UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

IN RE ROCKWELL MEDICAL, INC. STOCKHOLDER DERIVATIVE LITIGATION	Lead Case No. 1:19-cv-02373-ARR-RER (Consolidated with Case No. 1:19-cv-02774-ARR-RER)
This Document Relates To: ALL ACTIONS.	Hon. Ramon E. Reyes, Jr. **PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF DERIVATIVE SETTLEMENT**

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Plaintiffs Bill Le Clair and John Post ("Plaintiffs"), by and through their undersigned counsel ("Plaintiffs' Counsel"), respectfully submit this Unopposed Motion for Preliminary Approval of the Derivative Settlement of this shareholder derivative action (the "Litigation") brought on behalf of nominal defendant Rockwell Medical, Inc. ("Rockwell" or the "Company") against certain of its current and former directors and officers (the "Individual Defendants").[1] All capitalized terms not defined herein shall have the same meaning as set forth in the Stipulation of Settlement dated May 18, 2020 ("Settlement" or "Stipulation"), which is attached as Exhibit 1 to the Declaration of Shane P. Sanders in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Derivative Settlement ("Sanders Decl."), filed concurrently herewith.

I. INTRODUCTION

After extensive, arm's-length negotiations, the parties to the Litigation have agreed to the Settlement, which fully resolves and settles the Released Claims. The Settlement requires Rockwell to maintain for a period of at least four (4) years a robust set of enhancements to the Company's corporate governance that will help prevent future damage to Rockwell of the type alleged in this Litigation (the "Reforms"). The Reforms will help to ensure (among other things) enhanced director independence and stockholder input and involvement; timely and accurate public disclosures by the Company, including through enhancements to the duties and responsibilities of the Company's Disclosure Committee and Board-level Audit Committee; improved policies and procedures relating to whistleblower complaints; and improved transparency and enhanced processes relating to the compensation paid to the Company's executives and directors.

[1] This Motion was provided to the nominal defendant Rockwell and the Individual Defendants (together, "Defendants") prior to its filing, and Defendants have informed Plaintiffs that they do not oppose the relief requested in the Motion.

After the material substantive terms of the Settlement were determined and agreed upon, the parties separately negotiated in good faith and on an informed basis the amount of attorneys' fees and expenses to be paid to Plaintiffs' Counsel. In recognition of the substantial benefits the corporate governance reforms will provide to Rockwell as a result of Plaintiffs' Counsel's efforts, Plaintiffs and Rockwell agreed that the Individual Defendants shall cause their insurers to pay Plaintiffs' Counsel a fee and expense award of $450,000 (the "Fee and Expense Amount"). Rockwell, acting through its independent, non-defendant directors, reviewed the allegations and the Settlement terms, and in a good faith exercise of business judgment, determined that: (1) the terms of Settlement and each of its terms, as set forth in the Stipulation, are in the best interests of Rockwell; and (2) the Settlement confers substantial benefits on the Company and its stockholders. Defendants also acknowledge that the commencement, litigation, and settlement of the Litigation was the cause of the Board of Director's (the "Board") decision to implement and maintain the Reforms, and, as described in Section IV of the Stipulation, that the Reforms confer substantial benefits on the Company and its stockholders.

At the preliminary approval stage, the Court need only determine that the proposed Settlement is within the range of what might be found to be fair, reasonable, and adequate, such that notice of the Settlement should be provided to current Rockwell shareholders and a hearing scheduled for consideration of final settlement approval. The proposed Settlement plainly meets this standard. In addition, the proposed schedule and notice are adequate to apprise shareholders of the Settlement's terms and to afford them a fair opportunity to submit objections, if any. Accordingly, Plaintiffs respectfully request that the Court: (i) preliminarily approve the Settlement set forth in the Stipulation; (ii) approve the form of the Notice of Pendency and Proposed Settlement of Derivative Action ("Notice") and Summary Notice, and direct that they be published and posted in the time and manner described in the Stipulation; and (iii) schedule a hearing to

consider final approval of the Settlement (the "Settlement Hearing"), as well as hearing objections, if any, by current Rockwell shareholders.

II. OVERVIEW OF THE LITIGATION

A. The Derivative Action

Plaintiff Le Clair filed a Verified Stockholder Derivative Complaint on April 23, 2019 in Case No. 1:19-cv-02373, and Plaintiff Post filed a Verified Stockholder Derivative Complaint on May 10, 2019 in Case No. 1:19-cv-02774.

On June 14, 2019, the Court entered an order (i) consolidating Case No. 1:19-cv-02373 and Case No. 1:19-cv-02774 for all purposes, including pre-trial proceedings and trial; (ii) designating Robbins LLP as lead counsel for Plaintiffs in the Litigation; and (iii) designating the Law Offices of Thomas G. Amon as liaison counsel for Plaintiffs in the Litigation.

Plaintiffs filed their Verified Consolidated Stockholder Derivative Complaint (the "Consolidated Complaint") on October 28, 2019. The Consolidated Complaint alleges, *inter alia*, that the Individual Defendants breached their duty of loyalty to the Company because they knew or were reckless in not knowing that: (i) the Centers for Medicare & Medicaid Services had already denied Rockwell's proposal for separate reimbursement of its drug Triferic by no later than March 27, 2018, of which Rockwell was well aware; (ii) Rockwell's estimated reserve figures were understated; (iii) the denial of separate reimbursement of Triferic had significant implications to the Company's reserves and future projections; (iv) the Company was experiencing known but undisclosed deficiencies in its internal controls; and (v) as a result, Rockwell's representations concerning the effectiveness of its internal controls and certifications pursuant to the Sarbanes-Oxley Act of 2002 were improper. Plaintiffs made demands on Rockwell's Board to investigate and take action against the Defendants, and allege in the Consolidated Complaint that the Board wrongfully ignored – and therefore effectively refused – Plaintiffs' demands.

