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**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

Hon. Michael A. Hammer

Class Action

Motion Day: December 7, 2023

**DECLARATION OF GARTH SPENCER IN SUPPORT OF: (I)
PLAINTIFF'S UNOPPOSED MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION; AND (II)
LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES
AND REIMBURSEMENT OF LITIGATION EXPENSES**

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1	Declaration Of Josephine Bravata Concerning: (1) Mailing of Notice; (2) Report on Exclusions And Objections; and (3) Distribution Plan (“Mailing Declaration”)
2	Declaration Of Plaintiff Richard Goodman In Support Of: (1) Plaintiff’s Motion For Final Approval Of Class Action Settlement And Plan Of Allocation; And (2) Service Award
3	Declaration Of Garth Spencer, Esq. In Support Of Plaintiff’s Counsel’s Motion For An Award Of Attorneys’ Fees And Reimbursement Of Litigation Expenses Filed On Behalf Of Glancy Prongay & Murray LLP
4	Declaration Of William H. Goodman, Esq. In Support Of Plaintiff’s Counsel’s Motion For An Award Of Attorneys’ Fees And Reimbursement Of Litigation Expenses Filed On Behalf Of Goodman Hurwitz & James, P.C.
5	Table compiled by Lead Counsel with: (1) billing rates for plaintiffs’ firms in cases involving complex class actions; and (2) billing rates of law firms that regularly defend complex class actions from fee applications submitted by such firms
6	<i>Southeastern Pennsylvania Transportation Authority v. Orrstown Financial Services, Inc.</i> , Case No. 1:12-cv-00993, ECF No. 309 (M.D. Pa. May 19, 2023)
7	<i>In re Virgin Mobile USA IPO Litig.</i> , No. 07-cv-5619 (SDW), ECF No. 146 (D.N.J. Dec. 8, 2010)
8	<i>Zacharia v. Straight Path Communications, Inc.</i> , No. 2:15-cv-08051-JMV-MF, ECF No. 90 (D.N.J. Sept. 7, 2018)
9	<i>Sun v. Han et al.</i> , No. 2:15-cv-00703-JMV-MF, ECF No. 77 (D.N.J. Mar. 6, 2018)
10	Chart of Select Third Circuit Cases with \$1M Settlement and 33% or Higher Fee Awards

I, Garth Spencer, declare, pursuant to 28 U.S.C. § 1746, as follows:

I. INTRODUCTION

1. I am a partner in the law firm of Glancy Prongay & Murray LLP (“GPM” or “Lead Plaintiff’s Counsel”). GPM and Goodman Hurwitz & James, P.C. (“GHJ”, and together with GPM, “Plaintiff’s Counsel”) are counsel for the Plaintiff Richard Goodman (“Plaintiff”) in this matter.¹ I have personal knowledge of the matters set forth herein based on my participation in the prosecution and settlement of the claims asserted on behalf of the Settlement Class in this Action.

2. I respectfully submit this Declaration in support of Plaintiff’s motion, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, for final approval of the proposed \$2,500,000 settlement (the “Settlement”) that the Court preliminarily approved by Order dated July 12, 2023 (the “Preliminary Approval Order”) (ECF No. 60); as well as of the proposed plan for allocating the proceeds of the Net Settlement Fund to eligible Settlement Class Members (the “Plan of Allocation”) (collectively, the “Final Approval Motion”).

3. I also respectfully submit this Declaration in support of Lead Plaintiff’s Counsel’s motion, on behalf of all Plaintiff’s Counsel, for an award of attorneys’ fees in the amount of 33 $\frac{1}{3}$ % of the Settlement Fund, which equates to \$833,333, plus

¹ Unless otherwise defined, all capitalized terms herein have the same meanings as set forth in the Stipulation and Agreement of Settlement, dated June 8, 2023 (the “Stipulation”). ECF No. 55-1.

interest earned at the same rate as the Settlement Fund; reimbursement of Lead Plaintiff's Counsel's out-of-pocket expenses in the amount of \$118,343.85; and a service award of \$25,000 to Plaintiff for his time and efforts in representing the Settlement Class (the "Fee and Expense Application").

4. The proposed Settlement now before the Court provides for the resolution of all claims in the Action in exchange for a cash payment of \$2,500,000. As detailed below, Plaintiff and Lead Plaintiff's Counsel respectfully submit that the Settlement represents a favorable result for the Settlement Class, especially when juxtaposed against the significant risks of continued litigation. In fact, Plaintiff's damages expert estimates that if 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. Of course, Defendants had advanced serious arguments with respect to liability, and would continue to advance these and additional arguments concerning damages, and class certification. If any of these arguments were accepted, Plaintiff's potential recovery would have been substantially reduced or completely eliminated.

5. As explained in greater detail herein, this Settlement was reached only after comprehensive inquiry into the merits of the claims alleged and the likely damages that could be recovered by the Settlement Class, and arm's-length bargaining by experienced and knowledgeable counsel on both sides, under the supervision of a respected mediator, which resulted in a fair and reasonable Settlement for the Settlement Class. The Settlement confers a substantial immediate benefit to the Settlement Class and is eminently fair, reasonable, and adequate given the legal hurdles and risks involved in proving liability and damages. The Settlement also avoids the further risk, delay, and expense had this case continued through class certification, discovery, summary judgment, and to trial and the inevitable appeals. Lead Plaintiff's Counsel respectfully submits that under the circumstances, the Settlement is in the best interest of the Settlement Class and should be approved.

6. In addition to seeking final approval of the Settlement, Plaintiff seeks approval of the proposed Plan of Allocation as fair and reasonable. As discussed in further detail below, Lead Plaintiff's Counsel developed the Plan of Allocation with the assistance of Plaintiff's damages expert. The Plan of Allocation provides for the distribution of the Net Settlement Fund to Settlement Class Members on a *pro rata* basis. Specifically, an Authorized Claimant's *pro rata* share shall be the Authorized Claimant's Recognized Claim divided by the total Recognized Claims of all Authorized Claimants, multiplied by the total amount in the Net Settlement Fund.

