

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

In Re The Hain Celestial Group Inc.
Securities Litigation

Case No. 2:16-cv-04581-LGD
Hon. Lee G. Dunst

**MEMORANDUM OF LAW IN SUPPORT OF CO-LEAD COUNSEL'S
MOTION FOR AN AWARD OF ATTORNEYS' FEES
AND PAYMENT OF EXPENSES**

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Statutes

15 U.S.C. § 78u-4(a)(6)4

Co-lead counsel Labaton Keller Sucharow LLP (“Labaton”), Glancy Prongay Wolke & Rotter LLP (“GPWR”), Schall, Brown & Schwartz LLP (“Schall”), and the Law Offices of Howard G. Smith (“Smith,” and with Labaton, GPWR, and Schall, “Co-Lead Counsel”)¹ respectfully submit this memorandum of law in support of their request for attorneys’ fees of 33.3% of the Settlement Fund (or \$11,655,000, plus accrued interest at the same rate as the Settlement Fund). Co-Lead Counsel also seek payment of \$309,356.50 in litigation expenses advanced by counsel, plus accrued interest, as well as an aggregate of \$29,000 to the Court-appointed lead plaintiffs, Rosewood Funeral Home (“Rosewood”) and Salamon Gimpel (“Gimpel,” and with Rosewood, “Lead Plaintiffs”), as authorized by the Private Securities Litigation Reform Act of 1995 (the “PSLRA”), 15 U.S.C. §78u-4(a)(4).

PRELIMINARY STATEMENT

The proposed Settlement provides for a non-reversionary cash payment of \$35,000,000 in exchange for the resolution of the Action and the release of Released Plaintiffs’ Claims. This is a very good result for the Settlement Class, particularly considering the significant risks to recovery Lead Plaintiffs faced in this complex, long-running securities fraud case. Achieving the Settlement was not easy or a foregone conclusion. Defendants were represented by highly skilled litigators, and Co-Lead Counsel faced numerous hurdles and risks from the outset, including the PSLRA’s heightened pleading standards and automatic stay of discovery, the complex nature of the claims at issue, which hinged in

¹ Unless otherwise noted, capitalized terms have the meanings set forth in the Stipulation and Agreement of Settlement, dated as of June 25, 2026 (the “Stipulation,” ECF No. 172-3). Unless otherwise noted, all internal citations and quotations have been omitted, and emphasis has been added. Citations to “¶__” or “Ex. __” in this memorandum refer to paragraphs in, or exhibits to, the Joint Declaration of Christine M. Fox and Leanne H. Solish, submitted herewith (the “Joint Declaration”). The Joint Declaration is an integral part of this submission and, for the sake of brevity, the Court is respectfully referred to it for a discussion of, *inter alia*, the history of the Action; the claims asserted; the mediation and negotiations leading to the Settlement; the risks of continued litigation; the services Co-Lead Counsel provided; and additional information that supports the fee and expense application, including the lodestar cross-check.

large part on highly subjective and technical accounting standards, the high cost of experts needed to litigate a complex securities fraud case, and a substantial risk of non-payment and the ability to recover more from a judgment. These were not idle risks. The claims were dismissed by three judges, four times. *See* ECF Nos. 106, 122, 142 (R&R), 148.² Nor do the risks end at the pleading stage. Even when a plaintiff is successful at trial, payment is far from guaranteed.³

Despite facing long odds, Co-Lead Counsel vigorously pursued this case for approximately *ten years*, working in excess of 8,100 hours and advancing \$309,356.50 in litigation expenses, all on a fully contingent basis. As compensation for their considerable efforts on behalf of the Settlement Class, Co-Lead Counsel respectfully request a fee award in the amount of 33.3% of the Settlement Fund. The requested fee is consistent with fee awards in comparable class action settlements, whether considered as a percentage of the Settlement or in relation to Co-Lead Counsel's lodestar. In fact, the requested fee represents a multiplier of 1.7 on Co-Lead Counsel's lodestar, which is well within the range of multipliers typically awarded in class actions with substantial contingency risks such as this one.

Co-Lead Counsel also seek payment of \$309,356.50 in Litigation Expenses. This amount, plus the \$29,000 in PSLRA awards for Lead Plaintiffs, is below the \$950,000 limit on Litigation Expenses disclosed in the Notice and Postcard Notice. The expenses are reasonable in amount and were

² *See, e.g.,* Ex. 10, *2025 Year in Review – Securities Class Action Filings* (Cornerstone Research 2026) (“Cornerstone Filing Report”) at 16 (According to Cornerstone, “from 2015 to 2022, 54% of core federal filings have been dismissed, 39% have settled, and 5% are ongoing.”).

³ *See, e.g., In re BankAtlantic Bancorp, Inc. Sec. Litig.*, 2011 WL 1585605 (S.D. Fla. Apr. 25, 2011) (granting judgment as a matter of law for defendants on loss causation grounds after jury verdict for plaintiffs), *aff'd sub nom., Hubbard v. BankAtlantic Bancorp, Inc.*, 688 F.3d 713 (11th Cir. 2012); *Robbins v. Koger Props., Inc.*, 116 F.3d 1441 (11th Cir. 1997) (reversing jury verdict of \$81 million for plaintiffs and dismissing with prejudice); *In re Apple Comput. Sec. Litig.*, 1991 WL 238298 (N.D. Cal. Sept. 6, 1991) (\$100 million jury verdict vacated on post-trial motions); *Anixter v. Home-Stake Prod. Co.*, 77 F.3d 1215 (10th Cir. 1996) (overturning securities-fraud class-action jury verdict for plaintiffs in case filed in 1973 and tried in 1988 on the basis of 1994 Supreme Court opinion).

necessarily incurred in the successful prosecution of the Action. Accordingly, they should be approved.

