UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

LOUISIANA MUNICIPAL POLICE EMPLOYEES' RETIREMENT SYSTEM, SJUNDE AP-FONDEN, BOARD OF TRUSTEES OF THE CITY OF FORT LAUDERDALE GENERAL EMPLOYEES' RETIREMENT SYSTEM, EMPLOYEES' RETIREMENT SYSTEM OF THE GOVERNMENT OF THE VIRGIN ISLANDS, AND PUBLIC EMPLOYEES' RETIREMENT SYSTEM OF MISSISSIPPI on behalf of themselves and all others similarly situated, Plaintiffs, v. GREEN MOUNTAIN COFFEE ROASTERS, INC., LAWRENCE J. BLANFORD and FRANCES G. RATHKE, Defendants.	No. 2:11-CV-00289-WKS

NOTICE OF CLASS REPRESENTATIVES' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION

TO: All Counsel of Record

PLEASE TAKE NOTICE that pursuant to Federal Rule of Civil Procedure 23(e) and this Court's Order Preliminarily Approving Settlement and Providing for Notice entered July 6, 2018 (ECF No. 339), and upon (i) the Joint Declaration of Matthew L. Mustokoff, John C. Browne, and Mark R. Rosen in Support of: (I) Class Representatives' Motion for Final Approval of Class Action Settlement and Plan of Allocation; and (II) Class Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses; (ii) the Memorandum of Law in Support of Class Representatives' Motion for Final Approval of Class Action Settlement and Plan of Allocation;

and (iii) all other papers and proceedings herein, Class Representatives Louisiana Municipal Police Employees' Retirement System, Sjunde AP-Fonden, Board of Trustees of the City of Fort Lauderdale General Employees' Retirement System, Employees' Retirement System of the Government of the Virgin Islands, and Public Employees' Retirement System of Mississippi (collectively, "Class Representatives"), on behalf of themselves and the certified Class, will and do hereby move this Court, before the Honorable William K. Sessions III, on October 22, 2018 at 10:00 a.m., in Courtroom 110 of the United States District Court for the District of Vermont, 11 Elmwood Avenue, Burlington, VT 05401, or at such other location and time as set by the Court, for entry of a Judgment approving the Settlement as fair, reasonable, and adequate and for entry of an Order approving the proposed Plan of Allocation as fair, reasonable, and adequate. A proposed Judgment and Order granting the requested relief will be submitted with Class Representatives' reply papers after the deadlines for objecting to the Settlement and requesting exclusion from the Class have passed.

Dated: September 17, 2018

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UNITED STATES DISTRICT COURT
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LOUISIANA MUNICIPAL POLICE EMPLOYEES' RETIREMENT SYSTEM, SJUNDE AP-FONDEN, BOARD OF TRUSTEES OF THE CITY OF FORT LAUDERDALE GENERAL EMPLOYEES' RETIREMENT SYSTEM, EMPLOYEES' RETIREMENT SYSTEM OF THE GOVERNMENT OF THE VIRGIN ISLANDS, AND PUBLIC EMPLOYEES' RETIREMENT SYSTEM OF MISSISSIPPI on behalf of themselves and all others similarly situated, Plaintiffs, v. GREEN MOUNTAIN COFFEE ROASTERS, INC., LAWRENCE J. BLANFORD and FRANCES G. RATHKE, Defendants.	No. 2:11-CV-00289-WKS

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

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PRELIMINARY STATEMENT

After more than six years of intense litigation, including extensive fact and expert discovery and protracted settlement negotiations under the auspices of then-retired United States District Court Magistrate Judge Edward A. Infante ("Judge Infante" or "Mediator"), Class Representatives and Defendants have agreed to settle all claims asserted in the above-captioned securities class action ("Action") in exchange for payment of $36.5 million in cash (the "Settlement Amount"), which has been deposited in an interest-bearing escrow account. The $36.5 million Settlement is based on the Parties' acceptance of Judge Infante's proposal that the Action be settled for that amount. Class Representatives respectfully submit that the proposed Settlement represents an excellent result for the Class and plainly satisfies the standards for final approval of a settlement under Rule 23 of the Federal Rules of Civil Procedure.

The Settlement represents a substantial recovery in a securities class action alleging that Green Mountain, Lawrence J. Blanford, and Frances G. Rathke (collectively, "Defendants") told

the market that Green Mountain was straining capacity and struggling to build enough inventory to satisfy demand, but, in reality, Defendants knew or should have known that the Company was experiencing serious problems with inventory controls and concerns about ballooning inventory levels. *See* ¶¶12, 46.[1] At the time the Settlement was reached, Class Representatives and Class Counsel had a full understanding of the strengths and weaknesses of Class Representatives' claims and Defendants' defenses and recognized the risks in proceeding through summary judgment and trial (and any appeals to follow). Indeed, Defendants' motions to dismiss had been denied on appeal, fact and expert discovery had been completed, class certification had been granted and Defendants' motion for summary judgment was *sub judice* at the time of settlement.