B. Proceedings in the Related Federal Securities Actions

Two putative securities class actions, titled *Too v. Rockwell Medical, Inc., et al.*, No. 1:18-cv-04253, and *Spock v. Rockwell Medical, Inc., et al.*, No. 2:18-cv-4993, alleging some of the same misstatements alleged in the Litigation, were filed on July 27, 2018 and September 4, 2018, respectively. On October 10, 2018, those actions were consolidated into a single action (the "Securities Class Action"). On December 10, 2018, the plaintiffs in the Securities Class Action filed a consolidated complaint, alleging violations of Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 promulgated thereunder, and Section 20(a) of the Exchange Act. Defendants in the Securities Class Action filed answers to the consolidated complaint on February 18, 2019.

On June 3, 2019, the parties to the Securities Class Action entered into a memorandum of understanding that set forth, among other things, their agreement to settle and release all claims asserted against the defendants in the Securities Class Action in exchange for a cash payment by or on behalf of the defendants of $3,700,000. On February 26, 2020, this Court fully and finally approved the parties' settlement and dismissed all of the claims asserted against the defendants in the Securities Class Action with prejudice.

C. Settlement Efforts in the Derivative Litigation

The parties commenced discussions about a potential early resolution of this Litigation in the summer of 2019. Plaintiffs' Counsel sent a settlement demand to counsel for the Defendants on August 16, 2019. Over the following five months, the parties negotiated in good faith the possibility of a settlement, including potential corporate reforms. On or about January 16, 2020, the parties reached an agreement in principle as to the substantive consideration for the Settlement (i.e., the corporate governance reforms, described in Section V.2. of the Stipulation).

After reaching agreement on the substantive consideration for the Settlement, the parties

separately negotiated in good faith and on an informed basis the amount of attorneys' fees to be paid to Plaintiffs' Counsel in recognition of the substantial benefits the Defendants, as described in Section IV of the Stipulation, acknowledge the corporate governance reforms will provide to Rockwell as a result of Plaintiffs' Counsel's efforts. The Settling Parties then documented the Settlement in the Stipulation.

D. Approval of the Settlement by Rockwell and the Non-Defendant Members of the Board

Rockwell, acting through its independent, non-defendant directors, reviewed the allegations and the Settlement terms and, in a good faith exercise of business judgment, determined that (1) the terms of the Settlement and each of its terms, as set forth in the Stipulation, are in the best interests of Rockwell; and (2) the Settlement confers substantial benefits on the Company and its stockholders.

III. THE SETTLEMENT TERMS

The proposed Settlement is an excellent result, reached after extensive, arm's-length negotiations. In connection with the Settlement, the Board has agreed to implement within ninety (90) days of final settlement approval, and to maintain for a minimum period of four (4) years (the "Compliance Term"), the corporate governance reforms detailed below. Defendants acknowledge that the commencement, litigation, and settlement of the Litigation was the cause of the Board's decision to implement and maintain the Reforms, and, as described in Section IV of the Stipulation, that the Reforms confer substantial benefits on the Company and its stockholders.

A. Enhanced Board Independence

1. Separate Chairman/CEO: The Company shall formalize a requirement that, at all times, the positions of Chairman of the Board ("Chairman") and Chief Executive Officer ("CEO") will not be occupied by the same individual.

2. Director Term Limits: Rockwell shall amend its Corporate Governance

Guidelines to include a term limit of ten (10) years for all directors; provided, however, that a director may serve for longer than ten years upon approval of then-current independent members of Rockwell's Board (with the interested director abstaining from such vote).

B. Stockholder Input

The Board's Bylaws shall be amended, as necessary, to include, and shall reflect throughout the Compliance Term, the following:

1. No later than the last day of the month in which stockholder proposals are due under Rule 14a-8, the Company shall distribute to the entire Board all proposals received by the Company. After the distribution to the Board, and before the making of any recommendation to the Board or any of its members concerning a response, approval or disapproval, Rockwell's legal counsel and senior management shall discuss with the Board Chairman and the chairperson ("Chair") of any Board committee responsible for oversight of the subject matter of the proposal, if applicable, the financial, legal, practical and social implications of approval and implementation of the proposal.

2. Where a stockholder proposal has been made, the Company shall timely contact the proponent of the proposal to arrange a teleconference or an in-person meeting to discuss the proposal and its financial, legal, social and practical implications. If the proponent agrees to a meeting or teleconference, the Board Chairman and/or Chair of any Board committee responsible for the oversight of the subject matter of the proposal shall attend.

3. Rockwell's legal counsel and senior management, with the authorization of the Board Chairman or the Chair of any Board committee responsible for oversight of the subject matter of the proposal, may prepare a response to the stockholder proposal and/or submit a no-action request to the U.S. Securities and Exchange Commission ("SEC") pursuant to Section 14(a) of the Exchange Act, and SEC Rule 14a-8, promulgated thereunder.

4. Before the filing of a proxy statement that makes a recommendation concerning any stockholder proposal submitted in accordance with Rule 14a-8, a draft of the recommendation shall be reviewed and approved by the Board.

C. Enhancements to Disclosure Committee Duties and Responsibilities

The Charter of the Disclosure Committee shall be amended to provide as follows:

1. The Disclosure Committee shall record minutes of all meetings, and shall provide the Audit Committee with all meeting minutes and, at the request of the Audit Committee, all materials, exhibits and attachments reviewed in connection with the preparation and review of each of the Company's periodic reports filed under the Exchange Act on Forms 10-K and 10-Q, as well as proxy statements and quarterly earnings releases.