7. Lead Plaintiff's Counsel, on behalf of all Plaintiff's Counsel, also seeks approval of the Fee and Expense Application. As discussed in detail in the Fee and Expense Application, the requested 33⅓% fee is well within the range of percentage awards granted by courts in this Circuit in comparable class actions, and is a fair and reasonable amount in light of the work performed and the result obtained. Moreover, the out-of-pocket expenses incurred were all reasonable and necessary for the prosecution of the Action and are considerably less than the maximum figure proposed in the Notice made available to the Settlement Class.

8. For these reasons and those discussed below, Lead Plaintiff's Counsel respectfully submits that the \$2.5 million Settlement is a favorable result for the Settlement Class and should be approved as fair, reasonable, and adequate, that the proposed Plan of Allocation is equitable and just, and that the requested attorneys' fees of 33⅓% of the Settlement Fund and reimbursement of Litigation Expenses should be awarded in full.

II. PROSECUTION OF THE ACTION

A. Background

9. Defendant UBS Financial Services Inc. ("Defendant" or "UBS") primarily operates as a wealth management firm providing services to clients in the United States. Class Action Complaint, ECF No. 1 (the "Complaint"). UBS is registered with the Securities and Exchange Commission ("SEC") as a broker-dealer

and investment adviser. *Id.* Defendant provides clients with investment advisory services, brokerage services, and/or other financial planning services. *Id.*

10. As alleged in the Complaint, beginning 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 Treasury Regulations. Defendant failed to report amortizable bond premium for taxable municipal bonds, which had the effect of substantially overstating its clients' taxable income. These issues came to light when Defendant's former employee, Brian Edgar ("Mr. Edgar"), discovered them, raised them internally, and eventually convinced UBS to issue "corrected" 1099 Forms to Plaintiff. Plaintiff alleged in the Complaint that UBS's incorrect tax information reporting was negligent and in breach of Defendant's contractual and fiduciary duties owed to its clients, and caused them damages, including overpayment of federal income taxes.

B. The Comprehensive Pre-Filing Investigation And Preparation Of The Complaint, And Commencement Of The Instant Action

11. Plaintiff's Counsel conducted a thorough investigation into UBS's allegedly wrongful acts prior to filing the Complaint. Counsel's investigation included, among other things: (a) a review and analysis of (i) Defendant's public documents; (ii) public documents issued by the U.S. Department of the Treasury ("Treasury") and/or the Internal Revenue Service ("IRS"); (iii) communications between Defendant and Plaintiff; and (iv) other publicly available information

concerning Defendant; and (b) investigative interviews with a former employee of Mr. Edgar.

12. A class action complaint was filed by Plaintiff Richard Goodman on October 5, 2021 in the United States District Court for the District of New Jersey (the “Court”), styled *Richard Goodman v. UBS Financial Services Inc.*, Case No. 2:21-cv-18123.

13. The Complaint pled causes of action for (i) breach of contract, (ii) breach of the implied covenant of good faith and fair dealing, (iii) breach of fiduciary duty, (iv) negligent misrepresentation, (v) negligence, (vi) negligence per se, and (vii) punitive damages.

C. Defendant’s Motion To Dismiss The Complaint And Plaintiff’s Opposition

14. On December 22, 2021, Defendant filed a motion to dismiss the Complaint. ECF No. 13. Among other things, Defendant argued that Plaintiff failed to plead: (a) any promise concerning tax information reporting in the UBS Client Relationship Agreement; (b) any contractual duty arising from UBS’s other documents provided to customers; (c) any bad faith by UBS sufficient to support a claim for breach of the implied covenant of good faith and fair dealing; (d) any tort claim, due to the economic loss rule and the existence of contracts between UBS and its clients; (e) any actionable fiduciary or statutory duty, or duty of care; and (f) a viable cause of action for punitive damages.

15. On January 26, 2022, Plaintiff opposed Defendant's motion to dismiss. ECF No. 16. Plaintiff argued that: (a) UBS breached express contracts with its clients by, *inter alia*, incorporating into its Client Relationship Agreement by reference its Forms 1099 and Guides To Form 1099; (b) UBS breached the implied covenant of good faith and fair dealing due to its arbitrary and recklessly indifferent misconduct; (c) the economic loss rule did not bar Plaintiff's tort claims because those claims are based on extra-contractual duties; (d) UBS owed its clients fiduciary duties due to the relationship of trust between them in tax information reporting matters; (e) UBS owed its clients a duty of reasonable care due to factors including brokerage industry practices, clients' reasonable expectations, and Treasury Regulations; and (f) that UBS is liable for punitive damages regardless of whether such are a distinct cause of action.

16. On February 9, 2022, Defendant filed its reply brief. ECF No. 21. On June 30, 2022, the Court granted in part and denied in part Defendant's motion to dismiss. ECF Nos. 30-31. On July 28, 2022, Defendant filed an answer to the Complaint. ECF No. 37.

D. Plaintiff's Discovery Efforts

17. The initial scheduling conference was held before Judge Hammer on February 22, 2022, at which UBS argued for, and Plaintiff opposed, a partial stay of discovery. *See* ECF No. 23. The Court granted a partial stay of discovery under

which: (a) the Parties would (i) exchange initial disclosures, (ii) exchange and respond to initial document requests, and (iii) negotiate stipulations relating to confidentiality and discovery of electronically stored information (“ESI”); and (b) document productions, depositions, and further discovery would be stayed until resolution of UBS’s motion to dismiss. The Parties submitted a joint discovery plan accordingly, and the Court entered its scheduling order on March 7, 2022. *See* ECF Nos. 24-25.

18. Plaintiff drafted stipulations concerning confidentiality and discovery of ESI, and negotiated their terms with UBS. While negotiating their confidentiality and ESI stipulations, the Parties disagreed over whether certain personal tax and financial information should be redacted from document productions, and briefed this issue via letters to Judge Hammer, filed on April 15 and April 22, 2022. *See* ECF Nos. 26-27. The Court resolved that issue, and entered the parties’ discovery stipulations accordingly on April 26, 2022. ECF Nos. 28-29.

