (D.N.J. Oct. 3, 2019) (approving settlement providing 22% of reasonably recoverable damages, and

[11] Damages attributable to tax overpayments are the primary source of damages alleged by Plaintiff. Plaintiff also alleged other sources of damages, which Lead Plaintiff's Counsel believes to be substantially smaller in amount than the damages attributable to tax overpayments: (i) that UBS clients were harmed by the lost time-value of their money; and (ii) that some UBS clients likely incurred unnecessary expenses such as professional fees for tax return preparation and advice. *See* Complaint ¶¶105-13. Plaintiff also pled a claim for punitive damages, which was dismissed by Judge McNulty on the grounds that "punitive damages are a remedy, not a cause of action." *Goodman*, 2022 WL 2358403, at *2. Lead Plaintiff's Counsel believes there was substantial risk to obtaining punitive damages.

citing cases approving settlements ranging from 2.4% to 15.3% of damages).

This case was not, however, risk free and there were meaningful barriers to recovery, including, but certainly not limited to, the above described risks concerning liability, class certification, and damages. Given the range of possible results in this litigation, including a substantial risk of ***no*** recovery to the Settlement Class, there can be no question that the Settlement constitutes a considerable achievement and weighs heavily in favor of preliminary approval.

### D. The Other Rule 23(e)(2)(C) Factors Are Met

Rule 23(e)(2)(C) provides three more factors to consider in approving a settlement: (i) the effectiveness of the proposed method for distributing relief; (ii) the terms of the proposed attorneys' fees; and (iii) the existence of any other "agreements." Fed. R. Civ. P. 23(e)(2)(C)(ii)-(iv). Each of these factors supports approval of the Settlement or is neutral and thus does not suggest any basis to conclude the Settlement is inadequate.

#### 1. The Proposed Method For Distributing Relief Is Effective

The method for distributing relief to eligible Settlement Class Members includes well-established, effective procedures. Here, Strategic Claims Services, the Settlement Administrator selected by Lead Plaintiff's Counsel subject to Court approval, will (i) determine each Settlement Class Member's *pro rata* share of the Net Settlement Fund under Lead Plaintiff's Counsel's guidance, and according to

the Plan of Allocation; , and (ii) mail Authorized Claimants their *pro rata* share of the Net Settlement Fund after Court-approval. Given that UBS has contact information and the relevant transaction data for Settlement Class Members, a claims-free process is an efficient and effective way to distribute the Net Settlement Fund, and to ensure that a high proportion of eligible Settlement Class Members receive compensation.[12]

**2. The Proposed Attorneys' Fees**

Rule 23(e)(2)(C)(iii) addresses "the terms of any proposed award of attorney's fees, including timing of payment." The Notice provides that Lead Plaintiff's Counsel will apply to this Court for an award of attorneys' fees not to exceed 33⅓% of the Settlement Fund, which is consistent with attorneys' fees regularly approved in class action settlements. *See, e.g., Dartell*, 2017 WL 2815073, at *10 ("The one-third fee is within the range of fees typically awarded within the Third Circuit through the percentage-of-recovery method; the Circuit has observed that fee awards generally range from 19% to 45% of the settlement fund."); *In re Rite Aid Corp. Sec. Litig.*, 146 F. Supp. 2d 706, 735 (E.D. Pa. 2001) (review of 289 settlements demonstrates "average attorney's fee percentage [of]

[12] This is not a claims-made settlement. If the Settlement is approved, Defendant will not have any right to the return of a portion of the Settlement Amount based on the number of Settlement Class Members determined to be eligible to receive a distribution from the Net Settlement Fund, or the amounts to be paid to Authorized Claimants from the Net Settlement Fund. *See* Stipulation ¶13.

31.71%" with a median value that "turns out to be one-third").

**3. The Parties Have One Other Agreement**

Rule 23(e)(2)(C)(iv) calls for disclosure of any other agreements entered into in connection with the settlement of a class action. The Parties have entered into one confidential agreement that establishes certain conditions under which Defendant may terminate the Settlement if a certain threshold of Settlement Class Members eligible to participate in the Settlement request exclusion (or "opt out") from the Settlement. Such supplemental agreements are common in class action settlements, and have "no negative impact on the fairness of the Settlement." *Christine Asia Co., Ltd. v. Yun Ma*, 2019 WL 5257534, at *15 (S.D.N.Y. Oct. 16, 2019).