Throughout this hard-fought litigation, Class Representatives, through Class Counsel, vigorously prosecuted the claims of Class Members. As set forth in greater detail in the Joint Declaration, before the Settlement was reached, Class Counsel had (i) conducted a thorough pre-trial investigation into the Class's claims; (ii) drafted a detailed amended complaint; (iii) briefed and conducted oral argument on Defendants' motions to dismiss; (iv) successfully appealed the Court's decision granting Defendants' motions to dismiss to the United States Court of Appeals for the Second Circuit; (v) engaged in (and completed) extensive fact and expert discovery, which included depositions of 44 witnesses, reviewing over 1.1 million pages of documents produced to Class Representatives, and litigating various motions to compel; (vi) successfully moved for class certification; (vii) consulted with experts in the areas of sales and operations planning, including

[1] Unless otherwise stated, all references to ¶__ herein are to the Joint Declaration of Matthew L. Mustokoff, John C. Browne, and Mark R. Rosen in Support of: (I) Class Representatives' Motion for Final Approval of Class Action Settlement and Plan of Allocation; and (II) Class Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Joint Declaration" or "Joint Decl.") filed herewith. The Joint Declaration provides a detailed description of the history of this litigation, the claims asserted, the investigation and discovery undertaken, the negotiation process, the substance of the Settlement and the Plan of Allocation, and the substantial risks in litigating the claims asserted against the Defendants. It is an integral part of the submission and it is incorporated herein by reference.

business forecasting and supply and demand processes, insider stock trading plans under SEC Rule 10b5-1, market efficiency, reliance and economic damages; (viii) successfully opposed Defendants' motion for partial judgment on the pleadings; (ix) briefed Defendants' motion for summary judgment; and (x) briefed Class Representatives' motions to strike an affidavit from a fact witness and a supplemental expert submitted in connection with summary judgment. ¶9.

Moreover, the Settlement is the result of protracted settlement negotiations, including two formal mediation sessions and numerous telephonic communications, facilitated by a highly respected and experienced mediator. *Id.* The mediation process began on May 12, 2016, when the Parties participated in an Early Neutral Evaluation Session (as required by the Court). ¶77. Prior to the first mediation session, each side submitted detailed submissions to Judge Infante, where they outlined their respective views of the merits of the claims and defenses in the Action. The May 2016 session was attended, either in-person or by telephone, by representatives from certain of the Class Representatives, counsel for both sides, as well as counsel and representatives for various insurers carriers for Defendants. *Id.* On November 17, 2016, the Parties participated in a second session with the Mediator. ¶78. In connection with that session, the Parties once again submitted detailed mediation statements and exhibits to the Mediator. The November 2016 session was attended by representatives from certain of the Class Representatives, counsel for both sides, the general counsel of Green Mountain and representatives and counsel for all Defendants' insurance carriers. *Id.*

Following the second mediation session, the Parties stayed in contact with Judge Infante as the case progressed over the following year. While Defendants' summary judgment motion and Class Representatives' motions to strike were pending, the Parties worked behind the scenes with the Mediator in another attempt to resolve the case. Following numerous discussions with the

continued assistance of the Mediator, on February 28, 2018, Judge Infante made a mediator's proposal that the Parties settle the action for $36.5 million. The Parties accepted the mediator's proposal and reached an agreement-in-principle to settle the Action on March 9, 2018.

In addition to the many reasons stated in this Memorandum and in the Joint Declaration, the settlement process itself supports a strong presumption of fairness and approval of the Settlement. *See D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (presumption of fairness found where the settlement was the product of "arm's-length negotiations and that plaintiffs' counsel have possessed the experience and ability, and have engaged in the discovery, necessary to effective representation of the class's interests" and that "mediator's involvement in . . . settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure"); *In re Currency Conversion Fee Antitrust Litig.*, 263 F.R.D. 110, 122 (S.D.N.Y. 2009) (where a settlement is the production of arm's length negotiations conducted by experienced counsel knowledgeable in complex class litigation, the negotiation enjoys "a presumption of fairness").

The Settlement represents a particularly positive result when considered in light of the considerable risks associated with this Action. ¶¶43-74. As set forth in greater detail in the Joint Declaration, throughout the litigation, Defendants maintained a series of defenses that, if successful, could well have undercut Class Representatives' ability to defeat the motion for summary judgment and/or secure a meaningful recovery at trial, or even any recovery at all, on behalf the Class. *Id.*

Class Representatives faced considerable risks in establishing falsity and scienter. ¶¶46-64. Class Representatives alleged that Defendants made materially false and misleading statements to the market indicating that the Company was straining capacity and hardly able to

supply an enormous and growing demand for its coffee products. Defendants vigorously contested this argument, claiming through documentary evidence as well as fact witness and expert testimony that the statements Class Representatives alleged were materially misleading were truthful at the time they were made. ¶¶51-58.

Further, Defendants contested any allegation of scienter on either recklessness or personal motive grounds. ¶¶59-64. While Class Representatives argued that Defendants recklessly disregarded internal reports indicating growing inventories, missed forecasts and supply process breakdowns, the documents Class Representatives relied on were, in many instances, arguably susceptible to more than one interpretation, and arguably in conflict with witness testimony that, during the periods covered by the alleged false statements, the Company was, in fact, racing to keep up with demand. ¶¶57-58. Class Representatives also intended to show Blanford and Rathke's scienter under a theory of personal motive and benefit, pointing to their stock sales. Defendants asserted and presented evidence to show that those sales were not suspiciously timed or sized, and that most of the sales in question were made pursuant Rule 10b5-1 trading plans that established fixed timing and pricing terms. ¶¶62-63.