Lastly, Co-Lead Counsel respectfully request PSLRA awards totaling \$29,000 (\$14,000 for Lead Plaintiff Rosewood and \$15,000 for Lead Plaintiff Gimpel), to compensate them for the time and effort they expended on behalf of the Settlement Class.

ARGUMENT

I. THE COMMON FUND DOCTRINE APPLIES TO THE SETTLEMENT

The Supreme Court and the Second Circuit have long recognized that attorneys whose efforts create a “common fund” are entitled to a reasonable attorneys’ fee from that fund. *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 47 (2d Cir. 2000). “The rationale for the doctrine is an equitable one: it prevents unjust enrichment of those benefitting from a lawsuit without contributing to its cost.” *Goldberger*, 209 F.3d at 47. Awarding reasonable attorneys’ fees from a common fund also serves an important policy goal: it encourages “skilled counsel to represent those who seek redress for damages inflicted on entire classes of persons,” and thus discourages “future misconduct of a similar nature.” *In re Veeco Instruments Inc. Sec. Litig.*, 2007 WL 4115808, at *2 (S.D.N.Y. Nov. 7, 2007); *see also Hicks v. Morgan Stanley & Co.*, 2005 WL 2757792, at *9 (S.D.N.Y. Oct. 24, 2005).

For the common fund doctrine to apply, “the applicant’s efforts must confer a ‘substantial benefit on the members of an ascertainable class, and where the court’s jurisdiction over the subject matter of the suit makes possible an award that will operate to spread costs proportionately among them,’ an award of attorneys’ fees must operate to shift the costs of litigation to that group.” *Maley v. Del Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 369 (S.D.N.Y. 2002) (quoting *Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375, 393-94 (1970)). These elements are all present here. Co-Lead Counsel’s efforts conferred a substantial benefit—\$35 million in cash—on an ascertainable class. A fee award from the common fund will equitably shift the costs of litigation to the group benefitting from the Settlement,

i.e., the Settlement Class. *See Maley*, 186 F. Supp. 2d at 369.

II. THE COURT SHOULD AWARD A REASONABLE PERCENTAGE OF THE COMMON FUND

In the Second Circuit, “both the lodestar and the percentage of the fund methods are available to district judges in calculating attorneys’ fees.” *Goldberger*, 209 F.3d at 50. However, “[t]he trend in the Second Circuit is to use the percentage of the fund method . . . as it directly aligns the interests of the class and its counsel, mimics the compensation system actually used by individual clients to compensate their attorneys, provides a powerful incentive for the efficient prosecution and early resolution of litigation, and preserves judicial resources.” *Monzon v. 103W77 Partners, LLC*, 2015 WL 993038, at *2 (S.D.N.Y. Mar. 5, 2015); *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 121 (2d Cir. 2005) (“The trend in this Circuit is toward the percentage method, which directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation.”). The percentage-of-the-fund method is also supported by the PSLRA. *See* 15 U.S.C. § 78u-4(a)(6) (“Total attorneys’ fees and expenses awarded by the court to counsel for the plaintiff class shall not exceed a *reasonable percentage* of the amount of any damages and prejudgment interest actually paid to the class.”).⁴

Use of the percentage method does not, however, render the lodestar irrelevant. Rather, part of the reasonableness inquiry is a comparison of the lodestar to the fee awarded pursuant to the percentage of the fund method “[a]s a ‘cross-check.’” *Wal-Mart Stores*, 396 F.3d at 123 (quoting *Goldberger*, 209 F.3d at 50). “[W]here [the lodestar method is] used as a mere cross-check, the hours documented by

⁴ *See also Yang v. Focus Media Holding Ltd.*, 2014 WL 4401280, at *15 (S.D.N.Y. Sept. 4, 2014) (percentage of the fund method is “consistent with the PSLRA, which expressly provides that class counsel are entitled to attorneys’ fees that represent a ‘reasonable percentage’ of the damages recovered by the class.”); *In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 586 (S.D.N.Y. 2008) (“Congress plainly contemplated that percentage-of-recovery would be the primary measure of attorneys’ fees awards in federal securities class actions.”).

counsel need not be exhaustively scrutinized by the district court.” *Goldberger*, 209 F.3d at 50. “Instead, the reasonableness of the claimed lodestar can be tested by the court’s familiarity with the case,” *id.*, or summaries submitted by the attorneys, *see, e.g., Davis v. J.P. Morgan Chase & Co.*, 827 F. Supp. 2d 172, 184 (W.D.N.Y. 2011).

In sum, the weight of authority supports the use of the percentage-of-recovery method, with a lodestar cross-check, in determining the reasonableness of the requested attorneys’ fee. *See In re Bristol-Myers Squibb Sec. Litig.*, 361 F. Supp. 2d 229, 233 (S.D.N.Y. 2005) (“Typically, courts utilize the percentage method and then ‘cross-check’ the adequacy of the resulting fee by applying the lodestar method.”); *Bellifemine v. Sanofi-Aventis U.S. LLC*, 2010 WL 3119374, at *6 (S.D.N.Y. Aug. 6, 2010) (“applying a lodestar ‘cross-check’”).