**4. All Settlement Class Members Are Treated Equitably**

The Settlement does not provide preferential treatment to the Plaintiff or any other segment of the Settlement Class. The proposed Plan of Allocation, which was developed by Plaintiff's damages expert in consultation with Lead Plaintiff's Counsel, is set forth in the Notice and provides a fair and reasonable method to allocate the Net Settlement Fund among Settlement Class Members. *See* Spencer Decl., **Exhibit 1** at A-1 (Notice) at ¶¶34-36 (describing Plan of Allocation); Spencer Decl., **Exhibit 3** (Nye Decl.). Under the Plan of Allocation, the Settlement Administrator will calculate a Recognized Claim amount for each Settlement Class

Member, which shall be the sum of the Settlement Class Member's estimated amortizable bond premium amounts relating to their relevant transactions in taxable municipal securities during the Settlement Class Period, based on data provided by UBS. *Id.*

The calculation of each Settlement Class Member's Recognized Claim under the Plan of Allocation is explained in the Notice and will be based on several factors, including the particular taxable municipal securities purchased by each Settlement Class Member, the maturity or call dates of those securities, and their purchase prices. *See id.* The Net Settlement Fund will be allocated to Authorized Claimants on a *pro rata* basis based on the relative size of their Recognized Claim. *Id*. Similar plans have repeatedly been approved by courts in this District. *See, e.g.*, *In re Aetna Inc. Sec. Litig.*, 2001 WL 20928, at *12 (E.D. Pa. Jan. 4, 2001) ("Courts [] generally consider plans of allocation that reimburse class members based on the type and extent of their injuries to be reasonable.") (*citing In re Ikon*, 194 F.R.D. at 184).

In sum, the Rule 23(e)(2) and *Girsh* factors support preliminary approval of the Settlement.

## VI. THE COURT SHOULD CERTIFY THE CLASS TO PERMIT DISSEMINATION OF THE NOTICE

In accordance with the Stipulation, Plaintiff respectfully requests that the Court certify the following Settlement Class for the purposes of settlement:

all persons and entities in the United States that acquired At-Issue

> Taxable Municipal Securities at a premium (above par value) in a taxable account maintained by UBS between January 1, 2014 through December 31, 2019, inclusive, and who received a Form 1099 from UBS.

Stipulation, ¶1(kk).[13]

Rule 23(a) establishes four prerequisites to class certification: (1) numerosity; (2) commonality; (3) typicality; and (4) adequacy of representation. In addition, the class must meet one of the three requirements of Rule 23(b). Fed. R. Civ. P. 23.

### A. Rule 23(a)(1) – Numerosity

Rule 23(a)(1) requires a class to be so large that joinder of all its members would be "impracticable." Fed. R. Civ. P. 23(a)(1). The prerequisite of numerosity is discharged "where a class is likely to exceed forty members." *Smith v. Merck & Co., Inc.*, 2019 WL 3281609, at *2 (D.N.J. July 19, 2019). The exact size of the Settlement Class is not yet known, as UBS will only provide information personally identifying the Settlement Class members 10 business days after entry of the Preliminary Approval Order. *See* Stipulation ¶19. However, the anonymized data already provided by UBS concerning Settlement Class Members' relevant transactions over the Settlement Class Period includes over 2,200 unique UBS accounts, meaning that there are likely at least hundreds of Settlement Class Members.

[13] *See also id*. (setting forth exclusions to the Settlement Class).

### B. Rule 23(a)(2) – Commonality

Rule 23(a)(2) requires "that questions of law or fact exist that are common to the class." Fed. R. Civ. P. 23(a)(2). A finding of commonality does not require that the Class's claims are identical. *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 301 (3d Cir. 2011). Rather, "commonality is satisfied where common questions generate common answers 'apt to drive the resolution of the litigation.'" *Sullivan*, 667 F.3d at 299 (quoting *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011)). As such, the commonality requirement is easily met here because Plaintiff alleges a common course of misconduct—for example, UBS's allegedly breached contracts were identical for all Settlement Class Members, and Plaintiff alleges that UBS systemically failed to report amortizable bond premium with respect to all taxable municipal securities.

