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 CLASS ACTION 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)

Robert R. Henssler Jr. declares, pursuant to 28 U.S.C. §1746, as follows:

1. I am an attorney duly licensed to practice before all courts of the State of California. I am a member of the law firm of Robbins Geller Rudman & Dowd LLP ("Robbins Geller" or "Lead Counsel") and counsel for Lead Plaintiffs City of Birmingham Firemen's and Policemen's Supplemental Pension System and City of Birmingham Retirement and Relief System (collectively, "Plaintiff") in the above-captioned action (the "Litigation" or "Action"). I have personal knowledge of the majority of the matters set forth herein based on my active participation and supervision of all material aspects of the Litigation. As to the remaining matters, I have reviewed our litigation files and consulted with other attorneys and support staff who worked on this case. If called upon, I could and would testify completely to the matters set forth herein.

2. I submit this declaration 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).[1]

I. PRELIMINARY STATEMENT

3. The $5 million proposed Settlement is the culmination of several years of hard-fought litigation. As detailed below, Plaintiff, through Lead Counsel, zealously prosecuted its claims throughout this Action through filing a detailed amended complaint and proposed second amended complaint, successfully opposing Defendants' motion to dismiss, filing a motion for class certification, and steadfastly pursuing discovery from Defendants and numerous third parties. The

[1] Unless otherwise indicated, all capitalized terms herein have the meanings ascribed to them in the Stipulation and Agreement of Settlement, dated June 7, 2023 (the "Stipulation"). *See* ECF 130.

Settlement represents approximately 22% of the estimated recoverable damages for the one corrective disclosure remaining following the Court's June 1, 2020 motion to dismiss order ("MTD Order") (ECF 52) and February 4, 2021 clarification of the MTD Order (ECF 77 at 23:25-24:8), as calculated by Plaintiff's consultant, and is an excellent result for the Class.

4. As further detailed herein, proceeding to class certification, summary judgment, and then a jury trial would each present substantial risks. In agreeing to settle the Action now, Plaintiff and Lead Counsel carefully considered the strengths of the case, as well as the substantial risks they faced by continuing the Litigation. In opting to settle, Plaintiff and Lead Counsel determined that settlement on the terms obtained was in the Class's best interest. Representatives of Plaintiff – who supervised Lead Counsel and remained well informed during the Litigation – ultimately approved the Settlement. *See* Declaration of Jay P. Turner ("Turner Decl."), submitted herewith.

5. The substantial investigation, fact discovery, motion practice, and mediation outlined herein meaningfully informed Lead Counsel of the case's strengths and weaknesses. Lead Counsel consistently considered this information in determining the best course of action for the Class. And while Plaintiff is confident that proceeding through fact and expert discovery could unveil further evidence in support of its claims, Plaintiff understands the substantial risk and delays inherent in proceeding with further discovery, class certification, summary judgment, trial, and any possible appeals.

6. Plaintiff alleges that in violation of §§10(b) and 20(a) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 promulgated thereunder, Defendants made false and misleading statements and omitted material facts in filings with the U.S. Securities and Exchange Commission and in earnings calls and other public statements to investors and the

media. Specifically, Plaintiff claims that Defendants falsely understated and concealed the true likelihood that Ryanair's pilots and other staff would unionize, telling investors that "hell [would] freeze over" before Ryanair recognized employee trade unions, and that, Ryanair employees did not even want unionization because, among other things: "all of [Ryanair's] people are covered by collective bargaining," its labor relations were "excellent" and its pay and conditions were "industry leading," and "Ryanair [was] not short of pilots." Plaintiff alleges that in reality, and unbeknownst to Plaintiff and the Company's investors, Defendants knew that Ryanair was "always going to be unionised" – something defendant Michael O'Leary later admitted. More, Plaintiff asserts that Ryanair was not negotiating with its employees fairly or in good faith; the state of the Company's labor relations was far worse than had been publicly represented by Defendants; the Company's historical operating model and profit growth were not sustainable as the Company was suffering from a pilot shortage as it had been unable to hire and retain sufficient pilots to meet expected demand, and, as a consequence, the Company was experiencing increased employee turnover and was threatened with massive strikes. Defendants, on the other hand, have argued that Defendants always maintained that Ryanair would unionize when a majority of their employees wanted unionization, and that the alleged false statements were true when made. Defendants have also argued that Plaintiff will be unable to prove scienter, as at the time the alleged false statements were made, there was no reason for Defendants to believe that changing market conditions in the near future would require Ryanair to yield to pilots' unionization demands. *See, e.g.*, ECF 30-32. There is no doubt that Defendants would have continued to vigorously pursue these defenses throughout the Litigation and at trial.

7. Accordingly, the proposed Settlement avoids the substantial additional costs and risks of further litigating liability and damages if this case were to continue. Indeed, Plaintiff faced

substantial risk that the case would be fully or partially adjudicated against it following a motion for summary judgment from Defendants. And, in addition to the standard complexities and uncertainties inherent in securities litigation, Plaintiff also faced the additional hurdle posed by Defendants (and so relevant witnesses and documents) being located in Ireland. This meant that Plaintiff and the Class faced the costly and lengthy endeavor of pursuing discovery under the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters or the Foreign Tribunals Evidence Act of 1856 (the "Hague Convention") and other strict and multilayered European privacy laws, such as the General Data Protection Regulation ("GDPR"). For all its efforts, there could be no guarantee that Plaintiff would be able to obtain the evidence necessary to prove its claims under those regulations. Given the significant risks in continuing to litigate this Action, Plaintiff and Lead Counsel concluded that the $5,000,000 cash Settlement is in the best interest of the Class.

8. As detailed herein, the Settlement – in both amount and terms – is the product of a comprehensive investigation, detailed analysis, and extensive arm's-length negotiations by experienced counsel directly involved in and deeply familiar with the Action. The negotiations were facilitated by a highly experienced and respected mediator, Gregory P. Lindstrom of Phillips ADR, who ultimately recommended a $5,000,000 resolution to the Action, which the parties accepted. Lead Counsel, working closely with Plaintiff, negotiated the Settlement with a thorough understanding of the strengths and weaknesses of the claims asserted against both Defendants. The Settlement has Plaintiff's full support. *See* Turner Decl.

9. Plaintiff also seeks approval of the proposed Plan of Allocation, which Lead Counsel submits is fair and reasonable. Lead Counsel drafted the Plan of Allocation with the assistance of Lead Plaintiff's damages expert. As further described below and in the Notice, the

Plan of Allocation provides formulas for calculating the recognized claim of each Class Member, based on such information as when the person purchased and sold its Ryanair ADS on the open market. Each Authorized Claimant, including Plaintiff, will receive a *pro rata* distribution pursuant to the Plan of Allocation, and Plaintiff will be subject to the same formula for distribution of the Net Settlement Fund. Importantly, the Plan of Allocation does not treat Plaintiff or any other Class Member preferentially.