III. THE REQUESTED ATTORNEYS’ FEES ARE REASONABLE

A. The Requested Attorneys’ Fees Have Been Awarded in Comparable Cases Within the Second Circuit

The 33.3% fee requested by Co-Lead Counsel is within the range of percentage fees awarded in the Second Circuit in complex class action cases like that here. Indeed, “[d]istrict courts within the Second Circuit routinely approve attorneys’ fees awards of one third or 33 1/3% as reasonable.” *In re Tenaris S.A. Sec. Litig.*, 2024 WL 1719632, at *10 (E.D.N.Y. Apr. 22, 2024); *Nichols v. Noom, Inc.*, 2022 WL 2705354, at *10 (S.D.N.Y. July 12, 2022) (awarding one-third of \$56 million cash settlement fund and stating that “[a] fee equal to one-third of a settlement fund is routinely approved in this Circuit.”); *Maley*, 186 F. Supp. 2d at 370 (finding 33⅓% fee request of settlement fund valued at \$11.5 million “falls comfortably within the range of fees typically awarded in securities class actions”); *Mohney v. Shelly’s Prime Steak, Stone Crab & Oyster Bar*, 2009 WL 5851465, at *5 (S.D.N.Y. Mar. 31, 2009) (collecting cases and noting that “Class Counsel’s request for 33% of the Settlement Fund is typical in class action settlements in the Second Circuit.”).

The requested fee is also consistent with awards in comparably sized securities class action settlements reached in district courts within the Second Circuit. *See, e.g., Nichols*, 2022 WL 2705354, at *10 (awarding one-third of \$56 million settlement); *In re Chicago Bridge & Iron Co. N.V. Sec. Litig.*, 2022 WL 3220783, at *1 (S.D.N.Y. Aug. 5, 2022) (awarding 33⅓% of \$44 million settlement); *In re Crazy Eddie Sec. Litig.*, 824 F. Supp. 320 (E.D.N.Y. 1993) (awarding 33.8% of \$42 million settlement); *In re Perrigo Co. PLC Sec. Litig.*, 2022 WL 500913, at *1 (S.D.N.Y. Feb. 18, 2022) (awarding 33⅓% of \$31.9 million settlement); *see also In re Cnova N.V. Sec. Litig.*, Master File No. 1:16-cv-00444-LTS OTW, slip op. at 5 (S.D.N.Y. Mar. 20, 2018) (awarding 33.3% of \$28.5 million settlement) (Ex. 9);⁵ *In re Facebook, Inc. IPO Sec. & Derivative Litig.*, 2015 WL 6971424, at *9, *11-12 (S.D.N.Y. Nov. 9, 2015) (awarding 33% of \$26.5 million, and finding that “[a] fee award of one-third of the Settlement Fund is well within the range accepted by courts in this circuit.”); *Lokman v. Azure Power Glob. Ltd.*, No. 22-cv-07432, ECF No. 134 (S.D.N.Y. Sept. 8, 2025) (awarding 33⅓% of \$23 million settlement)(Ex. 9); *In re VEON Ltd. Sec. Litig.*, No. 1:15-cv-08672, ECF No. 310 (S.D.N.Y. May 29, 2026) (awarding 33⅓% of \$19,970,000 settlement) (Ex. 9).⁶

B. The Lodestar Cross-Check Strongly Supports the Reasonableness of the Requested Fee

A lodestar cross-check confirms the requested fee’s reasonableness. *See Goldberger*, 209 F.3d at 50. The lodestar is calculated by multiplying the number of hours expended by each attorney and professional by their reasonable and customary hourly rate and totaling the amounts for all

⁵ All unreported slip opinions are submitted in a compendium, which is Exhibit 9 to the Joint Declaration.

⁶ Similar fees have also been awarded in significantly larger settlements. *See, e.g., Pearlstein v. BlackBerry Ltd.*, 2022 WL 4554858, at *9-11 (S.D.N.Y. Sept. 29, 2022)(33⅓% fee in \$165,000,000 settlement); *Landmen Partners, Inc. v. Blackstone Grp. L.P.*, No. 08-cv-03601-HB-FM, ECF No. 191 at 5 (S.D.N.Y. Dec. 18, 2013) (awarding 33.33% of \$85 million settlement) (Ex. 9); *In re Grab Holdings Ltd. Sec. Litig.*, 2025 WL 1413515, at *5 (S.D.N.Y. May 15, 2025) (awarding 33⅓% fee in \$80,000,000 settlement).

timekeepers.⁷ Additionally, “[u]nder the lodestar method of fee computation, a multiplier is typically applied to the lodestar.” *In re Glob. Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 468 (S.D.N.Y. 2004). “The multiplier represents the risk of the litigation, the complexity of the issues, the contingent nature of the engagement, the skill of the attorneys, and other factors.” *Id.* (citing *Goldberger*, 209 F.3d at 47). Thus, “[w]here, as here, counsel has litigated a complex case under a contingency fee arrangement, they are entitled to a fee in excess of the lodestar.” *In re Comverse Tech., Inc. Sec. Litig.*, 2010 WL 2653354, at *5 (E.D.N.Y. June 24, 2010).

Co-Lead Counsel (including attorneys, paralegals, and professional support staff), collectively devoted more than 8,182.6 hours to prosecuting this Action, resulting in a lodestar of \$6,671,048.50. ¶161; Ex. 8 (Summary Table).⁸ Based on a 33.3% fee, this lodestar yields a multiplier of 1.7, which is well within the range commonly awarded in securities class actions and other complex litigation. *See In re Signet Jewelers Ltd. Sec. Litig.*, 2020 WL 4196468, at *17 (S.D.N.Y. July 21, 2020) (awarding requested fee with a 1.98 multiplier and finding “In complex litigation, lodestar multipliers between 2 and 5 are commonly awarded, and fee awards resulting in multipliers as high as 6 have also been approved.”); *Guevoura Fund Ltd. v. Sillerman*, 2019 WL 6889901, at *18 (S.D.N.Y. Dec. 18, 2019)

⁷ “[T]he use of current rates to calculate the lodestar figure has been endorsed repeatedly by the Supreme Court, the Second Circuit and district courts within the Second Circuit as a means of accounting for the delay in payment inherent in class actions and for inflation.” *In re Hi-Crush Partners L.P. Sec. Litig.*, 2014 WL 7323417, at *15 (S.D.N.Y. Dec. 19, 2014); *Missouri v. Jenkins*, 491 U.S. 274, 283-84 (1989); *LeBlanc-Sternberg v. Fletcher*, 143 F.3d 748, 764 (2d Cir. 1998) (“[C]urrent rates, rather than historical rates, should be applied in order to compensate for the delay in payment.”).