### C. Rule 23(a)(3) – Typicality

Putative class representatives' claims must also be typical of those of the class. Fed. R. Civ. P. 23(a)(3). Typicality is satisfied if the "'claims or defenses of the representative parties are typical of the claims or defenses of the class.'" *In re Cendant Corp. Litig.*, 264 F.3d 201, 244 n.25 (3d Cir. 2001). Typicality does not require identicality. *Varacallo v. Mass. Mut. Life Ins. Co.*, 226 F.R.D. 207, 232 (D.N.J. 2005). Plaintiff's claims are typical of the Settlement Class: Plaintiff bought At-Issue Taxable Municipal Securities at a premium in a taxable UBS account

during the Settlement Class Period, received a Form 1099 from UBS, was allegedly damaged by the same conduct as all other Settlement Class Members, and seeks relief under the same legal theories. *See* Complaint ¶¶94-103. Nothing more is required. *See In re Corel Corp. Inc. Sec. Litig.*, 206 F.R.D. 533, 542 (E.D. Pa. 2002).

**D. Rule 23(a)(4) – Adequacy Of Representation**

Rule 23(a)(4) requires that the class representative "fairly and adequately represent the interests of the class." Fed. R. Civ. P. 23(a)(4). "The adequacy requirement entails two inquiries: (1) whether the attorneys retained by the named Plaintiffs are qualified, experienced, and generally able to conduct the litigation; and (2) whether the named Plaintiffs themselves have interests that are antagonistic to or in conflict with those they seek to represent." *Inmates of Northumberland Co. Prison v. Reish*, 2009 WL 8670860, at *20 (M.D. Pa. March 17, 2009) (citing *Barnes v. Am. Tobacco Co.*, 161 F.3d 127, 141 (3d Cir. 1998)).

Here, as described above, Plaintiff—the proposed class representative—has claims that are typical of and coextensive with those of the Settlement Class. Lead Plaintiff, like all Settlement Class Members, bought At-Issue Taxable Municipal Securities at a premium in a taxable UBS account during the Settlement Class Period, received a Form 1099 from UBS, and was allegedly damaged thereby. The close alignment of his interests with those of the Settlement Class are demonstrated by his substantial involvement in the case: regularly communicating with Lead

Plaintiff's Counsel, producing documents in response to discovery requests, and remotely attending the Parties' full-day mediation session. This close alignment of interests is further shown by Plaintiff's success in achieving an excellent result for *all* Settlement Class Members—according to Lead Plaintiff's Counsel's damages expert, the $2.5 million Settlement would *exceed* the *maximum* damages attributable to Settlement Class Members' tax overpayments that are *potentially* recoverable in this case. Plaintiff is, therefore, an adequate class representative. *See In re Schering-Plough Corp.*, 2012 WL 4482032, at *6 (D.N.J. Sept. 25, 2012) ("[W]hen Lead Plaintiffs have a strong interest in establishing liability . . . and seek similar damages for similar injuries, the adequacy requirement can be met.").[14]

In the interests of full transparency, Plaintiff wishes to disclose that he has a family relationship with one of the attorneys representing him in the case. Plaintiff's Counsel includes William H. Goodman of Goodman, Hurwitz & James, P.C. William Goodman and Plaintiff Richard Goodman are brothers. William Goodman is a highly accomplished and respected lawyer with substantial experience

[14] Plaintiff will seek an incentive award in an amount not to exceed $25,000. "Courts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation." *Cullen v. Whitman Med. Corp.*, 197 F.R.D. 136, 145 (E.D. Pa. 2000). Such awards do not give rise to a conflict between class representatives and other class members. *See Rossini v. PNC Fin. Servs. Grp., Inc.*, at *9 (W.D. Pa. June 26, 2020); *see also Meijer, Inc. v. 3M*, 2006 WL 2382718, at *25 (E.D. Pa. Aug. 14, 2006) (collecting cases and approving request for $25,000 incentive award).

representing plaintiffs in class action litigation. The Settlement in no way favors the interests of William Goodman over the Settlement Class. Under these circumstances, in which a personal relationship exists between a class representative plaintiff and his counsel, which relationship is fully disclosed and does not negatively impact the class in any way, courts routinely find adequacy to be satisfied. *See, e.g.*, *Malchman v. Davis*, 761 F.2d 893, 899 (2d Cir. 1985) (affirming certification of class representatives who included the brother, mother-in-law, and personal friend of class counsel) *abrograted on other grounds by Amchem Prods., Inc. v. Windsor*, 521 U.S. 591 (1997); *Weikel v. Tower Semiconductor Ltd.*, 183 F.R.D. 377, 398 (D.N.J. 1998) ("A personal relationship with a member of the law firm representing named plaintiffs does not, standing alone, warrant a finding undue reliance upon counsel"); *In re Greenwich Pharms. Sec. Litig.*, 1993 WL 436031, at *2 (E.D. Pa. Oct. 25, 1993) ("this court is not willing to find that the [father/son] relationship alone is sufficient to disqualify a representative plaintiff"); *Lewis v. Goldsmith*, 95 F.R.D. 15, 20 (D.N.J. 1982) ("I do not believe that because plaintiff is the nephew of his counsel he must be disqualified as a representative plaintiff").