10. Lead Counsel prosecuted the Litigation on a wholly contingent basis, advancing and incurring substantial litigation expenses and charges over the years. Lead Counsel shouldered substantial risk in doing so, and, to this date, has not received any compensation for its efforts. Accordingly, in consideration of its significant efforts on behalf of the Class, Lead Counsel seeks an award of attorneys' fees of 18% of the Settlement Amount, plus its litigation expenses of $526,073.86, with interest thereon earned at the same rate as the Settlement Fund. The fee request is made pursuant to an agreement with Plaintiff, and has Plaintiff's full support.

11. The requested fee is within the range of fees awarded in similar Private Securities Litigation Reform Act of 1995 ("PSLRA") securities class action settlements, and is fully justified in light of the substantial benefits conferred on the Class, the significant risks overcome in achieving the Settlement, the quality of representation, and the nature and extent of the legal services Lead Counsel performed in this complex litigation. To date, no Class Members have objected, which suggests Class-wide approval of both the Settlement and the requested fees. Lead Counsel submits that the fee application is fair to the Class under all applicable standards and warrants the Court's approval.

12. Lead Counsel also seeks payment in the amount of $526,073.86, plus interest, for expenses and charges reasonably and necessarily committed to the prosecution of the Litigation

over the last four years. These expenses include, for example: (a) fees and expenses of Ireland-based law firm, Matheson, which assisted Lead Counsel in navigating Irish service requirements and completed other discrete tasks required to ensure fulsome and effective litigation of the Action; (b) fees of Plaintiff's market efficiency, loss causation and executive trading experts; (c) online factual and legal research; (d) administrative expenses; (e) document management expenses; (f) transcript charges; and (g) mediation expenses.

13. The following summarizes the principal events during the Litigation and the legal services Lead Counsel provided to Plaintiff and the Class.

II. THE NATURE AND HISTORY OF THE LITIGATION

A. Plaintiff City of Birmingham Firemen's and Policemen's Supplemental Pension System Files the Initial Complaint and Is Appointed Lead Plaintiff

14. On November 6, 2018, City of Birmingham Firemen's and Policemen's Supplemental Pension System initiated this Action in the United States District Court for the Southern District of New York, as a class action arising under §§10(b) and 20(a) of the Exchange Act, 15 U.S.C. §§78j(b) and 78t(a), and Rule 10b-5, 17 C.F.R. §240.10b-5. ECF 1.

15. In accordance with PSLRA requirements, on November 6, 2018, notice was published advising putative Class members of their right to file a motion for appointment as lead plaintiff. 15 U.S.C. §§78u(a)(1), (a)(3)(B)(i). In response to that notice, the University of Puerto Rico Retirement System ("UPR Retirement") and the City of Birmingham Retirement and Relief System and the City of Birmingham Firemen's and Policemen's Supplemental Pension System (the "Birmingham Funds") each moved to be appointed Lead Plaintiff.

16. On January 24, 2019, the Court granted the Birmingham Funds' motion and approved their selection of Robbins Geller as Lead Counsel. ECF 15. Thereafter, on February 27,

2019, the Court so ordered a proposed briefing schedule for the filing of an amended complaint and responses thereto. ECF 17.

B. Plaintiff Vigorously Pursues Its Claims at the Pleading Stage

17. Before and after initiating this Action, Lead Counsel conducted an extensive investigation of the alleged securities law violations at issue, analyzing years of Ryanair's public filings with the SEC, media reports, analyst reports, and trading data, as well as speaking with former Ryanair employees. Prior to filing the FAC, Lead Counsel also performed legal research to evaluate exactly which theories of liability Plaintiff could allege and how to allege them. Following that investigation, on April 5, 2019, Plaintiff filed the First Amended Complaint (the "FAC"). ECF 22.

18. The FAC asserts claims against Ryanair and O'Leary under §§10(b) and 20(a) of the Exchange Act and Rule 10b-5 promulgated thereunder on behalf of all persons who purchased or otherwise acquired Ryanair ADSs during the period May 30, 2017 to September 28, 2018, inclusive, and who were damaged thereby. ¶¶1, 264, 270-278. Plaintiff's FAC alleged that during the Class Period, Defendants made materially false and misleading statements and omissions concerning Ryanair's labor practices and ability to staff its flights (¶¶136-138, 140-144, 152-153, 157-160, 162-164, 169, 172, 174, 176-177, 179-181, 183, 185-186, 188, 192, 205, 207, 209, 211, 216-217, 219, 222-223), the sustainability of its non-union business model and true likelihood that Ryanair pilots and flight crew would unionize (¶¶139, 142, 145-146, 149, 155, 160, 162, 166-167, 170, 175, 181, 185-187, 193, 195-196, 198-200, 203-204, 207-208, 213-214, 216, 221, 224), and the Company's growth prospects (¶¶145, 150, 183, 188, 190, 193, 198, 200-201, 224). The FAC further alleged that unbeknownst to Ryanair's shareholders, the Company was not negotiating with its employees fairly or in good faith; the state of the Company's labor relations was far worse than

had been publicly represented by Defendants; the Company's historical operating model and profit growth were not sustainable as the Company was suffering from a pilot shortage as it had been unable to hire and retain sufficient pilots to meet expected demand, and, as a consequence, the Company was experiencing increased employee turnover and was threatened with massive strikes; and, as Defendants later admitted, Ryanair was "always going to be unionised." ¶¶44-55, 61-63, 72-74, 81, 85, 89, 95, 99(j), 100-101, 105-106, 109, 111, 123-124, 127(h), 150, 151(b), 156, 168(b), 194(c). Plaintiff also alleged that the Company's 2017 20-F failed to disclose to the market (in violation of the disclosure requirements of Item 5 of SEC Form 20-F and Item 303 of Regulation S-K, 17 C.F.R. §229.303) that it was experiencing pilot shortages and was losing significant numbers of experienced pilots, despite the importance of those trends to Ryanair's operations, growth capacity, and labor costs. ¶¶152-154.

19. The FAC alleged that the truth regarding Defendants' false and misleading statements and omissions began to emerge on December 15, 2017, when the Company announced it needed to recognize employee unions in the face of mounting employee unrest. ¶98. On the announcement of this news, and further partial corrective disclosures on February 5, 2018, May 21, 2018, July 23, 2018, and October 1, 2018 revealed the truth regarding Ryanair's labor practices, pilot shortage, and growth prospects, artificial inflation was removed from the ADS price, causing the Class to suffer damages. ¶¶118, 126, 254.

20. On June 14, 2019, Defendants moved to dismiss the FAC in its entirety pursuant to Federal Rule of Civil Procedure ("Rule") 12(b)(6) and the PSLRA. ECF 30-32. Defendants argued, among other things, that Plaintiff failed to plead: (i) falsity with particularity; (ii) materiality; (iii) a strong inference of scienter; and (iv) control person liability. In accordance with the PSLRA, discovery in the Action was stayed until the Court ruled on Defendants' motion to

dismiss. Lead Plaintiff opposed Defendants' motion on August 30, 2019 (ECF 35), and Defendants replied on October 25, 2019. ECF 45.