⁸ Labaton and GPWR’s rates range from \$925 to \$1,450 per hour for partners, \$800 to \$1,025 per hour for of counsel, and \$325 to \$850 for associates and other attorneys (¶160) and “are comparable to peer law firms in recent years.” *Tenaris*, 2024 WL 1719632, at *10 (commenting on GPWR’s 2023 rates). “[P]erhaps the best indicator of the ‘market rate’ in the New York area for plaintiffs’ counsel in securities class actions is to examine the rates charged by New York firms that *defend* class actions on a regular basis.” *Telik*, 576 F. Supp. 2d at 589. Sample defense firm rates in 2025, gathered by Labaton annually from fee applications in bankruptcy court filings nationwide, often exceeded these rates. ¶160; Ex. 7.

(“multipliers of between three and four times . . . have been routinely awarded in this Circuit”); *In re Bisy Sec. Litig.*, 2007 WL 2049726, at *3 (S.D.N.Y. July 16, 2007) (fee award equated to a 2.99 multiplier and finding that the multiplier “falls well within the parameters set in this district and elsewhere”); *Velez v. Novartis Pharm. Corp.*, 2010 WL 4877852, at *23 (S.D.N.Y. Nov. 30, 2010) (recognizing a “multiplier of 2.4 times the hourly fees already incurred.... [as] well within (indeed, at the lower end) of the range of multipliers accepted within the Second Circuit.”); *see also Wal-Mart*, 396 F.3d at 123 (upholding multiplier of 3.5 as reasonable on appeal); *Maley*, 186 F. Supp. 2d at 369 (awarding fee equal to a 4.65 multiplier, which was “well within the range awarded by courts in this Circuit and courts throughout the country”).

Additionally, “[t]he fact that [Co-Lead] Counsel’s fee award will not only compensate them for time and effort already expended, but for the time that they will be required to spend administering the settlement going forward, also supports their fee request.” *Leach v. NBC Universal Media, LLC*, 2017 WL 10435878, at *20 (S.D.N.Y. Aug. 24, 2017). Among other things, Co-Lead Counsel will oversee the claims administration process, respond to shareholder inquiries, and supervise the distribution of the Net Settlement Fund to Settlement Class Members. The multiplier will, therefore, diminish as the case moves forward because Co-Lead Counsel will not seek any additional compensation for this work. In sum, Co-Lead Counsel’s requested fee award is well within the range of what courts in this Circuit regularly award in class actions such as this one, whether calculated as a percentage of the fund or in relation to Co-Lead Counsel’s lodestar.

C. Factors Considered by Courts in the Second Circuit Confirm the Requested Fee Is Reasonable

The Second Circuit has held that, under both the lodestar and percentage-of-the-fund methods, “district courts should continue to be guided by the traditional criteria in determining a reasonable common fund fee, including: (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 (with modification). Consideration of these factors, together with the percentage and lodestar analyses above, demonstrates that the requested fee is reasonable.

1. Time and Labor Expended Support the Requested Fee

The time and effort expended by Co-Lead Counsel in prosecuting the Action over nearly ten years and achieving the Settlement support the requested fee. As explained in the Joint Declaration, among other things, Co-Lead Counsel:

- conducted a comprehensive investigation into Defendants’ conduct, which included, among other things: (i) reviewing and analyzing (a) Hain’s filings with the U.S. Securities and Exchange Commission (“SEC”), (b) publicly available information, including press releases, news articles, research reports issued by securities and financial analysts, and other public statements issued by or concerning the Company and Individual Defendants, (c) Hain’s investor call transcripts, and (d) the applicable law governing the claims and potential defenses; (ii) contacting former Hain employees and others with relevant knowledge and interviewing 27 of these individuals (eight of whom provided information used in the SAC and were designated as confidential witnesses); and (iii) consulting with experts in accounting, loss causation, and damages;
- utilized their investigation to draft the comprehensive 104-page (365-paragraph) [Corrected] Consolidated Class Action Complaint for Violations of Federal Securities Laws (ECF No. 75; “Amended Complaint”);
- researched, drafted, and filed (i) an opposition to Defendants’ motion to dismiss the Amended Complaint (ECF No. 87); and (ii) additional briefing responding to Judge Spatt’s questions related to the motion to dismiss the Amended Complaint (ECF No. 99), after which the Court granted Defendants’ motion with leave to amend (ECF No. 106);
- drafted the comprehensive 134-page (428-paragraph) Second Amended Class Action Complaint for Violations of the Federal Securities Laws (“SAC”) (ECF No. 110);
- researched, drafted, and filed oppositions to Defendants’ two motions to dismiss the SAC (ECF Nos. 118-119), after which Judge Spatt dismissed the SAC with prejudice (ECF No. 122);
- researched, drafted, and filed (i) a Notice of Appeal with the Second Circuit Court of Appeals (2d Cir. Dkt. No. 20-1517, ECF No. 124); (ii) an opening appellate brief; and (iii) a reply brief;

