UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CITY OF BIRMINGHAM FIREMEN'S AND POLICEMEN'S SUPPLEMENTAL PENSION SYSTEM, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. RYANAIR HOLDINGS PLC and MICHAEL O'LEARY, Defendants.	Civil Action No. 1:18-cv-10330-JPO <u>CLASS ACTION</u> MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION FOR (1) FINAL APPROVAL OF CLASS ACTION SETTLEMENT, (2) APPROVAL OF PLAN OF ALLOCATION, AND (3) LEAD COUNSEL'S APPLICATION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND AWARD TO PLAINTIFF PURSUANT TO 15 U.S.C. §78u-4(a)(4)

TABLE OF CONTENTS

Page

I. PRELIMINARY STATEMENT 1

II. FACTUAL AND PROCEDURAL BACKGROUND 4

III. THE COURT SHOULD FINALLY CERTIFY THE CLASS FOR PURPOSES OF EFFECTUATING THE SETTLEMENT 7

IV. THE SETTLEMENT SHOULD BE GRANTED FINAL APPROVAL 8

A. Standards for Final Approval of Class Action Settlements 8

B. The Proposed Settlement Is Procedurally and Substantively Fair, Adequate, and Reasonable 9

1. The Settlement Satisfies the Requirements of Rule 23(e)(2) 9

a. Plaintiff and Lead Counsel Adequately Represented the Class 10

b. The Settlement Resulted from Extensive Arm's-Length Negotiations 11

c. The Proposed Settlement Is Adequate in Light of the Costs, Risks, and Delays of Trial and Appeal 12

(1) The Risks of Establishing Liability at Trial 12

(2) The Settlement Eliminates the Additional Costs and Delay of Continued Litigation 14

d. The Proposed Method for Distributing Relief Is Effective 15

e. The Requested Attorneys' Fees Are Reasonable 16

f. The Parties Have No Other Agreements Except for a Standard Supplemental Agreement 17

g. The Settlement Treats Class Members Equitably 17

2. The Settlement Satisfies the Remaining *Grinnell* Factors 18

a. The Lack of Objections to Date Supports Final Approval 18

b. Plaintiff Had Sufficient Information to Resolve the Case 18

Page

c. Maintaining Class Action Status Through Trial Presents Substantial Risk 19

d. Defendants' Ability to Withstand a Greater Judgment....19

e. The Settlement Amount Is Reasonable in View of the Best Possible Recovery and the Risks of Litigation 20

V. THE PLAN OF ALLOCATION IS FAIR AND ADEQUATE 21

VI. NOTICE TO THE CLASS SATISFIES THE REQUIREMENTS OF RULE 23 AND DUE PROCESS 21

VII. AWARD OF ATTORNEYS' FEES....23

A. Lead Counsel Is Entitled to an Award of Attorneys' Fees and Expenses from the Common Fund Achieved in the Settlement 23

B. The Court Should Award a Reasonable Percentage of the Common Fund....23

C. The Requested Attorneys' Fees Are Reasonable Under the Percentage-of-the-Fund Method....24

D. The Relevant Factors Confirm that the Requested Fee Is Reasonable 25

1. The Time and Labor Expended by Counsel 25

2. The Magnitude and Complexity of the Litigation 26

3. The Risks of the Litigation Support the Requested Fee 26

4. The Quality of Representation and Public Policy Support the Requested Fee 28

5. Plaintiff's Approval and the Class's Reaction to Date Support the Requested Fee 29

E. A Lodestar Crosscheck Confirms the Reasonability of the Requested Fee....29

VIII. COUNSEL'S EXPENSES WERE REASONABLY INCURRED AND NECESSARY TO THE PROSECUTION OF THIS LITIGATION....31

IX. PLAINTIFF SHOULD RECEIVE A REASONABLE AWARD PURSUANT TO 15 U.S.C. §78u-4(a)(4) 32

Page

X. CONCLUSION..33

TABLE OF AUTHORITIES

Page

CASES

Anwar v. Fairfield Greenwich Ltd.,
2012 WL 1981505 (S.D.N.Y. June 1, 2012) 30

Aponte v. Comprehensive Health Mgmt.,
2013 WL 1364147 (S.D.N.Y. Apr. 2, 2013)..26

Bellifemine v. Sanofi-Aventis U.S. LLC,
2010 WL 3119374 (S.D.N.Y. Aug. 6, 2010)..18

Blum v. Stenson,
465 U.S. 886 (1984)..23, 24

Boeing Co. v. Van Gemert,
444 U.S. 472 (1980)..23

Camden I Condo. Ass'n v. Dunkle,
946 F.2d 768 (11th Cir. 1991) 24

Castagna v. Madison Square Garden, L.P.,
2011 WL 2208614 (S.D.N.Y. June 7, 2011) 19

Christine Asia Co., Ltd. v. Yun Ma,
2019 WL 5257534 (S.D.N.Y. Oct. 16, 2019).. *passim*

City of Providence v. Aeropostale, Inc.,
2014 WL 1883494 (S.D.N.Y. May 9, 2014),
aff'd sub nom. Arbuthnot v. Pierson,
607 F. App'x 73 (2d Cir. 2015) 19, 23

Cordes & Co. Fin. Servs., Inc. v. A.G. Edwards & Sons, Inc.,
502 F.3d 91 (2d Cir. 2007)..10

Detroit v. Grinnell Corp.,
495 F.2d 448 (2d Cir. 1974)... *passim*

Erlandson v. Triterras, Inc., et al.,
No. 7:20-cv-10795-CS, ECF 82 (S.D.N.Y. Sept. 8, 2022)..25

Fogarazzo v. Lehman Bros.,
2011 WL 671745 (S.D.N.Y. Feb. 23, 2011)..31

4872-7732-8761.v1

Page

Goldberger v. Integrated Res., Inc.,
209 F.3d 43 (2d Cir. 2000).. *passim*

Gottlieb v. Barry,
43 F.3d 474 (10th Cir. 1994) 24

Harman v. Lyphomed, Inc.,
945 F.2d 969 (7th Cir. 1991) 24

Haw. Structural Ironworkers Pension Tr. Fund v. AMC Ent. Holdings, Inc.,
2022 WL 4136175 (S.D.N.Y. Feb. 14, 2022)..25

Hicks v. Morgan Stanley,
2005 WL 2757792 (S.D.N.Y. Oct. 24, 2005)..15

Hubbard v. BankAtlantic Bancorp, Inc.,
688 F.3d 713 (11th Cir. 2012) 28

In re Advanced Battery Techs., Inc. Sec. Litig.,
298 F.R.D. 171 (S.D.N.Y. 2014) 8, 14, 21

In re "Agent Orange" Prod. Liab. Litig.,
597 F. Supp. 740 (E.D.N.Y. 1984),
aff'd, 818 F.2d 145 (2d Cir. 1987)...20

In re Alstom SA Sec. Litig.,
741 F. Supp. 2d 469 (S.D.N.Y. 2010)..28

In re AOL Time Warner, Inc. Sec. & "ERISA" Litig.,
2006 WL 903236 (S.D.N.Y. Apr. 6, 2006)..12, 13, 20

In re AT&T Corp. Sec. Litig.,
455 F.3d 160 (3d Cir. 2006)..24

In re Bear Stearns Cos.,
909 F. Supp. 2d 259 (S.D.N.Y. 2012)..18

In re Bisys Sec. Litig.,
2007 WL 2049726 (S.D.N.Y. July 16, 2007) 30

In re China Sunergy Sec. Litig.,
2011 WL 1899715 (S.D.N.Y. May 13, 2011) 31

Page

In re Chrysler-Dodge-Jeep Ecodiesel® Mktg., Sales Pracs., & Prods. Liab. Litig., 2019 WL 2554232 (N.D. Cal. May 3, 2019) 9

In re Comverse Tech., Inc. Sec. Litig., 2010 WL 2653354 (E.D.N.Y. June 24, 2010) 30

In re Deutsche Bank AG Sec. Litig., 2020 WL 3162980 (S.D.N.Y. June 11, 2020) 33

In re Facebook, Inc., IPO Sec. & Derivative Litig., 343 F. Supp. 3d 394 (S.D.N.Y. 2018), *aff'd sub nom. In re Facebook, Inc.*, 822 F. App'x 40 (2d Cir. 2020) 12

In re FLAG Telecom Holdings, Ltd. Sec. Litig., 2010 WL 4537550 (S.D.N.Y. Nov. 8, 2010) .... *passim*

In re Hi-Crush Partners L.P. Sec. Litig., 2014 WL 7323417 (S.D.N.Y. Dec. 19, 2014) 18

In re IMAX Sec. Litig., 283 F.R.D. 178 (S.D.N.Y. 2012) 14

In re Intercloud Sys., Inc. Sec. Litig., No. 3:14-cv-01982-PGS-DEA, ECF 135 (D.N.J. Dec. 5, 2017) 33

In re JDS Uniphase Corp. Sec. Litig., 2007 WL 4788556 (N.D. Cal. Nov. 27, 2007) 27

In re Marsh ERISA Litig., 265 F.R.D. 128 (S.D.N.Y. 2010) 28, 29

In re Merrill Lynch Tyco Rsch. Sec. Litig., 249 F.R.D. 124 (S.D.N.Y. 2008). Notice....................22

In re PPDAI Grp. Inc. Sec. Litig., 2022 WL 198491 (E.D.N.Y. Jan. 21, 2022) 25

In re Prothena Corp. PLC Sec. Litig., 2019 WL 6528672 (S.D.N.Y. Dec. 4, 2019) 30

In re Signet Jewelers Ltd. Sec. Litig., 2020 WL 4196468 (S.D.N.Y. July 21, 2020) 10, 32

Page

In re Sony SXRD Rear Projection Television Class Action Litig.,
2008 WL 1956267 (S.D.N.Y. May 1, 2008) 19

In re Sumitomo Copper Litig.,
189 F.R.D. 274 (S.D.N.Y. 1999) 12, 26

In re Telik, Inc. Sec. Litig.,
576 F. Supp. 2d 570 (S.D.N.Y. 2008)....................9, 14, 24, 26

In re Thirteen Appeals Arising Out of the San Juan Dupont Plaza Hotel Fire Litig.,
56 F.3d 295 (1st Cir. 1995)....................24

In re Union Carbide Corp. Consumer Prods. Bus. Sec. Litig.,
724 F. Supp. 160 (S.D.N.Y. 1989)....................31

In re Veeco Instruments Inc. Sec. Litig.,
2007 WL 4115808 (S.D.N.Y. Nov. 7, 2007)....................27, 31, 33

In re Veeco Instruments Inc. Sec. Litig.,
2007 WL 4115809 (S.D.N.Y. Nov. 7, 2007)....................18, 21

In re WorldCom, Inc. Sec. Litig.,
388 F. Supp. 2d 319 (S.D.N.Y. 2005)....................21, 24

In re Xcel Energy, Inc. Sec., Derivative & ERISA Litig.,
364 F. Supp. 2d 980 (D. Minn. 2005)....................28

Lea v. TAL Educ. Grp.,
2021 WL 5578665 (S.D.N.Y. Nov 30, 2021)....................23, 25, 26

McMahon v. Oliver Cheng Catering & Events, LLC,
2010 WL 2399328 (S.D.N.Y. Mar. 3, 2010) 19

Mikhlin v. Oasmia Pharm. AB.,
2021 WL 1259559 (E.D.N.Y. Jan. 6, 2021) 14, 16

Mo. v. Jenkins by Agyei,
491 U.S. 274 (1989)....................24, 31

N.J. Carpenters Health Fund v. Royal Bank of Scot. Grp., PLC,
2019 WL 13150344 (S.D.N.Y. Mar. 8, 2019),
aff'd as modified sub nom. N.J. Carpenters Health Fund v. NovaStar Mortg., Inc.,
28 F.4th 357 (2d Cir. 2022) 11

4872-7732-8761.v1

Page

Newman v. Stein,
464 F.2d 689 (2d Cir. 1972)....................20

Okla. Police Pension Fund & Ret Sys. v. Teligent, Inc.,
2021 WL 5630806 (S.D.N.Y. Dec. 1, 2012) 31

Panther Partners Inc. v. Jianpu Tech. Inc., et al.,
No. 1:18-cv-09848-PGG, ECF 130 (S.D.N.Y. May 12, 2022) 25