21. On June 1, 2020, the Court entered its Opinion and Order granting in part and denying in part Defendants' motion to dismiss. ECF 52. The Court held that Plaintiff adequately alleged actionable misstatements and omissions concerning the likelihood that Ryanair would recognize unions. *Id*. at 4-5, 12-15. As to these statements, the Court also found that Plaintiff adequately alleged a strong inference of scienter, because "statements indicating a near certainty that Ryanair would not recognize employee unions," were "impossible to reconcile with O'Leary's subsequent admission that he had 'long anticipated' unionization.'" *Id.* at 7. The Court similarly upheld Plaintiff's control-person liability claims under §20(a) of the Exchange Act with respect to these statements. *Id*. at 7-8, 18-19. However, the Court dismissed Plaintiff's claims arising from Defendants' statements regarding the Company's labor relations, profitability, and growth targets on falsity, materiality, and scienter grounds. *Id*. at 15-18. With respect to scienter, the Court found insufficient allegations that O'Leary had motive and opportunity to commit fraud because he sold six million shares of Ryanair stock during the Class Period, explaining that Plaintiff had failed "to allege that O'Leary's stock sales were unusual." *Id.* at 6.

22. On July 30, 2020, Defendants filed their answer to the FAC, denying Plaintiff's substantive allegations and asserting 40 separate affirmative defenses. ECF 55.

C. Plaintiff and Lead Counsel Diligently Pursue Discovery

23. Immediately following the Court's MTD Order, Plaintiff and Lead Counsel began analyzing what discovery would be needed to prove the Class's claims, the best avenues through which to pursue such discovery, and then actively issued discovery requests.

24. On July 31, 2020, the Court issued an Order for Conference pursuant to Rule 16(b). ECF 56. In accordance therewith, the parties negotiated a Joint Report and Discovery Plan Pursuant to Fed. R. Civ. P. 26(f) outlining, *inter alia*, statements of the issues as they then appeared, a detailed proposed case schedule, and an estimated time frame for discovery. ECF 57.

25. In lieu of the Rule 16(b) conference, which the Court had scheduled for August 21, 2020 (ECF 56), the Court entered a Scheduling Order setting deadlines for fact discovery, expert discovery, amendment of the complaint, and other pre-trial deadlines, approving the schedule which the parties had negotiated. ECF 58. In accordance with that order, on September 10, 2020, Plaintiff served its Initial Disclosure Statement pursuant to Fed. R. Civ. P. Rule 26(a)(1). In the Initial Disclosure Statement, Plaintiff identified numerous individuals and entities likely to have discoverable information supporting the claims alleged in the FAC. To compile this information, Plaintiff reviewed its own internal files, public information regarding Ryanair's corporate organization, and information obtained during the course of Lead Counsel's investigation into the matters alleged in the FAC.

26. Before discovery could get underway in earnest, the parties had to negotiate and prepare a protective order to govern the treatment, handling and continued production of confidential information produced in this Action in a manner that would protect against the public disclosure of potentially sensitive personal or proprietary information. The parties also negotiated the extent to which, and the conditions under which, such confidential information could be shown to deponents, non-parties, and others not previously privy to such information.

27. However, as referenced above, these negotiations were complex and hard-fought, as the parties could not come to an agreement as to the treatment of foreign personal data in discoverable material under the European General Data Protection Regulation ("GDPR").

Plaintiff ultimately filed a letter motion with the Court requesting a conference on the issue, as well as its proposed protective order on October 2, 2020. ECF 63. On October 6, 2020, Defendants filed a response in opposition along with their own proposed protective order (ECF 64). On October 23, 2020, the Court denied as moot the request for a conference and held that it was premature to resolve any potential disputes regarding the application of foreign data privacy laws and entered Defendants' proposed protective order. ECF 66, 67.

1. Plaintiff Actively Pursues Discovery from Defendants

28. On July 20, 2020, Plaintiff served extensive document requests on Defendants related to the allegations in the FAC. The requests sought information on a variety of issues related to the likelihood of unionization at Ryanair, including the Company's labor relations, its evaluations of the costs and benefits of union recognition, pilot and cabin crew staffing and leave, employee grievances, threatened industrial action, and O'Leary's public statements regarding unionization. On August 21, 2020, Defendants served responses and objections to Plaintiff's First Request for Production of Documents.

29. Plaintiff served its Second Request for Production of Documents to Defendants on December 15, 2020, which sought documents related to Ryanair's GDPR policies and treatment of foreign personal data. On January 14, 2021, Defendants served responses and objections to Plaintiff's Second Request for Production of Documents.

30. For approximately six months, the parties met and conferred to negotiate the scope of Plaintiff's document requests and Defendants' resultant production. Lead Counsel put together detailed letters to Defendants memorializing these discussions and urging Defendants to begin the rolling production of agreed upon categories of documents. Among the key disputed issues were whether the relevant time period for purposes of discovery extended beyond the December 15,

2017 decision to unionize, whether threats of industrial action were sufficiently tied to the likelihood of unionization, the relevance of potential custodians compared to the incremental burden to Defendants of additional custodians, and the collection of O'Leary's documents – or documents that would sufficiently memorialize his conversations – given his lack of email use.

31. On January 20, 2021, when it was clear that the parties' months-long efforts to reach an agreement about the proper scope of Defendants' document production having stalled, Plaintiff filed a letter with the Court requesting an informal conference to address Defendants' document production and the relevant scope of discovery pursuant to Rule 4C of the Court's Individual Practices, in advance of the filing of a motion to compel. ECF 72. Plaintiff's letter argued, among other things, that Defendants had sought to unilaterally narrow the relevant time period and had improperly refused to search for and produce discovery to various requests that were responsive and relevant to falsity, materiality, and scienter. *Id.* Defendants submitted a letter in opposition on January 22, 2021. ECF 73.

32. The Court granted Plaintiff's request for a conference, and, on February 4, 2021, the parties appeared before the Court telephonically to argue the discovery dispute. ECF 75. During the hearing, the Court significantly limited the scope of discovery in this Action and clarified for the first time that, as a result of its partial grant of Defendants' motion to dismiss and lack of amendment, the only operative corrective disclosure in the Action was the December 15, 2017 announcement that Ryanair would recognize certain pilot unions. ECF 77 at 23-24. As a result, Plaintiff understood that the Class Period would be narrowed to May 30, 2017 through December 15, 2017 (the "February 4 Rulings"). *Id.*

33. In addition to pursuing document discovery, Plaintiff also utilized other avenues to obtain important discovery from Defendants. Plaintiff served Requests for Admission to

Defendants on September 9, 2020, October 30, 2020, December 16, 2022, and January 6, 2023, which sought definitive answers from Defendants as to the contents of the February 2018 *Sunday Times* article discussing Ryanair's decision to unionize, O'Leary's responses during his September 2018 interview with the *Irish Independent*, and factors impacting the efficiency of Ryanair ADSs during the Class Period. Defendants served their Responses and Objections on October 21, 2020, November 30, 2020, January 17, 2023, and February 6, 2023.