- engaged in oral argument before the Second Circuit, after which the Second Circuit issued an Opinion and Order vacating the judgment of the District Court and remanding the case for further consideration of Lead Plaintiffs' scienter allegations in the SAC (*In re Hain Celestial Group, Inc. Sec. Litig.*, 20 F.4th 131, 132 (2d Cir. 2021));
- following remand, researched, drafted, and filed an opposition to Defendants' further briefing on their motions to dismiss the SAC (ECF No. 136), after which Magistrate Judge Dunst issued a Report and Recommendation ("R&R") granting the motions with prejudice (ECF No. 142);
- researched, drafted, and filed an opposition to the R&R (ECF No. 144), after which Judge Seybert issued an order adopting Magistrate Judge Dunst's R&R as to scienter, and granting Defendants' Second Motions to Dismiss (ECF No. 148);
- researched, drafted, and filed (i) a Notice of Appeal (2d Cir. Dkt. 23-7612, ECF No. 34); (ii) an opening appellate brief; and (iii) a reply brief;
- engaged in oral argument before the Second Circuit, after which the Second Circuit issued an Opinion vacating the judgment of the district court, finding that falsity, scienter, and loss causation had been adequately pled, and remanding the case for discovery and further proceedings (*Gimpel v. The Hain Celestial Grp., Inc.*, 156 F.4th 121 (2d Cir. 2025));
- successfully opposed Defendants' motion for rehearing *en banc* and panel rehearing (*Gimpel v. Hain Celestial Grp., Inc.*, 2025 WL 3485174 (2d Cir. 2025));
- engaged in fact discovery, which entailed, *inter alia*, (i) exchanging initial disclosures; (ii) propounding requests for production of documents; (iii) responding to Defendants' requests for production and interrogatories; (iv) negotiating a confidentiality order and ESI Protocol; (v) serving five subpoenas *duces tecum* on various third parties, including Hain's largest U.S. distributors and customers; and (vi) conducting a targeted review and analysis of the more than 675,000 pages of documents produced by Defendants and third parties, including transcripts of SEC interviews;
- participated with Defendants' counsel in an unsuccessful mediation process (in October 2022) overseen by a highly experienced third-party mediator, David Murphy, Esq. of Phillips ADR Enterprises (the "Mediator"), which involved, *inter alia*: (i) exchanging and providing to the Mediator written submissions concerning the facts of the case, liability and damages; and (ii) a formal mediation session;
- participated with Defendants' counsel in a second mediation process in April 2026 overseen by the Mediator, which involved, *inter alia*: (i) an exchange of extensive supplemental written submissions, as well as exhibits, concerning the facts of the case, liability and damages; (ii) a full-day formal mediation session, followed by continued negotiations with the Mediator over the course of several days; and (iii) a mediator's recommendation to settle the Action for \$35 million, which was accepted by the Parties;
- negotiated the terms of the Stipulation and Supplemental Agreement;

- worked with Lead Plaintiffs' damages expert to craft a plan of allocation for the proceeds of the Settlement;
- moved for preliminary approval of the proposed Settlement; and
- oversaw the Claims Administrator's implementation of the Court-approved notice program.

See Joint Decl. Sections III-IV.

Additional time and resources will be expended assisting Settlement Class Members, shepherding the claims process to conclusion, and supervising the distribution of the Net Settlement Fund to Settlement Class Members who have submitted valid Claim Forms. No additional compensation will be sought for this work. *See In re Facebook, Inc. IPO Sec. & Derivative Litig.*, 2015 WL 6971424, at *10 (S.D.N.Y. Nov. 9, 2015) ("Considering that the work in this matter is not yet concluded for Plaintiffs' counsel who will necessarily need to oversee the claims process, respond to inquiries, and assist Class Members in submitting their Proof of Claims, the time and labor expended by counsel in this matter support a conclusion that a 33% fee award in this matter is reasonable."). Accordingly, this factor supports the requested fee.

2. The Risks of Litigation Support the Requested Fee

"[T]he risk of success [is] perhaps the foremost factor to be considered in determining" a reasonable award of attorneys' fees. *Goldberger*, 209 F.3d at 54; *see also In re PPDAL Grp. Inc. Sec. Litig.*, 2022 WL 198491, at *15 (E.D.N.Y. Jan. 21, 2022) (risk of litigation is "often cited as the first, and most important, *Goldberger* factor, weighs in favor of requested fee as class counsel undertook this litigation on a contingent basis and have received no payment for their work"). "Little about litigation is risk-free, and class actions confront even more substantial risks than other forms of litigation." *In re Comverse Tech., Inc., Sec. Litig.*, 2010 WL 2653354, at *5; *see also In re Signet*, 2020 WL 4196468, at *19 ("The Second Circuit has recognized that the risks associated with a case undertaken on a contingent fee basis is an important factor in determining an appropriate fee award").

This is because:

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.

City of Detroit v. Grinnell Corp., 495 F.2d 448, 470 (2d Cir. 1974). *See 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.”).

The many substantial risks that Co-Lead Counsel faced in prosecuting this suit more than justify the requested fee.⁹ Numerous courts have recognized that “class actions confront even more substantial risks than other forms of litigation[.]” *Comverse*, 2010 WL 2653354, at *5.¹⁰ This case was no exception. From the outset, Co-Lead Counsel understood that they were embarking on a complex, expensive, and potentially lengthy litigation with no guarantee of being compensated for their substantial investment of time and money. In undertaking that responsibility, “plaintiffs’ counsel were obligated to assure that sufficient attorney and professional resources were dedicated to the prosecution of the action; counsel also faced the responsibility of advancing litigation and overhead expenses on this case for [many] years.” *In re Giant Interactive Grp., Inc. Sec. Litig.*, 279 F.R.D. 151, 164 (S.D.N.Y. 2011). “Unlike counsel for Defendants, who are paid substantial hourly rates and reimbursed for their expenses on a regular basis, [Co-Lead] Counsel have not been compensated for any time or expenses

⁹ This section focuses on contingency fee risk. For a detailed discussion of the numerous litigation risks in this case, the Court is respectfully referred to the concurrently filed Memorandum of Law in Support of Lead Plaintiffs’ Motion for Final Approval of Class Action Settlement and Plan of Allocation (“Settlement Memorandum”), §I.B.3., and Joint Decl., §V.