Pelzer v. Vassalle,
655 F. App'x 352 (6th Cir. 2016) 16

Petrovic v. AMOCO Oil Co.,
200 F.3d 1140 (8th Cir. 1999) 24

Rawlings v. Prudential-Bache Props.,
9 F.3d 513 (6th Cir. 1993) 24

Reynolds v. Repsol YPF, S.A.,
2008 WL 11383317 (S.D.N.Y. May 7, 2008) 30

Robbins v. Koger Props., Inc.,
116 F.3d 1441 (11th Cir. 1997) 28

Silverman v. Motorola Sols., Inc.,
739 F.3d 956 (7th Cir. 2013) 28

Strougo ex rel. Brazilian Equity Fund, Inc. v. Bassini,
258 F. Supp. 2d 254 (S.D.N.Y. 2003)....................15

Swedish Hosp. Corp. v. Shalala,
1 F.3d 1261 (D.C. Cir. 1993)....................24

Thompson v. Metro. Life Ins. Co.,
216 F.R.D. 55 (S.D.N.Y. 2003) 9

Union Asset Mgmt. Holding A.G. v. Dell, Inc.,
669 F.3d 632 (5th Cir. 2012) 24

Vizcaino v. Microsoft Corp.,
290 F.3d 1043 (9th Cir. 2002) 24

Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.,
396 F.3d 96 (2d Cir. 2005)....................8, 9, 11, 23

Page

Woburn Ret. Sys. v. Salix Pharms., Ltd.,
2017 WL 3579892 (S.D.N.Y. Aug. 18, 2017) 27, 29

STATUTES, RULES AND REGULATIONS

15 U.S.C.
§78j(b) 4, 26
§78t(a) 4, 26
§78u-4(a)(6) 24
§78u-4(a)(7) 22

Federal Rules of Civil Procedure
Rule 23 21
Rule 23(a) 7
Rule 23(b)(3) 7
Rule 23(c) 19
Rule 23(c)(2)(B) 22
Rule 23(e) 1, 3
Rule 23(e)(1)(B) 22
Rule 23(e)(2) ..... *passim*
Rule 23(e)(2)(A) 11
Rule 23(e)(2)(B) 11
Rule 23(e)(2)(C)(i) 12, 15
Rule 23(e)(2)(C)(ii) 15
Rule 23(e)(2)(C)(iv) 17
Rule 23(e)(2)(D) 17
Rule 23(e)(3) 8, 17
Rule 23(f) 19

SECONDARY AUTHORITIES

2022. Janeen McIntosh, Svetlana Starykh, and Edward Flores,
Recent Trends in Securities Class Action Litigation: 2022 Full-Year Review
(NERA Jan. 24, 2023) 20, 28

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, Lead Plaintiffs City of Birmingham Firemen's and Policemen's Supplemental Pension System and City of Birmingham Retirement and Relief System (collectively, "Plaintiff") respectfully submit this memorandum of law in support of its motion for approval of (1) the $5 million all-cash Settlement;[1] (2) the proposed Plan of Allocation; and (3) Lead Counsel's application for an award of attorneys' fees and expenses and for an award to Plaintiff of $3,696.00, pursuant to 15 U.S.C. §78u-4(a)(4). The Court preliminarily approved the Settlement on July 5, 2023. Order Preliminarily Approving Settlement and Providing for Notice (ECF 133) ("Preliminary Approval Order").

I. PRELIMINARY STATEMENT

The $5 million recovery is the result of Plaintiff's rigorous multi-year effort to prosecute this Litigation, reached after arm's-length settlement negotiations by experienced and knowledgeable counsel, overseen by a nationally recognized mediator with extensive experience in mediating securities class actions. The Settlement represents a very favorable result for the Class and satisfies each of the Rule 23(e)(2) factors, as well as the factors set forth in *Detroit v. Grinnell Corp.*, 495 F.2d 448 (2d Cir. 1974).

The Settlement is especially beneficial to the Class in light of the substantial litigation risks Plaintiff faced. The gravamen of Plaintiff's claims was that during the Class Period, Ryanair Holdings plc and its Chief Executive Officer, Michael O'Leary, continually told investors that Ryanair – unlike the vast majority of its competitor airlines – would not unionize. Henssler Decl.,

---

[1] All capitalized terms not otherwise defined herein have the meanings set forth in the Stipulation and Agreement of Settlement, dated June 7, 2023 ("Stipulation") (ECF 130), and the Declaration of Robert R. Henssler Jr. in Support of Plaintiff's Motion for (1) Final Approval of Class Action Settlement, (2) Approval of Plan of Allocation, and (3) Lead Counsel's Application for an Award of Attorneys' Fees and Expenses and Award to Plaintiff Pursuant to 15 U.S.C. §78u-4(a)(4) ("Henssler Decl."), submitted herewith. All emphasis is added and internal citations are omitted, unless otherwise stated.

¶¶6, 18. Ryanair's extra-low-cost business model depended on it keeping labor costs to a minimum, and its non-union status was a key competitive advantage. However, Plaintiff alleges that Defendants' representations falsely and materially understated the likelihood that Ryanair was going to unionize, despite wildly fomenting labor discontent, an ongoing senior pilot shortage providing unhappy Ryanair pilots unprecedented leverage, and, as O'Leary later admitted, Ryanair "always" knew that it would have to unionize in the near future. *Id.* When, on December 15, 2017, Ryanair announced that it would be recognizing certain pilot unions, the price of Ryanair's American Depositary Shares ("ADSs") sharply declined – thereby causing damages to Plaintiff and the Class. *Id.*, ¶19.

While Plaintiff believes in the merit of its claims, Defendants had strong and credible arguments that could ultimately be successful in persuading the Court or jury that, among other things: (i) Defendants did not make any actionable misstatements or omissions to investors; (ii) Defendants did not act with the requisite scienter, but instead were forced to change their honestly-held positions on unionization due to dramatically changing labor conditions; (iii) any misstatements regarding Ryanair's non-union status were immaterial to investors; and (iv) even if Plaintiff was able to prove Defendants' liability, damages were minimal or non-existent. Had Plaintiff failed to establish any one of the elements of its claims, or failed to refute Defendants' contentions, the entire case would be lost or damages could be found to be much lower than claimed, if damages were found to exist at all. *Id.*, ¶¶72-76.

As detailed in the Henssler Declaration, Plaintiff and Lead Counsel had a thorough understanding of the strengths and weaknesses of the case before reaching the Settlement, as they had conducted a thorough investigation into the claims both before and after filing the initial complaint and First Amended Complaint for Violations of the Federal Securities Laws (ECF 22)

("FAC"), successfully opposed Defendants' motion to dismiss, commenced discovery, drafted a detailed mediation statement, and participated in numerous discussions with the mediator. *See generally* Henssler Decl. Based on the results of this work, Plaintiff knew that Defendants could have succeeded in either opposing class certification or in obtaining summary judgment, resulting in a lower recovery or no recovery at all. Likewise, there was no assurance that a trial would provide a better outcome than the 22% of estimated damages recovered from the Settlement. Moreover, a skilled and highly reputable mediator – Gregory P. Lindstrom, Esq. of Phillips ADR – recommended the parties reach a resolution of the case for $5 million. Henssler Decl., ¶¶8, 60-62.

Given the risks to proceeding and the favorable recovery obtained, Plaintiff respectfully submits that the $5 million Settlement and the Plan of Allocation – which was prepared with the assistance of Plaintiff's damages expert and is substantially similar to numerous other such plans that have been approved in this Circuit – are fair and reasonable in all respects.

Members of the Class have also reacted positively to the Settlement. Pursuant to the Preliminary Approval Order, copies of the Notice were sent to over 80,000 potential Class Members and nominees beginning on July 19, 2023, and notice was published in *The Wall Street Journal* and transmitted over *Business Wire* on July 26, 2023. *See* Declaration of Ross D. Murray Regarding Notice Dissemination, Publication, and Requests for Exclusion Received to Date ("Murray Decl."), ¶¶4-12, submitted herewith. Notice was also provided via a website created for the Settlement. *Id.*, ¶14. To date, not a single objection to the Settlement has been submitted and no requests for exclusion from the Class have been received. *Id.*, ¶16. Accordingly, Plaintiff respectfully requests that the Court grant final approval of the Settlement under Rule 23(e) of the Federal Rules of Civil Procedure and approve the Plan of Allocation as fair and reasonable.

Lead Counsel also respectfully requests an award of attorneys' fees of 18% of the Settlement Amount and $526,073.86 in expenses and charges reasonably and necessarily incurred in the Litigation, plus interest on both amounts. This request has the full support of Plaintiff,[2] institutional investors with meaningful losses, and is within the range of, if not below, fees often awarded in comparable securities class action settlements in this District and across the country. The requested fee is also warranted in light of the favorable result achieved and the contingent nature of counsel's representation. Finally, pursuant to 15 U.S.C. §78u-4(a)(4), Plaintiff seeks an award in the amount of $3,696.00 for its efforts in representing the Class.

II. FACTUAL AND PROCEDURAL BACKGROUND

In an effort to avoid burdening the Court with duplicative information, Plaintiff provides only a brief summary of the history of the Litigation here. A more fulsome description of the procedural history leading up to the Settlement can be found in the Henssler Declaration, ¶¶14-64.

The initial complaint was filed in this Court on November 6, 2018. ECF 1. On January 24, 2019, the Court appointed Plaintiff City of Birmingham Firemen's and Policemen's Supplemental Pension System and City of Birmingham Retirement and Relief System as lead plaintiff and Robbins Geller Rudman & Dowd LLP as Lead Counsel.

On April 5, 2019, Plaintiff filed the FAC, alleging that Defendants violated §§10(b) and 20(a) of the Securities Exchange Act of 1934 ("Exchange Act") by making materially false and misleading statements and omitting material facts in statements to investors concerning Ryanair's business and operations during the May 30, 2017 through September 28, 2018 class period (the "Class Period"). ECF 22. Specifically, the FAC alleged that Defendants misrepresented that "all of [Ryanair's] people are covered by collective bargaining," that its labor relations were "excellent"

---

[2] *See* Declaration of Jay P. Turner ("Turner Decl."), ¶9, submitted herewith.

and its pay and conditions were "industry leading," that Ryanair "ha[d] ambitions to grow to 200 million customers by March 2024 and that's going to happen," that "Ryanair [was] not short of pilots," and that "hell [would] freeze over" before Ryanair recognized employee trade unions. *Id.*, ¶¶6, 9, 10, 59, 64, 65, 67, 84, 88, 90, 100, 129, 135, 141, 143, 150, 157, 159, 172, 198. The FAC alleged that the truth regarding Ryanair's substandard labor practices, pilot shortage, and the unsustainability of its non-union business model was revealed through a series of partial corrective disclosures beginning on December 15, 2017, when Ryanair (facing major pilot strikes during the crucial holiday travel season) announced that it would recognize certain pilot unions. *Id.*, ¶97. These corrective disclosures removed artificial inflation from Ryanair's ADS price caused by the alleged fraud, causing the ADS price to drop and Plaintiff and the Class to suffer damages. *Id.*, ¶¶97-99, 118, 126, 254.

On June 14, 2019, Defendants moved to dismiss the FAC, and on August 30, 2019, Plaintiff submitted a reply. ECFs 30-32, 35-36. On June 1, 2020, the Court granted in part and denied in part Defendants' motion to dismiss, upholding Plaintiff's claims with respect to Defendants' statements regarding the likelihood that Ryanair would unionize. ECF 52 at 12-15.

On November 13, 2020, Plaintiff filed a motion for class certification and accompanying declarations, including an expert report addressing issues of market efficiency and a class-wide damages model. ECFs 68-70. On February 4, 2021, the Court held a discovery hearing to resolve ongoing discovery disputes stemming from Defendants' responses and objections to Plaintiff's first set of requests for production of documents to Defendants. At the February 4, 2021 hearing, the Court determined that, as a result of its partial grant of Defendants' motion to dismiss, the only operative corrective disclosure was the December 15, 2017 announcement concerning Ryanair's

decision to recognize certain pilot unions, and that the Class Period should be narrowed to May 30, 2017 through December 15, 2017. ECF 75.

