UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

PATRICIA B. BAUM, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. HARMAN INTERNATIONAL INDUSTRIES, INCORPORATED, et al., Defendants.	No. 3:17-cv-00246-RNC CLASS ACTION MEMORANDUM IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT, APPROVAL OF PLAN OF ALLOCATION, AND AWARD OF ATTORNEYS' FEES AND EXPENSES

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I. INTRODUCTION

In the face of long odds and a vigorous defense, Lead Plaintiff and Lead Counsel have achieved a proposed settlement of $28 million plus interest for the benefit of the Class. Post-merger monetary settlements on §14(a) claims are rare, and a result of this magnitude on such a case is unprecedented in this jurisdiction. The $28 million Settlement is a highly favorable result, brought about by Lead Counsel's determined, detailed, and diligent litigation efforts. Lead Plaintiff and Lead Counsel respectfully submit this memorandum in support of their motion for final approval of the proposed Settlement, Plan of Allocation, and request for attorneys' fees and expenses.[1]

Lead Plaintiff's case, although strong, was not without risk. As the Court remarked at a November 2021 status conference, "I recognize that given what has happened over these past years [regarding Harman's alleged post-Merger performance], if I were plaintiffs' counsel I would need to think long and hard about investing in this litigation." Knotts Decl., Ex. 4 at 13 (Pretrial Conference Transcript, dated Nov. 11, 2021). The Court also remarked, "it could be . . . that this case has modest value on its best day." *Id.* at 12. The Court had previously described this as a "case that does have some apparent weaknesses, which are well known." Knotts Decl., Ex. 5 at 14 (Pretrial Conference Transcript, dated Oct. 21, 2021). But Lead Counsel believed in the case, continued litigating, continued pursuing discovery, continued investing, and ultimately reached the proposed Settlement.

While securities class actions pose numerous challenges in general, Lead Plaintiff here faced particularly significant risks with respect to liability and damages. For example, Defendants argued

[1] Unless otherwise defined herein, capitalized terms have the meaning ascribed to them in the Stipulation of Settlement, previously filed with the Court on June 23, 2022. ECF 197-3. The Court is respectfully referred to the accompanying Declaration of David A. Knotts in Support of Motion for Final Approval of Class Action Settlement, Approval of Plan of Allocation, and Award of Attorneys' Fees and Expenses ("Knotts Decl.") for a more detailed history of the Litigation, the investigation of Lead Counsel, the fact discovery conducted in this case, and the factors bearing on the reasonableness of the Settlement, the Plan of Allocation, and counsel's request for an award of attorneys' fees and expenses.

that the statements challenged by Lead Plaintiff were forward-looking and therefore non-actionable under the Private Securities Litigation Reform Act's ("PSLRA") safe-harbor provisions. Defendants also argued that Harman stockholders suffered no harm from the Merger, and instead received a benefit in the form of a premium for their shares. Absent the Merger, according to Defendants, Harman's standalone position would have continued to deteriorate in a declining global auto industry. Although Lead Plaintiff strongly disputed these assertions, if Defendants' arguments were successful in any respect, the Class would recover nothing. Lead Plaintiff and Lead Counsel overcame these and other risks by achieving the Settlement.

Lead Counsel also seeks an award of attorneys' fees representing 31% of the Settlement Amount, plus expenses. As the Southern District of New York recently held in a large securities case, "[c]lass counsel's request for one-third of the gross settlement fund is reasonable within this circuit." *Pearlstein v. Blackberry Ltd.*, 2022 WL 4554858, at *10 (S.D.N.Y. Sep. 29, 2022) (collecting cases). As in *Pearlstein*, the requested 31% fee here also falls comfortably within the typical range of percentages awarded by courts in this circuit. *Id.*

The difficulty in obtaining this $28 million recovery, and the risk inherent in litigating this case, are both underscored by this fact: Lead Counsel are aware of only one other case since at least 2016, in any jurisdiction, where plaintiffs obtained a monetary recovery greater than $28 million on a pure §14(a) negligence claim challenging a merger proxy (with no open market securities fraud component). In fact, recent studies have identified monetary recoveries on post-merger litigation like this case as "relatively rare." *See* Knotts Decl., Ex. 1 at 5. This case's standing against such few others highlights the favorable nature of this result, relative to the risk in litigating post-merger securities cases. In similar circumstances, courts have held: "When this suit got under way, no other law firm was willing to serve as lead counsel. Lack of competition not only implies a higher fee but

also suggests that most members of the securities bar saw this litigation as too risky for their practices." *Silverman v. Motorola Sols., Inc.*, 739 F.3d 956, 958 (7th Cir. 2013).

For the reasons set forth herein and in the Knotts Declaration, Lead Plaintiff and Lead Counsel respectfully submit that the Settlement, Plan of Allocation, and requested attorneys' fees and expenses are all fair and reasonable, and should be approved by the Court.

II. THE SETTLEMENT SHOULD BE APPROVED BY THE COURT

A. The Settlement Is Presumptively Fair

A "'presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm's-length negotiations between experienced, capable counsel after meaningful discovery.'"[2] *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 116 (2d Cir. 2005); *D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (same); *see also* 5 *Moore's Federal Practice*, §23.164[4] (Matthew Bender 3d ed. 2004) ("The more experience that class counsel possesses, the greater weight a court tends to attach to counsel's opinions on fairness, reasonableness, and adequacy.").

This case has been litigated and settled by experienced counsel on both sides of the case. Based on their extensive experience and expertise, Lead Counsel determined that the Settlement is in the best interest of the Class after weighing the substantial benefits of the Settlement against the numerous obstacles to a better recovery after continued litigation. Knotts Decl., ¶¶44-57. Moreover, the Settlement was only achieved after discovery had commenced, 43,274 pages of documents had been produced, the parties had exchanged over 370 pages of briefing directed at the pleadings, and the parties had engaged in four months of arm's-length settlement discussions involving highly experienced and sophisticated counsel. Knotts Decl., ¶¶22, 32, 43. Thus, the Settlement is entitled to the presumption of procedural fairness.

[2] Citations are omitted and emphasis is added throughout unless otherwise noted.

B. The Standard for Judicial Approval

In this circuit, "[f]ederal courts have adopted a 'strong judicial policy in favor of settlements, particularly in the class action context.'" *Collins v. Olin Corp.*, 2010 WL 1677764, at *2 (D. Conn. Apr. 21, 2010) (quoting *In re PaineWebber Ltd. P'ships Litig.*, 147 F.3d 132, 138 (2d Cir. 1998)); *Wal-Mart*, 396 F.3d at 116 (same); *Menkes v. Stolt-Nielsen S.A.*, 270 F.R.D. 80, 88 (D. Conn. 2010) ("[C]ourts have long favored the voluntary settlement of complex class action litigation."). Federal Rule of Civil Procedure 23(e) requires judicial approval for the compromise of class claims.