Plaintiff respectfully requests that the Court appoint Glancy Prongay & Murray LLP ("GPM") to serve as Class Counsel for the Settlement Class. *See* Fed. R. Civ. P. 23(g)(1) ("Unless a statute provides otherwise, a court that certifies a class must appoint class counsel."). GPM has extensive experience and expertise litigating

complex class actions throughout the United States, and is qualified and able to conduct this litigation. *See* Spencer Decl. **Exhibit 2** (GPM firm résumé). Moreover, GPM has demonstrated its ability and commitment to this litigation by, among other things, defeating in substantial part Defendant's motion dismiss, and negotiating a Settlement that is an excellent result for the Settlement Class. Thus, Plaintiff is an adequate representative of the Settlement Class, and his counsel GPM is qualified, experienced and capable of prosecuting this Action. *See Wilson v. LSB Indus., Inc.*, 2018 WL 3913115, at *18 (S.D.N.Y. Aug. 13, 2018) (appointing GPM as class counsel and noting that "GPM has had extensive experience serving as lead or co-lead counsel in class action securities litigation.").

### E. The Class Should Be Certified Under 23(b)(3)

To certify a class under Rule 23(b)(3), the Court must find that "the 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." Fed. R. Civ. P. 23(b)(3). Plaintiff satisfies the predominance and superiority criteria.

**Common Questions Predominate.** The predominance inquiry "tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem*, 521 U.S. at 623. When common questions are a significant aspect of a case and can be resolved in a single action, class certification

is appropriate. *See* 7A Wright, Miller & Kane, *Federal Practice and Procedure: Civil 2d*, § 1788 at 528 (3d ed. 1986).

Here, common questions predominate relating to Defendant's alleged conduct, such as whether it: failed to report amortizable bond premium as required; breached its contracts with clients; acted negligently; and caused damages to Plaintiff and the Settlement Class. If each Settlement Class Member were to bring an individual action, each would need to demonstrate the same contractual breaches and negligence to prove liability. Since the evidence needed to prove such claims would be the same for all, a finding of predominance is appropriate. *Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 466-67 (2013); *see also Amchem*, 521 U.S. at 625 ("[p]redominance is a test readily met in certain cases alleging consumer or securities fraud or violations of the antitrust laws.").

**Class Action Is Superior.** Rule 23(b)(3) lists non-exhaustive factors for determining whether class certification is the superior method of litigation. *See* Fed. R. Civ. P. 23(b)(3). Suits, such as this one, with hundreds of class members, many of whom may have comparatively small recoverable damages, easily satisfy the superiority requirement of Rule 23(b)(3), because "the alternatives are either no recourse" or "a multiplicity and scattering of suits with the inefficient administration of litigation which follows in its wake." *In re MF Glob. Holdings Ltd. Inv. Litig.*, 310 F.R.D. 230, 239 (S.D.N.Y. 2015). Plaintiff has satisfied all the requirements of

Rules 23(a) and (b)(3). The Court should, therefore, certify the Settlement Class for settlement purposes, appoint Plaintiff to serve as the Class Representative, and appoint GPM to serve as Class Counsel for the Settlement Class.

## VII. NOTICE TO THE CLASS SHOULD BE APPROVED

As outlined in the proposed Preliminary Approval Order, Plaintiff will notify Settlement Class Members of the Settlement by mailing the Postcard Notice and emailing the Notice to all Settlement Class Members who can be identified through UBS's records, or otherwise identified, through reasonable effort. The proposed Postcard Notice and Notice have been carefully drafted to advise recipients of their legal rights, including that they can object to any portion of the Settlement, exclude themselves from the Settlement, and/or remain a member of the Settlement Class, which will allow them to obtain their *pro rata* portion of the Settlement.