There were further significant risks that, even if Class Representatives were successful in establishing liability, damages could still be substantially reduced or eliminated based on Defendants' arguments that (i) the disclosure of a lack of capacity constraints at Green Mountain, which Class Representatives claim was revealed on November 9, 2011, was actually revealed months earlier, in July 2011; and (ii) the alleged 39% decline in Green Mountain's stock price after the November 9, 2011 disclosure was not in reaction to the correction of a fraud, but to other information revealed on that date. ¶¶65-73. Defendants' loss causation and damages arguments

presented a very real risk that the Class could recover far less than the Settlement Amount, or nothing at all.

The proposed Settlement, if approved, provides an immediate, certain recovery for the claims asserted in this Action, without incurring the risk that Defendants would succeed either at summary judgment, trial, or in subsequent appeals. Class Representatives, sophisticated institutional investors with prior experience serving as lead plaintiffs and with a significant financial stake in the outcome of the Action, have closely supervised and monitored both the prosecution and the settlement of the Action. *See* Exhibits 1A through 1E to the accompanying Joint Declaration. Moreover, Class Counsel, who are experienced in prosecuting securities class actions, believe that this Settlement is in the best interest of the Class.

By Court Order dated July 6, 2018, the Court granted preliminary approval of the Settlement ("Preliminary Approval Order"). In accordance with the Preliminary Approval Order, the Court-authorized claims administrator, Epiq Class Action & Claims Solutions, Inc. ("Epiq"), thereafter began its notice campaign. Epiq, working with Class Counsel, mailed a copy of the Notice and the Claim Form (together, the "Notice Packet") to potential Class Members; (ii) published the Summary Notice in *Investor's Business Daily* and transmitted it over the *PR Newswire*; and (iii) developed a website from which copies of the Notice and Claim Form, and other relevant documents, can be downloaded. ¶88. As ordered by the Court and stated in the Notice, any objections to the Settlement, the Plan of Allocation or the request for attorneys' fees and reimbursement of litigation expenses must be submitted by October 1, 2018.

In light of the relevant considerations detailed below and under the standards articulated by the Second Circuit in *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974), Class

Representatives respectfully submit that the Settlement and the Plan of Allocation are fair, reasonable, and adequate, and should be approved by the Court.

ARGUMENT

I. FINAL APPROVAL OF THE SETTLEMENT SHOULD BE GRANTED

A. The Standard for Approval of a Class Action Settlement

As a matter of public policy, courts strongly favor the settlement of lawsuits. *Weinberger v. Kendrick,* 698 F.2d 61, 73 (2d. Cir. 1983). This is particularly true in connection with complex class action litigation. *See Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 116 (2d. Cir. 2005). "In deciding whether to approve [a class action settlement agreement], the court acknowledges that 'there is an overriding public interest in settling and quieting litigation, and this is particularly true in class actions.'" *Davis v. Central Vermont Pub. Serv. Corp.*, 2012 WL 4471226, at *7 (D. Vt. Sept. 27, 2012) (quoting *In re Prudential Sec. Inc. Ltd. P'ships Litig.,* 163 F.R.D. 200, 209 (S.D.N.Y. 2005)). "Settlements generally advance the public interest because they minimize the expense of litigation, avoid the expenditure of judicial resources, and ensure injured parties' recoveries without the time, expense, and inconvenience of litigation." *Id.*

When evaluating a proposed settlement under Rule 23(e), a court must determine whether the settlement, taken as a whole, is fair, reasonable and adequate, and was not the product of collusion. *Maywalt v. Parker & Parsley Petro. Co.*, 67 F.3d 1072, 1079 (2d Cir. 1995); *Varljen v. H.J. Meyers & Co., Inc.*, 2000 WL 1683656, at *3 (S.D.N.Y. Nov. 8, 2000); *In re Merrill Lynch Tyco Research Sec. Litig.*, 249 F.R.D. 124, 132 (S.D.N.Y. Apr. 16, 2008). A proposed class action settlement is entitled to a presumption of fairness where, as here, it was the product of arm's-length negotiations conducted by capable, experienced counsel. *See, e.g., In re EVCI Career Colls. Holding Corp. Sec. Litig.*, 2007 WL 2230177, *4 (S.D.N.Y. July 27, 2007); *Strougo ex rel. Brazilian Equity Fund, Inc. v. Bassini*, 258 F. Supp. 2d 254, 257 (S.D.N.Y. 2003).

Indeed, "absent evidence of fraud or overreaching, [courts] consistently have refused to act as Monday morning quarterbacks in evaluating the judgment of counsel." *Trief v. Dun & Bradstreet Corp.*, 840 F. Supp. 277, 281 (S.D.N.Y. 1993) (citation omitted). The principal factors in evaluating the fairness of a proposed settlement in the Second Circuit are well-settled:

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

Wal-Mart, 396 F.3d at 117 (quoting *Grinnell*, 495 F.2d at 463).[2] In weighing these factors, courts recognize that settlements usually involve a significant amount of give and take between the negotiating parties; therefore, courts do not attempt to rewrite settlement agreements or try to resolve issues that are left undecided as a result of the parties' compromise. *See, e.g., In re Warner Commc'ns Sec. Litig.*, 798 F.2d 35, 37 (2d Cir. 1986).