The standards governing approval of class action settlements are well established. In *City of Detroit v. Grinnell Corp.*, the U.S. Court of Appeals for the Second Circuit held that the following factors should be considered in evaluating a class action:

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

City of Detroit v. Grinnell Corp., 495 F.2d 448, 463 (2d Cir. 1974), *abrogated sub nom. Goldberger v. Integrated Res. Inc.*, 209 F.3d 43 (2d Cir. 2000); *see also Lea v. Tal Educ. Grp.*, 2021 WL 5578665, at *8 (S.D.N.Y. Nov. 30, 2021) ("[T]he Court's assessment of the settlement under Rule 23(e) is guided and informed by the *Grinnell* factors.").

Importantly, in deciding whether a settlement merits approval, "'not every factor must weigh in favor of [the] settlement, rather the court should consider the totality of these factors in light of the particular circumstances.'" *Id.* (alterations in original). Here, as discussed below, the Settlement warrants approval under each of the relevant factors.

C. Application of the *Grinnell* Factors Supports Final Approval of the Settlement

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

"'In evaluating the settlement of a securities class action, federal courts . . . have long recognized that such litigation is notably difficult and notoriously uncertain.'" *In re Sturm, Ruger, & Co., Inc. Sec. Litig.*, 2012 WL 3589610, at *5 (D. Conn. Aug. 20, 2012). This case is no different. The Court described this matter as a "case that does have some apparent weaknesses, which are well known, I assume, to everybody on this call." Knotts Decl., Ex. 5 at 14 (Pretrial Conference Transcript, dated Oct. 21, 2021). As discussed herein and in the Knotts Declaration, if not for the Settlement, the case would have continued to be fiercely contested by all parties, and even if Lead Plaintiff were able to prevail on every issue, the entire litigation process would likely span several more years. The $28 million Settlement, at this juncture, results in an immediate and substantial tangible recovery, without the considerable risk, expense, and delay of continued discovery, class certification, summary judgment motions, and trial and post-trial litigation.

Given those facts, the following ruling from the Southern District of New York in *Tal Education Group* – which settled in a similar procedural posture as this case – is applicable here:

> [T]he settlement brings to a close litigation that could have lasted several more years and costs hundreds of thousands of dollars in attorneys' fees and expenses and brings immediate relief to the class. . . . [T]here was sufficient discovery to appropriately inform them about the facts and risks of continued litigation to enter into settlement discussions.

Tal Educ. Grp, 2021 WL 5578665, at *9.

2. Factor 2 – The Reaction of the Class to the Settlement

The reaction of the Class to the Settlement is a significant factor in assessing its fairness and adequacy, and the lack of objections "evidenc[es] the fairness of [the] [S]ettlement." *In re PaineWebber Ltd. P'ships Litig.*, 171 F.R.D. 104, 126 (S.D.N.Y. 1997), *aff'd sub. nom. In re PaineWebber Inc. Ltd. P'ships Litig.*, 117 F.3d 721 (2d Cir. 1997). Thus, even "[a] small number of

objections are convincing evidence of strong support by class members. Indeed, 'in litigation involving a large class it would be "extremely unusual" not to encounter objections.'" *Shapiro v. JPMorgan Chase & Co.*, 2014 WL 1224666, at *9 (S.D.N.Y. Mar. 24, 2014).

Pursuant to the Court's Preliminary Approval Order, the Claims Administrator mailed over 37,700 copies of the Notice and Proof of Claim and Release to potential Class Members and nominees.[3] In addition, the Claims Administrator caused the Summary Notice to be published in the national edition of *The Wall Street Journal* and over *Business Wire* on July 22, 2022. *Id.*, ¶12. The Claims Administrator also placed all of the relevant materials on the website established for the Settlement, www.HarmanMergerLitigation.com. *Id.*, ¶14. The Notice advised Class Members of their right to object to the terms of the Settlement, Plan of Allocation, and request for attorneys' fees and expenses. While the time for objecting has not yet expired, to date, no Class Member has done so. The Court-appointed Lead Plaintiff, however, has submitted a declaration in strong support of the Settlement. *See* Lead Plaintiff's Declaration in Support of Settlement Approval ("Lead Plaintiff Decl."), submitted herewith.

3. Factor 3 – The Stage of the Proceedings and the Discovery Completed

The third *Grinnell* factor explores "the information that was available to the settling parties to assess whether [Lead Counsel] 'have weighed their position based on a full consideration of the possibilities facing them.'" *Kemp-DeLisser v. Saint Francis Hosp. & Med. Ctr.*, 2016 WL 6542707, at *8 (D. Conn. Nov. 3, 2016). Thus, "'the question is whether the parties had adequate information about their claims.'" *Id.* "To satisfy this factor, parties need not have even engaged in formal or extensive discovery." *In re Hi-Crush Partners L.P. Sec. Litig.*, 2014 WL 7323417, at *7 (S.D.N.Y. Dec. 19, 2014).

[3] *See* ¶¶4-11 of the accompanying Declaration of Ross D. Murray Regarding Notice Dissemination, Publication, and Requests for Exclusion Received to Date ("Murray Decl.").

In this case, there is no question that Lead Plaintiff had sufficient information to make an informed decision on the propriety of the Settlement. *See* Knotts Decl., ¶¶19-22, 24-32. This case was well into discovery, and Lead Counsel had received and reviewed 43,274 pages of documents from Defendants and their third-party financial advisors. *Id.*, ¶32. Lead Counsel reviewed and analyzed a massive amount of information regarding Harman's historical forecasting practices and expected business outlook, then conducted a detailed comparison of that information with the disclosures in the Proxy. *Id.*, ¶21. Lead Counsel also retained and consulted with a corporate finance and valuation expert regarding Harman's expected business outlook relative to company trends and the global auto market in general. *Id.* Lead Counsel's investigation also included the drafting of the detailed Amended Complaint; opposing Defendants' motion to dismiss the Amended Complaint (the "Motion to Dismiss"); opposing the Pleadings Motion; opposing the Judicial Notice Motion; opposing Defendants' motion to certify an interlocutory appeal of the Court's denial of the Pleadings Motion (the "Appeals Motion"); detailed fact discovery; and participating in an in-person mediation with Defendants' counsel overseen by Judge Phillips, with extensive follow-up negotiations. Lead Counsel's work is described in greater detail at Knotts Decl., ¶¶19-22, 24-32, 43.