2. Before each periodic report on Form 10-K or Form 10-Q is filed, the Chair of the Disclosure Committee or his or her designee shall report to the Audit Committee regarding the Disclosure Committee's deliberations, activities, and disclosure recommendations on such filings.

3. The Disclosure Committee shall be responsible for evaluating the materiality of information and events relating to or affecting the Company, and determining the timing and appropriate method of disclosure of information deemed material.

4. At least on a quarterly basis, the Disclosure Committee Chair shall prepare and submit to the Audit Committee a report regarding any concerns about actual or potential disclosure issues.

5. The Company shall post the Disclosure Committee Charter on its website.

D. Enhancements to Audit Committee Duties and Responsibilities

1. The Audit Committee Charter shall be amended to provide that the Audit Committee will be responsible for overseeing the work of the Disclosure Committee. The Audit

Committee shall meet at least quarterly with the Chair of the Disclosure Committee and discuss matters of potential significance to Rockwell's compliance with securities laws, the adequacy of the Company's internal controls over financial reporting, and the Company's published earnings guidance (if any).

2. The Audit Committee Charter and other Company policies shall be amended as necessary to provide mechanisms for periodic and ad hoc reporting to the Audit Committee and the Disclosure Committee by the operational units in which matters arise that are material to the Company's financial reporting and related disclosures.

3. Committee policies shall be amended as necessary to reflect that all Company employees are expected to cooperate with Audit Committee investigations, and that any failure to cooperate may be grounds for discipline by the Board, including, but not limited to, termination, in the sole discretion of the Board.

E. Whistleblower Program and Policy

1. The Board shall require the Company to maintain a formal written policy protecting whistleblowers who, in good faith, report actual or suspected violations of laws or Company policies (the "Whistleblower Policy").

2. The Company's Whistleblower Policy shall, inter alia, address the following points:

(a) Encourage individuals to report known ethical and legal violations, and/or their reasonable beliefs that ethical and legal violations have occurred (with such reports to be made, as appropriate, to the employee's supervisor, the Audit Committee, or a third-party operated "Whistleblower Hotline") so that action may be taken to resolve the problem. Complaints submitted through the Whistleblower Hotline shall be reviewed by the Audit Committee, in consultation with and under the supervision of legal counsel, and presented to the full Board as

appropriate;

(b) State that Rockwell is serious about adherence to its corporate governance policies and that whistleblowing is an important tool in achieving this goal, including by making clear that it is both illegal and against Rockwell's policy to discharge, demote, suspend, threaten, intimidate, harass or in any manner discriminate against whistleblowers, and that executives may be subject to penalties, including termination, for retaliation against whistleblowers;

(c) Make clear that whistleblower complaints may be directed to the Audit Committee in addition to the Whistleblower Hotline, and that complaints will be handled by these parties anonymously and in confidence;

(d) Make clear that if a whistleblower brings his or her complaint to an outside regulator or other governmental entity, he or she will be protected by the terms of the Whistleblower Policy just as if he or she directed the complaint to the Audit Committee, the employee's supervisor, and/or the Whistleblower Hotline; and

(e) Make clear that if an employee is subject to an adverse employment decision as a result of whistleblowing, the employee may assert a claim for impermissible retaliation under applicable laws and regulations. The Company shall provide a written communication at least annually reminding employees of whistleblower options and whistleblower protections set forth in the Company's policies, as well as posting such policies on the Company's intranet (or through similar means of providing notice to employees).

3. The Audit Committee shall receive at least quarterly: (i) a report on hotline usage trends; and (ii) a report on statistics regarding the results of whistleblower complaints (i.e., the percentage that led to investigation, the percentage referred to Human Resources, etc.).

4. A log of whistleblower complaints, and the results of all investigations of

complaints, shall be memorialized in writing and maintained for a period of not less than one year.

5. The Company's General Counsel (if any) shall have access to the log at any time and shall oversee (together with the Audit Committee) any internal investigations into complaints relating to ethics and/or compliance.

6. The Audit Committee shall have access to the log at any time, and shall receive timely reports from the Company's General Counsel (if any) regarding any complaints raising material ethics and/or compliance risks, including updates regarding any investigations into such complaints.

7. To the extent applicable, at each regularly scheduled Board meeting, the Board shall be provided with a summary of the types of complaints received, as well as any material information resulting from any internal investigation into such complaints.

8. The Whistleblower Policy shall at all times be publicly available on the Company's website.

F. Enhanced Nominating and Corporate Governance Committee Responsibilities

1. The Governance Committee Charter shall be amended to reflect that the Governance Committee is responsible for evaluating all stockholder proposals submitted in accordance with Rule 14a-8 and making recommendations to the Board regarding such proposals.

2. The Governance Committee Charter shall be amended to include the responsibility for evaluating disciplinary recommendations for executive officers and directors, and, together with the Company's independent directors (excepting any independent director who may be the subject of disciplinary review), making final determinations regarding such discipline.

3. At least once annually, the Governance Committee shall conduct a formal evaluation of Rockwell's director nomination processes, compare these processes with best practices, and develop recommendations to the Board regarding any actions to take based on its

evaluation, including the implementation of new processes and procedures as necessary.

4. In accordance with its duties to develop principles of corporate governance and recommend such principles to the Board, the Governance Committee shall ensure that any agreed upon corporate governance principles or guidelines are available to the public through the Company's website.