Class Representatives respectfully submit that the proposed Settlement is eminently fair, reasonable and adequate when measured under the foregoing criteria. The negotiated settlement was reached only after capable counsel with extensive experience in complex securities litigation: (i) had fully explored the substantial risks associated with continued litigation of the Action and the strengths and weaknesses of the Parties' respective positions; and (ii) had engaged in lengthy arm's-length settlement negotiations with counsel for Defendants, overseen by then-former Judge

[2] Class Representatives recognize that Keurig Green Mountain is a large company and, therefore, Defendants' ability to withstand a greater judgment was not a significant factor in Class Representatives' decision to enter into the Settlement.

Infante. The Settlement represents an excellent and immediate result for the Class and should be approved by this Court.

B. The Settlement is Substantively Fair Under *Grinnell*

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

"[I]n evaluating the settlement of a securities class action, federal courts, including this Court, 'have long recognized that such litigation is notably difficult and notoriously uncertain.'" *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, 2010 WL 4537550, at *15 (S.D.N.Y. Nov. 8, 2010) (quoting *In re Sumitomo Copper Litig.,* 189 F.R.D. 274, 281 (S.D.N.Y. 1999)). Because "[s]ecurities class actions are generally complex and expensive to prosecute," *In re Gilat Satellite Networks, Ltd.*, 2007 WL 1191048, at *10 (E.D.N.Y. Apr. 19, 2007), such actions "readily lend themselves to compromise because of the difficulties of proof, the uncertainties of the outcome, and the typical length of the litigation." *In re Luxottica Grp. S.p.A. Sec. Litig.*, 233 F.R.D. 306, 310 (E.D.N.Y. 2006).

Securities actions are, by their nature, costly and complex. At the time the Settlement was reached, the Parties had engaged in more than six years of litigation. For example, Defendants filed two extensive motions to dismiss in which they contended that Class Representatives failed to adequately allege a false statement in Green Mountain's public disclosures or to plead a strong and compelling inference of scienter as to any of the Defendants. Class Representatives filed an omnibus memorandum in opposition, which required significant resources. ¶19. And, after the Court granted Defendants' motions to dismiss the Complaint for failure to plead falsity and scienter, Class Representatives appealed and proceedings progressed in the Second Circuit, which ultimately vacated the dismissal order. ¶¶20-22. In addition, the Parties thoroughly briefed Class Representatives' motion for class certification ("Class Certification Motion"), which the Court granted, as well as Defendants' motion for judgment on the pleadings, which the Court denied.

The Class Certification Motion was accompanied by an expert report from David Tabak, Ph.D. supporting Class Representatives' argument that class treatment was appropriate for this case. ¶¶35-37.

Discovery in this case was also both complex and costly. The Parties completed both fact and expert discovery, which included expert reports on topics central to the liability theories at issue: market efficiency, economic damages, the operation of insider stock trading plans under SEC Rule 10b5-1, and sales, inventory and operations planning. As reflected in the Joint Declaration, in order to accomplish the task of reviewing over 1.1 million pages of documents in time to complete discovery, including preparing for and taking or defending depositions of a total of 44 witnesses, Class Counsel leveraged technology and effective organization of resources to review and analyze the voluminous document production in this case. ¶¶23-34, 42.

Defendants' motion for summary judgment following the close of expert discovery exemplifies how complex this case is. Among other things, Defendants argued that Class Representatives could not establish loss causation, because a jury could not find that the stock price decline on November 9, 2011 was caused by the revelation of the alleged fraud; could not prove that any of Defendants' statements regarding Green Mountain's production capacity were false; and could not prove that Defendants' false statements were made with scienter. The summary judgment motion and opposition were accompanied by significant evidence developed during the course of discovery as well as expert testimony and reports. ¶¶38-40.

The complexity of the substantive issues in this Action also weighs in favor of approving the Settlement. Here, the facts underlying the Class's claims involved issues regarding sales and operations planning and supply and demand processes, insider stock trading plans under SEC Rule 10b5-1, and loss causation and damages, each of which required expert reports and testimony.

Moreover, Class Representatives' theory of falsity was inherently complex and presented significant challenges to Class Representatives and the Class going forward. ¶47.

Furthermore, absent the Settlement, there would have been significant additional necessary resources and costs expended to prosecute the claims against the Defendants. Trial on these issues would be both lengthy and costly, and would require expert testimony, further adding to the expense and duration of the Action. *See In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 318 (3d Cir. 1998) (settlement favored where "trial of this class action would be a long, arduous process requiring great expenditures of time and money on behalf of both the parties and the court"). Moreover, even if the Class were able to recover a judgment at trial, there is always additional delay caused by not only the trial, but by the inevitable appeals of any judgments. Thus, the Settlement provides a substantial immediate benefit for the Class without the expense and delay of further litigation.

2. The Reaction of the Class to the Settlement to Date

"[T]he reaction of the class to the settlement is perhaps the most significant factor to be weighed in considering its adequacy." *Davis*, 2012 WL 4471226, at *9; *see also Grinnell*, 495 F.2d at 462-63. The deadline for filing objections is October 1, 2018. To date, no objections to the Settlement or Plan of Allocation have been received by Class Counsel or the Claims Administrator. Class Representatives respectfully submit that the positive reaction of the Class to date supports approval of the Settlement. *See Maley v. Del. Global Techs. Corp.*, 186 F. Supp. 2d 358, 362 (S.D.N.Y. 2002) ("It is well-settled that the reaction of the class to the settlement is perhaps the most significant factor to be weighed in considering its adequacy.").

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

"[T]he stage of the proceedings and the amount of discovery completed" are other factors to be considered in determining the fairness, reasonableness and adequacy of a settlement.