Thereafter, on March 24, 2021, the Court set a briefing schedule for Plaintiff to seek leave to amend the FAC, stayed discovery, adjourned all deadlines set forth in the Amended Civil Case Management Plan, and withdrew, without prejudice, Plaintiff's motion for class certification. ECF 86. On March 31, 2021, Plaintiff filed a motion for leave to file a second amended complaint to: (1) add factual allegations based on evidence recently obtained through Plaintiff's ongoing investigation and Defendants' discovery; and (2) join City of Sterling Heights Police & Fire Retirement System ("Sterling Heights") and MARTA/ATU Local 732 Employees Retirement Plan ("MARTA") as additional named plaintiffs. ECFs 88-91. Defendants opposed Plaintiff's motion, and on September 22, 2022, the Court denied Plaintiff's motion for leave to further amend the complaint and fact discovery resumed. ECFs 101-104, 109, 111. Plaintiff moved for reconsideration of the Court's September 22, 2022 Order, which motion was denied as moot when the Court granted Plaintiff's motion for preliminary approval of settlement. ECFs 112, 133.

In November 2022, as Plaintiff prepared to refile its motion for class certification with updated expert analysis, the Settling Parties agreed to mediate Plaintiff's claims with experienced mediator Gregory P. Lindstrom. On December 1, 2022, the Settling Parties exchanged mediation statements in anticipation of a scheduled full-day mediation session on December 8, 2022. While that formal mediation session was cancelled following the parties' exchange of mediation statements and supporting evidence, over the next three months, the Settling Parties engaged in good faith, arm's-length negotiations through Mr. Lindstrom while Lead Counsel continued to vigorously litigate the case. On March 10, 2023, Mr. Lindstrom issued a mediator's recommendation to the Settling Parties that they settle the case for $5,000,000. On March 15, 2023, the Settling Parties

agreed to accept the mediator's recommendation. On March 17, 2023, the Settling Parties informed the Court that they had reached an agreement in principle, subject to final documentation of the Settlement's terms.

On June 7, 2023, Plaintiff filed a motion for preliminary approval of the Settlement (ECF 128), which the Court granted on July 5, 2023. ECF 133.

III. THE COURT SHOULD FINALLY CERTIFY THE CLASS FOR PURPOSES OF EFFECTUATING THE SETTLEMENT

In granting preliminary approval of the Settlement, the Court found that Plaintiff had met the requirements to certify the Class under Rules 23(a) and 23(b)(3) and preliminarily certified the following Class for settlement purposes:

> [A]ll persons and entities who purchased or otherwise acquired Ryanair Holdings plc ("Ryanair") American Depositary Shares ("ADSs") between May 30, 2017 and September 28, 2018, inclusive, and were damaged thereby. Excluded from the Class are Defendants and their immediate families, Ryanair's officers and directors at all relevant times, as well as their immediate families, Defendants' legal representatives, heirs, successors, or assigns, and any entity in which any Defendant has a controlling interest. Also excluded from the Class are those Persons who timely and validly request exclusion from the Class pursuant to the requirements described below and in the Notice of Pendency and Proposed Settlement of Class Action ("Notice") to be sent to Class Members pursuant to this Order.

ECF 133, ¶¶2-3. In addition, the Court preliminarily certified Plaintiff as class representative and Lead Counsel as class counsel. *Id.*, ¶5. Since entry of the Preliminary Approval Order, nothing has occurred to alter the reasonableness of those rulings. Thus, for the reasons stated in Plaintiff's memorandum in support of its motion for preliminary approval, ECF 129 (incorporated herein by reference), Plaintiff respectfully requests that the Court affirm its preliminary certification, certify the Class under Rules 23(a) and 23(b)(3) for purposes of effectuating the Settlement, and appoint Plaintiff as class representative and Lead Counsel as class counsel.

IV. THE SETTLEMENT SHOULD BE GRANTED FINAL APPROVAL

A. Standards for Final Approval of Class Action Settlements

"The law favors settlement, particularly in class actions and other complex cases where substantial resources can be conserved by avoiding the time, cost, and rigor of prolonged litigation." *In re Advanced Battery Techs., Inc. Sec. Litig.*, 298 F.R.D. 171, 174 (S.D.N.Y. 2014). Therefore, when exercising discretion to approve a settlement, courts are "mindful of the 'strong judicial policy in favor of settlements.'" *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 116 (2d Cir. 2005). Thus, the Second Circuit has cautioned that, while a court should not give "rubber stamp approval" to a proposed settlement, it should "stop short of the detailed and thorough investigation that it would undertake if it were actually trying the case." *Grinnell*, 495 F.2d at 462.

Rule 23(e)(2) provides that courts should consider certain factors when determining whether a class action settlement is "fair, reasonable, and adequate" such that final approval is warranted:

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

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

Courts in the Second Circuit also consider the following factors in evaluating whether to approve a class action settlement (the "*Grinnell* factors"):

> "(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).

In finding that a settlement is fair, reasonable, and adequate, the Court need not find that every factor is satisfied but "should consider the[ir] totality" in light of the circumstances. *Thompson v. Metro. Life Ins. Co.*, 216 F.R.D. 55, 61 (S.D.N.Y. 2003). In making that determination, a court may not substitute its """business judgment for that of counsel, absent evidence of fraud or overreaching.""" *In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 579-80 (S.D.N.Y. 2008). Here, Plaintiff respectfully submits that the proposed Settlement fully satisfies Rule 23(e)(2) and all of the *Grinnell* factors and is therefore fair, reasonable, and adequate.

B. The Proposed Settlement Is Procedurally and Substantively Fair, Adequate, and Reasonable

1. The Settlement Satisfies the Requirements of Rule 23(e)(2)

As explained in Plaintiff's Memorandum of Law in Support of Unopposed Motion for Preliminary Approval of Settlement, Certification of the Class, and Approval of Notice to the Class (at 14-16) ("Preliminary Approval Brief") (ECF 129), the Settlement meets all of the requirements imposed by Rule 23(e)(2) and the Second Circuit in *Grinnell*. That nothing has changed since preliminary approval "counsel[s] equally in favor of final approval now." *See In re Chrysler-Dodge-*

Jeep Ecodiesel® Mktg., Sales Pracs., & Prods. Liab. Litig., 2019 WL 2554232, at *2 (N.D. Cal. May 3, 2019).

a. Plaintiff and Lead Counsel Adequately Represented the Class

The first factor of Rule 23(e)(2) is satisfied because Plaintiff and Lead Counsel adequately represented the Class. The determination of adequacy "typically 'entails inquiry as to whether: 1) plaintiff's interests are antagonistic to the interest[s] of other members of the class and 2) plaintiff's attorneys are qualified, experienced and able to conduct the litigation.'" *Cordes & Co. Fin. Servs., Inc. v. A.G. Edwards & Sons, Inc.*, 502 F.3d 91, 99 (2d Cir. 2007). Here, Plaintiff's interests are not antagonistic to, and in fact are directly aligned with, the interests of other Members of the Class. Plaintiff has "claims that are typical of and coextensive with those of other Class Members and has no interests antagonistic to those of other Class Members. Like other Class Members, . . . Plaintiff has an interest in obtaining the largest possible recovery from Defendants." *In re Signet Jewelers Ltd. Sec. Litig.*, 2020 WL 4196468, at *2 (S.D.N.Y. July 21, 2020).

Plaintiff and Lead Counsel have also adequately represented the Class in that the Settlement is the product of a thorough factual investigation and effective litigation and negotiation strategy, bolstered by an extensive analysis of damages and an understanding of the strengths and weaknesses of the claims. Henssler Decl., ¶¶4, 5, 8, 17, 90. Lead Counsel conducted an extensive factual investigation and analysis of documents filed with the SEC, press releases, news articles, analyst research reports, and other public statements issued by or concerning Ryanair and O'Leary. *Id.*, ¶17. Lead Counsel carefully evaluated this information and drafted the detailed, 278-paragraph FAC, successfully opposed Defendants' motion to dismiss, actively conducted fact discovery, moved for class certification, served two expert reports, prepared a detailed mediation statement, and was able

to negotiate the all-cash, $5 million Settlement, a favorable resolution which fairly values the claims and provides an immediate benefit to Class Members.

Further, in actively overseeing and participating in this Litigation, Plaintiff, working with Lead Counsel, monitored the investigation, reviewed documents before and after filing as necessary, made voluminous document productions, submitted a declaration in support of class certification, and supervised the mediation process and negotiations. *Id.*, ¶¶4, 104; ECF 70-2. In addition, Plaintiff's investment manager, Thornburg Investment Management, Inc. ("Thornburg"), prepared for and sat for a deposition. *Id.*, ¶44. Plaintiff also retained highly-experienced and well-respected counsel, who not only zealously prosecuted the Litigation from investigation through negotiations, but who were able to secure a very favorable settlement. *See id.*, ¶¶69-71, 97, 98. This diligent and adequate representation of the Class supports final approval. *See* Fed. R. Civ. P. 23(e)(2)(A).

b. The Settlement Resulted from Extensive Arm's-Length Negotiations

Rule 23(e)(2)(B) is satisfied because the Settlement is also the result of extensive, arm's-length negotiations before a neutral mediator, with no hint of collusion. The parties engaged Mr. Lindstrom of Phillips ADR, an experienced securities class action mediator, and engaged in multiple rounds of discussions with him before receiving his mediator's recommendation. Henssler Decl., ¶¶8, 60-62.

The arm's-length nature of this mediation process provides compelling evidence that the Settlement is not a product of collusion. *See Wal-Mart*, 396 F.3d at 116; *N.J. Carpenters Health Fund v. Royal Bank of Scot. Grp., PLC*, 2019 WL 13150344, at *2 (S.D.N.Y. Mar. 8, 2019), *aff'd as modified sub nom. N.J. Carpenters Health Fund v. NovaStar Mortg., Inc.*, 28 F.4th 357 (2d Cir. 2022) (participation in mediation is evidence of arm's-length negotiations). Moreover, the Settlement negotiations in this case were "carried out under the direction of [Plaintiff], . . . whose

involvement suggests procedural fairness." *In re Facebook, Inc., IPO Sec. & Derivative Litig.*, 343 F. Supp. 3d 394, 409 (S.D.N.Y. 2018), *aff'd sub nom. In re Facebook, Inc.*, 822 F. App'x 40 (2d Cir. 2020).

c. The Proposed Settlement Is Adequate in Light of the Costs, Risks, and Delays of Trial and Appeal

Rule 23(e)(2)(C)(i) and the first, fourth and fifth *Grinnell* factors concern the substantive adequacy of the Settlement. Rule 23(e)(2)(C)(i) advises district courts to consider "the costs, risks, and delay of trial and appeal," while the relevant *Grinnell* factors overlap and address the risks of establishing liability and damages. Fed. R. Civ. P. 23(e)(2)(C)(i).

(1) The Risks of Establishing Liability at Trial

Securities class actions present numerous hurdles for plaintiffs to meet, and these risks weigh in favor of final settlement approval. Indeed, courts in this district '""have long recognized that [securities] 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)); *see also In re AOL Time Warner, Inc. Sec. & "ERISA" Litig.*, 2006 WL 903236, at *11 (S.D.N.Y. Apr. 6, 2006) ("The difficulty of establishing liability is a common risk of securities litigation."). Although Plaintiff and Lead Counsel believe that the claims asserted in the Action are meritorious, continued litigation posed substantial risks that made any recovery uncertain.

For example, Defendants argued that testimony or documents Plaintiff believed to be critical to its claims concerning employee grievances, any threats of industrial action, and difficulties with staffing at Ryanair during the May 30, 2017 to December 15, 2017 period were not sufficiently tied to the likelihood of unionization for Defendants to have to produce discovery or have a witness testify to those topics. This dispute was quickly heading toward a motion to compel, and the Court's

resolution of this issue in Defendants' favor could have had profound implications for Plaintiff's ability to marshal the evidence needed to prove its claims.

More, while Plaintiff believes its claims would be borne out by the evidence, Defendants have articulated certain defenses throughout the pendency of the Action that they no doubt would have asserted at summary judgment and/or at trial. Indeed, Defendants maintain that the alleged misstatements about the likelihood of unionization are not material or actionably false and misleading. ECF 32 at 22-26. Defendants also maintain that Plaintiff will not be able to prove scienter because O'Leary's sales of Ryanair ADSs did not demonstrate sufficient motive and opportunity to defraud, *id.* at 32-34, and there is no evidence that, at the time the statements were made, Defendants knew that Ryanair would be forced to reconsider its long-held position of remaining non-union. *Id.* at 34-39. If Defendants prevailed on any one of these grounds, the Class would recover nothing.