5. Rockwell shall post the amended Governance Committee Charter on its website.

G. Enhanced Compensation Committee Responsibilities

1. To the extent that the Company is not already required to do so, the Company shall make additional disclosures in its definitive annual meeting proxy statements beginning with its 2020 definitive proxy statement. These additional disclosures shall provide an overview of the Company's compensation philosophy and compensation-setting process for directors and officers, including (at a minimum): (a) a description of the involvement of any independent compensation consultant in the compensation-setting process; (b) the peer group used in setting compensation for directors and officers in a given year; and (c) a description of the use of benchmarking data in setting executive compensation, and any peer group benchmarking analysis employed in setting such compensation.

2. The Board shall annually review and approve the compensation payable to directors and executive officers, including any recommendation by the Compensation Committee as to changes in the compensation payable to directors and/or executive officers.

3. In determining, setting, or approving annual short-term compensation arrangements, the Compensation Committee shall take into account the particular executive's performance as it relates to both legal compliance and compliance with the Company's internal policies and procedures.

4. In determining, setting, or approving termination benefits and/or separation pay to executive officers, the Compensation Committee shall take into consideration the circumstances surrounding the particular executive officer's departure and the executive's performance as it relates to both legal compliance and compliance with the Company's internal policies and procedures.

5. Rockwell shall post the amended Compensation Committee Charter on its website.

IV. STANDARDS FOR PRELIMINARY APPROVAL OF THE SETTLEMENT

It is well-settled that strong public policies favor the settlement of disputed claims, especially in complex class and shareholder derivative litigation. *Schimmel v. Goldman*, 57 F.R.D. 481, 487 (S.D.N.Y. 1977) (settlements of shareholder derivative actions particularly favored because such litigation is "notoriously difficult and unpredictable") (citation omitted); *Republic Nat'l Life Ins. Co. v. Beasley*, 73 F.R.D. 658, 667 (S.D.N.Y. 1977) (same).

Pursuant to Rule 23.1 of the Federal Rules of Civil Procedure, a derivative action "may be settled, voluntarily dismissed, or compromised only with the court's approval. Notice of a proposed settlement, voluntary dismissal, or compromise must be given to shareholders or members in the manner that the court orders." Fed. R. Civ. P. 23.1(c). "The role of the court and the criteria considered in evaluating the adequacy and fairness of a derivative settlement are substantially the same as in a class action." Alba Conte & Herbert Newberg, *Newberg on Class Actions* §22.110 at 476 (4th ed. 2002).

The procedure for the Court's review of a derivative settlement is well-established. Preliminary approval is the first of two stages that comprise the approval procedure. The Court first reviews the proposal preliminarily to determine whether it is sufficient to warrant notice to shareholders and a hearing. If so, the Court would then consider final approval of the settlement at

a settlement hearing, after notice of settlement is provided to shareholders. *Manual for Complex Litigation* §13.14 at 173 (4th ed. 2004). Preliminary approval does not require the Court to answer the ultimate question of whether the proposed settlement is fair, reasonable, and adequate. *Id*. Rather, that determination is made only after notice of the settlement has been given to shareholders and after they have been given the opportunity to comment. 5 James Wm. Moore, *Moore's Federal Practice* 23.83[1] at 23-336.2 to 23-339 (3d ed. 2002).

The standards for preliminary approval are "not as stringent as those" for final approval. *Manual for Complex Litigation* §21.632 (4th ed. 2004). To grant preliminary approval, the Court need only make a preliminary determination regarding the fairness, reasonableness, and adequacy of the settlement. *In re Prudential Sec. Inc. P'ships Litig.*, 163 F.R.D. 200, 210 (S.D.N.Y. 1995). The sole issue before the Court is whether the Settlement falls within the range of what could be found to be fair, adequate, and reasonable, such that it would be appropriate to give notice to the shareholders and schedule a hearing to consider final approval of the Settlement. *In re Currency Conversion Fee Antitrust Litig.*, 2006 U.S. Dist. LEXIS 81440, at *13 (S.D.N.Y. Nov. 8, 2006) (court to conduct "a preliminary evaluation as to whether the settlement is fair, reasonable and adequate") (citation omitted); *In re NASDAQ Market-Makers Antitrust Litig.*, 176 F.R.D. 99, 102 (S.D.N.Y. 1997) (preliminary approval requires only a "preliminary evaluation of the fairness of the settlement, prior to notice"). The substantive determination regarding whether a proposed settlement is fair, adequate, and reasonable is to be made after notice of the settlement has been given to shareholders and after they have been given an opportunity to voice their views regarding the settlement. *Detroit v. Grinnell Corp.*, 495 F.2d 448, 456 (2d Cir. 1974).

Preliminary approval should generally be granted where, as here, the proposed settlement appears to be the product of serious, informed, non-collusive negotiations; has no obvious substantive deficiencies; and falls within the range of possible approval in light of the benefits

guaranteed by the settlement and the risks, cost and delays entailed in attempting to secure a better result through continued litigation. *See NASDAQ*, 176 F.R.D. at 102 (citing *Manual for Complex Litigation, Third*, § 30.41); *West Virginia v. Chas. Pfizer & Co.*, 314 F. Supp. 710, 741 (S.D.N.Y. 1970), *aff'd*, 440 F.2d 1079 (2d Cir. 1971) (preliminary fairness evaluation should balance possible "'rewards of litigation' with its 'risk and cost'" against benefits guaranteed through proposed settlement) (citations omitted).

V. THE SETTLEMENT WARRANTS PRELIMINARY APPROVAL

Plaintiffs respectfully submit that the proposed Settlement is well within the range of possible approval. Reference to some of the factors considered by courts in granting final approval of derivative and class action settlements lends ample support to Plaintiffs' request that the Settlement be preliminary approved, *i.e.*, is within the range of possible approval. *In re Pfizer Inc. S'holder Derivative Litig.*, 780 F. Supp. 2d 336, 340 (S.D.N.Y. 2011).