Grinnell, 495 F.2d at 463. "[F]ormal discovery is not a prerequisite; the question is whether the parties had adequate information about their claims." *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 458 (S.D.N.Y. 2004); *see also In re WorldCom, Inc. Sec.*, 347 B.R. 123, 145 (Bankr. S.D.N.Y. 2006) ("This factor is attuned to the parties' knowledge and awareness of the relative strength or weakness of each party's respective arguments and positions."). This factor strongly supports the Settlement. In fact, courts in this Circuit have held that "it is enough for the parties to have engaged in sufficient investigation of the facts to enable the [c]ourt to intelligently make … an appraisal of the Settlement." *Allen v. Dairy Farmers of America, Inc.*, 2011 WL 3361233, at *6 (D. Vt. Aug. 3, 2011) (internal quotations omitted).

Here, after more than six years of litigating this Action, Class Representatives and Defendants have gained a thorough understanding of the strengths and weaknesses of the claims and the obstacles to success. As set forth in greater detail in the Joint Declaration, the Settlement was reached only after a significant amount of work was done by Class Representatives and Class Counsel, including, *inter alia*: (i) conducting a thorough pre-trial investigation into the Class's claims; (ii) drafting a detailed amended complaint; (iii) briefing and conducting oral argument on Defendants' motions to dismiss; (iv) successfully appealing the Court's decision granting Defendants' motions to dismiss; (v) engaging in (and completing) extensive fact and expert discovery, which included depositions of 44 witnesses, reviewing over 1.1 million pages of documents produced to Class Representatives, and litigating various motions to compel; (vi) successfully moving for class certification; (vii) consulting with experts in the areas of sales and operations planning, including business forecasting and supply and demand processes, insider stock trading plans under SEC Rule 10b5-1, market efficiency, reliance and economic damages; (viii) successfully opposing Defendants' motion for partial judgment on the pleadings; (ix) briefing

Defendants' motion for summary judgment; (x) briefing Class Representatives' motions to strike an affidavit from a fact witness and a supplemental expert submitted in connection with summary judgment; and (xi) participating in protracted settlement negotiations, including two formal mediation sessions and numerous telephonic communications, facilitated by a highly respected and experienced mediator. ¶9.

With respect to fact and expert discovery specifically, Class Representatives thoroughly developed the record by obtaining documents from Defendants, Defendants' experts and various third parties, securing written discovery in the form of responses to interrogatories and requests for admission, and taking sworn testimony from fact and expert witnesses. Class Representatives aggressively litigated discovery issues, filing several motions to compel Defendants to produce discovery in order to further develop the record and gain a thorough understanding of the case. ¶¶23-34.

Thus, the Settlement was not achieved until the Parties had sufficient familiarity with the issues in the case in order to evaluate its merits and agree on a settlement amount that was acceptable to Defendants and reasonable, fair and adequate to the Class. Class Representatives and Class Counsel therefore had the requisite information to make an informed decision about the relative benefits of litigating or settling the Action and "developed an informed basis from which to negotiate a reasonable compromise." *Global Crossing*, 225 F.R.D. at 459; *see also Maley*, 186 F. Supp. 2d at 363-64.

4. The Risks of Establishing Liability and Damages and in Maintaining the Class Action Through Trial

Grinnell holds that, in assessing the fairness, reasonableness, and adequacy of a settlement, courts should also consider the "risks of establishing liability," "the risks of establishing damages," and "the risks of maintaining the class action through the trial." *Grinnell*, 495 F.2d at 463. In so

doing, the Court is not called on to adjudicate disputed issues or decide unsettled questions, but instead should "assess the risks of litigation against the certainty of recovery under the proposed settlement." *Global Crossing*, 225 F.R.D. at 459 ("Courts approve settlements where plaintiffs would have faced significant legal and factual obstacles to proving their case."). While the claims asserted in this Action were brought in good faith and Class Representatives believe they have merit, as detailed in the Joint Declaration ¶¶43-74, there were significant risks that Class Representatives would have faced in attempting to achieve a better result through continued litigation.

Although the claims asserted in the Complaint survived Defendants' motions to dismiss (following the appeal to the Second Circuit), and the Court certified the Class, there were also numerous other risks that could have prevented Class Representatives from achieving any recovery on behalf of the Class, or at least a recovery of the magnitude of the amount achieved through the proposed Settlement. For instance, there was the possibility of the Court finding in favor of Defendants at summary judgment. Further, even if the Court had permitted the claims to proceed to trial, a jury could have either ruled against Class Representatives or awarded damages in an amount less than those sought. The risks that Class Representatives faced included establishing falsity and scienter, as well as loss causation and damages.

First, Class Representatives faced considerable risks in establishing falsity. ¶¶46-58. Class Representatives alleged that Defendants made materially false and misleading statements to the market that indicated that the Company was straining capacity and hardly able to supply an enormous and growing demand for its coffee products, and this capacity-constrained "growth story" was revealed to be materially misleading when, on November 9, 2011, Defendants disclosed that its inventories had increased by 156% versus the prior year. ¶46. Class Representatives

intended to prove, through document and deposition testimony, as well as through expert testimony, that the Company's constraints and issues in meeting customer needs were not a function of runaway demand, but rather of known (or recklessly ignored) internal failures and breakdowns. ¶¶47-48. But Defendants strenuously argued that the statements Class Representatives claimed were materially misleading were truthful at the time they were made, and, in fact, Class Representatives' claims were dismissed for a failure to adequately allege falsity at the motion to dismiss stage, although that ruling was later reversed by the Second Circuit. ¶50. The risks regarding falsity were heightened by the fact that multiple witnesses testified instead that Green Mountain's growth story was true, requiring Class Representatives to attempt to prove their claims primarily through ambiguous internal documents authored by loyal Company employees and interpreted by hostile witnesses. ¶¶51-58.