Moreover, to succeed at class certification, and to prove its case at summary judgment and trial, Plaintiff would need to rely extensively on several expert witnesses for analysis of key issues, including market efficiency, loss causation and damages. Each expert's testimony would be critical to demonstrating the validity of Plaintiff's claims and maintaining this case as a class action, and the conclusions of each expert would be hotly contested at trial. Thus, Plaintiff's case was particularly susceptible to a danger inherent in reliance on expert witness testimony, including that the experts will be subject to a *Daubert* challenge. If, for some reason, the Court determined that even one of Plaintiff's experts should be excluded from testifying at trial, Plaintiff's case would become much more difficult to prove.

Plaintiff also faced risks in establishing damages. The Court has already ruled that only a single corrective disclosure remains operative – Ryanair's December 15, 2017 announcement. If

Defendants succeeded in challenging loss causation with respect to this disclosure, Plaintiff and the Class would not be able to establish any damages – their case would be over. More, Defendants have argued and would likely continue to argue that any damages resulting from the December 15, 2017 disclosure are minimal and are further decreased by the PSLRA's mandatory "bounce back" provision. Henssler Decl., ¶76. Both sides would inevitably produce highly qualified experts on loss causation and damages, who would provide conflicting calculations of the "true" amount of damages; such an unpredictable and hotly disputed "battle of the experts" would leave Plaintiff and the Class open to a significant risk of a smaller recovery than Plaintiff's expert currently estimates, or to no recovery at all. *Id. See Mikhlin v. Oasmia Pharm. AB.*, 2021 WL 1259559 at *6 (E.D.N.Y. Jan. 6, 2021), final approval granted at 19-cv-04349-NGG-RER, ECF 46 ("Both parties would present expert testimony on the issue of damages, which makes it 'virtually impossible to predict' which side's testimony would be found more credible, as well as 'which damages would be found to have been caused by actionable, rather than the myriad nonactionable factors such as general market conditions.'"); *In re IMAX Sec. Litig.*, 283 F.R.D. 178, 193 (S.D.N.Y. 2012) ("[I]t is well established that damages calculations in securities class actions often descend into a battle of experts."); *Telik*, 576 F. Supp. 2d at 579-80 ("'In this "battle of experts," it is virtually impossible to predict with any certainty which testimony would be credited, and ultimately, which damages would be found . . . .'").

Thus, in light of the very significant risks Plaintiff faced at the time of the Settlement with regard to establishing liability and damages, this factor weighs heavily in favor of final approval.

(2) The Settlement Eliminates the Additional Costs and Delay of Continued Litigation

If not for this Settlement, the Litigation would have continued to be vigorously contested, and the complexity, cost, and duration of continued litigation would be considerable. *See Advanced*

Battery, 298 F.R.D. at 175 ("the complexity, expense, and likely duration of litigation are critical factors in evaluating the reasonableness of a settlement"); *see also Strougo ex rel. Brazilian Equity Fund, Inc. v. Bassini*, 258 F. Supp. 2d 254, 261 (S.D.N.Y. 2003) ("even if a shareholder or class member was willing to assume all the risks of pursuing the actions through further litigation . . . the passage of time would introduce yet more risks . . . and would, in light of the time value of money, make future recoveries less valuable than this current recovery"); *Hicks v. Morgan Stanley*, 2005 WL 2757792, at *6 (S.D.N.Y. Oct. 24, 2005) ("Further litigation would necessarily involve further costs [and] justice may be best served with a fair settlement today as opposed to an uncertain future settlement or trial of the action.").

Continued litigation would see the parties complete both fact and expert discovery and brief class certification, motions for summary judgment as well as prepare for a likely multi-week trial. Any appeals filed by either side following each stage would add months to this already five-year-old Litigation, and post-trial motions and appeals could last for years. A prolonged period of pretrial proceedings and a lengthy and uncertain trial and appeals process would inject additional risk to achieving a favorable recovery, which runs counter to the interests of the Class compared to the immediate monetary benefits of the Settlement.

Accordingly, Rule 23(e)(2)(C)(i) and the first, fourth and fifth *Grinnell* factors weigh in favor of final approval of the Settlement.

d. The Proposed Method for Distributing Relief Is Effective

With respect to Rule 23(e)(2)(C)(ii), Plaintiff and Lead Counsel have taken appropriate steps to ensure that the Class is notified about the Settlement. More than 80,000 copies of the Notice and Proof of Claim were mailed and the Summary Notice was published. Murray Decl., ¶¶11-12.

Additionally, a settlement-specific website was created where key Settlement documents were posted, including the Stipulation, Notice, Proof of Claim, and Preliminary Approval Order. *Id.*, ¶14.

The claims process proposed here is similar to that commonly used in securities class action settlements, and provides for straightforward cash payments based on trading information provided. *Id.*, Exhibit A (Notice). *See Christine Asia Co., Ltd. v. Yun Ma*, 2019 WL 5257534, at *14 (S.D.N.Y. Oct. 16, 2019) ("This type of claims processing and method for distributing settlement proceeds is standard in securities and other class actions and is effective."). This claims process will "'deter or defeat unjustified claims' without imposing an undue demand on class members." *Mikhlin*, 2021 WL 1259559, at *6. This factor therefore supports final approval.

e. The Requested Attorneys' Fees Are Reasonable

Consistent with the Notice, and as discussed further below, Lead Counsel seeks an award of attorneys' fees in the amount of 18% of the Settlement Amount and expenses and charges in an amount of $526,073.86, plus interest on both amounts. Lead Counsel's fee request is reasonable in light of its substantial efforts, fee awards in similar securities class actions in this District, the contingent nature of Lead Counsel's representation, and the significant risks of the litigation. Moreover, since this is not a "claims made" settlement, the entire Net Settlement Fund will be distributed to Class Members until it is no longer economically feasible, so there is no risk that counsel will be paid but Class Members will not.[3]

[3] The Stipulation provides that any attorneys' fees and expenses awarded by the Court shall be paid to Lead Counsel when the Court executes the Judgment and an order awarding such fees and expenses. *See Pelzer v. Vassalle*, 655 F. App'x 352, 365 (6th Cir. 2016) (approving a similar provision finding that it "does not harm the class members in any discernible way, as the size of the settlement fund available to the class will be the same regardless of when the attorneys get paid").

f. The Parties Have No Other Agreements Except for a Standard Supplemental Agreement

Rule 23(e)(2)(C)(iv) requires the disclosure of any agreement covered by Rule 23(e)(3), which requires "a statement identifying any agreement made in connection with the proposal." Fed. R. Civ. P. 23(e)(3). As Plaintiff disclosed when seeking preliminary approval, the parties have a standard supplemental agreement which allows Ryanair to terminate the Settlement if Class Members with a certain aggregate amount of Recognized Claims opt out of the Class.[4] Stipulation, ¶7.3. As is standard in securities class actions, the Supplemental Agreement is being kept confidential in order to avoid incentivizing the formation of a group of opt-outs for the sole purpose of leveraging a larger individual settlement, to the detriment of the Class. This agreement has no bearing on the fairness of the Settlement, and as such, this factor weighs in favor of final approval. *See Christine Asia*, 2019 WL 5257534, at *15 (stating that opt-out agreements are "standard in securities class action settlements and ha[ve] no negative impact on the fairness of the Settlement").

g. The Settlement Treats Class Members Equitably

Finally, Rule 23(e)(2)(D) requires the Court to examine whether a settlement treats class members equitably. The Settlement is designed to do precisely that. The Plan of Allocation treats Class Members equitably relative to each other, based on the timing of their securities purchases, acquisitions and sales, and by providing that each Authorized Claimant, including Plaintiff, shall receive his, her, or its *pro rata* share of the Net Settlement Fund based on their recognized losses. In this way, all Class Members are situated and treated similarly.

Based on the foregoing, Plaintiff and Lead Counsel respectfully submit that each of the Rule 23(e)(2) factors support granting final approval of the Settlement.

---

[4] Upon request, Plaintiff will provide a copy of the Supplemental Agreement to the Court for *in camera* review.

2. The Settlement Satisfies the Remaining *Grinnell* Factors

a. The Lack of Objections to Date Supports Final Approval

The reaction of the Class to the Settlement is "perhaps 'the most significant'" indicator of its adequacy. *In re Veeco Instruments Inc. Sec. Litig.*, 2007 WL 4115809, at *7 (S.D.N.Y. Nov. 7, 2007). "A favorable reception by the class constitutes 'strong evidence' of the fairness of a proposed settlement and supports judicial approval." *Bellifemine v. Sanofi-Aventis U.S. LLC*, 2010 WL 3119374, at *3 (S.D.N.Y. Aug. 6, 2010). To date, no Class Member has objected to the Settlement or requested exclusion from the Class. *See* Murray Decl., ¶16. The positive reaction of the Class to date further supports approval of the Settlement.

b. Plaintiff Had Sufficient Information to Resolve the Case

To support approval of a settlement, the parties must have been able to "'intelligently evaluate the merits of plaintiff's claims, the strengths of the defenses asserted by defendants, and the value of plaintiffs' causes of action for purposes of settlement.'" *In re Bear Stearns Cos.*, 909 F. Supp. 2d 259, 267 (S.D.N.Y. 2012). "To satisfy this factor," however, "formal or extensive discovery" is not required. *In re Hi-Crush Partners L.P. Sec. Litig.*, 2014 WL 7323417, at *7 (S.D.N.Y. Dec. 19, 2014). Here, Plaintiff had more than sufficient information to make an informed decision on the Settlement. As discussed above (§IV.B.1.a.), at the time the Settlement was reached, Lead Counsel had conducted an extensive investigation, filed a detailed FAC (and proposed SAC), overcome Defendants' motion to dismiss, conducted significant fact discovery, litigated several discovery disputes with Defendants, filed a motion to certify the Class, consulted with experts, served two expert reports, and drafted an opening mediation statement. Henssler Decl., ¶91. Mr. Lindstrom also provided a candid, meaningful and unbiased assessment of the strengths and weaknesses of the claims and defenses throughout the negotiation process. *Id.*, ¶¶60-62. Thus,

Plaintiff and Lead Counsel had "sufficient information to make an intelligent appraisal of the value of the case by assessing the strengths and weaknesses of the claims." *Christine Asia*, 2019 WL 5257534, at *11.

c. Maintaining Class Action Status Through Trial Presents Substantial Risk

While Plaintiff believes it would have prevailed on its motion to certify the Class, Defendants were poised to vigorously litigate that issue. Even if they lost their initial opposition to certification, Defendants may have filed a Rule 23(f) petition – an increasing trend in recent securities litigation – or moved to decertify the Class or shorten the Class Period, presenting additional risk to a favorable outcome for the Class. *See id.* at *13 (stating that this risk weighed in favor of final approval because "a class certification order may be altered or amended any time before a decision on the merits"); Fed. R. Civ. P. 23(c) (authorizing a court to decertify a class at any time). "The risk of maintaining class status throughout trial . . . weighs in favor of final approval." *McMahon v. Oliver Cheng Catering & Events, LLC*, 2010 WL 2399328, at *5 (S.D.N.Y. Mar. 3, 2010).

d. Defendants' Ability to Withstand a Greater Judgment

A "'defendant's ability to withstand a greater judgment, standing alone, does not suggest that the settlement is unfair.'" *Castagna v. Madison Square Garden, L.P.*, 2011 WL 2208614, at *7 (S.D.N.Y. June 7, 2011); *see also City of Providence v. Aeropostale, Inc.*, 2014 WL 1883494, at *9 (S.D.N.Y. May 9, 2014) (courts "generally do not find the ability of a defendant to withstand a greater judgment to be an impediment to settlement when the other factors favor the settlement"), *aff'd sub nom. Arbuthnot v. Pierson*, 607 F. App'x 73 (2d Cir. 2015). A "defendant is not required to 'empty its coffers' before a settlement can be found adequate." *In re Sony SXRD Rear Projection Television Class Action Litig.*, 2008 WL 1956267, at *8 (S.D.N.Y. May 1, 2008). Indeed, even if

Defendants could satisfy – and Plaintiff could enforce – a larger judgment, all other factors support final approval of the Settlement.

e. The Settlement Amount Is Reasonable in View of the Best Possible Recovery and the Risks of Litigation

The last two *Grinnell* factors are also satisfied here. The adequacy of the settlement amount must be judged "not in comparison with the possible recovery in the best of all possible worlds, but rather in light of the strengths and weaknesses of plaintiffs' case." *In re "Agent Orange" Prod. Liab. Litig.*, 597 F. Supp. 740, 762 (E.D.N.Y. 1984), *aff'd*, 818 F.2d 145 (2d Cir. 1987). For this reason, a settlement need only fall within a "range of reasonableness" which "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).