A "preliminary determination" of fairness can easily be made here because the Settlement was negotiated in good faith and at arm's-length among experienced counsel and will result in material benefits for nominal defendant Rockwell. Given the complexities of the Litigation and the uncertainties inherent in shareholder derivative litigation generally, the proposed Settlement eliminates the risk that Rockwell might not otherwise obtain any benefit or might obtain a lesser benefit. Settlement at this stage in the litigation will also limit the expense of risky, and prolonged litigation, which is in the best interests of Rockwell and all of the Settling Parties. These reasons are more than sufficient to support Plaintiffs' assertion that the Settlement is "within the range of possible approval" and should be preliminarily approved, as set forth below.

A. The Settlement Merits a Presumption of Fairness Because It Is the Product of Arm's-Length Negotiations by Experienced and Well-Informed Counsel

In determining whether a settlement is fair, courts focus on whether the settlement was reached as a result of good faith bargaining at arm's-length without collusion. *Weinberger v.*

Kendrick, 698 F.2d 61, 74 (2d Cir. 1982). Here, the Settlement was negotiated between and among experienced and sophisticated counsel and provides substantial benefits to the Company while eliminating the expense, risk, and delay inherent in such complex litigation, including the very real risk of no recovery. As the court observed in *City of Providence v. Aéropostale, Inc.*, 2014 WL 1883494, at *4 (S.D.N.Y. May 9, 2014), *aff'd sub nom. Arbuthnot v. Pierson*, 607 F. Appx. 73 (2d Cir. 2015), an "initial presumption of fairness and adequacy applies here because the Settlement was reached by experienced, fully-informed counsel after arm's-length negotiations …" *Id.* at *11-12; *see also In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 576 (S.D.N.Y. 2008) ("a strong presumption of fairness" attaches to settlements negotiated at arm's-length by experienced counsel).

Moreover, exercise of independent business judgment by directors is traditionally afforded significant deference by courts. *See Zapata Corp. v. Maldonado*, 430 A.2d 779, 782 (Del. 1981); *Brooks v. Am. Exp. Indus., Inc.*, 1977 U.S. Dist. LEXIS 17313, at *10 (S.D.N.Y. Feb. 17, 1977) ("The Court is of the view that in this case, the decision of the AEI board to approve this settlement is appropriately afforded certain deference; it is a business judgment with presumptive validity."). Here, Rockwell, acting through its independent, non-defendant directors, reviewed the allegations and the Settlement terms, and in a good faith exercise of business judgment determined that (1) the terms of the Settlement and each of its terms, as set forth in the Stipulation, are in the best interests of Rockwell; and (2) the Settlement confers substantial benefits on the Company and its stockholders. Stipulation § IV.

Significant weight also should be attributed to the belief of experienced counsel that settlement is in the best interest of those affected by the settlement. *In re PaineWebber Ltd. P'ships Litig.*, 171 F.R.D. 104, 125 (S.D.N.Y. 1997) ("'[G]reat weight' is accorded to the recommendations of counsel, who are most closely acquainted with the facts of the underlying litigation."); *In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 173-74 (S.D.N.Y. 2000)

(settlement enjoys presumption of fairness where it is the product of arm's-length negotiations conducted by experienced and knowledgeable counsel); *In re Metro. Life Derivative Litig.*, 935 F. Supp. 286, 294 (S.D.N.Y. 1996) (same); *In re Elan Sec. Litig.*, 385 F. Supp. 2d 363, 369 (S.D.N.Y. 2005) (same). "'Absent fraud or collusion, [courts] should be hesitant to substitute [their] judgment for that of the parties who negotiated the settlement.'" *Clark v. Ecolab Inc.*, 2010 WL 1948198, at *4 (S.D.N.Y. May 11, 2010) (alterations in original); *In re Advanced Battery Techs., Inc. Sec. Litig.*, 298 F.R.D. 171, 174 (S.D.N.Y. 2014) (same). Robbins LLP has tremendous experience in shareholder derivative litigation. *See* Sanders Decl., Ex. 2. Plaintiffs' Counsel thus have unique insight into the legal and factual issues presented. *In re NeuStar, Inc. Sec. Litig.*, 2015 WL 8484438, at *4 (E.D. Va. Dec. 8, 2015) (where, as here, plaintiffs' counsel are "'nationally recognized members of the securities litigation bar,'" the Court "may pay heed to [Plaintiffs'] Counsel's judgment in approving, negotiating, and entering into a putative settlement") (citation omitted). Defendants were vigorously represented by Gibson Dunn & Crutcher LLP and Goodwin Procter LLP—highly experienced practitioners from preeminent corporate defense firms.[2]

In addition, Plaintiffs and their counsel acted on an informed basis in negotiating the Settlement. "[T]he question is not whether the parties have completed a particular amount of discovery, but whether the parties have obtained sufficient information about the strengths and weaknesses of their respective cases to make a reasoned judgment about the desirability of settling the case on the terms proposed or continuing to litigate it." *In re Educ. Testing Serv. Praxis Principles of Learning & Teaching, Grades 7-12 Litig.*, 447 F. Supp. 2d 612, 620-21 (E.D. La.

[2] While the Court need not address fees until final approval, it bears mention that arm's-length fee negotiations receive similar deference. *See Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983) (negotiated fees strongly preferred) ("A request for attorney's fees should not result in a second major litigation."). Where there is no evidence of collusion and no detriment to the parties, "the Court should give substantial weight to a negotiated fee amount." *Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685, 695 (N.D. Ga. 2001).