Further, Defendants contested any allegation of scienter on either recklessness or personal motive grounds. ¶¶59-63. While Class Representatives argued that Defendants recklessly disregarded things such as internal reports indicating growing inventories, missed forecasts and supply process breakdowns, this recklessness theory faced significant risks at summary judgment and trial. ¶¶61-62. The documents that Class Representatives relied on were, in many instances, arguably susceptible to more than one interpretation, and Defendants' witnesses insisted in testimony that, contrary to Class Representatives' claims, during the periods covered by the alleged false statements, the Company was, in fact, racing to keep up with demand, and important customers were, in fact, complaining about a lack of supply. ¶61. Moreover, while Class Representatives also intended to show Blanford and Rathke's scienter under a theory of personal motive and benefit, pointing to the combined Class Period sales of $49 million of stock, Defendants' counter-arguments posed real risks to Class Representatives' claims. ¶¶62-63. For

instance, Defendants asserted and presented evidence to show that the Individual Defendants' stock sales during the Class Period were not suspiciously timed or sized, and that most of the sales in question were made pursuant Rule 10b5-1 trading plans that established fixed timing and pricing terms. ¶63.

Class Representatives also faced considerable risks in establishing loss causation and damages. ¶¶65-73. As set forth in the Joint Declaration, Class Representatives alleged that the market learned of facts on November 9, 2011, indicating that Defendants' prior statements or omissions were false or materially misleading and that this resulted in a statistically significant decline in the price of Green Mountain stock when the artificial inflation from Defendants' misrepresentations left the stock price. ¶66. Class Representatives relied on expert reports from a financial economist, David Tabak, Ph.D., of NERA Economic Consulting, Inc., who determined that, from a financial perspective, the November 9 disclosure provided new, corrective material to the market. Dr. Tabak also developed a stock price inflation ribbon to calculate damages, based on Class Members' transaction data. ¶67.

But Defendants, through their own expert, Dr. Paul Gompers, challenged Class Representatives' theory of loss causation and damages by arguing, among other things, that the alleged curative information was actually disclosed months earlier and further that the decline in the Company's stock price after the November 9, 2011 disclosure was actually due to the revelation of other information on that date. ¶¶68-69. As such, based on this, there was the distinct possibility that Defendants may have been able to persuade either this Court, or the fact-finder at trial, or an appellate court, that the stock price decline after the November 9 disclosure could not be claimed as damages from the alleged fraud, and that, therefore, if credited by this Court a jury, or an appellate court, could have materially limited or eliminated the Class's recovery. *Id*.

Proof of damages in a securities fraud case is always difficult and invariably requires highly technical expert testimony. The experts retained by Class Representatives and Defendants had widely divergent views on loss causation and damages issues in this case. Courts have recognized the need for compromise where it is impossible to predict which expert's testimony or methodology would be accepted by the jury. *See generally In re Am. Bank Note Holographics, Inc., Sec. Litig.,* 127 F. Supp. 2d 418, 426-27 (S.D.N.Y. 2001) (stating that "[i]n such a battle, Plaintiffs' counsel recognize the possibility that a jury could be swayed by experts for Defendants, who could minimize or eliminate the amount of Plaintiffs' losses"); *see also In re PaineWebber Ltd. P'ships Litig.,* 171 F.R.D. 104, 129 (1997), *aff'd,* 117 F.3d 721 (2d Cir. 1997).

Given all of the risks of establishing liability, damages and maintaining the class action through trial, this factor weighs in favor of approval of the Settlement.

5. The Range of Reasonableness of the Settlement Amount in Light of the Best Possible Recovery and the Risks of Litigation

The final two *Grinnell* factors - the reasonableness of the settlement in light of the best possible recovery and the risks of litigation - also weigh in favor of approval of the Settlement. As the Second Circuit has explained, there is "a range of reasonableness with respect to a settlement" that "recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion." *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972). A fairness determination turns not on a "mathematical equation yielding a particularized sum ... but rather ... [on] the strengths and weaknesses of the plaintiff's case." *In re PaineWebber*, 171 F.R.D. at 130.

In assessing the reasonableness of a settlement amount, the legal and practical obstacles to obtaining a larger recovery at trial must be weighed against the certainty of the proposed settlement. *See Global Crossing*, 225 F.R.D. at 461. The prompt, guaranteed payment of the

settlement money now increases the settlement's value in comparison to "some speculative payment of a hypothetically larger amount years down the road." *Teachers' Ret. Sys. of La. v. A.C.L.N., Ltd.*, 2004 WL 1087261, at *5 (S.D.N.Y. May 14, 2004); *see also Global Crossing,* 225 F.R.D. at 461; *In re "Agent Orange" Prod. Liab. Litig.*, 611 F. Supp. 1396, 1405 (E.D.N.Y. 1985).