¹⁰ *See also Teachers’ Ret. Sys. of La. v. A.C.L.N., Ltd.*, 2004 WL 1087261, at *3 (S.D.N.Y. May 14, 2004) (“Little about litigation is risk-free, and class actions confront even more substantial risks.”); *Great Neck Cap. Appreciation Inv. P’ship, L.P. v. PricewaterhouseCoopers, L.L.P.*, 212 F.R.D. 400, 409 (E.D. Wis. 2002) (“Shareholder class actions are difficult and unpredictable, and skepticism about optimistic forecasts of recovery is warranted.”).

since this case began more than [ten] years ago.” *In re Flag Telecom Holdings Ltd. Sec. Litig.*, 2010 WL 4537550, at *27 (S.D.N.Y. Nov. 8, 2010).

Co-Lead Counsel’s commitment was substantial (*i.e.*, \$6,671,048.50 in lodestar (¶161), and \$309,356.50 in Litigation Expenses (¶164)), and had they not obtained a recovery, it would have all been unrecouped. *See, e.g., Gross v. GFI Grp., Inc.*, 784 F. App’x. 27, 28 (2d Cir. 2019) (affirming summary judgment against plaintiffs in securities fraud class action, where GPWR served as one of lead plaintiff’s counsel, on the alternative ground that Defendant’s “statement did not, as a matter of law, amount to a material misrepresentation or omission actionable under section 10(b),” despite the trial court twice finding the statement actionable); *In re JDS Uniphase Corp. Sec. Litig.*, 2007 WL 4788556, at *1 (N.D. Cal. Nov. 27, 2007) (jury verdict for defendants in case in which Labaton served as Lead Counsel); *see also* Joint Decl. ¶¶147-154. Put simply, complex litigation is not risk free, and this case—which was dismissed four times by three different Judges of the District Court—was no different. *See In re Xcel Energy Inc. Sec., Derivative & ERISA Litig.*, 364 F. Supp. 2d 980,1003 (D. Minn. 2005) (“The court needs to look no further than its own order dismissing the . . . litigation to assess the risks involved.”). Because Co-Lead Counsel accepted a substantial risk of non-payment, this factor supports the requested fee.

3. The Magnitude and Complexity of the Action Support the Fee Request

Courts have repeatedly recognized the “notorious complexity” of securities class action litigation. *In re AOL Time Warner, Inc. Sec. & “ERISA” Litig.*, 2006 WL 903236, at *8 (S.D.N.Y. Apr. 6, 2006); *Lea v. Tal Educ. Grp.*, 2021 WL 5578665, at *9 (S.D.N.Y. Nov. 30, 2021) (“Class action suits have a well-deserved reputation as being most complex, and securities class actions are notably difficult and notoriously uncertain to litigate.”); *City of Providence v. Aeropostale, Inc.*, 2014 WL 1883494, at *5 (S.D.N.Y. May 9, 2014), *aff’d sub nom. Arbuthnot v. Pierson*, 607 F. App’x. 73

(2d Cir. 2015)(securities class action litigation is “notably difficult and notoriously uncertain”). Moreover, “securities actions have become more difficult from a plaintiff’s perspective in the wake of the PSLRA,” and other changes in the law. *In re Ikon Off. Sols., Inc. Sec. Litig.*, 194 F.R.D. 166, 194 (E.D. Pa. 2000); *see also AOL Time Warner*, 2006 WL 903236, at *9 (“[T]he legal requirements for recovery under the securities laws present considerable challenges, particularly with respect to loss causation and the calculation of damages.”).

As discussed in the Settlement Memorandum and the Joint Declaration, this case raised a number of complex questions concerning liability and damages that required great skill and extensive efforts to litigate. The complexities were especially acute given that the case was being litigated under the PSLRA’s heightened pleading standard and automatic stay of discovery, as well as the case’s subject matter—accounting in general, and channel stuffing in particular. *See In re Datatec Sys. Inc. Sec. Litig.*, 2007 WL 4225828, at *7 (D.N.J. Nov. 28, 2007) (“securities fraud class actions involving alleged violations of accounting principles are complex actions to prosecute”). As a result, this case was always going to require a thorough understanding of complicated accounting issues, significant work with experts and investigators, and the skill to respond to a host of legal and factual issues raised by Defendants at every step of the litigation. Indeed, the Action was litigated by the Parties over the course of nearly ten years, was dismissed four times, and required two trips to the Second Circuit. ¶¶39-74. This was an incredibly complex matter—even by the standards of securities class actions. *See City of Providence*, 2014 WL 1883494, at *16, 20 (awarding 33% fee where, *inter alia*, case “involved difficult, complex, hotly disputed, and expert-intensive issues related to the retail industry, inventory accounting and loss causation.”).

Consequently, the magnitude and complexity of the litigation support the requested fee.

4. The Quality of Representation Supports the Requested Fee

“To determine the ‘quality of the representation,’ courts review, among other things, the

recovery obtained and the backgrounds of the lawyers involved in the lawsuit.” *Taft v. Ackermans*, 2007 WL 414493, at *10 (S.D.N.Y. Jan. 31, 2007); *see also In re Veeco Instruments Sec. Litig.*, 2007 WL 4115808, at *7 (S.D.N.Y. Nov. 7, 2007). Both of these factors support the conclusion that a 33.3% fee award is reasonable here.