Accordingly, Lead Plaintiff and Lead Counsel "'have developed a comprehensive understanding of the key legal and factual issues in the litigation and, at the time the Settlement was reached, had "a clear view of the strengths and weaknesses of their case" and of the range of possible outcomes at trial.'" *Hi-Crush Partners*, 2014 WL 7323417, at *7 (quoting *City of Providence v. Aéropostale, Inc.*, 2014 WL 1883494, at *7 (S.D.N.Y. May 9, 2014), *aff'd sub nom. Arbuthnot v. Pierson*, 607 F. App'x 73 (2d Cir. 2015)).

4. Factors 4 and 5 – The Risks of Establishing Liability and Damages

In *Grinnell*, the Second Circuit stated that in assessing the fairness, reasonableness, and adequacy of a settlement, courts should consider factors such as "the risks of establishing liability"

and the "risks of establishing damages." *Grinnell*, 495 F.2d at 463. While Lead Plaintiff and Lead Counsel believe that the claims asserted against the Defendants are meritorious, they also recognize that there were considerable risks in pursuing the Litigation that could have led to a substantially smaller recovery or no recovery at all for the Class. Indeed, Defendants could avail themselves of several potential defenses detailed below, which, if successful, would severely curtail or even eliminate the claims of the Class. These risks factors further support final approval of the Settlement. Knotts Decl., ¶¶48-51.

To prevail on her §14(a) claim, Lead Plaintiff would have the burden of demonstrating to the satisfaction of the jury and the Court that (1) the proxy statement contained a material misstatement or omission, which (2) caused plaintiff's injury, and (3) the Proxy solicitation itself, rather than the particular defect in the solicitation materials, was an essential link in the accomplishment of the transaction. *Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375, 384-85 (1970).

The Amended Complaint largely alleged that Defendants (i) falsely stated in the Proxy that the Management Projections contained greater downside risk than upside potential, contradicting Paliwal's earlier positive statements; and (ii) failed to disclose that a J.P. Morgan Securities LLC ("J.P. Morgan") affiliate was concurrently engaged by a Samsung Electronics Co., Ltd. ("Samsung") affiliate at the same time J.P. Morgan was purportedly negotiating against Samsung in connection with the Merger. ¶¶70-81.[4] More specifically, with respect to Lead Plaintiff's first claim, the Amended Complaint alleged that Defendants endorsed a lower set of financial projections that were created specifically to justify the Merger price, and that were substantively and numerically incompatible with the Company's operative reality. ¶¶70-72. Lead Plaintiff also alleged that the omissions/misrepresentations in the Proxy misled stockholders as to the intrinsic value of the

[4] This summary describes only those claims and related allegations of the Amended Complaint that survived the Court's order granting in part and denying in part Defendants' Motion to Dismiss. ECF 61. All "¶" or "¶¶" references are to the Amended Complaint.

Company, and induced a stockholder vote in favor of the Merger based on material misinformation. ¶¶78-81.

Defendants' Appeals Motion was pending at the time of the Settlement. Lead Counsel were optimistic that the motion would be denied. Knotts Decl., ¶¶17, 48. But there are no guarantees in securities litigation. As one court noted: "Securities class actions present hurdles to proving liability that are difficult for plaintiffs to meet." *Hi-Crush Partners*, 2014 WL 7323417, at *8.

Defendants adamantly denied any culpability and made numerous arguments seeking dismissal of the case, including the following:

- that the Amended Complaint failed to articulate "any concrete, non-speculative basis to suggest that there was a viable path to achieving more than the deal price" (Appeals Motion at 15);
- that the Court's determination that Lead Plaintiff had sufficiently pleaded loss causation under the PSLRA was "at odds with rulings by at least two district courts within this circuit . . . one of which referred to this Court's analysis as 'not supported by law' and was latter affirmed by the Second Circuit" (*id*. at 13);
- that "[a] court of appeals reversal on loss causation would terminate the litigation" (*id*. at 11);
- that "a statement that there is greater downside risk than likely upside potential in a set of projections is demonstrably forward-looking" (*id*. at 15);
- that "[t]he Court's ruling to the contrary is now squarely at odds with that of at least four other district courts within this circuit," and "also in conflict with several district court decisions outside the circuit that have dismissed Section 14(a) claims" (*id*. at 15, 17); and
- that "[i]f that issue [PSLRA's safe harbor] is decided in defendants' favor, all that will be left is a claim that Harman should have disclosed a relationship between J.P. Morgan and a 'Samsung' entity that wasn't even owned by the Samsung that bought Harman" (*id*. at 11).

Knotts Decl., ¶48. Lead Plaintiff and Lead Counsel disagree with those arguments, but they were made by well-capitalized Defendants through highly respected, accomplished, and aggressive defense attorneys. These arguments raised potentially valid defenses that presented risks to a Class recovery if the Litigation continued.

Even if the Appeals Motion were denied, Lead Plaintiff faced significant risks and uncertainties in proving out her claims. Defendants would have continued to argue that a global downturn in the auto industry supported the conclusion that the Merger consideration was more beneficial to Harman shareholders than Harman remaining a stand-alone entity. Defendants had repeatedly argued that Harman's post-close performance undermined Lead Plaintiff's claim regarding the downward revision of the projections of the Proxy. For example, Defendants claimed that "the global auto recession and underlying data . . . clearly show that the opinion statement at issue in this case was not false and is thus not actionable." Judicial Notice at 2.

Relatedly, Defendants argued that "courts have recognized[] a forecast that 'ultimately proves to be accurate' cannot 'give rise to liability,'" and, therefore, "the fact that Harman's cautions have now proved accurate is . . . dispositive." *Id*. at 10-11. Moreover, there was the possibility that additional discovery would not prove beneficial to Lead Plaintiff's claims if Harman's internal documents supported Defendants' argument (despite existing and publicly available evidence to the contrary).

Moreover, at one status conference hearing, the Court had expressed skepticism regarding the viability of Lead Plaintiff's conflict of interest claim about J.P. Morgan, which the Court stated was "secondary to the main claim." Knotts Decl., Ex. 4 at 12 ("I think that describing it that way might even dignify it, but I won't use a different term."). After further stating that this claim could be a "stumbling block" to a successful mediation, the Court strongly encouraged the parties to treat this claim "as if it's not even in the case" for the purposes of mediation. *Id*. Lead Counsel was cognizant of these and other comments from the Court when assessing the strength of the remaining claims.