19. On March 18, 2022, Plaintiff served his initial disclosures on UBS. Plaintiff drafted a comprehensive set of 47 requests for production of documents, which were served on UBS on April 1, 2022. On May 6, 2022, Plaintiff responded and objected to UBS’s set of 30 requests for production of documents.

20. After Judge McNulty partially denied UBS’s motion to dismiss on June 30, 2022, discovery began in full.

21. Plaintiff drafted a comprehensive set of proposed ESI search terms, which Plaintiff proposed for UBS to use to locate documents responsive to his requests for production of documents. Plaintiff sent these proposed search terms to UBS on July 26, 2022.

22. On July 11, 2022, Plaintiff served on UBS his notice of subpoena to the Financial Industry Regulatory Authority Inc. (“FINRA”). Plaintiff’s subpoena to FINRA sought, *inter alia*, documents relating to two prior FINRA enforcement actions against UBS relating to its erroneous tax information reporting to clients. On September 20, 2022, FINRA produced documents responsive to the subpoena, which Plaintiff reviewed and analyzed.

E. Mediation Efforts, Related Further Discovery, And The Negotiation Of The Settlement

23. On or about August 5, 2022, the Parties began to discuss the prospects for mediation, including related issues such as potential mediators, pre-mediation discovery, and Plaintiff’s damages framework.

24. Plaintiff insisted on receiving from UBS, prior to mediation, information sufficient to calculate classwide damages and determine the size of the class, so that Plaintiff could negotiate a potential resolution of the Action on an informed basis. UBS produced the requested information on October 31, 2022, consisting of data on its clients’ transactions in relevant taxable municipal securities from 2014 through 2019. Plaintiff thoroughly reviewed and analyzed that data and

used it to calculate an estimate of classwide damages for use in the Parties' mediation.

25. Also on October 31, 2022, Plaintiff sent UBS his pre-mediation production of documents, including his Forms 1099 from UBS, and relevant excerpts of his federal income tax returns.

26. Plaintiff drafted a comprehensive mediation statement addressing both liability and damages. The Parties exchanged mediation statements and provided them to Robert A. Meyer, Esq. (the "Mediator") of JAMS on November 10, 2022.

27. On November 17, 2022, the Parties participated in a full day mediation session before the Mediator. During the mediation, full and frank discussions took place concerning the merits of the case, with particular focus on damages. This negotiation process enabled the Parties to meaningfully assess the relative strengths and weaknesses of their respective claims and defenses. That mediation session did not end in an agreement to resolve the Action.

28. The Parties, with the assistance of the Mediator, continued to negotiate a potential resolution of the Action during the weeks following their November 17, 2022, mediation session. This culminated in a mediator's proposal from the Mediator on December 22, 2022, to resolve the Action for \$2.5 million on a classwide basis, which the Parties accepted.

29. Following the Parties' acceptance of the Mediator's proposal, Lead Plaintiff's Counsel and Defendant's Counsel then began negotiating the essential non-monetary terms of the Settlement. Before entering into a final settlement agreement, Plaintiff insisted on receiving certain additional information from UBS. First, Plaintiff requested certain additional data concerning potential class members' transactions in taxable municipal securities. UBS provided that data on March 15, 2023. Second, Plaintiff requested an interview with a knowledgeable UBS employee, in order to confirm certain information about Plaintiff's allegations, the data produced by UBS, and the causes and scope of the alleged tax information reporting error. That interview—with UBS Executive Director Richard Colville—took place on April 21, 2023.

30. After receiving the additional transactional data from UBS, Plaintiff worked with his consulting damages expert, Zachary R. Nye, Ph.D., of Stanford Consulting Group, Inc., to analyze the data provided by UBS, and to formulate a fair and equitable plan of allocation, including by calculating the amounts of amortizable bond premium that should have been reported to Settlement Class Members.

31. The Parties continued their negotiations concerning the non-monetary terms of a settlement, exchanged multiple drafts of a stipulation of settlement, and ultimately executed the Stipulation on June 8, 2023. ECF No. 55-1.

F. Preliminary Approval Of The Settlement

32. On June 9, 2023, Plaintiff submitted his Unopposed Motion for: (I) Preliminary Approval of Class Action Settlement; (II) Certification of the Settlement Class; and (III) Approval of Notice of Settlement. ECF Nos. 53-55.

33. The Court entered the Preliminary Approval Order on July 12, 2023. Among other things, the Preliminary Approval Order direct notice of the Settlement to be disseminated to prospective members of the Settlement Class. ECF No. 60.

III. THE RISKS OF CONTINUED LITIGATION

34. The Settlement provides an immediate and certain benefit to the Settlement Class in the form of a non-reversionary cash payment of \$2,500,000. As explained more fully below, there were significant risks that the Settlement Class might recover substantially less than the Settlement Amount—or nothing at all—if the case were to proceed through additional litigation to a jury trial, followed by the inevitable appeals.

A. Risks Faced In Obtaining And Maintaining Class Action Status

35. Defendant likely would have argued against class certification. While Lead Plaintiff's Counsel is confident that all of the Rule 23 requirements would have been met, and the Court would have certified the proposed class, Plaintiff bears the burden of proof on class certification, and Defendant would have undoubtedly raised arguments challenging the propriety of class certification.

36. In particular, Defendant was likely to argue that individualized issues preclude class certification, such as class members' differing securities transactions and tax positions (*e.g.*, class members' different marginal tax rates, whether class members were entitled to tax refunds or owed additional tax each year, *etc.*).

37. Even if Plaintiff successfully obtained class certification, Defendant could have sought permission from the Third Circuit to appeal any class certification order under Federal Rule of Civil Procedure 23(f), further delaying or precluding any potential recovery. While Plaintiff believes he had the better arguments, Class certification was, by no means, a forgone conclusion.