34. On December 12, 2022, Plaintiff served an amended Rule 30(b)(6) deposition notice on Ryanair to conform the deposition topics to the Court's February 4 Rulings. Defendants served their responses and objections on January 11, 2023. The parties held several meet and confer sessions spanning the following three months to discuss the scope of Plaintiff's Rule 30(b)(6) deposition topics and exchanged a series of letters memorializing such discussions.

2. Plaintiff Sought and Obtained Discovery from Relevant Third Parties

35. Plaintiff also served non-party document subpoenas on 17 third parties – 16 financial analysts and Ryanair's Chairman of the Board of Directors during the Class Period, David Bonderman. Following protracted negotiations with counsel for the third parties subpoenaed, Plaintiff received and analyzed document productions from eight of the sixteen analysts, with negotiations concerning the remaining analysts ongoing at the time the Settlement was reached. These productions contained important evidence relevant to establishing the falsity, materiality, and loss causation elements of Plaintiff's claims, as well as to issues raised at class certification.

36. Third-party discovery in this Action was more complex than in a typical securities class action against a U.S. corporation, as many of the critical documents and third-party witnesses were located in Europe. This required Plaintiff and Lead Counsel to navigate additional procedural hurdles to seek necessary discovery. For example, on February 26, 2021, Plaintiff filed a letter

motion requesting permission to file a Motion for the Issuance of Seven Letters of Request pursuant to Rule 28(b) and 28 U.S.C. §1781(b)(2) to obtain testimonial evidence and documents from three foreign staffing agencies, through which Ryanair contracted the majority of its pilots and flight crew during the Class Period: Brookfield Aviation International Ltd. ("Brookfield"), McGinley Aviation ("McGinley"), and Crewlink. ECF 79. Plaintiff also requested permission to obtain testimonial evidence and documents from several foreign media outlets which followed Ryanair's labor problems during the Class Period, discussed unionization with O'Leary, and reported his comments to the public: *The Sunday Times*, *Financial Times*, *Reuters*, and the *Irish Independent*. *Id*. Defendants filed a letter opposing Plaintiff's motion on March 2, 2021. ECF 80.

37. On March 24, 2021, after the Court granted Plaintiff leave to file a motion to amend the FAC, the Court denied Plaintiff's motion for the issuance of seven letters of request without prejudice to renewal upon the resumption of discovery. ECF 86.

38. Pursuant to the Court's March 24, 2021 order, on January 24, 2023, Plaintiff requested permission to re-file its Motion for the Issuance of Seven Letters of Request pursuant to Rule 28(b) and 28 U.S.C. §1781(b)(2) to obtain documents from: (1) Brookfield; (2) The MCG Group International Limited (fka McGinley); (3) Crewlink; (4) *The Sunday Times*; (5) *Financial Times*; (6) *Reuters*; and (7) Mediahuis Ireland Group Ltd. (fka *Irish Independent*). To ease any alleged burden on the non-parties, Plaintiff sought only documentary evidence from the seven non-parties and not testimonial evidence.

39. On January 26, 2023, Defendants filed their letter response in opposition to the motion. ECF 124.

40. On January 27, 2023, in an effort to resolve and/or narrow any disputes before burdening the Court, Plaintiff withdrew its January 24, 2023 letter requesting permission to re-file its motion for the issuance of seven letters of request. ECF 125.

41. Lead Counsel also continued its investigation through meetings and conversations with former employees of Ryanair, who provided valuable information on Ryanair's practices, operations and pilot shortage leading up to the Class Period that enabled Lead Counsel to hone in on relevant search terms, custodians, and sources of electronic discovery from Defendants, and corroborated and provided additional facts supporting certain allegations that had been previously dismissed by the Court as insufficiently specific.

3. Plaintiff Diligently Responded to Defendants' Discovery Requests, Analyzed and Capitalized on Defendants' Third-Party Discovery

42. Defendants served 36 comprehensive document requests upon Plaintiff. Although Defendants' requests were overly broad and unduly burdensome, Lead Counsel undertook a review of 23,127 pages of internal documents, and Plaintiff voluntarily produced more than 10,000 pages of documents, rather than burden the Court with another discovery dispute. Following the filing of Plaintiff's motion for class certification and appointment of Class Representatives and Class Counsel and Expert Report of John D. Finnerty, Ph.D., in support, ECF 68-70, Plaintiff also produced materials relied upon by Dr. Finnerty to Defendants.

43. Defendants also served five interrogatories, not including distinct subparts, upon Plaintiff. Though each interrogatory was objectionable and many contained multiple subparts, Plaintiff promptly provided Defendants with responses to each of their interrogatories.

44. Defendants also noticed the Rule 30(b)(6) deposition of Thornburg Investment Management, Inc. ("Thornburg") through its representative Miguel Oleaga ("Oleaga"). Lead

Counsel attended the deposition, and also questioned Oleaga based on its review of 100,176 pages of documents produced by Thornburg in response to Defendants' October 20, 2020 subpoena. Oleaga testified regarding, *inter alia*: (i) the identities of all persons involved in or knowledgeable of all transactions of Ryanair securities for or on behalf of Plaintiff; (ii) any agreements or arrangements between Thornburg and Plaintiff; (iii) any communications Thornburg had with Defendants concerning the allegations in the FAC; (iv) Thornburg's understanding of Plaintiff's investment strategy, goals, and guidelines; (v) Thornburg's organizational structure; and (vi) Thornburg's current and former policies and practices for obtaining and monitoring information about securities issued by companies that provide air travel, operate under the laws of Ireland, and have or had their headquarters or principal place of business in Ireland.

45. Similarly, Lead Counsel analyzed 21,487 pages of documents produced by Plaintiff's investment manager, Lazard Asset Management, in response to a subpoena from Defendants.

4. Plaintiff's Motion to Certify the Class and Motion for Leave to Amend the FAC

46. On November 13, 2020, Plaintiff filed its motion for class certification and appointment of Class Representatives and Class Counsel. ECF 68-70. Plaintiff's accompanying memorandum of law explained how Plaintiff established all of the requirements for certification under Rules 23(a) and 23(b)(3), including predominance of common issues over individual ones. ECF 69. With respect to the latter issue, Plaintiff demonstrated that Ryanair ADS traded in an efficient market during the proposed Class Period and that Plaintiff was entitled to rely on the presumption of class-wide reliance on Defendants' public misrepresentations and omissions set forth in *Basic Inc. v. Levinson*, 485 U.S. 224 (1988). ECF 69.