Even if liability was established in part, Lead Plaintiff faced further risk and uncertainty regarding damages. "'It is well established that damages calculations in securities class actions often

descend into a battle of experts.'" *In re Facebook, Inc., IPO Sec. & Derivative Litig.*, 343 F. Supp. 3d 394, 413 (S.D.N.Y. 2018), *aff'd sub nom. In re Facebook, Inc.*, 822 F. App'x 40 (2d Cir. 2020) (approving settlement reached prior to ruling on several motions for summary judgment and noting that "with a 'battle of experts, it is virtually impossible to predict with any certainty which testimony would be credited, and ultimately, which damages would be found.'").[5]

Continued litigation thus bore the risk that potential damages could have been reduced, or eliminated entirely, as Lead Plaintiff litigated the case to trial. That is precisely what happened in the *Trados* merger litigation – plaintiffs proved liability in a merger trial, but the court found that the price was fair and damages were zero. *See In re Trados Inc. S'holder Litig.*, 73 A.3d 17 (Del. Ch. 2013); *see also In re PLX Tech. Inc. S'holders Litig.*, 2018 WL 5018535 (Del. Ch. Oct. 16, 2018) (post-trial merger decision; finding liability but awarding no damages and issuing a judgment for defendants).

In sum, while these claims are strong, Lead Plaintiff faced numerous obstacles in proving both liability and damages and there was no certainty that Lead Plaintiff and the Class would prevail on either issue. Knotts Decl., ¶¶45, 54-57. And there was no certainty that if Lead Plaintiff did prevail, the recovery would exceed the Settlement. Additionally, Defendants would inevitably appeal any substantial verdict and damages award. The entire litigation process could span several additional years, delaying any recovery by Class Members and increasing the risk that an intervening change in the law or other unforeseeable changed circumstances could further delay, reduce, or eliminate a recovery. *Id*. By contrast, the $28 million Settlement is immediate. *See Hi-Crush Partners*, 2014 WL 7323417, at *9 ("[T]he Settlement will provide tangible, certain and substantial

[5] The Knotts Declaration describes this issue as well, taking into account the specific circumstances of this case. Knotts Decl., ¶¶53, 56-57, 75, 77.

relief to the proposed class now, 'without subjecting them to the risks, complexity, duration, and expense of continuing litigation.'").

5. Factors 6 and 7 – The Risk of Maintaining the Action as a Class Action and Defendants' Ability to Withstand a Greater Judgment

"The risks associated with maintaining class certification and the defendant's ability to pay a larger sum in settlement are neutral factors which 'weigh neither for nor against approval' of a proposed settlement." *Collins*, 2010 WL 1677764, at *5 (quoting *In re Luxottica Grp. S.p.A. Sec. Litig.*, 233 F.R.D. 306, 314 (E.D.N.Y. 2006)).

No class has been certified in this Litigation except in the settlement context. While Lead Plaintiff believes that she would prevail on her motion for class certification, this nonetheless remains a risk that weighs in favor of the Settlement. *See Hi-Crush Partners*, 2014 WL 7323417, at *9. Thus, in the present case, where "the Class had yet to be certified and there is no guarantee of success . . . the risks favor settlement." *In re Ocean Power Techs., Inc.*, 2016 WL 6778218, at *20 (D.N.J. Nov. 15, 2016). Furthermore, the Court could have reevaluated class certification at any time. *See Kemp-DeLisser*, 2016 WL 6542707, at *9 ("Even if Plaintiff had obtained class certification, the risk of decertification at a later stage would remain.").

For a settlement to be fair and adequate, a "'defendant is not required to empty its coffers.'" *Id*. at *10; *Hi-Crush Partners*, 2014 WL 7323417, at *9 ("Courts . . . generally do not find the ability to withstand a greater judgment to be an impediment to settlement when the other factors favor the settlement."). Here, while Defendants may be able to withstand a higher judgment than the amount of the Settlement, all other *Grinnell* factors favor final approval.

6. Factors 8 and 9 – The Range of Reasonableness of the Settlement Fund in Light of the Best Possible Recovery and all the Attendant Risks of Litigation

The last two *Grinnell* factors require that courts consider the range of reasonableness of the settlement fund in light of: (i) the best possible recovery; and (ii) litigation risks. *Grinnell*, 495 F.2d

at 463; *see also Kemp-DeLisser*, 2016 WL 6542707, at *10 ("Courts often combine their analysis of these factors."). The question for the Court is not whether the Settlement represents the best possible recovery, but how the Settlement relates to the strengths and weaknesses of the case. In making this assessment, the Court must "consider and weigh the nature of the claim, the possible defenses, the situation of the parties, and the exercise of business judgment in determining whether the proposed settlement is reasonable." *Grinnell*, 495 F.2d at 462. Courts agree that the determination of a reasonable settlement "'is not susceptible of a mathematical equation yielding a particularized sum.'" *Collins*, 2010 WL 1677764, at *6 (quoting *In re Michael Milken & Assocs. Sec. Litig.*, 150 F.R.D. 57, 66 (S.D.N.Y. 1993)). Rather, the Court must inquire into "whether the proposed settlement falls within the range of reasonableness." *Collins*, 2010 WL 1677764, at *6; *see also Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972) ("[I]n any case there is a range of reasonableness with respect to a settlement.").

Here, the $28 million Settlement represents an excellent recovery. Lead Counsel are aware of only one other case since at least 2016, in any jurisdiction, where plaintiffs obtained a monetary recovery greater than $28 million on a pure §14(a) negligence claim challenging a merger proxy (with no open market securities fraud component). Lead Counsel also believe that this $28 million Settlement is the largest §14(a) post-merger common fund recovery in the history of the District of Connecticut (again, with no open market securities fraud component). *See* Knotts Decl., ¶6. As noted above and in the accompanying Knotts Declaration, post-merger monetary settlements on §14(a) claims are rare, and a result of this magnitude on such a case is unprecedented in this jurisdiction.

In light of the substantial uncertainties and risks discussed above, the Settlement here is well within the range of reasonableness, and this factor also weighs in favor of final approval of the Settlement.