B. Risks To Proving Liability

38. Plaintiff, while confident in the merits of his claims, faced substantial risks in proving UBS's liability.

39. For example, in response to UBS's motion, Judge McNulty granted dismissal of the majority of Plaintiff's claims. *See Goodman v. UBS Fin. Servs., Inc.*, 2022 WL 2358403 (D.N.J. June 30, 2022) (dismissing claims for breach of the implied covenant of good faith and fair dealing, breach of fiduciary duty, negligent misrepresentation, and punitive damages).² Even in allowing Plaintiff's negligence and breach of contract claims to proceed, Judge McNulty warned, "[i]t is entirely

² During briefing on the motion to dismiss, Plaintiff previously determined not to pursue the Complaint's cause of action for negligence per se.

possible that information revealed in discovery will make either Count 1 [breach of contract] or 5 [negligence] untenable.” *See id.* at *2.

40. UBS likely would have continued to vigorously argue against liability throughout the course of litigation in this Action. Among other things, 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. Moreover, at summary judgment or in pre-trial motions UBS was likely to renew its argument that Plaintiff is required under the economic loss rule to elect to proceed under only his contract claim or his tort claim. *See Goodman*, 2022 WL 2358403 at *7 (concluding “that, *at this stage*, the economic loss rule does not bar Goodman’s claims and declin[ing] to dismiss Count 5.” (emphasis added)). And Plaintiff would bear the burden to produce evidence to prove his claims at trial, with no guarantee of prevailing on either the contract or negligence claim.

C. Risks To Proving Damages

41. Assuming Plaintiff overcame the above risks, obtained class certification, and established Defendant’s liability, Plaintiff would have confronted considerable challenges in establishing classwide damages.

42. Due to the complexity of calculating damages in a class action such as this one, the Parties were likely to retain competing damages experts, with the substantial risk that a jury might credit UBS's expert over Plaintiff's.

43. UBS would likely also argue that the Plaintiff did not suffer any damages at all, and to make related arguments as to Plaintiff's standing or typicality as a class representative. 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* ECF No. 22 at 6. If such arguments were successful, there may have been no recovery for the Settlement Class.

D. Other Risks, Including Trial And Appeals

44. Plaintiff would have had to prevail at several stages of litigation, each of which would have presented significant risks in complex class actions such as this one. GPM knows from experience that despite the most vigorous and competent efforts, success in complex litigation such as this case is never assured. In fact, GPM lost a six-week antitrust jury trial in the Northern District of California after five years of litigation, which included many overseas depositions, the expenditure of millions of dollars of attorney and paralegal time, and the expenditure of more than a million dollars in hard costs. *See In re: Korean Ramen Antitrust Litigation*, Case

No. 3:13-cv-04115 (N.D. Cal.). Put another way, complex litigation is uncertain, and success in cases like this one is never guaranteed.

45. Even if Plaintiff succeeded in proving all elements of his case at trial and obtained a jury verdict, Defendant would almost certainly have appealed. An appeal not only would have renewed the risks faced by Plaintiff—as Defendant would have reasserted its arguments summarized above—but also would have resulted in significant additional delay. Given these significant litigation risks, Plaintiff and Lead Plaintiff’s Counsel believe the Settlement represents an excellent result for the Settlement Class.

E. The Settlement Is Reasonable In Light Of Potential Recovery In The Action

46. In addition to the attendant risks of litigation discussed above, the Settlement is also fair and reasonable in light of the potential recovery of available damages.

47. Plaintiff’s damages expert estimates that if 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.

48. 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: (a) that UBS clients were harmed by the lost time-value of their money; and (b) 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 v. UBS Fin. Servs., Inc.*, 2022 WL 2358403, at *2 (D.N.J. June 30, 2022). Lead Plaintiff's Counsel believes there was substantial risk to obtaining punitive damages.

49. Therefore, Lead Plaintiff's Counsel believes that the \$2.5 million Settlement represents a substantial majority of the maximum classwide damages that could have been proven at trial. Lead Plaintiff's Counsel believes this is an excellent result, especially in comparison to other class action settlements routinely approved by courts, in which recoveries are often a small percentage of damages. *See, e.g.*, Janeen McIntosh, Svetlana Starykh, and Edward Flores, *Recent Trends in Securities Class Action Litigation: 2022 Full-Year Review*, NERA Economic Consulting (January 24, 2023), at p. 18 (Fig. 19) (median recovery in securities class action settlements in 2022 was 1.8% of estimated damages); *In re Linerboard Antitrust*

Litig., MDL No. 1261, 2004 WL 1221350, at *5 (E.D. Pa. June 2, 2004) (collecting cases in which courts have approved settlements of 5.35% to 28% of estimated damages in complex antitrust actions).

50. Of course, if Defendant prevailed on any of its arguments with respect to class certification, liability, or damages detailed above, the potential recovery for the Settlement Class would have been substantially reduced or completely eliminated, further showing that the \$2.5 million Settlement is a reasonable result in light of the range of potential recoveries in this Action.

IV. PLAINTIFF'S COMPLIANCE WITH THE COURT'S PRELIMINARY APPROVAL ORDER REGARDING NOTICE TO SETTLEMENT CLASS MEMBERS

51. The Preliminary Approval Order directed that the postcard notice highlighting key information regarding the proposed Settlement (the "Postcard Notice") be mailed to Settlement Class Members, or that the Notice of (I) Pendency of Class Action, Certification of Settlement Class, and Proposed Settlement; (II) Settlement Fairness Hearing; and (III) Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Notice") be emailed to Settlement Class Members. The Preliminary Approval Order also set a deadline of November 16, 2023 (21 calendar days prior to the settlement hearing) for Settlement Class Members to submit objections to the Settlement, the Plan of Allocation, and/or the

Fee Memorandum or to request exclusion from the Settlement Class and set a settlement hearing date of December 7, 2023 (the “Settlement Hearing”).