The Notice also provides additional information to allow Settlement Class Members to make informed decisions: stating the amount of the Settlement; providing a brief statement explaining the reasons why the Parties are proposing the Settlement; stating the amount of attorneys' fees and maximum amount of litigation expenses that Lead Plaintiff's Counsel will seek; and providing the names, addresses, and telephone numbers of representatives of the Settlement Administrator and Lead Plaintiff's Counsel who will be available to answer questions from Settlement Class Members.

In addition to mailed and/or emailed notice, the proposed Preliminary Approval Order further requires the Settlement Administrator to create a settlement specific website (www.UBSTaxSettlement.com), from which copies of important documents like the Notice can be downloaded.

The form and manner of providing notice to the Settlement Class satisfy the requirements of due process and Rule 23. Settlement Class Members are "provide[d] all the required information concerning the class members' rights and obligations under the settlement" (*Prudential*, 148 F.3d at 328), and the manner of providing notice by mail and email represents the best notice practicable under the circumstances. *See Jones v. Commerce Bancorp, Inc.*, 2007 WL 2085357, at *5 (D.N.J. July 16, 2007) ("[T]he proposed distribution of notice to class members by first class mail is reasonable because no alternative method of distribution is more likely to notify class members[.]"); *Rudel Corp. v. Heartland Payment Sys., Inc.*, 2017 WL 4422416, at *5 (D.N.J. Oct. 4, 2017) (approving notice of settlement to affected customers identified by defendant financial institution, via mail to their business addresses).

## VIII. PROPOSED SCHEDULE

In connection with preliminary approval of the Settlement, the Parties are requesting that the Court establish dates by which notice of the Settlement will be distributed to Settlement Class members, dates by which Settlement Class Members

may comment on the Settlement, and a date on which the Court will hold the Settlement Hearing. The Parties respectfully propose the following schedule for the Court's consideration, as agreed to by the Parties and set forth in the proposed Preliminary Approval Order:

| **Event** | **Deadline for Compliance** |
|---|---|
| UBS to provide Settlement Administrator with Settlement Class Member contact information | No later than 10 business days after entry of the Preliminary Approval Order. (Preliminary Approval Order ¶7(a)) |
| Mailing of Postcard Notice, emailing of Notice, and posting of Notice to settlement website | No later than 20 business days after the entry of Preliminary Approval Order. (Preliminary Approval Order ¶7(b), (c)) |
| Plaintiff to file and serve papers in support of the proposed Settlement, the Plan of Allocation, and Lead Plaintiff's Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses | 35 calendar days prior to the Settlement Hearing. (Preliminary Approval Order ¶23) |
| Filing deadline for requests for exclusion | Received no later than 21 calendar days prior to the Settlement Hearing. (Preliminary Approval Order ¶10) |
| Deadline for objections and any Settlement Class Member notice of appearance | 21 calendar days prior to the Settlement Hearing. (Preliminary Approval Order ¶¶13-14) |
| Plaintiff to file reply papers in support of the proposed Settlement, the Plan of Allocation, and Lead Plaintiff's Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses | 7 calendar days prior to the Settlement Hearing. (Preliminary Approval Order ¶23) |

| | |
|---|---|
| Plaintiff to file proof of mailing, emailing, and website posting, of Postcard Notice and/or Notice | 7 calendar days prior to the Settlement Hearing. (Preliminary Approval Order ¶7(d)) |
| Settlement Hearing | At least 120 days after the Court preliminarily approves the settlement |

## IX. CONCLUSION

For all of the above reasons, Plaintiff respectfully requests that the Court grant the motion for preliminary approval of the proposed Settlement and enter the [Proposed] Order Preliminarily Approving Settlement And Providing for Notice.

DATED: June 9, 2023

GLANCY PRONGAY & MURRAY LLP

By: */s/ Lee Albert*

Lee Albert (State Bar No. 26231986)
*lalbert@glancylaw.com*
230 Park Ave, Suite 358
New York, New York 10169
(212) 682-5340

Garth A. Spencer (*pro hac vice*)
*gspencer@glancylaw.com*
1925 Century Park East, Suite 2100
Los Angeles, California 90067
(310) 201-9150

*Attorneys for Plaintiff Richard Goodman and the Proposed Settlement Class*

**CERTIFICATE OF SERVICE**

I hereby certify that on June 9, 2023, I caused the foregoing to be filed electronically with the Clerk of the Court using the ECF system, which will send notification of such filing to all parties.

Respectfully submitted,

June 9, 2023
Lafayette Hill, Pennsylvania

*/s/ Lee Albert*
Lee Albert