III. THE PLAN OF ALLOCATION SHOULD BE APPROVED BY THE COURT

"The plan of allocation is subject to the same test of fairness, reasonableness, and adequacy as the settlement itself." *In re Citigroup Inc. Bond Litig.*, 296 F.R.D. 147, 157-58 (S.D.N.Y. 2013). In determining the reasonableness and fairness of a plan of allocation, "'courts look primarily to the opinion of counsel.'" *In re Facebook*, 343 F. Supp. at 414; *see also Aéropostale*, 2014 WL 1883494, at *10. "This does not mean that the plan must be 'perfect'; rather, '[a]n allocation formula need only have a reasonable, rational basis, particularly if recommended by experienced and competent class counsel.'" *Pearlstein*, 2022 WL 4554858, at *8.

The Plan of Allocation here provides for a per-share distribution to those Class Members who were holders of record of Harman common stock at the close of business on January 10, 2017, the record date, and were thus record holders entitled to vote on the Merger (and who submit a valid Proof of Claim and Release form to the Claims Administrator). Knotts Decl., ¶¶61-62.[6] The objective of the Plan of Allocation is to distribute the Settlement proceeds equitably among those Class Members who have legal standing to bring the §§14(a) and 20(a) claims currently asserted in the Litigation. *See, e.g.*, *In re AOL Time Warner, Inc. Sec. & "ERISA" Litig.*, 381 F. Supp. 2d 192, 241 (S.D.N.Y. 2004) ("[O]nly shareholders who owned Time Warner common stock on the record date of the Merger are permitted to bring Section 14(a) claims.").

In order to confirm the most sensible, equitable, and legally supported plan of allocation, Lead Counsel previously conducted a survey of all recent cash recoveries on merger-related §14(a) claims. That research showed that the most recent and analogous post-merger settlements utilized settlement distributions based on the voting record date for a merger. These instances include all of the following cases:

[6] The Plan of Allocation is also extensively described in the Notice sent to Class Members. *See* Murray Decl., Ex. A, Notice at 9.

- *NECA-IBEW Pension Tr. Fund v. Precision Castparts Corp.*, No. 3:16-cv-01756 (D. Or. 2021).
- *Duncan v. Joy Glob. Inc.*, No. 2:16-cv-01229 (E.D. Wis. 2021).
- *In re Hot Topic, Inc. Sec. Litig.*, No. 2:13-cv-02939 (C.D. Cal. 2015).
- *Lane v. Page*, No. Civ-06-1071 (D.N.M. 2012).
- *In re Piedmont Off. Realty Tr. Inc. Sec. Litig.*, No. 1:07-cv-02660 (N.D. Ga. 2013).

Knotts Decl., ¶64. For example, *Hot Topic* also involved §14(a) and §20(a) claims regarding projection-related statements in a merger proxy and resulted in a $14.9 million post-merger settlement for the class. *See* Knotts Decl., Ex. 8. The *Hot Topic* plan of allocation distributed settlement funds on a per-share basis to stockholders "on the record date, May 3, 2013," *i.e.*, those stockholders entitled to vote on the Hot Topic merger. *Id.* Lead Counsel employed the same plan of allocation concept here.

Similarly, *Lane v. Page*, No. Civ-06-1071 (D.N.M. 2012), was also a post-merger §14(a) proxy claim that resulted in a settlement fund for the stockholder class (just over $3.77 million). Knotts Decl., Ex. 9. There too, the court approved a plan of allocation based, in part, on "how many shares of Westland . . . held as of the close of business on September 18, 2006," or the voting record date on the acquisition. *Id.* Additionally, in *In re Piedmont Office Realty Trust Inc. Sec. Litig.*, No. 1:07-cv-02660 (N.D. Ga. 2013), the court approved a similar distribution on the §14(a) claims also based, in part, on the number of shares held as of the voting record date. Knotts Decl., Ex. 10. In sum, it is Lead Counsel's opinion that the Plan of Allocation here is reasonable and fair and is also supported by ample authority in post-merger §14(a) proxy claims.

IV. THE APPLICATION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES SHOULD BE APPROVED BY THE COURT

A. The Court Should Award Attorneys' Fees Using the Percentage-of-the-Fund Method

The Supreme Court has consistently held that where a common fund has been created for the benefit of a class as a result of counsel's efforts, counsel fees should be based on a percentage of the fund. *See, e.g.*, *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478-79 (1980); *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984) ("under the 'common fund doctrine,' . . . a reasonable fee is based on a percentage of the fund bestowed on the class"). Likewise, the Second Circuit has expressed a preference for the percentage method of calculating attorneys' fees, noting that such approach "'aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation.'" *Wal-Mart*, 396 F.3d at 121 ("The trend in this Circuit is toward the percentage method . . . ."); *see also Kemp-DeLisser*, 2016 WL 6542707, at *15 ("Many courts in the Second Circuit favor the percentage of fund method for awarding attorneys' fees in class action settlements.").

The PSLRA also supports awarding attorneys' fees in securities cases using the percentage method, as it provides that "[t]otal attorneys' fees and expenses awarded by the court to counsel for the plaintiff class shall not exceed a reasonable ***percentage*** of the amount of any damages and prejudgment interest actually paid to the class." 15 U.S.C. §78u-4(a)(6); *see also 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.").

The percentage-of-recovery also recognizes that the quality of counsel's work is measured best by the results achieved and is most consistent with the system typically used in the marketplace to compensate attorneys in non-class contingency cases. *See, e.g.*, *Davis v. J.P. Morgan Chase &*

Co., 827 F. Supp. 2d 172, 184 (W.D.N.Y. 2011) (The "advantages of the percentage method . . . are that it provides an incentive to attorneys to resolve the case efficiently and to create the largest common fund out of which payments to the class can be made, and that it is consistent with the system typically used by individual clients to compensate their attorneys").