52. Pursuant to the Preliminary Approval Order, Lead Plaintiff’s Counsel instructed Strategic Claims Services (“SCS”), the Court-approved Settlement Administrator, to begin mailing copies of the Postcard Notice, and emailing copies of the Notice. Lead Plaintiff’s Counsel also instructed SCS to post downloadable copies of the Notice online at <https://ubstaxsettlement.com/> (the “Settlement Website”). Upon request, SCS will mail copies of the Notice to Settlement Class Members until the deadline to object or request exclusion has passed.

53. The Postcard Notice directed Settlement Class Members to the Settlement Website to obtain additional information on the Settlement, including access to downloadable versions of the Notice. The Notice contains, among other things, a description of the Action; the definition of the Settlement Class; a summary of the terms of the Settlement and the proposed Plan of Allocation; and a description of a Settlement Class Member’s right to participate in the Settlement, object to the Settlement, the Plan of Allocation and/or the Fee Memorandum, or to exclude themselves from the Settlement Class. The Notice also informs Settlement Class Members of Lead Plaintiff’s Counsel’s intent to apply for an award of attorneys’ fees in an amount not to exceed 33 $\frac{1}{3}$ % of the Settlement Fund, and for reimbursement of Litigation Expenses in an amount not to exceed \$200,000 which

may include an application for a service award to Plaintiff for his time and efforts in representing the Settlement Class in an amount not to exceed \$25,000. Ex. 1-C (Notice at ¶43).

54. To disseminate the Postcard Notice, SCS obtained from Defendants' Counsel, the names and last-known addresses and last-known email addresses of 2,481 potential Settlement Class Members.³ On August 9, 2023, SCS mailed copies of the Postcard Notice to each of the 2,481 potential Settlement Class Members. *See* Declaration of Josephine Bravata Concerning: (1) Mailing of Notice; (2) Report on Exclusions and Objections; and (3) Distribution Plan ("Mailing Declaration"), attached hereto as Exhibit 1. SCS confirmed and verified 1,879 email addresses, and then emailed those 1,879 potential Settlement Class Members a direct link to the Notice. *See id.*

55. Lead Plaintiff's Counsel also caused SCS to establish the Settlement Website, which became operational on August 8, 2023, and maintained a toll-free telephone number to provide Settlement Class Members with information concerning the Settlement, downloadable copies of the Notice, as well as

³ Plaintiff's Counsel is working with the Settlement Administrator and UBS to obtain and analyze additional data concerning potential Settlement Class Members, and will update the Court on the number of Settlement Class Members in the reply brief, which will be filed with the Court by November 30, 2023.

downloadable copies of the Stipulation, Preliminary Approval Order, the order regarding UBS's motion to dismiss, and the Complaint. Mailing Declaration at ¶8.

56. The deadline for Settlement Class Members to object to the Settlement, Plan of Allocation, and/or to the Fee Memorandum or to request exclusion from the Settlement Class is November 16, 2023. To date, no requests for exclusion have been received. *Id.* at ¶10. SCS will file a supplemental affidavit after the November 16, 2023, deadline addressing whether any requests for exclusion have been received. To date, no objections to the Settlement or the Plan of Allocation have been entered on this Court's docket or have otherwise been received by Lead Plaintiff's Counsel. Lead Plaintiff's Counsel will file reply papers by November 30, 2023, that will address any objections that may be received.

V. ALLOCATION OF THE NET PROCEEDS OF THE SETTLEMENT

57. Pursuant to the Preliminary Approval Order, and as set forth in the Notice, all Settlement Class Members who want to participate in the distribution of the Net Settlement Fund (*i.e.*, the \$2.5 million Settlement Amount, plus interest earned thereon less: (i) any Taxes; (ii) any Notice and Administration Costs; (iii) any Litigation Expenses awarded by the Court; and (iv) any attorneys' fees awarded by the Court) do not have to do anything to qualify for a payment. *See* Ex. 1-C (Notice) at pp. 2, 7. As set forth in the Notice, the Net Settlement Fund will be distributed

among Settlement Class Members according to the plan of allocation approved by the Court.

58. The proposed Plan of Allocation is detailed in the Notice. *See* Ex. 1-C (Notice, p. 8). The long-form Notice is posted online at the Settlement Website, is downloadable, and upon request, will be mailed to any potential Settlement Class Member. The Plan of Allocation's objective is to equitably distribute the Net Settlement Fund to those Settlement Class Members who suffered economic losses as a proximate result of the alleged wrongdoing, and takes into consideration data provided by UBS, including when each Authorized Claimant purchased and/or sold At-Issue Taxable Municipal Securities, which such securities each Authorized Claimant purchased and/or sold, and the quantities purchased and/or sold by each Authorized Claimant. *See* Ex. 1-C (Notice at ¶34).

59. As described in the Notice, calculations under the Plan of Allocation are not intended to be estimates of, nor indicative of, the amounts that Settlement Class Members might have been able to recover after a trial or estimates of the amounts that will be paid to Authorized Claimants pursuant to the Settlement. Instead, the calculations under the Plan of Allocation are a method to weigh the claims of Settlement Class Members against one another for the purposes of making an equitable allocation of the Net Settlement Fund. *Id.* at ¶34.

60. The Plan of Allocation was created with the assistance of a consulting damages expert, and reflects Plaintiff's allegations. The Plan of Allocation also reflects an estimate of the Amortizable Bond Premium Amounts for each Settlement Class Member, in accordance with applicable IRS guidelines and Treasury Regulations. More specifically, the Plan of Allocation reflects, and is based on, Plaintiff's allegation that UBS failed to report amortizable bond premium on certain taxable municipal securities for the 2014-2019 tax years. The Plan of Allocation is based on the premise that Settlement Class Members were entitled to deduct amortizable bond premium from their taxable income, but did not do so due to UBS's failure to report such amounts to Settlement Class Members.