47. In further support of its motion, and in particular in support of its market efficiency and damages arguments, Plaintiff submitted an expert report by Professor John D. Finnerty, Ph.D. ECF 70-1. Professor Finnerty is an Academic Affiliate in the Financial Advisory Services Group at AlixPartners, LLP and a Professor of Finance and the founding Director of the Master of Science in Quantitative Finance Program at Fordham University's Gabelli School of Business. He has published extensively on the analysis and valuation of securities, especially fixed income instruments and complex derivative products, and mortgage-backed and other asset-backed securities. Prior to entering academia, Professor Finnerty worked as an investment banker and as a financial advisor at a number of prominent investment banks and firms. Professor Finnerty has provided testimony in numerous class action securities lawsuits and analyzed various issues including securities appraisals, mortgage-backed securities damages, business valuations, solvency issues, private placement and other corporate finance issues, and broker raiding. Professor Finnerty's report concluded that the market for Ryanair ADSs was efficient during the Class Period. ECF 70-1, at 7-8. Among other things, Professor Finnerty conducted an event study, which identified a cause-and-effect relationship between the release of new, Ryanair-specific information and the movement in the price of Ryanair ADSs, evidencing that Ryanair ADSs traded in an efficient market during the Class Period. *Id.* at 17-31. Professor Finnerty also concluded that Class members' out-of-pocket damages would be able to be measured on a class-wide basis using a single methodology. ECF 70-1, at 45-47.

48. Thereafter, on March 17, 2021, after nearly nine months of gathering discovery from both Defendants and non-parties, and as expressly permitted under the scheduling order, Plaintiff filed a letter with the Court requesting leave to file a motion to amend the FAC. ECF 81. In an effort to proceed with discovery in the most efficient manner, Plaintiff also requested that

the Court: (1) withdraw Plaintiff's pending motion for class certification without prejudice to Plaintiff filing an amended motion for class certification following the Court's resolution of the motion for leave to amend the FAC; and (2) adjourn all further class certification briefing deadlines. *Id.* Defendants filed a letter response in opposition on March 19, 2021 to which Plaintiff responded on March 23, 2021. ECF 83, 85.

49. In an Order dated March 24, 2021, the Court entered Plaintiff's briefing schedule, withdrew Plaintiff's motion for class certification without prejudice to an amended motion being filed following resolution of the motion for leave to amend, and stayed discovery. ECF 86.

50. Plaintiff filed a motion for leave to amend the FAC and its Proposed Second Amended Complaint ("PSAC") on March 31, 2021. ECF 88-91.

51. Plaintiff's proposed amendments sought to: (1) add factual allegations based on evidence recently obtained through Plaintiff's ongoing investigation and Defendants' discovery that attempted to resolve the deficiencies that the Court identified in certain of Plaintiff's previously dismissed claims; 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 in order to enhance representation of the putative class. ECF 90, at 5.

52. To support its PSAC, Plaintiff retained Bjorn I. Steinholt, who performed an analysis and event study on the alleged corrective disclosures on December 15-18, 2017, July 23, 2018, and October 1, 2018. ECF 94-1. Mr. Steinholt ultimately determined that the information disclosed on the corrective disclosure dates was both related to and a foreseeable consequence of the information that Defendants allegedly misrepresented and concealed during the Class Period – namely, that: (a) labor relations had deteriorated to the point where the Company's traditional labor policies were no longer sustainable, in part as a result of a severe pilot shortage; (b) the

Company would be forced to recognize unions; and (c) absent major concessions to its labor force, future operating results would be materially impacted by industrial action. ECF 94-1 at 141-147.

53. Plaintiff also retained Professor M. Todd Henderson, an expert on securities regulation and corporate governance, to review O'Leary's insider trading during the Class Period, in an effort to cure the defect noted by the Court in its MTD Order – namely, that Plaintiff's allegations did not sufficiently plead that the sales were unusual or the amount of profit resulting to O'Leary. ECF 52 at 6. After a review and analysis of the relevant facts, Professor Henderson concluded that O'Leary's Class Period trades were "extraordinary and thus suspicious" as the trades were: (a) dramatically out of character based on O'Leary's prior trading practices; (b) unusual compared with CEOs of other public companies; (c) larger and different from trades made by the CEOs of other airlines; (d) extremely unlikely to have randomly happened on the days in question; and (e) the sales resulted in pure profit. ECF 94-1 at 166.

54. Defendants filed their opposition to Plaintiff's motion to amend on May 17, 2021. ECF 97. Plaintiff's reply in further support and Defendants' sur-reply in further opposition were filed on July 1, 2021 and August 2, 2021, respectively. ECF 101-104.

55. On March 31, 2022, the Court denied Plaintiff's motion for leave to amend the FAC. ECF 109. Thereafter, on September 22, 2022, the Court issued its written order denying Plaintiff's motion and lifted the discovery stay. ECF 111.

56. On October 6, 2022, Plaintiff filed a letter motion for leave to file a motion for partial reconsideration or, in the alternative, a motion to intervene. ECF 112. Plaintiff's letter explained that while the Court's September 22, 2022 order denying Plaintiff's motion for leave to amend the FAC was clear as to the disposition of Plaintiff's request to amend to add certain claims, it did not specifically address Plaintiff's request to amend the FAC to add Sterling Heights and

MARTA as named plaintiffs. Accordingly, Plaintiff requested that the Court clarify its order, and to the extent that it had denied Plaintiff's request to join Sterling Heights and MARTA, grant Plaintiff permission to file a motion for reconsideration as to that request. Defendants opposed the motion on October 11, 2022. ECF 114. That motion was denied as moot when the Court granted Plaintiff's motion for preliminary approval of settlement. ECF 133.

5. Plaintiff's Renewed Motion for Class Certification

57. After denying Plaintiff's motion for leave to amend the FAC, the Court directed the parties to file a joint letter addressing the status of discovery and proposed next steps within 14 days of the Court's order. ECF 111. On October 6, 2022, the parties filed a proposed joint case management plan. ECF 113. Per the operative scheduling order, Plaintiff's motion for class certification was due on December 2, 2022. *Id.*

58. On November 15, 2022, as the Court was still considering the relief requested in Plaintiff's letter motion seeking clarification of, and/or leave to file a motion for partial reconsideration of the Court's order denying Plaintiff's motion for leave to amend the FAC, Plaintiff requested that the class certification briefing deadlines contained in the October 6, 2022 proposed joint case management plan be revised so as to avoid unnecessary or duplicative briefing. ECF 115.