Here, the $5 million Settlement is a substantial result for the Class. As explained previously (ECF 129 at 22-23), Plaintiff estimates reasonably recoverable damages of approximately $23 million, but that figure could be less depending on various scenarios. Thus, the Settlement represents a recovery of at least 21.7% and perhaps much more, if Defendants' arguments were ultimately accepted. This percentage far exceeds the median recovery of 1.8% in securities class actions settled in 2022. Janeen McIntosh, Svetlana Starykh, and Edward Flores, *Recent Trends in Securities Class Action Litigation: 2022 Full-Year Review* (NERA Jan. 24, 2023) ("NERA Study"), at 18, Fig. 19 (attached as Ex. A hereto).

This is a particularly good result given the unique legal and factual issues involved here. In these circumstances, offering relief to the Class now, rather than a speculative payment possibly years later, undoubtedly favors the Class. *See AOL Time Warner*, 2006 WL 903236, at *13 (noting "the benefit of the Settlement will . . . be realized far earlier than a hypothetical post-trial recovery").

V. THE PLAN OF ALLOCATION IS FAIR AND ADEQUATE

The standard for approving a Plan of Allocation is the same as for approving the Settlement as a whole: "'it must be fair and adequate.'" *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 344 (S.D.N.Y. 2005). "'When formulated by competent and experienced class counsel,'" a plan of allocation "'need have only a reasonable, rational basis.'" *Advanced Battery*, 298 F.R.D. at 180. Here, the Plan (set forth in the Notice) was prepared with the assistance of Plaintiff's damages expert and is based on the same methodology underlying Plaintiff's damages estimate, *i.e.*, the amount of artificial inflation in the price of Ryanair ADSs during the Class Period due to the alleged misstatements and omissions. It is a fair means to apportion the Net Settlement Fund among Authorized Claimants based on, and consistent with, the claims alleged. *See* Henssler Decl., ¶¶82-85.

The Net Settlement Fund will be distributed to Authorized Claimants, *i.e.*, Class Members who submit timely and valid Proofs of Claim that are approved for payment from the Net Settlement Fund. The Plan treats all Class Members, including Plaintiff, in a similar manner: everyone who does not request exclusion and whose submission is valid and timely will receive a *pro rata* share of the Net Settlement Fund in the proportion that the Authorized Claimant's claim bears to the total of the claims of all Authorized Claimants (so long as payment is $10.00 or more, as is customary). Accordingly, the Plan of Allocation is fair and reasonable – a conclusion supported by the complete absence of objections to date. *See Veeco*, 2007 WL 4115809, at *7.

VI. NOTICE TO THE CLASS SATISFIES THE REQUIREMENTS OF RULE 23 AND DUE PROCESS

At the preliminary approval stage, Plaintiff established that the Notice comports with Rule 23 and settled law. Specifically, Rule 23 requires that notice of a settlement be "the best notice that is practicable under the circumstances, including individual notice to all members who can be

identified through reasonable effort" (Fed. R. Civ. P. 23(c)(2)(B)), and that it be directed to class members in a "reasonable manner." Fed. R. Civ. P. 23(e)(1)(B). "Notice need not be perfect" or received by every class member, but must instead be reasonable under the circumstances. *In re Merrill Lynch Tyco Rsch. Sec. Litig*., 249 F.R.D. 124, 133 (S.D.N.Y. 2008). Notice is adequate "if the average person understands the terms of the proposed settlement and the options provided to class members thereunder." *Id*.

The Notice and the means used to disseminate it to potential Class Members readily satisfy these standards. The Notice apprises Class Members of all of the information they would need to decide whether to participate in the Settlement. It describes: (1) the Litigation and the Class's claims; (2) the terms of the Settlement; (3) the proposed Plan of Allocation; (4) the right to request exclusion from the Class or object to any aspect of the Settlement, the Plan of Allocation, or the requested awards, and the procedure by which to do so; (5) the scope of the release and binding effect of a judgment; (6) Lead Counsel's application for an award of attorneys' fees and expenses and Plaintiff's requested award; and (7) the date, time, and place of the Settlement Hearing. *See* Murray Decl., Ex. A (Notice). The Notice also directs Class Members to the Claims Administrator, Lead Counsel, and the Settlement website for further information. And the Notice contains the information required by the PSLRA. *See* 15 U.S.C. §78u-4(a)(7).

In accordance with the Preliminary Approval Order, Gilardi, as the Claims Administrator, commenced mailing the Notice and Proof of Claim by first-class mail to potential Class Members, brokers, and nominees on July 19, 2023. Murray Decl., ¶¶5-11. Gilardi also published the Summary Notice in *The Wall Street Journal* and transmitted it over *Business Wire* on July 26, 2023. *Id.*, ¶12. Additionally, Gilardi posted the Notice and other Settlement-related materials, including the Stipulation, on the Settlement website, which also allows for the electronic submission of claims.

Id., ¶14. These methods of notice are common and appropriate in securities class actions. *See, e.g.*, *Christine Asia*, 2019 WL 5257534, at *16 (approving similar means of disseminating notice).

VII. AWARD OF ATTORNEYS' FEES

A. Lead Counsel Is Entitled to an Award of Attorneys' Fees and Expenses from the Common Fund Achieved in the Settlement

The Supreme Court has long recognized that "a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *accord Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 47 (2d Cir. 2000), 209 F.3d at 47. Such awards are important and serve a salutary purpose because they "encourage skilled counsel to represent those who seek redress for damages inflicted on entire classes of persons" and "discourage future alleged misconduct of a similar nature." *Aeropostale*, 2014 WL 1883494, at *10-*11.

B. The Court Should Award a Reasonable Percentage of the Common Fund

The Supreme Court has indicated that attorneys' fees in common-fund cases generally should be based on a percentage of the fund. *See Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984) (noting "a reasonable fee is based on a percentage of the fund bestowed on the class"). The Second Circuit has approved the percentage method, recognizing that the lodestar method, although acceptable, "proved vexing" and resulted in "an inevitable waste of judicial resources." *Goldberger*, 209 F.3d at 48-50. In fact, the Second Circuit has acknowledged that the "trend in this Circuit is toward the percentage method." *Wal-Mart*, 396 F.3d at 121; *accord Lea v. TAL Educ. Grp.*, 2021 WL 5578665, at *11 (S.D.N.Y. Nov 30, 2021); *Aeropostale*, 2014 WL 1883494, at *11.

Importantly, all Courts of Appeal to consider the matter have approved use of the percentage method.[5] The determination of attorneys' fees using the percentage-of-the-fund method is also supported by the PSLRA, which states that "[t]otal attorneys' fees and expenses awarded by the court to counsel for the plaintiff class shall not exceed a reasonable percentage of the amount" recovered for the class. 15 U.S.C. §78u-4(a)(6). Several courts have concluded that Congress, in using this language, expressed a preference for the percentage method when determining attorneys' fees in securities class actions. *See, e.g.*, *Telik*, 576 F. Supp. 2d at 586; *WorldCom*, 388 F. Supp. 2d at 355.

C. The Requested Attorneys' Fees Are Reasonable Under the Percentage-of-the-Fund Method

An appropriate court-awarded fee is intended to approximate what counsel would receive if they were bargaining for their services in the marketplace. *See Mo. v. Jenkins by Agyei*, 491 U.S. 274, 285-86 (1989). If this were a non-class action, the customary fee arrangement would be contingent and in the range of one-third of the recovery. *See Blum*, 465 U.S. at 904 n* ("In tort suits, an attorney might receive one-third of whatever amount the plaintiff recovers.") (Brennan, J., concurring).

The requested 18% fee is well below that customary one-third, and below the range of percentage fees awarded by other courts in this Circuit in recent comparable securities cases. *See,*

---

[5] *See In re Thirteen Appeals Arising Out of the San Juan Dupont Plaza Hotel Fire Litig.*, 56 F.3d 295, 305-07 (1st Cir. 1995); *In re AT&T Corp. Sec. Litig.*, 455 F.3d 160, 164 (3d Cir. 2006); *Union Asset Mgmt. Holding A.G. v. Dell, Inc.*, 669 F.3d 632, 642-43 (5th Cir. 2012); *Rawlings v. Prudential-Bache Props.*, 9 F.3d 513, 515-17 (6th Cir. 1993); *Harman v. Lyphomed, Inc.*, 945 F.2d 969, 975 (7th Cir. 1991); *Petrovic v. AMOCO Oil Co.*, 200 F.3d 1140, 1157 (8th Cir. 1999); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002); *Gottlieb v. Barry*, 43 F.3d 474, 483 (10th Cir. 1994); *Camden I Condo. Ass'n v. Dunkle*, 946 F.2d 768, 774 (11th Cir. 1991); *Swedish Hosp. Corp. v. Shalala*, 1 F.3d 1261, 1269-71 (D.C. Cir. 1993). The Eleventh and District of Columbia Circuits have required the use of the percentage method in common fund cases. *See Camden*, 946 F.2d at 774; *Swedish Hosp.*, 1 F.3d at 1271.

e.g., *Erlandson v. Triterras, Inc., et al.*, No. 7:20-cv-10795-CS, ECF 82 at 1 (¶4) (S.D.N.Y. Sept. 8, 2022) (awarding one-third of $9 million settlement) (attached as Ex. B hereto); *Panther Partners Inc. v. Jianpu Tech. Inc., et al.*, No. 1:18-cv-09848-PGG, ECF 130 at 1 (¶4) (S.D.N.Y. May 12, 2022) (awarding one-third of $7.5 million settlement) (attached as Ex. C hereto); *TAL Educ.*, 2021 WL 5578665, at *11 (same); *Haw. Structural Ironworkers Pension Tr. Fund v. AMC Ent. Holdings, Inc.*, 2022 WL 4136175, at *1 (S.D.N.Y. Feb. 14, 2022) (awarding one-third of $18 million settlement); *In re PPDAI Grp. Inc. Sec. Litig.*, 2022 WL 198491, at *16 (E.D.N.Y. Jan. 21, 2022) (noting a one-third fee "constitutes a proportion routinely approved as reasonable").

D. The Relevant Factors Confirm that the Requested Fee Is Reasonable

When considering whether a request for attorneys' fees in a common-fund or lodestar case is reasonable, a court will consider the following *Goldberger* factors:

> "(1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation . . .; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations."

Goldberger, 209 F.3d at 50. These factors also support approval of the requested fee.

1. The Time and Labor Expended by Counsel

Lead Counsel has expended substantial time and effort pursuing the Litigation on behalf of the Class for over four years without receiving any compensation. Robbins Geller conducted a considerable pre-filing investigation, as well as considerable work during the Litigation, including: (i) analyzing a massive amount of information, including Ryanair SEC filings, conference call transcripts, analyst reports, and other publicly available materials, and thoroughly researching the law pertinent to the claims and defenses asserted; (ii) drafting the FAC; (iii) opposing Defendants' motion to dismiss; (iv) moving for class certification; (v) litigating several discovery disputes with counsel for Defendants; (vi) engaging in document discovery from Defendants and third parties;(vii)

drafting a proposed second amended complaint; (viii) consulting with internal and external experts; (ix) drafting its mediation statement; and (x) preparing for a full-day mediation session and participating in subsequent negotiations. *See* Henssler Decl., ¶91. It will no doubt expend additional time and resources assisting Class Members with claims, responding to Class Member inquiries, and monitoring the Claims Administrator and claims process. *See Aponte v. Comprehensive Health Mgmt.*, 2013 WL 1364147, at *7 (S.D.N.Y. Apr. 2, 2013). Lead Counsel's substantial work in securing the $5 million Settlement, coupled with its continuing commitment, supports the reasonableness of the requested fee.

2. The Magnitude and Complexity of the Litigation

Securities actions are "'notably difficult and notoriously uncertain.'" *FLAG Telecom*, 2010 WL 4537550, at *27 (quoting *Sumitomo*, 189 F.R.D. at 281). This Litigation was no exception. It raised complex legal issues under §§10(b) and 20(a) of the Exchange Act, as well as unique procedural and factual issues surrounding Ryanair's Irish residency and Ryanair's union recognition process, which issues magnified the difficulty of proving liability. Indeed, Plaintiff faced challenges in overcoming Defendants' motions to dismiss which raised complex and challenging arguments regarding materiality, falsity, and scienter, issues which were sure to be presented again on summary judgment and at trial. The magnitude (damages were up to $23 million) and complexity of this Litigation support the fairness and reasonableness of the requested fee.