In contrast, the Second Circuit recognized that, while the lodestar method can be viable, it also "'create[s] an unanticipated disincentive to early settlements, tempt[s] lawyers to run up their hours, and compel[s] district courts to engage in a gimlet-eyed review of line-item fee audits.'" *Wal-Mart*, 396 F.3d at 121 (alterations in original).[7]

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

As the Southern District of New York recently held, "[c]lass counsel's request for one-third of the gross settlement fund is reasonable within this circuit." *Pearlstein*, 2022 WL 4554858, at *10 (collecting cases). The *Pearlstein* court then awarded a 33 1/3% fee to lead counsel on a $165,000,000 settlement in a securities case. *Id.*

Pearlstein is consistent with precedent. In this circuit and others, "courts routinely award attorneys' fees that run to 30% and even a little more of the amount of the common fund." *See In re Beacon Assocs. Litig.*, 2013 WL 2450960, at *5 (S.D.N.Y. May 9, 2013) (collecting cases); *see also Mohney v. Shelly's Prime Steak, Stone Crab & Oyster Bar*, 2009 WL 5851465, at *5 (S.D.N.Y. Mar. 31, 2009) ("Class Counsel's request for 33% of the Settlement Fund is typical in class action settlements in the Second Circuit."). For example:

[7] Additional cases where the Second Circuit has endorsed the percentage-of-the-recovery method or criticized the lodestar method include: *Goldberger*, 209 F.3d at 48-9 (finding that "the lodestar method proved vexing" and had resulted in "an inevitable waste of judicial resources"); *Fresno Cnty. Emps.' Ret. Ass'n v. Isaacson/Weaver Fam. Tr.*, 925 F.3d 63, 73 (2d Cir. 2019) (rejecting objector's appeal and declining to disturb the district court's assessment of fees on a percentage-of-the-fund basis); *DeValerio v. Olinski*, 673 F. App'x 87, 92 (2d Cir. 2016) (affirming percentage-of-the-fund fee award); *Cline v. TouchTunes Music Corp.*, 765 F. App'x 488, 492 (2d Cir. 2019) (district court did not abuse its discretion in assessing the fees on a percentage-of-the-fund basis).

- *Sheet Metal Workers Loc. 32 Pension Fund v. Terex Corp.*, No. 3:09-cv-02083-RNC, ECF 139 at 1 (D. Conn. July 31, 2017) (awarding 31% of $10 million recovery, plus expenses);

- *In re Facebook, Inc. IPO Sec. & Derivative Litig.*, 2015 WL 6971424, at *11 (S.D.N.Y. Nov. 9, 2015) (awarding 33% of $26.5 settlement plus expenses, finding that "[a] fee award of one-third of the Settlement Fund 'is well within the range accepted by courts in this circuit'"), *aff'd sub nom. In re Facebook Inc.*, 674 F. App'x 37 (2d Cir. 2016);

- *Strougo v. Barclays PLC*, No. 1:14-cv-05797-VM-DCF, ECF 146 (S.D.N.Y. June 3, 2019) (awarding 33% of $27 million settlement);

- *Aéropostale*, 2014 WL 1883494, at *19 (awarding 33% of a $15 million settlement, plus $455,506.85 of expenses);

- *Maley v. Del Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 367 (S.D.N.Y. 2002) (awarding 33 1/3% of a $11.5 million settlement, plus expenses);

- *Hi-Crush Partners*, 2014 WL 7323417, at *12 (awarding 33 1/3% of a $3.8 million settlement, plus expenses); and

- *Mohney*, 2009 WL 5851465, at *5 (awarding 33% of a $3.2 million settlement, plus expenses).

"Courts in other federal jurisdictions similarly have determined that a fee award of 33% or more is reasonable and should be awarded." *See Hi-Crush Partners*, 2014 WL 7323417, at *13 (collecting cases). The percentage sought here, 31% of the $28 million of the Settlement Amount, is therefore well within the typical range of percentages fees awarded recently by courts within the Second Circuit.

While not required, a lodestar "cross-check" further supports the reasonableness of the percentage fee requested here. *See Goldberger*, 209 F.3d at 50. In cases like this, fees representing multiples of lodestar are regularly awarded to reflect the contingency-fee risk and other relevant factors. *See, e.g.*, *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, 2010 WL 4537550, at *26 (S.D.N.Y. Nov. 8, 2010) ("'Under the lodestar method, a positive multiplier is typically applied to the lodestar in recognition of the risk of the litigation, the complexity of the issues, the contingent nature of the engagement, the skill of the attorneys, and other factors.'"); *In re Comverse Tech., Inc.*

Sec. Litig., 2010 WL 2653354, at *5 (E.D.N.Y. June 24, 2010) ("Where . . . counsel has litigated a complex case under a contingency fee arrangement, they are entitled to a fee in excess of the lodestar.").

In *Pearlstein*, the court collected cases approving lodestar multipliers within the Second Circuit, including the District of Connecticut, at ***3.24, 4.8, 3.0, 2.23, and 4.65***. *Pearlstein*, 2022 WL 4554858, at *10. The court in *Pearlstein*'s review is well-supported. In complex contingent litigation, lodestar multipliers of between 2 and 5 are commonly awarded. *See Wal-Mart*, 396 F.3d at 123 (upholding multiplier of 3.5); *Woburn Ret. Sys. v. Salix Pharms., Ltd.*, 2017 WL 3579892, at *6 (S.D.N.Y. Aug. 18, 2017) (3.14 multiplier was "within the range of reasonable . . . multipliers approved in this Circuit"); *Davis*, 827 F. Supp. 2d at 185 (multiplier of 5.3 was "not atypical" in similar cases); *Cornwell v. Credit Suisse Grp.*, 2011 WL 13263367, at *2 (S.D.N.Y. July 20, 2011) (4.7 multiplier); *Comverse*, 2010 WL 2653354, at *5 (2.78 multiplier). Here, a lodestar cross-check fully supports the requested fee. Plaintiff's Counsel devoted nearly 4,000 hours of attorney and staff time in prosecuting this Litigation, and their lodestar – derived by multiplying the hours each person worked by their current hourly rates – represents a reasonable multiplier of 3.02.

"Further, after final approval there will be significant additional tasks relating to the Settlement, lowering the lodestar multiplier even further." *Pearlstein*, 2022 WL 4554858, at *10. For example, as one court recently noted during the lengthy distribution process of a shareholder settlement, "Class Counsel deserves credit for their assiduousness in working through these challenges. Class Counsel received an award of fees and expenses based on the benefits they conferred in the litigation. That award did not take into account the subsequent burdens associated with a lengthy period of settlement administration." *In re PLX Tech. Inc. S'holders Litig.*, 2022 WL 1133118, at *1 (Del. Ch. Apr. 18, 2022).

C. Application of the *Goldberger* Factors Confirm that the Requested Fee Is Fair and Reasonable

The Second Circuit has often held that the appropriate criteria to consider when reviewing a request for attorneys' fees in a common-fund case include the six *Goldberger* factors: "'(1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation . . . ; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations.'" *Goldberger*, 209 F.3d at 50; *Wal-Mart*, 396 F.3d at 121. These factors, addressed below, fully support approval of the requested fee.