59. On November 30, 2022, the Court entered an amended civil case management plan and scheduling order. ECF 116. With respect to class certification, the Court ordered the parties to meet and confer and submit a proposed schedule within 14 days following the later of the Court's: (a) order on Plaintiff's request to file a motion for partial reconsideration of the Court's September 22, 2022 order denying Plaintiff's motion for leave to amend the FAC; or (b) resolution of any motion filed as a direct result of the order described in (a). *Id.*

III. THE SETTLEMENT

A. Reaching the Settlement

60. The Settlement is the product of intense and hard-fought negotiations, which were conducted at arm's length between experienced counsel and supervised by Gregory P. Lindstrom, Esq., of Phillips ADR, who has extensive experience in mediating securities class actions.

61. Prior to the mediation, Plaintiff and Defendants each submitted detailed opening mediation statements to Mr. Lindstrom explaining their positions on Defendants' allegedly false and misleading statements and omissions and issues concerning scienter and damages. The parties exchanged those mediation statements on December 1, 2022. The December 8, 2022 mediation, however, was cancelled on December 5, 2022, and the parties continued to engage in good faith, arm's-length negotiations while continuing to litigate the case.

62. Following numerous conversations with Mr. Lindstrom over the following three months and as a result of offers, counter-offers, and ultimately Mr. Lindstrom's recommendation, the parties agreed to settle the Action for $5 million, subject to the negotiation of a formal settlement agreement and approval by the Court.

B. The Settlement Is Preliminarily Approved and Notice Sent

63. On June 7, 2023, Plaintiff filed a motion for preliminary approval of the Settlement. ECF 128. In that motion, Plaintiff requested that the Court approve the proposed forms of notice, which, among other things, described the terms of the Settlement, advised Class Members of their rights, and set forth the proposed Plan of Allocation, the maximum amount of attorneys' fees and the expenses that Lead Counsel would request, and the procedure for submitting Proofs of Claim. ECF 130-3 – 130-5.

64. On July 5, 2023, the Court preliminarily approved the terms of the Settlement. ECF 133. A hearing before the Court to address final approval of the Settlement will take place on October 20, 2023, at 12:30 p.m. ECF 133.

65. The Preliminary Approval Order, among other things, appointed Gilardi as the Claims Administrator and directed it to cause the mailing of the Notice Packet to all potential Class Members identifiable with reasonable effort, no later than July 19, 2023. ECF 133, ¶11.

66. The Preliminary Approval Order also directed Lead Counsel to cause the Summary Notice to be published once in the national edition of *The Wall Street Journal* and transmitted over a national newswire, no later than July 26, 2023. *Id.*, ¶12.

67. As explained in the Declaration of Ross D. Murray Regarding Notice Dissemination, Publication, and Requests for Exclusion Received to Date ("Murray Decl."), submitted herewith, over 80,000 Notice Packets have been mailed to potential Class Members, banks, brokers and nominees to date, and the Summary Notice was published on July 26, 2023, in compliance with the provisions of the Preliminary Approval Order. Murray Decl., ¶¶11-12.

68. To date, no objections to any aspect of the Settlement have been filed and no requests for exclusion have been received. Murray Decl., ¶16.

C. Reasons for the Settlement

69. Plaintiff and Lead Counsel strongly endorse the Settlement. City of Birmingham Retirement and Relief System and City of Birmingham Firemen's and Policemen's Supplemental Pension System are both sophisticated institutional investors and have actively overseen the prosecution of this Litigation since 2018. Lead Counsel, meanwhile, specializes in complex securities litigation and is highly experienced in such litigation. *See* Exhibit E to the accompanying 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"). Based on their experience and intimate knowledge of the strengths and weaknesses of the case, Lead Counsel and Plaintiff determined that the Settlement is in the best interest of the Class.

70. An all-cash payment of $5,000,000 represents a significant recovery for the Class in light of the Court's prior rulings regarding the sufficiency of Plaintiff's allegations, the relevant corrective disclosure, and denial of Plaintiff's motion to file a second amended complaint. Indeed, the $5,000,000 Settlement represents approximately 22% of estimated recoverable damages following the Court's February 4, 2021 clarification of the operative class period (ECF 77 at 23-24). In contrast, the median percentage recovery for securities class action settlements in 2022 was ***1.8%***.

71. This recovery is a particularly good result for the Class in light of the risks and challenges posed by continued litigation of the Action. While Plaintiff believes in the merits of its claims, there were a number of hurdles it would have to clear in order to secure a recovery for the Class, many of which would be costly and complex.

72. For example, while Plaintiff is confident that fact discovery would have yielded evidence corroborating the FAC's allegations, obtaining that discovery was going to be a costly and extremely hard-fought endeavor. Not only did the Court rule that numerous categories of information were outside the scope of discovery in its February 4, 2021 ruling, ECF 77, but at the time Settlement was reached, Defendants had taken a substantially over-narrow view of the information that could be discovered in this Action. Defendants argued that testimony or documents concerning employee grievances, any threats of industrial action, and difficulties with staffing at Ryanair during the May 30, 2017 to December 15, 2017 period are not sufficiently tied to the likelihood of unionization. Accordingly, Defendants were refusing to produce any discovery

or identify a Rule 30(b)(6) deposition witness to testify on these topics. Undoubtedly, these disputes would have necessitated further motions to compel.

73. On top of these difficulties, the fact that most of the critical documents and witnesses with information relevant to the Action are located in Europe, which has strict privacy laws governing the sharing of an individual's information (such as emails, correspondence, and other broad categories of personal information), made it very likely that the parties would end up in further disputes regarding the appropriate level of redactions to Defendants' document productions and use of the information in depositions. And, to obtain the necessary third-party discovery from foreign residents, Plaintiff would have had to continue navigating the Hague Convention and the various regulations and treaties governing the procedures for obtaining and the extent of permissible discovery in witnesses' home countries.

74. More, while Plaintiff believes that this Action meets all of the requirements of Rule 23(a) and 23(b)(3) for class certification, there was no guarantee that the Court would certify the Class. Defendants intended to oppose class certification, and, if the Court agreed with Defendants that any element of Rule 23's requirements were not met, the Action could not be sustained on a class-wide basis and members of the putative Class would need to commence individual actions (if timely) to pursue recovery. Most Class members likely would choose not to do so, given the difficulty and cost involved in litigating securities fraud actions individually. And if a Class was certified, Defendants would likely have appealed that decision (a frequent occurrence in securities fraud litigation), causing months-long delays. Even if the appeal was denied, the Court could still de-certify the Action, or particular claims, as a class action, before trial.

75. If the Class was certified, Plaintiff and the Class also would face significant risk at summary judgment and trial. Throughout the Litigation, Defendants have vigorously contested

liability, maintaining that all of the allegedly false and misleading statements were true when made and that in any event, the alleged misstatements regarding the likelihood of Ryanair unionizing were not material. Defendants also hotly contested scienter, arguing that O'Leary's sales of Ryanair ADSs did not demonstrate sufficient motive and opportunity to defraud, and that Plaintiff could not provide sufficient circumstantial evidence that, at the time the statements were made, Defendants made them with knowledge of or reckless disregard to the falsity of the statements. Instead, Defendants have argued, and would likely continue to argue, that each of the statements alleged reflects O'Leary's and Ryanair's honest belief of the Company's then-current plans to remain non-union. Plaintiff disputes these arguments, and believes that it could defeat them. However, Plaintiff recognizes that a jury could find such arguments reasonable, in which case, the Class would not be able to recover any losses.