3. The Risks of the Litigation Support the Requested Fee

The risk undertaken in an action is often considered the most important *Goldberger* factor. *E.g.*, *Lea*, 2021 WL5578665, at *12; *Telik*, 576 F. Supp. 2d at 592. The risk associated with a case undertaken on a contingent fee basis is an important factor in determining an appropriate fee award:

> No one expects a lawyer whose compensation is contingent upon his success to charge, when successful, as little as he would charge a client who in advance had

> agreed to pay for his services, regardless of success. Nor, particularly in complicated cases producing large recoveries, is it just to make a fee depend solely on the reasonable amount of time expended.

Grinnell, 495 F.2d at 470. When considering the reasonableness of attorneys' fees in a contingency action, the Court should consider the risks of the litigation at the time the suit was brought. *See Goldberger*, 209 F.3d at 54-55; *Woburn Ret. Sys. v. Salix Pharms., Ltd.*, 2017 WL 3579892, at *6 (S.D.N.Y. Aug. 18, 2017) (discussing "the risk of the litigation" as "one of the most important factors" and that "[p]articularly when lawyers undertake a case on a contingency fee basis, and thus assume a great deal of risk, the Second Circuit has held that it is appropriate to award fees that exceed the lodestar amount").

Unlike counsel for Defendants, who are paid an hourly rate and paid for their expenses on a regular basis, Lead Counsel undertook this case on a contingent basis, knowing that the Litigation could last for years and would require substantial attorney time and significant expenses with no guarantee of compensation. Henssler Decl., ¶¶92-95. Although the case was brought to a successful conclusion, this was far from guaranteed at the outset. This Litigation was a particularly challenging and risky proposition in light of Defendants' materiality, falsity, and scienter arguments. As discussed in the previous section, securities actions are "notoriously uncertain" and this was particularly true here, as there was no way to know whether Lead Counsel would be able to prove each of the elements under §10(b) at trial.

"There are numerous class actions in which counsel expended thousands of hours and yet received no remuneration whatsoever despite their diligence and expertise." *In re Veeco Instruments Inc. Sec. Litig.*, 2007 WL 4115808, at *6 (S.D.N.Y. Nov. 7, 2007). Securities cases have been dismissed at the pleading stage, dismissed on summary judgment, lost at trial, and even reversed after plaintiffs prevailed at trial, as the law is complex and continually evolving. *See, e.g.*, *In re JDS*

Uniphase Corp. Sec. Litig., 2007 WL 4788556, at *1 (N.D. Cal. Nov. 27, 2007) (jury verdict for defendants after lengthy trial); *In re Alstom SA Sec. Litig.*, 741 F. Supp. 2d 469, 471-73 (S.D.N.Y. 2010) (claims based on purchases on foreign exchanges eliminated by the "new 'transactional' rule" enunciated by the Supreme Court).[6] Quite simply, "Defendants prevail outright in many securities suits." *Silverman v. Motorola Sols., Inc.*, 739 F.3d 956, 958 (7th Cir. 2013).

Lead Counsel's assumption of a contingency-fee risk in this case strongly supports the reasonableness of the requested fee. *See FLAG Telecom*, 2010 WL 4537550, at *27 ("the risk associated with a case undertaken on a contingent fee basis is an important factor in determining an appropriate fee award"); *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 148 (S.D.N.Y. 2010) ("There was significant risk of non-payment in this case, and Plaintiffs' Counsel should be rewarded for having borne and successfully overcome that risk.").

4. The Quality of Representation and Public Policy Support the Requested Fee

Lead Counsel litigated this case efficiently and diligently, beginning with its research and investigation of the facts to support a pleading that could withstand a motion to dismiss, to obtain an exceptional result for the Class. Indeed, the quality of Lead Counsel's representation is best evidenced by the result achieved. The Settlement represents a recovery that is multiples above the median 1.8% percentage recovery in securities class actions settled in 2022. NERA Study, Fig. 19 at 18. Here, Lead Counsel demonstrated a great deal of effectiveness in achieving a settlement at this level, at this juncture, in this particular case.

---

[6] In fact, "[p]recedent is replete with situations in which attorneys representing a class have devoted substantial resources in terms of time and advanced costs yet have lost the case despite their advocacy." *In re Xcel Energy, Inc. Sec., Derivative & ERISA Litig.*, 364 F. Supp. 2d 980, 994 (D. Minn. 2005); *see also, e.g.*, *Hubbard v. BankAtlantic Bancorp, Inc.*, 688 F.3d 713 (11th Cir. 2012) (affirming judgment as a matter of law following jury verdict partially in plaintiffs' favor); *Robbins v. Koger Props., Inc.*, 116 F.3d 1441, 1449 (11th Cir. 1997) (reversal of jury verdict of $81 million).

The result is all the more impressive in light of the quality of defense counsel. *See Marsh*, 265 F.R.D. at 148 ("The high quality of defense counsel opposing Plaintiffs' efforts further proves the caliber of representation that was necessary to achieve the Settlement."). Here, defense counsel is a prominent international law firm with extensive securities litigation experience. They did not and would not settle without serious deliberation.

Finally, strong public policy favors rewarding firms for bringing successful securities actions. *See Woburn Ret. Sys.*, 2017 WL 3579892, at *7 (noting a fee award was "appropriate, and not excessive, to encourage future securities class actions"); *FLAG Telecom*, 2010 WL 4537550, at *29 (recognizing that if the "important public policy [of enforcing the securities laws] is to be carried out, the courts should award fees which will adequately compensate Lead Counsel for the value of their efforts, taking into account the enormous risks they undertook").

5. Plaintiff's Approval and the Class's Reaction to Date Support the Requested Fee

Plaintiff was actively involved in prosecuting and resolving this Litigation and approved the requested fee and expense award, which they understand is contingent on this Court's approval. *See* Turner Decl., ¶9. Additionally, the Notice advised Class Members that counsel would apply to the Court for an award of attorneys' fees in an amount up to 18% of the Settlement Amount. As discussed above, the reaction of the Class to date supports the fee request as no Class Member has objected to that amount or, for that matter, any aspect of the Settlement. These factors further support the reasonableness of the fee request.

E. A Lodestar Crosscheck Confirms the Reasonability of the Requested Fee

To ensure the reasonableness of a fee awarded under the percentage-of-the-fund method, the Second Circuit permits courts to "cross-check" the proposed award against counsel's lodestar. *See*

Goldberger, 209 F.3d at 50. In cases like this, fees representing multiples of lodestar are regularly awarded to reflect the contingency-fee risk and other relevant factors. *See, e.g.*, *Flag Telecom*, 2010 WL 4537550, at *26 ("'Under the lodestar method, a positive multiplier is typically applied to the lodestar in recognition of the risk of the litigation, the complexity of the issues, the contingent nature of the engagement, the skill of the attorneys, and other factors.'"); *In re Comverse Tech., Inc. Sec. Litig.*, 2010 WL 2653354, at *5 (E.D.N.Y. June 24, 2010) ("Where . . . counsel has litigated a complex case under a contingency fee arrangement, they are entitled to a fee in excess of the lodestar.").

Accordingly, in complex contingent litigation, lodestar multipliers of between 2 and 5 are commonly awarded. *See Anwar v. Fairfield Greenwich Ltd.*, 2012 WL 1981505, *3 (S.D.N.Y. June 1, 2012) (acknowledging 3 to 4.5 multipliers to be common, and finding multiplier of 2.42 "well within the range of lodestar multipliers approved by courts in the Second Circuit"); *In re Prothena Corp. PLC Sec. Litig.*, 2019 WL 6528672, *1-*2 (S.D.N.Y. Dec. 4, 2019) (2.67 multiplier, 30% fee); *Reynolds v. Repsol YPF, S.A.*, 2008 WL 11383317, *2 (S.D.N.Y. May 7, 2008) (awarding 25% fee with 2.37 multiplier); *In re Bisys Sec. Litig*., 2007 WL 2049726, at *3 (S.D.N.Y. July 16, 2007) (awarding 30% fee representing 2.99 multiplier, which "f[ell] well within the parameters set in this district and elsewhere"). Here, if the Court decides to consider it, a lodestar cross-check would fully support the requested fee.

This contingent action was litigated for over four years and the recovery is roughly 22% of reasonably recoverable class-wide damages. Lead Counsel devoted 6,556.79 hours of attorney and staff time in prosecuting this Litigation, and their lodestar – derived by multiplying the hours each

person worked by their current hourly rates – is $4,573,599.65.[7] *See* Declaration of Robert R. Henssler Jr. Filed on Behalf of Robbins Geller Rudman & Dowd LLP in Support of Application for Award of Attorneys' Fees and Expenses ("RGRD Declaration"), Ex. A. The requested fee of 18% of the Settlement Amount represents a ***negative*** multiplier of 0.19 lodestar, unquestionably supporting the requested fee. *See Fogarazzo v. Lehman Bros.*, 2011 WL 671745, *4 (S.D.N.Y. Feb. 23, 2011) ("Not only is Class Counsel not receiving a multiplier of their lodestar to compensate them for the contingent risk factor, their fee request amounts to a deep discount from their lodestar. Thus, the lodestar 'crosscheck' unquestionably supports a percentage fee award of one-third."); *Okla. Police Pension Fund & Ret Sys. v. Teligent, Inc.*, 2021 WL 5630806, at *1 (S.D.N.Y. Dec. 1, 2012) (negative multiplier reinforced suitability of one-third fee award). The multiplier here is well below the range of multipliers in cases of this type and fully supports the requested fee.

VIII. COUNSEL'S EXPENSES WERE REASONABLY INCURRED AND NECESSARY TO THE PROSECUTION OF THIS LITIGATION

Lead Counsel also respectfully requests an award of $526,073.86 in expenses and charges related to this Litigation, plus interest at the same rate as that earned by the Settlement Fund. Lead Counsel was aware that it might not recover any of these expenses unless the case was successfully resolved. It therefore took steps to minimize expenses where it could while still vigorously litigating the Action. Henssler Decl., ¶100. Lead Counsel has carefully detailed these expenses, which are properly recovered by counsel. *See* RGRD Declaration. *See, e.g.*, *In re China Sunergy Sec. Litig.*, 2011 WL 1899715, at *6 (S.D.N.Y. May 13, 2011) (noting counsel is compensated "'for reasonable

---

[7] The Supreme Court and courts in this Circuit have long approved the use of current hourly rates to calculate lodestar as a means of compensating for the delay in receiving payment that is inherent in class actions, inflationary losses, and the loss of access to legal and monetary capital that could otherwise have been employed had class counsel been paid on a current basis during the pendency of the litigation. *See In re Union Carbide Corp. Consumer Prods. Bus. Sec. Litig.*, 724 F. Supp. 160, 163 (S.D.N.Y. 1989); *Veeco*, 2007 WL 4115808, at *9; *Jenkins*, 491 U.S. at 284.

out-of-pocket expenses incurred and customarily charged to their clients, as long as they were "incidental and necessary to the representation"'"'); *FLAG Telecom*, 2010 WL 4537550, at *30 ("It is well accepted that counsel who create a common fund are entitled to the reimbursement of expenses that they advanced to a class.").

These expenses reflect routine and typical expenditures in securities cases (for example, expert and mediation fees and travel to meet with potential witnesses and consultants), were necessarily incurred, and are of the type routinely charged to clients billed by the hour.

These expenses were approved by Plaintiff,[8] and no Class Member has objected to them to date. Each of these expenses is reasonable and therefore should be approved.

IX. PLAINTIFF SHOULD RECEIVE A REASONABLE AWARD PURSUANT TO 15 U.S.C. §78u-4(a)(4)

Plaintiff Birmingham Funds seeks an award of $3,696.00 for its efforts in representing the Class. The PSLRA provides an "award of reasonable costs and expenses (including lost wages) directly relating to the representation of the class" to "any representative party serving on behalf of a class." 15 U.S.C. §78u-4(a)(4). This type of an award "'provide[s] an incentive for such plaintiffs to remain involved in the litigation and to incur such expenses in the first place.'" *Signet Jewelers*, 2020 WL 4196468, at *22.

As its declaration demonstrates, Plaintiff dedicated significant time and attention to this Litigation by interfacing with counsel, monitoring the investigation, reviewing documents before and after filing as necessary, supervising the mediation process and negotiations, reviewing updates and factual developments, and otherwise assisting counsel as asked. *See* Turner Decl., ¶¶6-7. In short,

---

[8] *See* Turner Decl., ¶9. The Turner Declaration indicates Plaintiff's approval of expenses of $526,216.32, but, as noted above, Lead Counsel requests an award of $526,073.86 in expenses and charges related to this Litigation.

without its involvement in this Action and its contributions to date, there would be no recovery for the Class. The requested award to Plaintiff would satisfy the sound policy of incentivizing investors to assist in meritorious securities class actions. Notably, Class Members received notice of these requested awards and, to date, no objections have been received.