1. Factor 1 – The Time and Labor Expended by Lead Counsel

The first *Goldberger* factor weighs in favor of approval of the fee award. In the ver five years since this case was filed, Lead Counsel dedicated a substantial amount of time and resources to prosecuting these claims. Lead Counsel's efforts included an extensive and thorough investigation necessary to prepare the initial complaint and the Amended Complaint. Knotts Decl., ¶¶19-21. Lead Counsel also successfully opposed the Motion to Dismiss, the Pleadings Motion, the Judicial Notice Motion, and have completed briefing on the Appeals Motion. *Id*., ¶¶16-17, 22. Lead Counsel further devoted considerable resources to developing and reviewing an evidentiary and discovery record over Defendants' and third parties' vigorous objections. *Id*., ¶¶24-32.

Lead Counsel's discovery efforts resulted in the receipt of over 43,000 pages of documents, all of which Lead Counsel thoroughly reviewed and analyzed. *Id*., ¶32. This effort was significant but efficient, and resulted in Lead Counsel's compilation of useful evidence that Lead Plaintiff was prepared to use throughout the remainder of the Litigation. *Id*.

Plaintiff's Counsel spent over 3,850 hours prosecuting this case. *See* Declaration of David A. Knotts Filed on Behalf of Robbins Geller Rudman & Dowd LLP in Support of Application for Award of Attorneys' Fees and Expenses ("Robbins Geller Declaration"), the Declaration of Brett M. Middleton Filed on Behalf of Johnson Fistel LLP in Support of Application for Award of Attorneys'

Fees and Expenses, and the Declaration of William H. Narwold Filed on Behalf of Motley Rice LLC in Support of Application for Award of Attorneys' Fees and Expenses (collectively, "Plaintiff's Counsel Declarations"), submitted herewith. This time and effort confirm that the fee requested here is reasonable. *See, e.g.*, *Kemp-DeLisser*, 2016 WL 6542707, at *14-*15 ("'time and labor'" criterion satisfied where class counsel expended over 450 hours to the litigation of the case); *Hi-Crush Partners*, 2014 WL 7323417, at *13 ("'time and labor'" criterion satisfied where class counsel expended over 1,594.75 hours to the litigation of the case).

2. Factor 2 – The Magnitude and Complexities of the Litigation

As described in detail above, courts have long recognized that securities class actions are "'notably difficult and notoriously uncertain.'" *Sturm*, 2012 WL 3589610, at *5; *In re Merrill Lynch & Co., Inc. Rsch. Reps. Sec. Litig.*, 2007 WL 313474, at *14 (S.D.N.Y. Feb. 1, 2007) ("[S]ecurities class litigation "'is notably difficult and notoriously uncertain.'"'"). As described in detail above, this Litigation was no exception, as it raised many complex issues with respect to liability and damages. *Supra*, §II(C)(4). These issues required substantial efforts by Lead Counsel, often through analysis of the factual record, the applicable case law, and consultations with experts. *Supra*, §II(C)(3). Accordingly, the magnitude and complexity of this Litigation supports the conclusion that the requested fee is fair and reasonable.

3. Factor 3 – The Risk of the Litigation

The Second Circuit has identified the risk of success as "'perhaps the foremost'" factor to be considered in determining a reasonable award of attorneys' fees. *Goldberger*, 209 F.3d at 54. Of particular relevance here, the Second Circuit recognized contingency fee representation as an important factor in determining appropriate fee awards:

> No one expects a lawyer whose compensation is contingent upon his success to charge, when successful, as little as he would charge a client who in advance had agreed to pay for his services, regardless of success. Nor, particularly in complicated

> cases producing large recoveries, is it just to make a fee depend solely on the reasonable amount of time expended.

Grinnell, 495 F.2d at 470; *see also Kemp-DeLisser*, 2016 WL 6542707, at *16 (considering the risk of non-recovery associated with contingency fee representation); *Aéropostale*, 2014 WL 1883494, at *14 ("[T]he financial burden on contingent-fee counsel is far greater than on a firm that is paid on an ongoing basis.").

This action was prosecuted by Lead Counsel on a contingent fee basis. Unlike counsel for Defendants, who are paid an hourly rate and paid for their expenses on a regular basis, Plaintiff's Counsel have not been compensated for over 3,850 hours of time or $123,809.79 in expenses since this case began. *See* Plaintiff's Counsel Declarations. While the outcome here was successful, Lead Counsel assumed a significant risk that Defendants would succeed on their Motion to Dismiss, Pleadings Motion, Judicial Notice Motion, Appeals Motion – or when opposing class certification, or at summary judgment, or at trial, or on a later appeal – and the Class and Lead Counsel would recover nothing. Knotts Decl., ¶¶44-57. "This is especially true of securities class actions, where intervening shifts in legal standards have undermined trial victories." *Pearlstein*, 2022 WL 4554858, at *3 (citing *Vivendi Universal, S.A. Sec. Litig.*, 765 F. Supp. 2d 512, 533 (S.D.N.Y. 2011), *aff'd* 838 F.3d 223 (2d Cir. 2016)).

As described above, while Lead Counsel are confident that Harman was undersold, Lead Plaintiff would have to win the "battle of experts" to actually recover anything for the Class. *Supra*, §II(C)(4). If Defendants' expert calculations were accepted, damages would likely be zero. *Id.* Lead Plaintiff thus faced the prospect of advancing all the way to trial and winning the liability phase, but recovering nothing for the Class and losing the case. *Id.*

There are a number of merger cases where plaintiffs' counsel in contingent fee cases such as this, after the expenditure of thousands of hours, have received no compensation, including on those taken to trial. *See, e.g.*, *Trados*, 73 A.3d 17 (plaintiffs proved liability and self-dealing at trial but the

court found that the transaction was fairly priced and awarded no damages); *PLX Tech.*, 2018 WL 5018535 (same). Indeed, the following cases provide examples where Lead Counsel's specific team of deal litigation attorneys litigated merger cases at least to summary judgment or trial, but lost:

- *Laborers' Loc. #231 Pension Fund v. Cowan*, 2020 WL 1304041 (D. Del. Mar. 19, 2020) (motion for summary judgment granted after years of fact and expert discovery, dismissing §§14(a) and 20(a) claims challenging a $356 million merger, later affirmed by the Third Circuit);
- *PLX Tech.*, 2018 WL 5018535 (the trial court ruled in favor of the defendant after finding that the plaintiffs had failed to prove damages, a decision affirmed over a year later by the Delaware Supreme Court); and
- *Elloway v. Pate*, 238 S.W.3d 882, 889 (Tex. App. 2007) (the trial court entered a take nothing judgment, which the Court of Appeals of Texas affirmed, after a three-week jury trial in the Texas District Court of Harris County).