2006); *see also In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) ("'formal discovery is not a necessary ticket to the bargaining table' where the parties have sufficient information to make an informed decision about settlement"). Here, Plaintiffs, by and through Plaintiffs' Counsel, thoroughly considered the facts and law underlying the Litigation and have conducted an extensive investigation relating to the claims and the underlying events alleged in the Litigation, including: (i) reviewing Rockwell's press releases, public statements, SEC filings, and securities analysts' reports and advisories about the Company; (ii) reviewing related media reports about the Company; (iii) researching applicable law with respect to the claims alleged in the Litigation and potential defenses thereto; (iv) preparing and filing derivative complaint(s); (v) conducting extensive damages analyses; (vi) researching Rockwell's existing and historical corporate governance practices and processes, corporate governance processes at Rockwell's peer companies, and industry-wide best practices; (vii) reviewing non-public documents produced by certain Defendants; (viii) preparing a detailed settlement demand that helped set the framework for settlement negotiations and ultimately the Settlement; (ix) evaluating the merits of the Securities Class Action and the potential liability of the defendants in the Securities Class Action, including the settlement of the Securities Class Action; and (x) negotiating this Settlement, including researching corporate governance best practices and negotiating the Reforms. Plaintiffs believe that the claims asserted in the Litigation have merit, but they also recognize and acknowledge the significant risk, expense, and length of continued proceedings necessary to prosecute the Litigation through trial and appeal. Plaintiffs and Plaintiffs' Counsel also have taken into account the uncertain outcome and the risk of any litigation, especially in complex cases such as the Litigation, as well as the difficulties and delays inherent in such litigation. After weighing the risks of continued litigation, Plaintiffs and Plaintiffs' Counsel determined that it is in the best interests of Rockwell and its shareholders that the Litigation be fully and finally settled in the

manner and upon the terms and conditions set forth in the Stipulation, and that those terms and conditions are fair, reasonable, adequate, and confer substantial benefits upon Rockwell and its shareholders.

As described herein and in Section IV of the Stipulation, Plaintiffs, by and through Plaintiffs' Counsel, and the Defendants, by and through their counsel, and exercising their business judgment and mindful of their duties to shareholders, have independently considered the Settlement and all agree that it is in the best interest of Rockwell and its shareholders. This weighs in favor of settlement approval.

B. The Settlement Confers Valuable Benefits upon Rockwell and Falls Well Within the Range of Possible Approval

"[S]trong corporate governance is fundamental to the economic well-being and success of a corporation;" accordingly, courts have long "recognized that corporate governance reforms such as those achieved here provide valuable benefits for public companies." *In re NVIDIA Corp. Derivative Litig*, 2009 U.S. Dist. LEXIS 24973, at *11-12 (N.D. Cal. Mar. 18, 2009); *see also Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375, 395 (1970) ("[A] corporation may receive a 'substantial benefit' from a derivative suit ... regardless of whether the benefit is pecuniary in nature."); *Maher v. Zapata Corp.*, 714 F.2d 436, 461 (5th Cir. 1983) ("[T]he effects of the suit on the functioning of the corporation may have a substantially greater economic impact on it, both long- and short-term, than the dollar amount of any likely judgment in its favor.").

Courts approve settlements supported by consideration in the form of corporate governance reforms "specifically designed to minimize the probability of violations of fiduciary duties and federal securities laws[.]" *Cohn v. Nelson*, 375 F. Supp. 2d 844, 853 (E.D. Mo. 2005). Among other benefits, such reforms make it "far less likely [that the corporation will] become subject to long and costly securities litigation in the future, as well as prosecution or investigation by regulators or prosecutors." *Id. See Pfizer Inc.,*, 780 F. Supp. 2d at 342 (approving settlement of

shareholder derivative action where the corporate benefits included "a significantly improved institutional structure for detecting and rectifying the types of wrongdoing that have, in recent years, caused extensive harm to the company"); *Unite Nat'l Ret. Fund v. Watts*, 2005 WL 2877899, at *2 (D.N.J. Oct. 28, 2005) (non-monetary benefits support settlement where "the relief is intended to prevent future harm"). The Reforms guaranteed by the Settlement confer this sort of substantial benefit here.

Rockwell and the Individual Defendants acknowledge that the commencement, litigation, and settlement of the Litigation was the cause of the Board's decision to implement and maintain a number of new corporate governance enhancements, which will help to ensure (among other things) enhanced director independence and stockholder input and involvement; timely and accurate public disclosures by the Company, including through enhancements to the duties and responsibilities of the Company's Disclosure Committee and Board-level Audit Committee; improved policies and procedures relating to whistleblower complaints; and improved transparency and enhanced processes relating to the compensation paid to the Company's executives and directors. Taken together, these Reforms will strengthen the Company's legal and regulatory compliance, reduce the Company's exposure to violations and the substantial penalties that result therefrom, and make Rockwell a better-run Company overall moving forward. The Settlement is an outstanding resolution for Rockwell and it positions the Company to reap the long-term benefits of strong corporate governance. Indeed, as described in Section IV of the Stipulation, Defendants acknowledge that the Settlement confers substantial benefits on the Company and its stockholders. Rockwell has agreed to maintain all of these governance measures for a minimum of four (4) years – a meaningful amount of time intended to ensure the Reforms become embedded in the Company's policies, practices, and corporate culture, thus protecting against discontinuation of these Reforms following the four-year period. Stipulation § VI; *see*

also, e.g., *Cohn v. Nelson*, 375 F. Supp. 2d 844, 850 (E.D. Mo. 2005) (finding that corporate governance measures which must be in place for no less than three years will "provide meaningful ways of avoiding the problems [the company] experienced in the recent past").