Lead Plaintiffs’ consulting damages expert has estimated that if Lead Plaintiffs fully prevailed on all their claims, *i.e.*, at summary judgment and after a jury trial, and if the Court and jury accepted Lead Plaintiffs’ damages theory in full—*i.e.*, Lead Plaintiffs’ *best-case scenario*—the total maximum damages potentially available in this Action, after netting out gains from pre-Class Period purchases, would be approximately \$672 million, or approximately \$1.1 billion without netting pre-Class Period gains. Joint Decl. ¶121. However, there were credible arguments Defendants would have undoubtedly asserted at class certification (including arguments for shortening the class period to end on August 15, 2016), summary judgment and trial, which could have significantly reduced Lead Plaintiffs’ potential recovery to as low as approximately \$472 million. *Id.* Based on these analyses, the Settlement recovers approximately 3.2% to 7.4% of estimated damages. *Id.* This recovery compares favorably to the median recovery in securities class actions under the Exchange Act with similar-sized damages. According to Cornerstone Research, for Exchange Act cases with total estimated damages of more than \$1 billion, the median percentage of recovery from 2016 to 2024 was 3.6% of total Cornerstone estimated damages, and the median percentage of recovery for such cases in 2025 was 3%. *See* Laarni T. Bulan and Eric Tam, *Securities Class Action Settlements – 2025 Review and Analysis* (Cornerstone Research 2026), Exhibit 4 at 7. The median recovery for securities class action settlements in the last ten years was 4.3% for cases with estimated damages of \$500-999 million, and 6.5% for such cases in 2025. *Id.* Accordingly, the result obtained for the Settlement Class weighs in favor of finding that Co-Lead Counsel provided high quality representation and supports the requested fee. *See Tenaris*, 2024

WL 1719632, at *11-12 (recovery that was “significantly higher than the ... average settlement recovery rate for similar securities class actions between 2011 and 2022” represented “a favorable outcome for the class” and supported 33⅓% attorneys’ fee award).

Moreover, Co-Lead Counsel’s significant experience in prosecuting securities class action claims and commitment to providing the Settlement Class with the best possible representation, were the foundation for achieving this very favorable result. *See, e.g.*, Exs. 5-D (Labaton firm résumé); 6-C (GPWR firm résumé). Indeed, Co-Lead Counsel’s extensive experience and knowledge of the securities laws provided them with the necessary fortitude to continue litigating despite repeated setbacks before the District Court, and, as a result, their commitment and belief in the case never wavered. Such commitment should be rewarded.

“Courts have [also] recognized that the quality of the opposition should also be taken into consideration in assessing the quality of the counsel’s performance.” *Signet*, 2020 WL 4196468, at *20. Here, Defendants were vigorously represented by experienced, aggressive, and highly skilled counsel from DLA Piper LLP, which aggressively represented the interests of its clients throughout this Action. ¶156. Notwithstanding this capable opposition, Co-Lead Counsel’s ability to present a strong case, and demonstrated willingness to vigorously prosecute the Action, enabled them to obtain an excellent result for the Settlement Class. *See Veeco*, 2007 WL 4115808, at *7 (“That Plaintiffs’ Counsel was able to obtain a substantial settlement from these Defendants confirms the quality of Plaintiffs’ Counsel’s representation . . . and is a factor in determining the reasonableness of the fee request.”). Consequently, this factor too weighs in favor of the requested fee.

5. The Requested Fee in Relation to the Settlement Amount

Courts have interpreted this factor as requiring the review of the fee requested in terms of the percentage it represents of the total recovery. “When determining whether a fee request is reasonable in relation to a settlement amount, ‘the court compares the fee application to fees awarded in similar

securities class-action settlements of comparable value.” *Comverse*, 2010 WL 2653354, at *3. As discussed in detail in Section III.A., *supra*, the requested fee is consistent with percentage fees that courts in the Second Circuit have awarded in comparable complex cases. Accordingly, the requested fee is reasonable in relation to the Settlement.

6. Public Policy Considerations Support the Requested Fee

“[The Supreme] Court has long recognized that meritorious private actions to enforce federal antifraud securities laws are an essential supplement to criminal prosecutions and civil enforcement actions brought, respectively, by the Department of Justice and the Securities and Exchange Commission (“SEC”).” *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 313 (2007). If this “important public policy 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.” *Flag Telecom*, 2010 WL 4537550, at *29. Indeed, as a practical matter, “[l]awsuits such as this one can only be maintained if competent counsel can be retained to prosecute them. This will occur if courts award reasonable and adequate compensation for such services where successful results are achieved.” *Aeropostale*, 2014 WL 1883494, at *18.

Here, Co-Lead Counsel invested substantial amounts of time and money pursuing the claims against Defendants on a fully contingent basis. Had Co-Lead Counsel not done so, the Settlement Class would have received no compensation. *See City of Birmingham Ret. and Relief Sys. v. Credit Suisse Grp. AG.*, 2020 WL 7413926, at *2 (S.D.N.Y. Dec. 17, 2020) (“Protecting investors from fraudulent or misleading investments serves the public interest, and Lead Counsel’s fees should reflect the important goal of serving as an inducement for lawyers to make similar efforts in the future.”). Accordingly, public policy considerations also favor the fee request.

IV. REQUESTED EXPENSES ARE REASONABLE AND SHOULD BE AWARDED

Co-Lead Counsel also request \$309,356.50 in expenses incurred while prosecuting the Action.

See 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”); *In re Indep. Energy Holdings PLC Sec. Litig.*, 302 F. Supp. 2d 180, 183 n.3 (S.D.N.Y. 2003) (“Attorneys may be compensated for reasonable out-of-pocket expenses incurred and customarily charged to their clients, as long as they were incidental and necessary to the representation of those clients.”). This amount is below the \$950,000 cap that the notices informed Settlement Class Members counsel may apply for.