On the other hand, that same team of Robbins Geller attorneys have taken post-merger cases to trial and won. *See, e.g.*, *In re Rural Metro Corp. S'holders Litig.*, 88 A.3d 54 (Del. Ch. 2014); *In re Dole Food Co., S'holder Litig.*, 2015 Del. Ch. LEXIS 223 (Del. Ch. Aug. 27, 2015). The fact that defendants and their counsel know that the leading members of the plaintiffs' bar are able to, and will, go to trial even in high-risk cases like this one gives rise to meaningful settlements in actions such as this.

The losses suffered by class counsel in other actions where insubstantial settlement offers were rejected, and where class counsel ultimately received little or no fee, should not be ignored. The undersigned counsel knows from personal experience that despite the most vigorous and competent of efforts, attorneys' success in contingent litigation is never assured. In sum, the contingent nature of counsel's representation, and the risk inherent in the Litigation, strongly favors approval of the requested fee.

4. Factor 4 – The Quality of Representation

The fourth *Goldberger* factor considers "the quality of representation" by class counsel. *Goldberger*, 209 F.3d at 50. In order to plead a claim likely to survive the pleading standard under

the PSLRA (which is no easy thing to do), Lead Counsel conducted a detailed and sophisticated investigation into Harman's forecasting practices and expected business outlook, as described in the Knotts Declaration. ¶¶19-22. As a result, the meticulously supported theory of liability in Lead Plaintiff's Amended Complaint appeared in no other complaint challenging the Merger. ¶21. Lead Counsel then briefed Defendants' Motion to Dismiss, the Pleadings Motion, the Judicial Notice Motion, the Appeals Motion, and various notices of recent authorities. ¶22. These extensive pleadings motions and response briefs totaled over 370 pages, excluding exhibits. *Id.* The Court ultimately issued two published rulings as a result of these hotly contested motions, which involved novel and cutting-edge legal issues. *See Baum v. Harman Int'l Indus., Inc.*, 408 F. Supp. 3d 70 (D. Conn. 2019); *Baum v. Harman Int'l Indus. Inc.*, 575 F. Supp. 3d 289 (D. Conn. 2021). In short, the quality of Lead Counsel's work on this case is ultimately reflected in the result.

The quality of opposing counsel is also important in evaluating the quality of the work done by plaintiffs' counsel. *See, e.g.*, *In re Marsh ERISA Litig.,* 265 F.R.D. 128, 148 (S.D.N.Y. 2010) ("The high quality of defense counsel opposing Plaintiffs' efforts further proves the caliber of representation that was necessary to achieve the Settlement."). Lead Plaintiff were opposed in this Litigation by skilled and respected counsel from Wachtell, Lipton, Rosen & Katz, one of the top defense firms in the country. In the face of this formidable opposition, the quality of Lead Counsel's advocacy in representing the Class is reflected in this almost unprecedented and highly favorable result.

5. Factor 5 – The Requested Fee in Relation to the Settlement

The fifth *Goldberger* factor considers "the requested fee in relation to the settlement." *Goldberger*, 209 F.3d at 50. "'In determining whether the Fee Application is reasonable in relation to the settlement amount, the Court compares the Fee Application to fees awarded in similar securities class-action settlements of comparable value.'" *In re Facebook*, 343 F. Supp. at 417. As

discussed above, the fee award requested is within the range of fees that this and other courts in the Second Circuit have awarded in comparable complex cases. *See supra* at §IV(B). Accordingly, the fee award requested here is reasonable in relation to the size of the Settlement.

6. Factor 6 – Public Policy Considerations

The sixth *Goldberger* factor analyzes "public policy considerations." *Goldberger*, 209 F.3d at 50. The Supreme Court has emphasized that private securities actions such as this provide "'a most effective weapon in the enforcement' of the securities laws and are 'a necessary supplement to [SEC] action.'" *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 318–19 (2007). As the District of Connecticut has noted:

> "[A] large segment of the public might be denied a remedy for violations of the securities laws if contingent fees awarded by the courts did not fairly compensate counsel for the services provided and the risks undertaken." Courts have therefore found it "imperative that the filing of such contingent lawsuits not be chilled by the imposition of fee awards which fail to adequately compensate counsel for the risks of pursuing such litigation and the benefits which would not otherwise have been achieved but for their persistent and diligent efforts."

Sturm, 2012 WL 3589610, at *13. So too here, important public considerations will be promoted by the requested award, especially in light of the fact that Lead Counsel was the only firm willing to prosecute these claims. In addition, Lead Plaintiff has approved the requested fee. *See* Lead Plaintiff Decl., ¶3.

D. Lead Counsel's Expenses Are Reasonable and Were Necessarily Incurred to Achieve the Settlement

"'It is well accepted that counsel who create a common fund are entitled to the reimbursement of expenses that they advanced to a class . . . .'" *Pearlstein*, 2022 WL 4554858, at *11.

Lead Counsel's application includes a request for expenses reasonably incurred in pursuing the claims on behalf of the Class, plus interest at the same rate as that earned by the Settlement Fund. "The Court may award reimbursement of reasonable out-of-pocket expenses incurred by counsel and

customarily charged to their clients, as long as these 'were incidental and necessary to the representation.'" *Menkes v. Stolt-Nielsen S.A.*, 2011 WL 13234815, at *5 (D. Conn. Jan. 25, 2011) (quoting *Reichman v. Bonsignore, Brignati & Mazzotta, P.C.*, 818 F.2d 278, 283 (2d Cir. 1987)).

As detailed in the Plaintiff's Counsel Declarations submitted herewith, Lead Counsel requests $123,809.79 in expenses for prosecuting this Litigation for the benefit of the Class. These expenses are of a type necessarily incurred in litigation and include consultant and expert fees, mediation costs, and travel expenses. Moreover, the Notice informed Class Members that Lead Counsel would apply for expenses in an amount not to exceed $200,000. *See* Murray Decl., Ex. A, Notice at 2. The expenses requested, $123,809.79, are below that amount. To date, no Class Member has objected to Lead Counsel's request for expenses.

V. CONCLUSION

The $28 million Settlement for the Class is a highly favorable culmination to the Litigation. The Settlement's nearly unprecedented status amongst such few others in post-merger securities litigation underscores the favorability of this result, as well as its inherent risk. For all the reasons stated herein and in the Knotts Declaration, Lead Plaintiff and Lead Counsel submit that the Settlement, Plan of Allocation, and requested attorneys' fees and expenses are all fair, reasonable, and should be approved by the Court.

DATED: October 6, 2022

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