An evaluation of the benefits of settlement must be tempered by recognition that any compromise involves concessions by all settling parties. Indeed, "inherent in compromise is a yielding of absolutes and an abandoning of highest hopes." *Milstein v. Werner*, 57 F.R.D. 515, 524-25 (S.D.N.Y. 1972). Here, the Settlement provides substantial benefits to Rockwell and its shareholders while eliminating numerous risks, costs, and burdens of litigation for all concerned, including the Company. Balanced against the delays, costs, and particularly the risks of attempting to secure additional benefits through further litigation and trial, the substantial benefits of the Settlement clearly fall within the range of possible approval as fair, reasonable, and adequate. *See Pfizer Inc.*, 780 F. Supp. 2d at 340 (citation omitted).

While Plaintiffs believe that the claims alleged in the Litigation are meritorious, continued litigation of the Litigation would be complex, costly, and of substantial duration, and significant risks would remain. Plaintiffs would have to overcome these hurdles in the context of a shareholder derivative action, which is "notoriously difficult and unpredictable." *Maher*, 714 F.2d at 455. In fact, courts have recognized that a derivative failure of oversight claim "is possibly the most difficult theory in corporation law on which a plaintiff might hope to win a judgment." *In re Caremark International Inc. Deriv. Litig.*, 698 A.2d 959, 967 (Del. Ch. 1996).

Plaintiffs likely would have faced a motion to dismiss by Defendants challenging the sufficiency of the allegations, as well as whether Plaintiffs' litigation demands were wrongfully ignored or refused—a daunting task for any shareholder derivative plaintiff. *See, e.g.*, *Kern v. Kern-Koskela*, 320 Mich. App. 212, 223, 905 N.W.2d 453, 461 (2017) (under Mich. Comp. Laws section 450.1495, courts may not review the merits of the underlying claims and, instead, may

only conduct a limited inquiry into whether the investigation was reasonable and the determination was made in good faith, and may only make such an inquiry if the independence of the process is challenged by plaintiffs);[3] *Spiegel v. Buntrock*, 571 A.2d 767, 774 (Del. 1990) (where demand is made courts apply business judgment presumption that, in responding, the directors "acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company"); *Norfolk Cnty. Ret. Sys. v. Jos. A. Bank Clothiers, Inc.*, 2009 WL 353746, at *7 n.51 (Del. Ch. Feb. 12, 2009) ("Demonstrating wrongful refusal is more daunting than demonstrating demand futility."). If that motion was defeated, litigation would be extremely complex, costly, and of substantial duration. Document discovery would need to be conducted, depositions would need to be taken, experts would need to be designated and expert discovery conducted. The Defendants' expected motions for summary judgment would have to be briefed and argued and a trial would have to be held. Even if liability was established, the amount of recoverable damages would still have posed significant issues and would have been subject to further litigation. *See In re Lloyd's Am. Trust Fund Litig.*, 2002 WL 31663577, at *21 (S.D.N.Y. Nov. 26, 2002) ("The determination of damages ... is a complicated and uncertain process, typically involving conflicting expert opinions. The reaction of a jury to such complex expert testimony is highly unpredictable.").

Moreover, a victory at trial is no guarantee that the judgment would ultimately be sustained on appeal or by the trial court. *See, e.g., Berkey Photo, Inc. v. Eastman Kodak Co.*, 603 F.2d 263 (2d Cir. 1979) (reversing $87 million judgment after trial). Add to these post-trial and appellate risks, the difficulty and unpredictability of a lengthy and complex trial—where witnesses could

[3] Rockwell was a Michigan corporation at the time Plaintiffs' demands were made. The Company reincorporated in Delaware on August 30, 2019.

suddenly become unavailable or the fact finder could react to the evidence in unforeseen ways—and the benefits of the Settlement become all the more apparent. *Grant v. Bethlehem Steel Corp.*, 823 F.2d 20, 24 (2d Cir. 1987) (affirming settlement where potential defenses presented the "possibility of 'a lesser or no recovery after trial'") (citations omitted). The Settlement eliminates these and other risks of continued litigation, including the very real risk of no recovery after several more years of litigation, while providing the Company and its shareholders substantial benefits. *In re Sony SXRD Rear Projection Television Class Action Litig.*, 2008 WL 1956267, at *6 (S.D.N.Y. May 1, 2008).

VI. NOTICE TO CURRENT ROCKWELL SHAREHOLDERS SATISFIES THE REQUIREMENTS OF RULE 23.1(C) AND DUE PROCESS

Fed. R. Civ. P. 23.1(c) requires that the notice of a proposed shareholder derivative settlement be given to shareholders "in the manner that court orders." Notice in a derivative action must meet the due process requirement of being "reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the [settlement] and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

Here, the Stipulation and proposed Preliminary Approval Order provide that within fifteen (15) business days after the date of an order preliminarily approving the Settlement, Rockwell shall make a good faith effort to provide notice to Rockwell's stockholders in the following manner: (i) filing of the Notice and Stipulation with the SEC in a Form 8-K or other appropriate filing; (ii) publishing of the summary form of the Notice once in *Investor's Business Daily*; and (iii) including the Notice on an Internet page that Rockwell shall create for this purpose, which shall be accessible via a link on the "Investors" page of the Company's website, the address of which shall be contained in the Notice and Summary Notice.[4]

[4] Counsel for Rockwell, at least seven (7) business days before the Settlement Hearing, shall file with the Court an appropriate proof of Notice and compliance with the other Notice procedures set