61. Under the proposed Plan of Allocation, each Authorized Claimant will receive his, her, or its *pro rata* share of the Net Settlement Fund. Specifically, an Authorized Claimant's *pro rata* share shall be the Authorized Claimant's Recognized Claim, divided by the total of Recognized Claims of all Authorized Claimants, multiplied by the total amount in the Net Settlement Fund. *Id.* at ¶39.

62. An individual Settlement Class Member's recovery under the Plan of Allocation will depend on several factors, including the quantity of At-Issue Taxable Municipal Securities the individual purchased, acquired, or sold during the Settlement Class Period, the prices at which that individual purchased, acquired, or sold such securities, and when that individual bought, acquired, or sold such

securities. Lead Plaintiff's Counsel believes that the Plan of Allocation will result in a fair and equitable distribution of the Net Settlement Fund among Settlement Class Members who do not request exclusion from the Settlement Class.

63. If the prorated payment to be distributed to any Authorized Claimant is less than \$10.00, no distribution will be made to that Authorized Claimant. *Id.* at ¶39. Any prorated amounts of less than \$10.00 will be included in the pool distributed to those Authorized Claimants whose prorated payments are \$10.00 or greater. In Lead Plaintiff's Counsel's experience, processing and sending a check for less than \$10.00 is cost-prohibitive, and they have been informed by settlement administrators that class members often fail to cash checks for less than \$10.

64. In sum, the Plan of Allocation was designed to allocate the proceeds of the Net Settlement Fund among Settlement Class Members based on the losses they suffered that were attributable to the conduct alleged in the Complaint. Accordingly, Lead Plaintiff's Counsel respectfully submits that the Plan of Allocation is fair and reasonable and should be approved by the Court.

65. As noted above, 2,481 copies of the Postcard Notice, which directs potential Settlement Class Members to the Settlement Website containing the Plan of Allocation and advises Settlement Class Members of their right to object to the proposed Plan of Allocation, have been mailed to potential Settlement Class Members, and 1,879 potential Settlement Class Members have been emailed

containing a direct link to the Notice. See Mailing Declaration at ¶¶5-6; Ex. 1-B (Postcard Notice). To date, no objections to the proposed Plan of Allocation have been received or filed on the Court's docket.

VI. LEAD COUNSEL'S REQUEST FOR ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

66. In addition to seeking final approval of the Settlement and Plan of Allocation, Lead Plaintiff's Counsel are applying for a fee award of 33 $\frac{1}{3}$ % of the Settlement Fund (or \$833,333, plus interest earned at the same rate as the Settlement Fund) on behalf of all Plaintiff's Counsel. Lead Plaintiff's Counsel also request reimbursement of Litigation Expenses in the amount of \$143,343.85, which includes \$118,343.85 in out-of-pocket expenses that Lead Plaintiff's Counsel incurred in connection with the prosecution of the Action from the Settlement Fund, and a service award of \$25,000 to Plaintiff for his time and efforts in representing the Settlement Class. The total Litigation Expenses amount of \$143,343.85 is significantly below the maximum expense amount of \$200,000 set forth in the Notice. The legal authorities supporting a 33 $\frac{1}{3}$ % fee award are set forth in the accompanying Fee Memorandum, which is being filed contemporaneously herewith. The primary factual bases for the requested fee and reimbursement of Litigation Expenses are summarized below.

A. The Fee Application

67. Lead Plaintiff's Counsel are applying for a percentage-of-the-common-fund fee award to compensate Plaintiff's Counsel for the services they rendered on behalf of the Settlement Class. As set forth in the accompanying Fee Memorandum, the percentage method is the best method for determining a fair attorneys' fee award in a common fund case, because unlike the lodestar method, it aligns the lawyers' interest with that of the Settlement Class in achieving the maximum recovery. The lawyers are motivated to achieve maximum recovery in the shortest amount of time required under the circumstances. This paradigm minimizes unnecessary drain on the Court's resources. Notably, the percentage-of-the-fund method has been recognized as appropriate by the Supreme Court and the Third Circuit for cases of this nature.

68. Based on the quality of the result achieved, the extent and quality of the work performed, the significant risks of the litigation, and the fully contingent nature of the representation, Lead Plaintiff's Counsel respectfully submits that the requested fee award is fair and reasonable and should be approved. As discussed in the Fee Memorandum, a 33 $\frac{1}{3}$ % fee award is well within the range of percentages awarded in class actions with comparable settlements in this Circuit.

1. The Outcome Achieved Is The Result Of The Significant Time And Labor That Plaintiff's Counsel Devoted To The Action

69. Attached hereto as Exhibits 3 and 4 are declarations from Plaintiff's Counsel in support of an award of attorneys' fees and reimbursement of Litigation Expenses. Included within each supporting declaration is a summary of the hours and lodestar of each firm from the inception of the case, a summary of expenses by category (if any), and a firm resume.⁴ The following is a chart of lodestar amounts for Plaintiff's Counsel:

LAW FIRM:	LODESTAR
Glancy Prongay & Murray LLP	\$637,365
Goodman Hurwitz & James, P.C.	\$66,000
TOTAL LODESTAR	\$703,365

70. The hourly rates for the attorneys and professional support staff are similar to the rates that have been accepted in other complex class action litigation. Additionally, the rates billed by Plaintiff's Counsel attorneys (ranging from \$785 to \$1,125 per hour for partners) are comparable to peer plaintiff and defense firms litigating matters of similar magnitude and complexity. *See* Ex. 5 (table of peer law firm billing rates).

71. As set forth above and in detail in Exhibits 3 and 4, Plaintiff's Counsel have collectively expended a total of 866.35 hours in the investigation and

⁴ Time expended in preparing the application for fees and reimbursement of Litigation Expenses has not been included.

prosecution of the Action through and including October 19, 2023. The resulting total lodestar is \$703,365. The requested fee amount of 33 $\frac{1}{3}$ % of the Settlement Fund equals \$833,333 (plus interest earned at the same rate as the Settlement Fund), and therefore represents a 1.18 multiplier of Plaintiff's Counsel's lodestar. In my opinion, the multiplier is not only reasonable, but it is modest when viewing the range of fee multipliers typically awarded in comparable class actions involving significant contingency fee risk, in this Circuit and elsewhere.