As set forth above, Defendants would have made arguments that would have challenged whatever damages Class Representatives might have sought at trial. Even if the amount of "potential damages" is greater than the amount of a proposed settlement, however, this does not preclude approval of a lesser settlement. *See Grinnell*, 495 F.2d at 455 ("[T]he fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved.").

The reasonableness of the Settlement in light of the risks of litigation, thus, weighs heavily in favor of the Settlement. Given the decline in the price of Green Mountain stock on the date of the alleged curative disclosure and the number of shares outstanding, according to Class Representatives' damages expert, the recovery that might have been achieved by successfully taking the case to trial and through the inevitable appeals could have been $900 million, which is more than the amount obtained through the Settlement. ¶105. However, as summarized in the Joint Declaration, Class Representatives faced very significant risks pertaining to liability, loss causation and damages. ¶¶43-73. Moreover, getting the case to a position where such a trial could have taken place, not to mention the inevitable appeals, would have subjected all Class Members to additional delay before any recovery might have been achieved. Among other things, once summary judgment was decided, the Parties would have faced the inevitable *Daubert* motions; as well as *in limine* motions, brought by each side, prior to trial. *See Maley*, 186 F. Supp. 2d at 366 ("Settling avoids delay as well as uncertain outcome at summary judgment, trial and on appeal.

The legal and factual difficulties inherent in this case…coupled with the unpredictability of a lengthy and complex trial, and the appellate process that would follow, with the risk of reversal, make the fairness of this substantial settlement readily apparent.").

Class Representatives faced risks at each of these stages, which they and Class Counsel took into account in accepting the proposal. Thus, when the benefits of the immediate guaranteed recovery are weighed against the risks of continued litigation and potential for recovery after trial, it is clear that approval of the Settlement is warranted on the basis of this factor.

C. The Proposed Settlement Is the Product of Informed Arm's-Length Negotiations And Is Presumptively Fair

The record demonstrates the Settlement's procedural fairness. The Settlement negotiations spanned approximately two years and were conducted at arm's-length between Class Counsel and counsel for the Defendants under the auspices of Judge Infante. As a result, the Settlement is entitled to a presumption of fairness. ¶¶75-82. *See In re Giant Interactive Grp., Inc. Sec. Litig.*, 279 F.R.D. 151, 160 (S.D.N.Y. 2011) (settlement approved where the "settlement was the product of prolonged, arms-length negotiation, including as facilitated by a respected mediator"); *In re Bear Stearns Cos., Inc. Sec., Derivative, & ERISA Litig.*, 909 F. Supp. 2d 259, 265 (S.D.N.Y. 2012) ("The parties, represented by highly experienced and capable counsel, engaged in extensive arm's length negotiations, which included multiple sessions mediated by … an experienced and well-regarded mediator of complex securities cases."); *In re Schering-Plough Corp. Sec. Litig.*, 2009 WL 5218066, at *3 (D.N.J. Dec. 31, 2009) (settlement "reached under the auspices of a highly-regarded mediator [Judge Infante], who had the benefit of a fully litigated case that had persisted up through fully briefed summary judgment motions … [m]ediation sessions began years before the ultimate settlement, foundered, recovered, gained traction, and were successful—a pattern that demonstrates arms-length negotiating").

In May 2016, the Parties participated in an Early Neutral Evaluations Session with Judge Infante and a second such session on November 17, 2016. In advance of those mediation sessions, the Parties submitted detailed mediation statements to Judge Infante, which addressed the issues of both liability and damages. While these sessions did not result in a resolution of the Action, the Parties stayed in contact with Judge Infante. In light of the Parties' extensive, arms' length negotiations, both at those mediations sessions and in numerous telephonic communications with and through Judge Infante throughout the pendency of the Action, Judge Infante made a mediator's proposal that the Parties settle the Action for $36,500,000. The Parties accepted the mediator's proposal and reached an agreement in principle to settle the Action on March 9, 2018 – almost two years after the initial Early Neutral Evaluation Session. ¶¶77-80.

Class Representatives were intimately involved in the negotiation process. Among other things, Class Representatives approved the decision to enter into settlement negotiations, participated in each of the mediation sessions either in-person or by telephone, were intimately involved in the negotiations, accepted and approved the agreement-in-principle on March 9, 2018, and approved the final Stipulation and Agreement of Settlement. ¶¶77-81. These facts also weigh in favor of approving the Settlement. *See In re Veeco Instruments Inc. Sec. Litig.*, 2007 WL 4115809, at *5 (S.D.N.Y. Nov. 7, 2007) ("under the PSLRA, a settlement reached — as this one was under the supervision and with the endorsement of a sophisticated institutional investor…is entitled to an even greater presumption of reasonableness…Absent fraud or collusion, the court should be hesitant to substitute its judgment for that of the parties who negotiated the settlement") (internal citations omitted).

Class Counsel, who made the presentations during mediation sessions, participated in other communications with the mediator and Class Representatives, and negotiated the final Settlement

on behalf of the Class, have extensive experience in successfully prosecuting some of the largest and most complex securities class actions in history. *See* ¶¶75-82; 103-104 & Exhibits 3A through 3C thereto. Class Counsel have served as lead counsel in other historic securities class actions settlements and had the benefit of protracted proceedings in this case, and were therefore in a position to assess the strengths and weaknesses of the claims and defenses and also recommend that the Court approve the Settlement. Such a recommendation should be accorded "great weight." *See In re Nasdaq Market-Makers Antitrust Litig.,* 187 F.R.D. 465, 474 (S.D.N.Y. 1998) ("'Great weight' is accorded to the recommendations of counsel, who are most closely acquainted with the facts of the underlying litigation.").