The proposed method of notice to shareholders here satisfies Rule 23.1 and due process standards in derivative actions brought by shareholders on behalf of public corporations. *See Arace v. Thompson*, 2011 WL 3627716, at *4 (S.D.N.Y. Aug. 17, 2011) ("[T]he publication of the notice in the September 25, 2009 edition of the *Investor's Business Daily*—'a nationally-circulated business-oriented publication catering to investors'—sufficiently apprised Wachovia shareholders of the nature of the proposed settlement, the upcoming public hearing on the matter, and the opportunity to object.") (citing *Marsden v. Select Med. Corp.*, 2005 U.S. Dist. LEXIS 714 (E.D. Pa. Jan. 18, 2005); *see also Metro. Life*, 935 F. Supp. at 294 n.10 (approving published notice of derivative settlement). Use of a Form 8-K together with publication in business periodicals and on company websites is the accepted practice in shareholder derivative actions. Personal notice is unnecessary because, unlike a shareholder class action, the settlement of a shareholder derivative action resolves claims belonging to, and secures a recovery for, the corporation, not individual class members. *See In re Rambus Inc. Derivative Litig.*, No. 5:06-cv-03513-JF, slip op., ¶8 (N.D. Cal. Oct. 30, 2008) (approving notice by filing on Form 8-K, Business Wire press release, and posting on company's website), Sanders Decl., Ex. 3; *In re: MoneyGram Int'l, Inc. Derivative Litig.*, No. 0:09-cv-03208-DSD-JJG, slip op., ¶3 (D. Minn. Apr. 1, 2010) (same), Sanders Decl., Ex. 4; *In re Comverse Tech., Inc. Derivative Litig.*, No. 2:06-cv-01849-NGG -RER, slip op., ¶¶10-11 (E.D.N.Y. Apr. 6, 2010) (approving notice by filing on Form 8-K, publication in *The Wall Street Journal* and posting on company's website), Sanders Decl., Ex. 5; *In re Marvell Tech. Grp.*

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forth in the Preliminary Approval Order, or, if Notice and compliance with the Notice procedures set forth in the Preliminary Approval Order have not been completed for reasons outside Rockwell's control, including but not limited to complications arising from the COVID-19 pandemic, resulting government orders, and limits on notice- and service-providers on which Rockwell would otherwise rely to effect service, Rockwell shall apprise the Court and, if necessary to ensure that Notice is sufficient, request that the Settlement Hearing be continued and rescheduled for a date certain that is mutually agreeable for the Settling Parties and the Court. Stipulation § V.2.G(5.4).

Ltd. Derivative Litig., No. 5:06-cv-03894-RMW, slip op., ¶4 (N.D. Cal. May 21, 2009) (same), Sanders Decl., Ex. 6; *Wandel, et al. v. Brenneman et al.*, No. 2006 Civ. 117491, slip op., ¶7 (Ga. Super. Ct. Apr. 3, 2008) (approving notice by filing on Form 8-K and publication in *Investor's Business Daily*), Sanders Decl., Ex. 7.

Additionally, the Notice is drafted in plain and easily understood language and clearly describes: the nature of the Litigation and the claims alleged therein; the terms of the proposed Settlement (including the attorneys' fees and expenses to be paid to Plaintiffs' Counsel, and the service awards to be paid to Plaintiffs therefrom, subject to Court approval); the considerations that caused the Settling Parties to conclude that the Settlement is fair, reasonable, adequate, and in Rockwell's best interests; the procedures for objecting to the Settlement; and the date, time, and place of the Settlement Hearing. *See* Sanders Decl., Ex. 1, Stipulation, Exs. C and D. In addition, the Notice invites current Rockwell shareholders who seek additional information not only to inspect the Stipulation and other documents filed with the Court, but also to contact the Settling Parties' counsel. As a result, the Notice is reasonably "calculated to apprise the parties of the terms of the proposed settlement and the options available in connection with the judicial proceeding." *In re Drexel Burnham Lambert Group*, 995 F. 2d 1138, 1144 (2d Cir. 1993). The Court, therefore, should approve the proposed method and form of Notice to Current Rockwell shareholders.

VII. PROPOSED SCHEDULE OF EVENTS

In connection with preliminary approval of the proposed Settlement, Plaintiffs respectfully request that the Court establish: (i) dates by which notice of the Settlement will be distributed to Rockwell shareholders; (ii) the date by which Rockwell shareholders may comment on the Settlement; and (iii) the date of a Settlement Hearing, at which the Court will consider whether final approval of the proposed Settlement should be granted. As set forth in the Preliminary Approval Order, Plaintiffs propose the following schedule:

Filing of Notice along with a Form 8-K or other SEC filing	15 business days after the Court enters the Preliminary Approval Order
Summary Notice published in *Investor's Business Daily*	15 business days after the Court enters the Preliminary Approval Order
Filing of Motion for Final Approval of Derivative Settlement	28 calendar days before Settlement Hearing
Last day for Rockwell shareholders to comment on the proposed Settlement	14 calendar days before Settlement Hearing
Defendants' counsel to file affidavit or declaration regarding publication and posting of Notice and Summary Notice	7 business days before Settlement Hearing
Filing of reply in support of Final Approval of Derivative Settlement	7 calendar days before Settlement Hearing
Settlement Hearing Date	At least fifty (50) calendar days after entry of the Preliminary Approval Order

VIII. CONCLUSION

Given the substantial benefits the Settlement provides to Rockwell and current Rockwell Shareholders, Plaintiffs respectfully request that the Court enter the proposed Preliminarily Approval Order, attached as Exhibit A to the Stipulation (Sanders Decl., Ex. 1), which: (i) preliminarily approves the proposed Settlement; (ii) approves the form and manner of publication and posting of the proposed Notice and Summary Notice; and (iii) schedules the Settlement Hearing.

Dated: May 26, 2020

ROBBINS LLP

/s/ *Shane P. Sanders*

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CERTIFICATE OF SERVICE

I hereby certify that on May 26, 2020, I authorized the electronic filing of the foregoing, and all attachments thereto, with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List for this action.

/s/ *Shane P. Sanders*
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