72. Moreover, in addition to drafting the motion for final approval, Counsel will continue to work towards effectuating the Settlement in the event the Court grants final approval. Among other things, Lead Plaintiff's Counsel will continue working with the Settlement Administrator to resolve any issues that arise in the settlement administration process, will respond to Settlement Class Member inquiries, and will oversee the distribution process. No additional compensation will be sought for this work. Thus, the multiplier will decline as the case continues.

73. As detailed above, throughout this case, Lead Plaintiff's Counsel devoted substantial time to the prosecution of the Action. Lead Plaintiff's Counsel maintained control of, and monitored the work performed by, lawyers and other personnel on this case. I personally devoted substantial time to this case and was personally involved in: (a) drafting or reviewing and editing all pleadings, court filings, various discovery-related materials, mediation statements, and other

correspondence prepared on behalf of Plaintiff; (b) communicating with Plaintiff on a regular basis; (c) engaging with Defendant's counsel on a variety of matters; and (d) participating in Settlement negotiations. Other experienced attorneys were involved with drafting, reviewing and/or editing pleadings, court filings, various discovery-related materials, and the mediation submissions, communicating with Plaintiff, the mediation process, negotiating the terms of the Stipulation, and other matters. Paralegals and Research Analysts also worked on matters appropriate to their skill and experience level. Throughout the litigation, Lead Plaintiff's Counsel maintained an appropriate level of staffing that avoided unnecessary duplication of effort and ensured the efficient prosecution of this litigation.

74. Plaintiff's Counsel's extensive efforts in the face of substantial risks and uncertainties have resulted in a significant recovery for the benefit of the Settlement Class. In circumstances such as these, and in consideration of the hard work and the result achieved, we respectfully submit that the requested fee is reasonable and should be approved.

2. Significant Risks Borne By Plaintiff's Counsel

75. This prosecution was undertaken by Plaintiff's Counsel on an entirely contingent-fee basis. From the outset, this Action was a novel, difficult, and highly uncertain case. There was no guarantee that Plaintiff's Counsel would ever be compensated for the substantial investment of time and money the case would

require. In undertaking that responsibility, Plaintiff's Counsel were obligated to ensure that sufficient resources were dedicated to the prosecution of the Action, that funds were available to compensate attorneys and staff, and that the considerable litigation costs required by a case like this one were covered. With an average lag time of many years for complex cases like this to conclude, the financial burden on contingent-fee counsel is far greater than on a firm that is paid on an ongoing basis. Indeed, Plaintiff's Counsel received no compensation during the course of the Action and incurred \$118,343.85 in out-of-pocket litigation-related expenses in prosecuting the Action.

76. Moreover, despite the most vigorous and competent of efforts, success in contingent-fee litigation like this one is never assured. Plaintiff's Counsel know from experience that the commencement of a class action does not guarantee a settlement. *See supra*, ¶44. On the contrary, it takes hard work and diligence by skilled counsel to develop the facts and theories that are needed to sustain a complaint or win at trial, or to induce sophisticated defendants to engage in serious settlement negotiations at meaningful levels.

77. Plaintiff's Counsel's extensive efforts in the face of substantial risks and uncertainties have resulted in a significant recovery for the benefit of the Settlement Class. In circumstances such as these, and in consideration of the hard

work and the result achieved, we respectfully submit that the requested fee is reasonable and should be approved.

3. The Experience And Expertise Of Plaintiff's Counsel And The Standing And Caliber Of Defendant's Counsel

78. As demonstrated by the firm resumes, attached hereto as Exhibits 3C and 4A, Plaintiff's Counsel are highly experienced and skilled laws firms, with significant expertise in class action litigation. Indeed, Lead Plaintiff's Counsel have substantial experience in litigating class actions and have negotiated scores of other class settlements, which have been approved by courts throughout the country. Lead Plaintiff's Counsel enjoy a well-deserved reputation for skill and success in the prosecution and favorable resolution of class actions and other complex civil matters. I believe Plaintiff's Counsel's experience added valuable leverage in the settlement negotiations.

79. Additionally, the quality of the work performed by Plaintiff's Counsel in obtaining the Settlement should also be evaluated in light of the quality of the opposition. Here, Defendant was represented by Wilmer Cutler Pickering Hale and Dorr LLP, a well-known law firm that vigorously represented the interests of its client throughout this Action. In the face of this experienced and formidable opposition, Plaintiff's Counsel were able to develop a case that was sufficiently strong to nonetheless persuade Defendant to settle the case on terms that were highly favorable to the Settlement Class.

4. Public Policy Interests, Including The Need To Ensure The Availability Of Experienced Counsel In High-Risk Contingent Cases

80. Courts consistently recognize that it is in the public interest to have experienced and able counsel to protect the rights and interests of consumer classes. If this important public policy is to be carried out, the courts should award fees that adequately compensate plaintiffs' counsel, taking into account the risks undertaken in prosecuting a particular class action. Relatedly, it is long-recognized public policy that settlement is to be encouraged, including the resolution of fee applications that fairly and adequately compensate the counsel who bear the risks and dedicate the time, financial investment, and expertise necessary to achieve those settlements.

81. As noted above, 2,481 copies of the Postcard Notice (which directs potential Settlement Class Members to the Settlement Website containing the Notice) have been mailed to potential Settlement Class Members, and 1,879 potential Settlement Class Members have been emailed containing a direct link to the Notice. *See* Mailing Declaration at ¶¶5-6; Ex. 1-B (Postcard Notice). The Notice advises Settlement Class Members that Lead Plaintiff's Counsel would apply for an award of attorneys' fees in an amount not to exceed 33⅓% of the Settlement Fund. To date, no objections to the maximum potential attorneys' fees request has been received or entered on this Court's docket. Any objections received after the date of

this filing will be addressed in Lead Plaintiff's Counsel's reply papers to be filed by November 30, 2023.