76. And, even if Plaintiff succeeded in proving falsity and scienter, there remained a risk related to loss causation and damages. In securities fraud actions like this one, loss causation and damages are typically hotly contested issues and the subject of conflicting – and often confusing – expert testimony. There was thus significant risk that a jury could be persuaded by Defendants' expert on loss causation or damages, and could find that there were no, or only minimal, damages to the Class when the operative corrective disclosure removed the alleged inflation from Ryanair's ADS price rather than the $23 million estimated by Plaintiff's expert.

77. Ultimately, although Plaintiff firmly believes that the documentary and testimonial evidence it would offer at summary judgment and trial fully substantiates its claims, there is no way of predicting with certainty which testimony, inferences, or interpretations the Court or jury would accept.

78. While Plaintiff remains confident in its ability to prove its claims and successfully counter all of Defendants' arguments, when weighed against the certain and substantial benefits of Settlement, the risks of losing at trial or having the Action dismissed or materially narrowed prior to trial indicate that the Settlement is in the best interests of the Class. There was certainly risk that Plaintiff would not prevail and the Class could recover nothing. Lead Counsel submits that these factors militate strongly in favor of the Settlement.

79. In addition, the decision to settle at this time is supported by the anticipated duration and expense of additional litigation, which would include substantial resources that would be expended to proceed through trial, as well as a likely post-trial appellate process, all without any guarantee of a better resolution for the Class. These expenditures would result in a considerable expense to be borne by the Class out of any potential recovery at trial. Securities class actions are inherently complex, time consuming, and expensive, which is magnified when such cases proceed through trial. The Settlement avoids these expenditures and provides an immediate recovery for the Class. Therefore, this factor favors the Settlement.

80. Finally, the lack of opposition to the Settlement also supports final approval of the Settlement. As outlined below, notice has already been widely disseminated to potential Class Members. The lack of any objections to the Settlement or opt outs to the Class to date weigh in favor of the Settlement. Any objections and requests to opt out will be presented with Plaintiff's reply papers.

81. In light of the significant risks of establishing liability and damages, Lead Counsel and Plaintiff respectfully submit that the Settlement represents a very favorable result for the Class. It provides Class Members with a very substantial benefit now, where there is a significant likelihood of less recovery or no recovery at all following trial.

D. The Plan of Allocation Is Fair and Should Be Approved

82. The Plan of Allocation is set forth in the Notice (*see* Murray Decl., Ex. A at 12-15) and provides that the Net Settlement Fund will be distributed to Authorized Claimants who timely submit valid Proofs of Claim that show a "Recognized Claim" according to the Court-approved Plan of Allocation. Given the costs of distributing payments, the Net Settlement Fund will be allocated among all Authorized Claimants whose distribution amount is $10.00 or greater.

83. The Plan of Allocation proposed by Plaintiff, which was prepared with the assistance of Plaintiff's damages expert, is designed to achieve an equitable and rational distribution of the Net Settlement Fund to eligible claimants, and is consistent with Plaintiff's damages theories. Lead Counsel believes that the Plan of Allocation provides a fair and reasonable method to equitably distribute the Net Settlement Fund among Authorized Claimants.

84. Pursuant to the Preliminary Approval Order, and as set forth in the Notice, all Class Members who wish to participate in the distribution of the Net Settlement Fund must submit a valid Proof of Claim and all required information no later than October 17, 2023. ECF 133, ¶16. Claims may be submitted to the Claims Administrator through the mail or submitted online using the case website. As provided in the Notice, after deduction of Court-awarded attorneys' fees and expenses, Notice and Administration Expenses, applicable taxes, and any other fees or expenses approved by the Court, the Net Settlement Fund will be distributed according to the Court-approved Plan of Allocation.

85. The Net Settlement Fund will be distributed to Authorized Claimants on a *pro rata* basis, based on the relative size of their Recognized Claims. A distribution amount will be calculated for each Authorized Claimant. The Plan of Allocation considers the amount of alleged artificial inflation in the per share prices of Ryanair ADSs, as estimated by Plaintiff's damages

expert. The calculations take into account several factors, including price changes in Ryanair ADSs in reaction to public disclosures that allegedly corrected the respective alleged misrepresentations and omissions, adjusting the price change for factors that were attributable to market or industry forces, and for non-fraud related Company-specific information.

86. After the Effective Date of the Settlement, in accordance with the terms of the Stipulation, the Plan of Allocation, or such further approval and further order(s) of the Court as may be necessary or as circumstances may require, the Net Settlement Fund will be distributed to Authorized Claimants whose distribution amount is $10.00 or more. After the distribution, if there is any balance remaining in the Net Settlement Fund after a reasonable amount of time from the date of the initial distribution, and after payment of any outstanding Notice and Administration Expenses, Taxes, and attorneys' fees and expenses, if any, Lead Counsel will, if feasible, reallocate the balance among Authorized Claimants in an equitable and economic fashion. Thereafter, any *de minimis* balance that still remains after re-distribution(s) and after payment of any outstanding Notice and Administration Expenses, Taxes, and attorneys' fees and expenses, if any, will be donated to the New York Bar Foundation, or a non-profit and non-sectarian organization chosen by the Court.

87. To date, there have been no objections to the Plan of Allocation. The Plan of Allocation is fair and reasonable, and should be approved.

IV. LEAD COUNSEL'S APPLICATION FOR ATTORNEYS' FEES AND EXPENSES

A. The Requested Fees Are Fair and Reasonable

88. Lead Counsel respectfully requests that the Court award attorneys' fees of 18% of the Settlement Amount. Lead Counsel believes such a fee is reasonable and appropriate in light of the competence and skill with which Robbins Geller litigated this matter, the resources Robbins

Geller expended in prosecuting the case, the inherent risk of nonpayment from representing the Class on a contingent basis, and the aggregate monetary benefit conferred on the Class in a challenging case. Lead Counsel further requests payment of $526,073.86 in litigation expenses. The legal authorities supporting the requested fees and expenses are set forth in the accompanying memorandum of law.

1. The Results

89. The fact that Lead Counsel was able to obtain such a substantial result for the Class supports the requested fee. The $5,000,000 cash Settlement represents approximately ***22%*** of the estimated recoverable damages for the one corrective disclosure that remained following the Court's MTD Order and February 4, 2021 clarification, and is more than 12 times the size of the median percentage recovery for securities class actions settled in 2022. *See* Janeen McIntosh, Svetlana Starykh, and Edward Flores, *Recent Trends in Securities Class Action Litigation: 2022 Full-Year Review* (NERA Jan. 24, 2023), at 18 Fig. 19 (estimating median percentage recovery of 1.8% for securities class action settlements in 2022).