II. THE NOTICE OF SETTLEMENT SATISFIES DUE PROCESS REQUIREMENTS AND IS REASONABLE

Rule 23(c)(2) requires "the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173-75 (1974) (class notice is designed to fulfill due process requirements); *In re NASDAQ Litig.,* 1999 WL 395407, at *2 n. 3 (S.D.N.Y. June 15, 1999). The standard for measuring the adequacy of a class action settlement notice is reasonableness. *See In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 340 (S.D.N.Y. 2005); *Wal-Mart,* 396 F.3d at 114. "There are no rigid rules to determine whether a settlement notice to the class satisfies constitutional or Rule 23(e) requirements; the settlement notice must fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings." *Id*. at 114 (internal citation omitted). "Notice is adequate if it may be understood by the average class member." *Id.* (internal citation omitted).

Here, in accordance with the Court's Preliminary Approval Order, Class Counsel retained Epiq as the Claims Administrator to supervise and administer the notice procedure in connection

with the Settlement as well as the processing of Claims. In accordance with the Court's Preliminary Approval Order, the Claims Administrator caused the Notice and Claim Form (together, the "Notice Packet"), as approved by the Court, to be mailed via first-class mail to all potential Class Members who could be identified with reasonable effort. The Claims Administrator also posted the Notice and Claim Form on a website developed solely for the administration of the Settlement (*www.GreenMountainSecuritiesLitigation.com*), and published the Summary Notice in *Investor's Business Daily* and transmitted it over the *PR Newswire*. ¶88. The Notice contains a thorough description of the Settlement, the Plan of Allocation, and Class Members' rights to participate in and object to the Settlement, or exclude themselves from the Class. ¶89.

The notice program, which combined an individual, mailed Notice Packet to all potential Class Members who could be reasonably identified, as well as to custodian holders, a downloadable Notice and Claim Form, and the publication of the Summary Notice in a national business publication and over the Internet, contained all of the information required by § 21D(a)(7) of the PSLRA, 15 U.S.C. § 78u4(a)(7), and is adequate to meet the due process and Rule 23(c)(2) and (e) requirements for providing notice to the Class.

III. THE PLAN OF ALLOCATION IS FAIR, REASONABLE AND ADEQUATE

"To warrant approval, the plan of allocation must meet the standards by which the … settlement was scrutinized — namely, it must be fair and adequate." *In re Currency Conversion Fee Antitrust Litig.*, 263 F.R.D. at 126. *See also WorldCom*, 388 F. Supp. 2d at 344 (to be approved, a plan of allocation for a class recovery must be fair and reasonable). "When formulated by competent and experienced class counsel," a plan of allocation "need have only a reasonable, rational basis.'" *Global Crossing*, 225 F.R.D. at 462 (internal citations omitted). *See also Maley,* 186 F. Supp. 2d at 367 ("The proposed Plan of Allocation, which was devised by experienced

plaintiffs' counsel who are familiar with the relative strengths and weaknesses of the potential claims of Class members, satisfies the same standards of fairness, reasonableness, and adequacy that apply to the overall settlement."); *In re Marsh & McLennan Cos., Inc. Sec. Litig.*, 2009 WL 5178546, at *13 (S.D.N.Y. Dec. 23, 2009). In determining whether a plan of allocation is fair, courts look largely to the opinion of counsel. *Am. Bank Note*, 127 F. Supp. 2d at 429-30; *In re NASDAQ Litig.,* 2000 WL 37992, at *2 (S.D.N.Y. Jan. 18, 2000).

Here, the Plan of Allocation is designed to achieve an equitable distribution of the Net Settlement Fund. Class Counsel worked closely with Class Representatives' damages expert in establishing the Plan of Allocation and believes that the Plan of Allocation is a fair and reasonable method to allocate the Net Settlement Fund among Class Members. ¶¶83-87.

The Plan of Allocation for Green Mountain's common stock calculates the Recognized Loss Amount based on the level of alleged artificial inflation in the prices of Green Mountain's common stock at the time a particular claimant purchased and sold shares, or retained shares beyond the end of the Class Period. ¶¶85-86. This method of allocating settlement proceeds based on the timing of the purchases and sales of the securities at issue have been repeatedly accepted by the courts. *See, e.g., WorldCom*, 388 F. Supp. 2d at 348; *In re Gulf Oil/Cities Serv. Tender Offer Litig*., 142 F.R.D. 588, 596 (S.D.N.Y. 1992); *In re Charter Commc'ns, Inc. Sec. Litig.*, 2005 WL 4045741, at *2 (E.D. Mo. June 30, 2005).

For these reasons, as more fully stated in the Joint Declaration, Class Representatives and Class Counsel believe that the Plan of Allocation is a fair and reasonable way to apportion the Net Settlement Fund to Class Members who timely file valid Claim Forms.

CONCLUSION

For all of the foregoing reasons, Class Representatives respectfully request that this Court: (i) grant final approval of the proposed Settlement as fair, reasonable and adequate; and (ii) approve the proposed Plan of Allocation as fair and reasonable.

Dated: September 17, 2018

Respectfully submitted,

/s/ Matthew L. Mustokoff

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