B. Reimbursement Of The Requested Litigation Expenses Is Fair And Reasonable

82. Lead Plaintiff's Counsel seeks a total of \$143,343.85 in Litigation Expenses to be paid from the Settlement Fund.⁵ This amount includes: \$118,343.85 in out-of-pocket expenses reasonably and necessarily incurred by Lead Plaintiff's Counsel in connection with commencing, litigating, and settling the claims asserted in the Action; as well as \$25,000 to Plaintiff Richard Goodman for his time and efforts in representing the Settlement Class.

83. Lead Plaintiff's Counsel is seeking reimbursement of a total of \$118,343.85 in out-of-pocket costs and expenses. The following is a breakdown by category of all expenses incurred by Lead Plaintiff's Counsel:

⁵ GHJ is not seeking reimbursement of expenses.

ITEM	AMOUNT
COURT FILING FEES	1,979.53
EXPERTS	95,278.00
MEDIATION	8,725.00
ONLINE RESEARCH	8,219.86
PHOTOIMAGING	58.47
SERVICE OF PROCESS	340.40
TRAVEL MEALS, HOTELS, TRANSPORTATION	3,742.59
GRAND TOTAL	118,343.85

84. The Notice informed potential Settlement Class Members that Lead Plaintiff's Counsel would be seeking reimbursement of Litigation Expenses in an amount not to exceed \$200,000. The total amount requested by Lead Plaintiff's Counsel and Plaintiff, \$143,343.85, falls well below the \$200,000 that Settlement Class Members were advised could be sought. To date, no objections have been raised as to the maximum amount of expenses set forth in the Notice. If any objection to the request for reimbursement of Litigation Expenses is made after the date of this filing, Lead Plaintiff's Counsel will address it in Plaintiff's reply papers.

85. From the beginning of the case, Lead Plaintiff's Counsel was aware that out-of-pocket expenses might not be recovered. Lead Plaintiff's Counsel also understood that, even assuming the case was ultimately successful, reimbursement for expenses would not compensate them for the contemporaneous lost use of funds advanced to prosecute this Action. Accordingly, Lead Plaintiff's Counsel were motivated to, and did, take steps to assure that only necessary expenses were incurred for the vigorous and efficient prosecution of the case.

86. The largest component of expenses, \$95,278, or approximately 81% of the total expenses, was expended on the retention of experts—specifically the consulting damages expert retained by Lead Plaintiff’s Counsel to help formulate the Plan of Allocation and to calculate Settlement Class Members’ Amortizable Bond Premium Amounts. Due to the novel and complex nature of the claims at issue in this Action, requiring application of Treasury Regulations and IRS guidance to perform bond amortization calculations for numerous different securities, retention of an experienced damages expert was important to arrive at a Plan of Allocation that equitably distributes the Net Settlement Fund among Settlement Class Members.

87. Additionally, Lead Plaintiff’s Counsel paid \$8,725 in mediation fees owed to the Mediator for the services he provided during the settlement negotiation period, which is approximately 7% of the total expenses incurred.

88. The other litigation expenses for which Lead Plaintiff’s Counsel seeks reimbursement are the types of expenses that are necessarily incurred in litigation and routinely charged to clients billed by the hour. These litigation expenses included, among other things, court fees, service of process costs, photoimaging, postage and delivery expenses, and the cost of on-line legal research.

89. Finally, as stated above, Plaintiff seeks a service award for his time and efforts in representing the Settlement Class in the amount of \$25,000. Plaintiff

worked closely with Plaintiff's Counsel throughout the pendency of this Action in connection with his service as a proposed class representative. For example, Plaintiff: (a) assisted counsel in investigating the case and in the preparation of the Complaint, including by arranging and participating in multiple investigative interviews between Plaintiff's Counsel and former UBS employee Brian Edgar; (b) supplied documentation to support the claims asserted in the Complaint, including his UBS account opening documents and 1099 tax forms; (c) reviewed and commented on all significant pleadings and briefs filed in the Action; (d) reviewed the Court's orders and discussed them with Plaintiff's Counsel; (e) discussed Defendant's requests for the production of documents with Plaintiff's Counsel, and responded and objected to the same; (f) reviewed and commented on the mediation briefs; (g) produced relevant tax returns and other relevant documents to UBS as part of the pre-mediation exchange of information, and coordinated between Plaintiff's Counsel and his accountants to obtain the same; (h) remotely attended the mediation session; (i) stayed abreast of the settlement negotiations; and (j) evaluated and approved the proposed Settlement.

90. To date, no objections to the Litigation Expenses have been filed on the Court's docket. In my opinion, the costs and expenses incurred by Lead Plaintiff's Counsel, and the service award sought by the Plaintiff, are reasonable. Moreover, I believe that the Lead Plaintiff's Counsel's costs and expenses were necessary to

representing the Settlement Class and achieving the Settlement. Accordingly, Lead Plaintiff's Counsel respectfully submits that the Litigation Expenses should be reimbursed in full from the Settlement Fund.

91. In view of the significant recovery for the Settlement Class and the substantial risks of this Action, as described herein and in the accompanying Final Approval Memorandum, I respectfully submit that the Settlement should be approved as fair, reasonable, and adequate and the proposed Plan of Allocation should be approved as fair and reasonable. I further submit that the requested fee in the amount of 33⅓% of the Settlement Fund should be approved as fair and reasonable, and the request for reimbursement of \$143,343.85 in Litigation Expenses, including a service award of \$25,000 for Plaintiff Richard Goodman, should also be approved.

I declare under penalty of perjury under the laws of the United States of America that the foregoing facts are true and correct.

Executed this 2nd day of November, 2023, at Wilmington, North Carolina.


GARTH SPENCER

CERTIFICATE OF SERVICE

I hereby certify that on November 2, 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,

November 2, 2023
Lafayette Hill, Pennsylvania

/s/ Lee Albert
Lee Albert