The expenses are consistent with the stage of the litigation and the claims and defenses at issue. Co-Lead Counsel incurred expenses related to, among other things, expert and consultant fees, mediation fees, legal counsel for confidential witnesses subpoenaed by Defendants, appellate printer costs, and litigation support fees related to electronic discovery. A complete breakdown by category of the expenses incurred is set forth in Exhibits B and C to the Declaration of Christine M. Fox on behalf of Labaton Keller Sucharow LLP, Joint Decl. Ex. 5, and Exhibit B to the Declaration of Leanne H. Solish on behalf of Glancy Prongay Wolke & Rotter LLP, Joint Decl. Ex. 6. These expense items are reported separately by Co-Lead Counsel, and such costs are not duplicated in the firms’ hourly rates.¹¹

The largest expense item relates to the retention of Lead Plaintiffs’ consulting experts in the fields of accounting, damages, loss causation, and bankruptcy. These fees total \$102,685.10, or approximately 33% of the total Litigation Expenses. ¶167. Co-Lead Counsel also consulted with bankruptcy counsel in connection with finalizing the terms of the Settlement. *Id.* The expenses also include \$62,500.00 for the fees and costs of the mediator (approximately 20% of total expenses). ¶168. Litigation support costs related to electronic discovery total \$37,745.93, or approximately 12% of expenses. ¶169. Co-Lead Counsel also incurred \$8,150.00 in connection with retaining counsel to

¹¹ Co-Lead Counsel Schall and Smith are not seeking expenses.

represent certain confidential witnesses interviewed by Defendants. Ex. 5, ¶6(d). The remainder of the expenses sought are the types that are necessarily incurred in complex litigation and routinely paid by private clients in non-contingent cases.

“The expenses incurred – which include investigative and expert witnesses, filing fees, service of process, travel, legal research and document production and review – are the type for which ‘the paying, arms’ length market’ reimburses attorneys. For this reason, they are properly chargeable to the Settlement fund.” *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 468 (S.D.N.Y. Nov. 24, 2004); *see also Flag Telecom*, 2010 WL 4537550, at *30. Similarly, the Litigation Expenses requested here should be reimbursed.

V. LEAD PLAINTIFFS SHOULD BE AWARDED THEIR REASONABLE COSTS AND EXPENSES UNDER 15 U.S.C. §78U-4(A)(4)

Co-Lead Counsel also seek reimbursement of \$15,000 on behalf of Lead Plaintiff Gimpel and \$14,000 on behalf of Lead Plaintiff Rosewood, directly related to their representation of the Settlement Class. *See* Rosewood Decl., Ex. 1; Gimpel Decl., Ex. 2. The PSLRA specifically provides that an “award of reasonable costs and expenses (including lost wages) directly relating to the representation of the class” may be made to “any representative party serving on behalf of a class.” 15 U.S.C. § 78u-4(a)(4). “Court[s] have found that the PSLRA permits courts to award lead plaintiffs in federal securities actions reimbursement for their time devoted to participating in and directing the litigation on behalf of the class.” *Sillerman*, 2019 WL 6889901, at *22.

Here, Lead Plaintiffs took an active role in the nearly ten years of litigation by, among other things: (i) communicating with their counsel regarding the case; (ii) reviewing significant court filings, as well as Court orders; (iii) responding to written discovery requests; (iv) consulting with their attorneys regarding the settlement negotiations; and (v) evaluating and approving the proposed Settlement. *See* Ex. 1, ¶¶4-5, 9-11; Ex. 2, ¶¶4-6, 13. These are “precisely the types of activities that

support awarding reimbursement of expenses to class representatives” (*In re Marsh & McLennan Cos. Sec. Litig.*, 2009 WL 5178546, at *21 (S.D.N.Y. 2009)), and the amounts requested are consistent with awards in other complex cases. *See id.* at *21 (approving \$214,657 total award to two lead plaintiffs).¹² But for their almost ten year “commitment to pursuing these claims, the successful recovery for the [Settlement] Class would not have been possible.” *Bell v. Pension Comm. of ATH Holding Co., LLC*, 2019 WL 4193376, at *6 (S.D. Ind. Sept. 4, 2019).

CONCLUSION

For all the foregoing reasons, Co-Lead Counsel respectfully request the Court grant the motion. A proposed order will be submitted by October 21, 2026, after the deadline for objecting has passed.

DATED: September 23, 2026

Respectfully submitted,

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¹² *See also Veeco*, 2007 WL 4115808, at *12 (PSLRA award of \$15,964 to lead plaintiff, and characterizing such awards as “routine” in this Circuit); *In re Alibaba Grp. Holding Ltd. Sec. Litig.*, 2025 WL 933955, at *2 (S.D.N.Y. Mar. 27, 2025) (PSLRA awards of \$25,000 to Lead Plaintiff and \$25,000 to each of the three additional named plaintiffs); *In re XL Fleet Corp. Sec. Litig.*, 2024 WL 1884483, at *2 (S.D.N.Y. Apr. 30, 2024) (PSLRA award of \$25,000 to Lead Plaintiff and \$15,000 each to the four additional named plaintiffs); *Signet*, 2020 WL 4196468, at *24 (collecting cases and awarding \$25,410 to lead plaintiff).

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LOCAL RULE 7.1 CERTIFICATION

The undersigned counsel certifies that this document complies with the type–volume limitations of Local Rule 7.1(c) because it contains 7,133 words, excluding the parts of the brief exempted by Local Rule 7.1(c), as calculated by the word–counting feature of Microsoft Office. It also complies with the Individual Practice Rules of Magistrate Judge Lee G. Dunst, Rule VI. B(3).

/s/ Christine M. Fox

Christine M. Fox

CERTIFICATE OF SERVICE

The undersigned counsel certifies that on this 23rd day of September 2026, I caused a true and correct copy of the foregoing Memorandum of Law in Support of Co-Lead Counsel's Motion for an Award of Attorneys' Fees and Payment of Litigation Expenses to be e-filed by CM/ECF to the parties registered to the Court's CM/ECF system.

/s/ Christine M. Fox

Christine M. Fox