Many courts have approved awards to lead plaintiffs well above this level. *See, e.g.*, *In re Deutsche Bank AG Sec. Litig.*, 2020 WL 3162980, at *2 (S.D.N.Y. June 11, 2020) (awarding total of $20,000 to two plaintiffs); *Christine Asia*, 2019 WL 5257534, at *1 (approving $12,500 to each of five plaintiffs); *Veeco*, 2007 WL 4115808, at *12 (awarding $16,089.20 for time spent supervising litigation and characterizing such awards as "routine"); *see also In re Intercloud Sys., Inc. Sec. Litig.*, No. 3:14-cv-01982-PGS-DEA, ECF 135 at 4 (¶8) (D.N.J. Dec. 5, 2017) (awarding $15,400) (attached as Ex. D hereto). The modest awards requested are appropriate here.

X. CONCLUSION

Based on the foregoing and the entire record, Plaintiff and Lead Counsel respectfully request that the Court certify the Class and approve: (1) the Settlement and Plan of Allocation; (2) Lead Counsel's request for an award of attorneys' fees of 18% of the Settlement Amount and $526,073.86 in litigation expenses and charges; and (3) an award of $3,696.00 to Plaintiff.

DATED: September 15, 2023

Respectfully submitted,

ROBBINS GELLER RUDMAN
& DOWD LLP
DARREN J. ROBBINS
THEODORE J. PINTAR
ROBERT R. HENSSLER JR.
HILLARY B. STAKEM
TING H. LIU
SARAH A. FALLON

s/ Robert R. Henssler Jr.

ROBERT R. HENSSLER JR.

655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)
darrenr@rgrdlaw.com
tedp@rgrdlaw.com
bhenssler@rgrdlaw.com
hstakem@rgrdlaw.com
tliu@rgrdlaw.com
sfallon@rgrdlaw.com

ROBBINS GELLER RUDMAN
& DOWD LLP
SAMUEL H. RUDMAN
MARIO ALBA JR.
ERIN W. BOARDMAN
58 South Service Road, Suite 200
Melville, NY 11747
Telephone: 631/367-7100
631/367-1173 (fax)
srudman@rgrdlaw.com
malba@rgrdlaw.com
eboardman@rgrdlaw.com

Lead Counsel for Lead Plaintiff and the Class

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on September 15, 2023, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the email addresses on the attached Electronic Mail Notice List, and I hereby certify that I caused the mailing of the foregoing via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

s/ Robert R. Henssler Jr.
ROBERT R. HENSSLER JR.

ROBBINS GELLER RUDMAN
& DOWD LLP
655 West Broadway, Suite 1900
San Diego, CA 92101-8498
Telephone: 619/231-1058
619/231-7423 (fax)

Email: BHenssler@rgrdlaw.com

Mailing Information for a Case 1:18-cv-10330-JPO City of Birmingham Firemen's and Policemen's Supplemental Pension System v. Ryanair Holdings plc et al

Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

- **Erin Whitney Boardman**
  eboardman@rgrdlaw.com,e_file_ny@rgrdlaw.com,e_file_sd@rgrdlaw.com
- **Roger Allen Cooper**
  racooper@cgsh.com,maofiling@cgsh.com
- **Sarah Fallon**
  sfallon@rgrdlaw.com
- **Jared Mitchell Gerber**
  jgerber@cgsh.com,maofiling@cgsh.com
- **Robert R. Henssler , Jr**
  bhenssler@rgrdlaw.com,kmccormack@rgrdlaw.com
- **Thomas S Kessler**
  tkessler@cgsh.com,maofiling@cgsh.com
- **Ting Liu**
  tliu@rgrdlaw.com,e_file_sd@rgrdlaw.com
- **Dominic LoVerde**
  dloverde@powerrogers.com
- **Francisco J. Mejia**
  fmejia@rgrdlaw.com
- **Theodore J. Pintar**
  tedp@rgrdlaw.com,e_file_sd@rgrdlaw.com
- **David Avi Rosenfeld**
  drosenfeld@rgrdlaw.com,e_file_ny@rgrdlaw.com,e_file_sd@rgrdlaw.com,drosenfeld@ecf.courtdrive.com
- **Samuel Howard Rudman**
  srudman@rgrdlaw.com,e_file_ny@rgrdlaw.com,mblasy@rgrdlaw.com,e_file_sd@rgrdlaw.com
- **Hillary B. Stakem**
  hstakem@rgrdlaw.com
- **Mitchell M.Z. Twersky**
  mtwersky@aftlaw.com,ahirsch@aftlaw.com

Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

- (No manual recipients)

EXHIBIT A

NERA
ECONOMIC CONSULTING

24 January 2023

Recent Trends in Securities Class Action Litigation: 2022 Full-Year Review

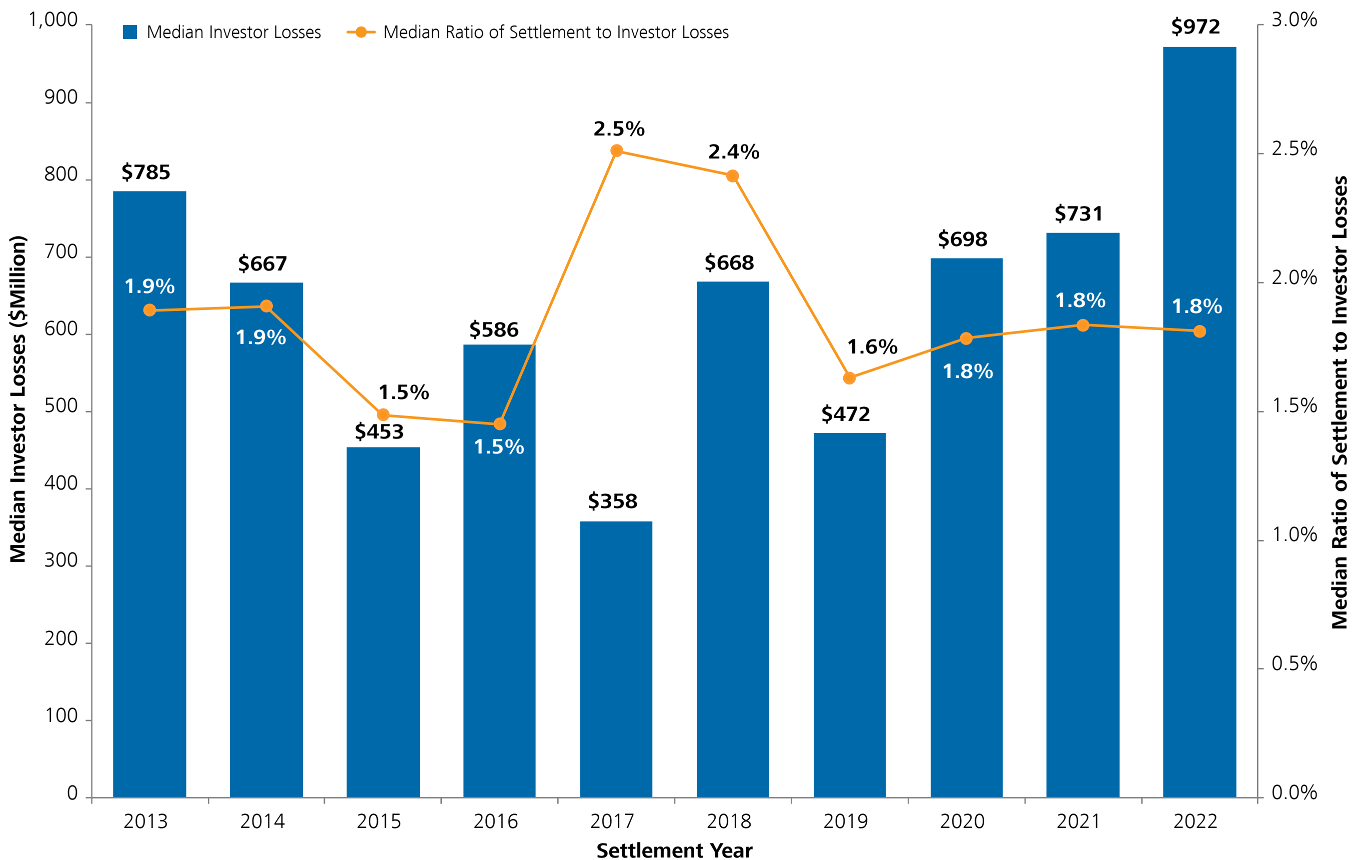
Federal Filings Declined for the Fourth Consecutive Year

Average and Median Settlement Values Increased by More than 50% Compared to 2021

By Janeen McIntosh, Svetlana Starykh, and Edward Flores

Insight in Economics™

Figure 19. **Median NERA-Defined Investor Losses and Median Ratio of Settlement to Investor Losses by Settlement Year**
January 2013–December 2022



NERA has identified the following key factors as driving settlement amounts:

- NERA-Defined Investor Losses;
- The market capitalization of the issuer immediately after the end of the class period;
- The types of securities (in addition to common stock) alleged to have been affected by the fraud;
- Variables that serve as a proxy for the merit of plaintiffs' allegations (e.g., whether the company has already been sanctioned by a government or regulatory agency or paid a fine in connection with the allegations);
- The stage of litigation at the time of settlement; and
- Whether an institution or public pension fund is named lead plaintiff (see Figure 20).

Visit **www.nera.com** to learn more about our practice areas and global offices.

© Copyright 2023
National Economic Research Associates, Inc.

All rights reserved.
Printed in the USA.

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHN A. ERLANDSON and JAMES IAN NORRIS, Individually and on Behalf of All Others Similarly Situated,

Plaintiffs,

vs.

TRITERRAS, INC. (f/k/a NETFIN HOLDCO), NETFIN ACQUISITION CORP., TRITERRAS FINTECH PTE. LTD., MVR NETFIN LLC, RICHARD MAURER, MARAT ROSENBERG, VADIM KOMISSAROV, GERALD PASCALE, SRINIVAS KONERU, JAMES H. GROH, ALVIN TAN, JOHN A. GALANI, MATTHEW RICHARDS, VANESSA SLOWEY and KENNETH STRATTON,

Defendants.

Civil Action No. 7:20-cv-10795-CS

CLASS ACTION

~~[PROPOSED]~~ ORDER AWARDING ATTORNEYS' FEES AND EXPENSES AND AWARDS TO PLAINTIFFS PURSUANT TO 15 U.S.C. §77z-1(a)(4)

This matter having come before the Court on September 6, 2022, on the motion of Lead Counsel for an award of attorneys' fees and expenses and awards to Plaintiffs (the "Fee Motion"), the Court, having considered all papers filed and proceedings conducted herein, having found the Settlement of this Action to be fair, reasonable and adequate, and otherwise being fully informed of the premises and good cause appearing therefor;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. This Order incorporates by reference the definitions in the Stipulation and Agreement of Settlement dated April 27, 2022 (the "Stipulation"), and all capitalized terms used, but not defined herein, shall have the same meanings as set forth in the Stipulation.

2. This Court has jurisdiction over the subject matter of this application and all matters relating thereto, including all Members of the Class who have not timely and validly requested exclusion.

3. Notice of Lead Counsel's Fee Motion was given to all Class Members who could be located with reasonable effort. The form and method of notifying the Class of the Fee Motion met the requirements of Rule 23 of the Federal Rules of Civil Procedure and the Securities Act of 1933, as amended by the Private Securities Litigation Reform Act of 1995 (15 U.S.C. §77z-1(a)(7)), due process, and any other applicable law, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

4. The Court hereby awards Lead Counsel attorneys' fees of one-third of the Settlement Amount, plus expenses in the amount of $38,872.83, together with the interest earned on both amounts for the same time period and at the same rate as that earned on the Settlement Fund until paid. The Court finds that the amount of fees awarded is fair, reasonable, and appropriate under the "percentage-of-recovery" method.

5. The awarded attorneys' fees and expenses and interest earned thereon, shall be paid to Lead Counsel immediately upon execution of the Final Judgment and this Order and subject to the terms, conditions, and obligations of the Stipulation, and in particular, ¶6.2 thereof, which terms, conditions, and obligations are incorporated herein.