2. The Risk and Complexity Inherent in the Litigation

90. As detailed above, the Action involved challenging issues of law and fact against a foreign company, making discovery in this case even more complex than in the typical Exchange Act action. The Litigation was highly complex both procedurally and substantively, and rendered the path to resolution time-consuming, difficult, and fraught with risk. Lead Counsel vigorously prosecuted the Class's claims for over four years against one of New York's top law firms.

91. Robbins Geller's representation of the Class in this Action required considerable pre-filing investigation, as well as substantial work during the Action, 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 initial complaint, FAC and PSAC; (iii) opposing Defendants' motion to dismiss; (iv) moving for class certification; (v) litigating several discovery disputes; (vi) engaging in and analyzing document discovery from Defendants and third parties; (vii) consulting with internal and external experts on loss causation, damages, and the European airline industry; (viii) drafting its mediation statement; and (ix) preparing for a full-day mediation session and participating in subsequent negotiations.

92. In light of the complex factual and legal issues presented during the Litigation and the substantial risks that were overcome, Lead Counsel submits that the 18% fee is fair, reasonable, and should be approved.

3. The Contingent Nature of the Representation and the Financial Burden Carried by Lead Counsel

93. Lead Counsel prosecuted this Litigation on an "at-risk" contingent-fee basis. At the outset in 2018, Lead Counsel knew it was embarking on complex and expensive litigation with no guarantee of compensation for the time, money, and effort it poured into this case over its multi-year lifespan. Accordingly, Lead Counsel fully assumed the risk of an unsuccessful result and to date has received no compensation for services rendered or the significant expenses incurred in litigating this Action. Had this case not settled, Lead Counsel was prepared to litigate this case through the remaining stages of fact discovery, expert discovery, class certification, summary judgment, trial, and appeal.

94. In undertaking the responsibility for prosecuting the Litigation, Lead Counsel assured that sufficient attorney resources were dedicated to advancing Plaintiff's and the Class's claims over the years, and that sufficient funds were available to advance the expenses required to zealously pursue the best possible result for the Class. Lead Counsel received no compensation,

while at the same time incurring over $4.5 million in lodestar and approximately $526,000 in litigation expenses and charges in prosecuting this Litigation for the benefit of the Class.

95. Lead Counsel also shouldered the risk that no recovery would be achieved. Lead Counsel knows from experience that success in contingent-fee litigation is never assured, and that the commencement of a securities class action in no way guarantees a recovery. Instead, it takes diligence, commitment, and years of tireless work by skilled counsel to secure a recovery for the Class.

96. Courts have repeatedly found that having experienced and able counsel enforce the securities laws promotes the public interest. Vigorous private enforcement of the federal securities laws can only occur if private plaintiffs – particularly institutional investors like Plaintiff – can obtain some parity in representation with that available to large corporate defendants. If this important public policy is to be carried out, courts should award fees that will adequately compensate private plaintiffs' counsel, taking into account the substantial risks inherent in prosecuting securities class actions on a contingent-fee basis. That is particularly true where, as here, the fee requested is based upon a percentage of the recovery after discussion with and approval by each Plaintiff, *see* Turner Decl., ¶9, and is similar to other requests approved by judges in this District, as set forth in the accompanying memorandum.

4. The Standing and Expertise of Lead Counsel and Quality of Representation

97. The Settlement represents a substantial recovery for the Class – one that is attributable to the diligence, determination, hard work, and reputation of Lead Counsel. As illustrated by Lead Counsel's firm biography, attached as Exhibit E to the RGRD Declaration, Lead Counsel is among the most experienced and skilled securities litigation law firms in the field.

98. The quality of work Lead Counsel provided in attaining the Settlement should also be evaluated in light of the quality of opposing counsel in this Litigation. Defendants were well-represented by experienced lawyers from Cleary Gottlieb Steen & Hamilton LLP, which is a prominent international defense firm. Defense counsel has a reputation for successfully defending complex securities cases such as this. The ability of Lead Counsel to obtain a favorable settlement for the Class in the face of such formidable opposition confirms the excellence of Lead Counsel's representation.

B. Application for Litigation Expenses and Charges

99. Robbins Geller seeks an award of $526,073.86 in expenses and charges in connection with the prosecution of the Action.

100. Robbins Geller submits that the expenses are reasonable and were necessary for the successful prosecution of this Action. Lead Counsel was aware that it may not recover any of these expenses unless and until this Action was successfully resolved. Lead Counsel also understood that, even assuming the case was ultimately successful, an award of expenses would not compensate it for the lost use of the funds it had dedicated to this Litigation. Accordingly, Robbins Geller took steps to minimize expenses whenever practicable without jeopardizing the vigorous and efficient prosecution of Plaintiff's claims.

101. Robbins Geller's expenses reflect routine and typical expenditures incurred in the course of litigation, such as the costs of travel, investigation, document duplication, transcript fees, expert and consultant fees, mediation fees, and expedited mail delivery. Lead Counsel believes these expenses are reasonable and were necessary for the successful prosecution of the Action.

V. PLAINTIFF'S APPLICATION FOR AN AWARD PURSUANT TO 15 U.S.C. §78u-4(a)(4) BASED ON REPRESENTATION OF THE CLASS

102. The PSLRA limits a class representative's recovery to an amount "equal, on a per share basis, to the portion of the final judgment or settlement awarded to all other members of the class," but also provides that "[n]othing in this paragraph shall be construed to limit the 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).

103. Here, as explained in the Turner Declaration, Plaintiff is seeking an award of $3,696.00 for its time related to its active participation in the Action. *See* Turner Decl., ¶¶10-11.

104. Many courts, including those in this Circuit, have approved reasonable payments to compensate plaintiffs for the time and effort they devoted to pursuing claims on behalf of a class. Plaintiff here dedicated time and effort to 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. Simply put, without its involvement in this Action and its contributions to date, there would be no recovery for the Class. As such, Lead Counsel respectfully submits that the Court should grant Plaintiff's requested award in its entirety.

VI. CONCLUSION

105. For the reasons set forth above and in the accompanying memorandum of law, I respectfully submit that: (i) the Settlement is fair, reasonable and adequate, and should be finally approved; (ii) the Plan of Allocation represents a fair method for the distribution of the Net Settlement Fund among Authorized Claimants and should also be approved; and (iii) the application for an award of attorneys' fees of 18% of the Settlement Amount and expenses of

$526,073.86, with interest thereon earned at the same rate as the Settlement Fund, plus an award of $3,696.00 in the aggregate to Plaintiff, should be granted in its entirety.

I declare under penalty of perjury that the foregoing is true and correct. Executed in San Diego, California, this 15th day of September, 2023.

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

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.

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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.

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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)