6. In making this award of fees and expenses to Lead Counsel, the Court has considered and found that:

(a) the Settlement has created a fund of $9,000,000 in cash that is already on deposit, and numerous Class Members who submit, or have submitted, valid Proof of Claim and Release forms will benefit from the Settlement created by Lead Counsel;

(b) at least 40,262 copies of the Notice were disseminated to potential Class Members indicating that Lead Counsel would move for attorneys' fees in an amount not to exceed one-third of the Settlement Amount and for expenses in an amount not to exceed $100,000, plus interest on both amounts, and no objections to the fees or expenses were filed by Class Members;

(c) Lead Counsel expended substantial time and effort pursuing the Action on behalf of the Class;

(d) Lead Counsel pursued the Action entirely on a contingent basis;

(e) the Action involves complex factual and legal issues and, in the absence of settlement, would involve lengthy proceedings whose resolution would be uncertain;

(f) had Lead Counsel not achieved the Settlement, there would remain a significant risk that the Class may have recovered less or nothing from the Defendants;

(g) Lead Counsel represented that they have devoted over 1,500 hours to achieve the Settlement;

(h) public policy concerns favor the award of reasonable attorneys' fees and expenses in securities class action litigation; and

(i) the attorneys' fees and expenses awarded are fair and reasonable.

7. Pursuant to 15 U.S.C. §77z-1(a)(4), the Court awards $10,000 each to Plaintiffs John A. Erlandson and James Ian Norris for the time they spent directly related to their representation of the Class.

8. Any appeal or any challenge affecting this Court's approval regarding the Fee Motion shall in no way disturb or affect the finality of the Judgment entered with respect to the Settlement.

9. In the event that the Settlement is terminated or does not become Final or the Effective Date does not occur in accordance with the terms of the Stipulation, this Order shall be rendered null and void to the extent provided in the Stipulation and shall be vacated in accordance with the Stipulation.

IT IS SO ORDERED.

DATED: 9/8/22

THE HONORABLE CATHY SEIBEL
UNITED STATES DISTRICT JUDGE

EXHIBIT C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PANTHER PARTNERS INC., Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. JIANPU TECHNOLOGY INC., DAQING (DAVID) YE, YILU (OSCAR) CHEN, JIAYAN LU, CAOFENG LIU, CHENCHAO ZHUANG, JAMES QUN MI, KUI ZHOU, YUANYUAN FAN, DENNY LEE, RONG360 INC., GOLDMAN SACHS (ASIA) L.L.C., GOLDMAN SACHS & CO. LLC, MORGAN STANLEY & CO. INTERNATIONAL PLC, J.P. MORGAN SECURITIES LLC, CHINA RENAISSANCE SECURITIES (HONG KONG) LIMITED, CHINA RENAISSANCE SECURITIES (US) INC., LAW DEBENTURE CORPORATE SERVICES INC. and GISELLE MANON, inclusive, Defendants.	:	Civil Action No. 1:18-cv-09848-PGG <u>CLASS ACTION</u> [~~PROPOSED~~] ORDER AWARDING ATTORNEYS' FEES AND EXPENSES AND AWARD TO PLAINTIFF PURSUANT TO 15 U.S.C. §77z-1(a)(4)

This matter having come before the Court on May 12, 2022, on the motion of Lead Counsel for an award of attorneys' fees and expenses and an award to Lead Plaintiff (the "Fee Motion"), the Court, having considered all papers filed and proceedings conducted herein, having found the Settlement of this Action to be fair, reasonable and adequate, and otherwise being fully informed of the premises and good cause appearing therefore;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. This Order incorporates by reference the definitions in the Stipulation of Settlement dated November 15, 2021 (the "Stipulation"), and all capitalized terms used, but not defined herein, shall have the same meanings as set forth in the Stipulation.

2. This Court has jurisdiction over the subject matter of this application and all matters relating thereto, including all members of the Settlement Class who have not timely and validly requested exclusion.

3. Notice of Lead Counsel's Fee Motion was given to all Settlement Class Members who could be located with reasonable effort. The form and method of notifying the Settlement Class of the Fee Motion met the requirements of Rule 23 of the Federal Rules of Civil Procedure and the Securities Act of 1933, as amended by the Private Securities Litigation Reform Act of 1995 (15 U.S.C. §77z-1(a)(7)), due process, and any other applicable law, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

4. The Court hereby awards Lead Counsel attorneys' fees of 33-1/3% of the Settlement Amount, plus expenses in the amount of $31,019.24, together with the interest earned on both amounts for the same time period and at the same rate as that earned on the Settlement Fund until

paid. The Court finds that the amount of fees awarded is fair, reasonable, and appropriate under the "percentage-of-recovery" method.

5. The awarded attorneys' fees and expenses and interest earned thereon, shall be paid to Lead Counsel immediately upon execution of the Final Judgment and this Order and subject to the terms, conditions, and obligations of the Stipulation, and in particular, ¶8.2 thereof, which terms, conditions, and obligations are incorporated herein.

6. In making this award of fees and expenses to Lead Counsel, the Court has considered and found that:

(a) the Settlement has created a fund of $7,500,000 in cash that is already on deposit, and numerous Settlement Class Members who submit, or have submitted, valid Proof of Claim and Release Forms will benefit from the Settlement created by Lead Counsel;

(b) at least 19,205 copies of the Notice were disseminated to potential Settlement Class Members indicating that Lead Counsel would move for attorneys' fees in an amount not to exceed 33-1/3% of the Settlement Amount and for expenses in an amount not to exceed $75,000, plus interest on both amounts, and no objections to the fees or expenses were filed by Settlement Class Members;

(c) Lead Counsel pursued the Action and achieved the Settlement with skill, perseverance, and diligent advocacy;

(d) Lead Counsel expended substantial time and effort pursuing the Action on behalf of the Settlement Class;

(e) Lead Counsel pursued the Action entirely on a contingent basis;

(f) the Action involves complex factual and legal issues and, in the absence of settlement, would involve lengthy proceedings whose resolution would be uncertain;

(g) had Lead Counsel not achieved the Settlement, there would remain a significant risk that the Settlement Class may have recovered less or nothing from the Defendants;

(h) Lead Counsel represented that they have devoted 2,589 hours, with a lodestar value of $1,863,898.50, to achieve the Settlement;

(i) public policy concerns favor the award of reasonable attorneys' fees and expenses in securities class action litigation; and

(j) the attorneys' fees and expenses awarded are fair and reasonable.

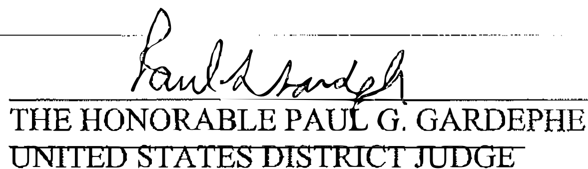
7. Pursuant to 15 U.S.C. §77z-1(a)(4), the Court awards $2,500 to Lead Plaintiff Panther Partners, Inc. for the time it spent directly related to its representation of the Settlement Class.

8. Any appeal or any challenge affecting this Court's approval regarding the Fee Motion shall in no way disturb or affect the finality of the Judgment entered with respect to the Settlement.

9. In the event that the Settlement is terminated or does not become Final or the Effective Date does not occur in accordance with the terms of the Stipulation, this Order shall be rendered null and void to the extent provided in the Stipulation and shall be vacated in accordance with the Stipulation.

IT IS SO ORDERED.

DATED: May 12, 2022



THE HONORABLE PAUL G. GARDEPHE
UNITED STATES DISTRICT JUDGE

EXHIBIT D

COHN LIFLAND PEARLMAN
HERRMANN & KNOPF LLP
PETER S. PEARLMAN
JEFFREY W. HERRMANN
Park 80 West – Plaza One
250 Pehle Avenue, Suite 401
Saddle Brook, NJ 07663
Telephone: 201/845-9600
201/845-9423 (fax)

Liaison Counsel

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

In re INTERCLOUD SYSTEMS, INC. SECURITIES LITIGATION	)	Master Docket No. 3:14-01982-PGS-DEA
This Document Relates To:	)	CLASS ACTION
ALL ACTIONS.	)	[~~PROPOSED~~] ORDER AWARDING ATTORNEYS' FEES AND EXPENSES AND AWARD TO LEAD PLAINTIFF PURSUANT TO 15 U.S.C. §78u-4(a)(4)

This matter having come before the Court on December 5, 2017, on the motion of Lead Counsel for an award of attorneys' fees and expenses (the "Fee Motion"), the Court, having considered all papers filed and proceedings conducted herein, having found the Settlement of this Litigation to be fair, reasonable and adequate, and otherwise being fully informed in the premises and good cause appearing therefore;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. This Order incorporates by reference the definitions in the Stipulation of Settlement dated July 26, 2017 (the "Stipulation"), and all capitalized terms used, but not defined herein, shall have the same meanings as set forth in the Stipulation.

2. This Court has jurisdiction over the subject matter of this application and all matters relating thereto, including all Members of the Class who have not timely and validly requested exclusion.

3. Notice of Lead Counsel's Fee Motion was given to all Class Members who could be located with reasonable effort. The form and method of notifying the Class of the Fee Motion met the requirements of Rule 23 of the Federal Rules of Civil Procedure and 15 U.S.C. §78u-4(a)(7), the Securities Exchange Act of 1934, as amended by the Private Securities Litigation Reform Act of 1995, due process, and any other applicable law, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

1330832_1

4. The Court hereby awards Lead Counsel attorneys' fees of 30% of the Settlement Amount (or $810,000), plus expenses in the amount of $156,629.59, together with the interest earned on both amounts for the same time period and at the same rate as that earned on the Settlement Fund until paid. The Court finds that the amount of fees awarded is appropriate and that the amount of fees awarded is fair and reasonable under the "percentage-of-recovery" method.

5. The awarded attorneys' fees and expenses and interest earned thereon, shall be paid to Lead Counsel subject to the terms, conditions, and obligations of the Stipulation, and in particular, ¶6.2 thereof, which terms, conditions, and obligations are incorporated herein.

6. In making this award of fees and expenses to Lead Counsel, the Court has considered and found that:

(a) the Settlement has created a fund of $2,700,000 in cash that is already on deposit, and numerous Class Members who submit, or have submitted, valid Proof of Claim and Release forms will benefit from the Settlement created by Lead Plaintiff's Counsel;

(b) over 14,300 copies of the Notice were disseminated to potential Class Members indicating that Lead Counsel would move for attorneys' fees in an amount not to exceed 30% of the Settlement Amount and for expenses in an amount

not to exceed $200,000, plus interest earned on both amounts, and no objections to the fees or expenses were filed by Class Members;

(c) Lead Plaintiff's Counsel have pursued the Litigation and achieved the Settlement with skill, perseverance and diligent advocacy;

(d) Lead Plaintiff's Counsel have expended substantial time and effort pursuing the Litigation on behalf of the Class;

(e) Lead Plaintiff's Counsel pursued the Litigation on a contingent basis, having received no compensation during the Litigation, and any fee amount has been contingent on the result achieved;

(f) the Litigation involves complex factual and legal issues and, in the absence of settlement, would involve lengthy proceedings whose resolution would be uncertain;

(g) had Lead Plaintiff's Counsel not achieved the Settlement, there would remain a significant risk that the Class may have recovered less or nothing from Defendants;

(h) Lead Plaintiff's Counsel have devoted over 4,500 hours, with a lodestar value of $2,662,359.25, to achieve the Settlement;

(i) public policy concerns favor the award of reasonable attorneys' fees and expenses in securities class action litigation; and

Case 3:14-cv-01982-PGS-TJB Document 132-4 Filed 11/28/17 Page 5 of 5 PageID: 2777

(j) the attorneys' fees and expenses awarded are fair and reasonable and consistent with awards in similar cases within the Third Circuit.

7. Any appeal or any challenge affecting this Court's approval regarding the Fee Motion shall in no way disturb or affect the finality of the Judgment entered with respect to the Settlement.

8. Pursuant to 15 U.S.C. §78u-4(a)(4), the Court awards $15,400.00 to Lead Plaintiff Charles R. Gilbert, Jr. for the time he spent directly related to his representation of the Class.

9. In the event that the Settlement is terminated or does not become Final or the Effective Date does not occur in accordance with the terms of the Stipulation, this Order shall be rendered null and void to the extent provided in the Stipulation and shall be vacated in accordance with the Stipulation.

DATED: 12/5/17

HONORABLE PETER G. SHERIDAN
UNITED STATES DISTRICT JUDGE

1330832_1