SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION

CAMELOT EVENT DRIVEN FUND, A SERIES OF FRANK FUNDS TRUST, Individually and On Behalf of All Others Similarly Situated,

Plaintiff,

v.

MORGAN STANLEY & CO. LLC, J.P. MORGAN SECURITIES, LLC, CITIGROUP GLOBAL MARKETS INC., GOLDMAN SACHS & CO. LLC, MIZUHO SECURITIES USA LLC, SIEBERT WILLIAMS SHANK & CO., LLC, BNP PARIBAS SECURITIES CORP., RBC CAPITAL MARKETS, LLC, U.S. BANCORP INVESTMENTS, INC., SMBC NIKKO SECURITIES AMERICA, INC., TD SECURITIES (USA) LLC, SG AMERICAS SECURITIES, LLC, MUFG SECURITIES AMERICAS INC., CASTLEOAK SECURITIES, L.P., SAMUEL A. RAMIREZ & COMPANY, INC., ACADEMY SECURITIES, INC., R. SEELAUS & CO., LLC, WELLS FARGO SECURITIES, LLC, BNY MELLON CAPITAL MARKETS, LLC, INTESA SANPAOLO S.P.A., ICBC STANDARD BANK PLC, VIACOMCBS, INC., ROBERT M. BAKISH, KATHERINE GILL-CHAREST, SHARI E. REDSTONE, CANDACE K. BEINECKE, BARBARA M. BYRNE, LINDA M. GRIEGO, ROBERT N. KLIEGER, JUDITH A. MCHALE, RONALD L. NELSON, CHARLES E. PHILLIPS, JR., SUSAN SCHUMAN, NICOLE SELIGMAN, and FREDERICK O. TERRELL,

Defendants.

Index No. 654959/2021

The Honorable Andrew Borrok

MEMORANDUM OF LAW IN SUPPORT OF CLASS COUNSEL'S MOTION FOR ATTORNEYS' FEES AND LITIGATION EXPENSES

Motion Sequence No.

Oral Argument Requested

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Pursuant to New York Civil Practice Law and Rules ("CPLR") Article 9, plaintiffs Camelot Event Driven Fund, A Series Of Frank Funds Trust, and Municipal Police Employees' Retirement System through their counsel, Glancy Prongay & Murray LLP and Bernstein Litowitz Berger & Grossmann LLP (together, "Class Counsel"), respectfully submit this memorandum of law in support of Class Counsel's motion for an award of attorneys' fees and Litigation Expenses, including awards to Plaintiffs for their time and efforts in representing the Class.[1]

Pursuant to CPLR § 909, Class Counsel request, in connection with the proposed Settlement: (i) an award of attorneys' fees in the amount of 29% of the Settlement Fund, including accrued interest; (ii) payment of litigation expenses in the amount of $1,806,535.77; and (iii) awards of $20,000 to each of the Plaintiffs for their time and efforts representing the Class. For all the reasons stated below, Class Counsel respectfully submit that this fee and expense application should be granted.

PRELIMINARY STATEMENT

Class Counsel have vigorously litigated this securities class action for nearly four years on a fully contingent basis, without receiving any compensation to date. The litigation was hard fought, and Class Counsel faced substantial risks from the outset that they would be unable to obtain a meaningful recovery for Plaintiffs and the class. As such, Class Counsel had to—and did—dedicate very substantial efforts to the Action from its outset. Class Counsel conducted an extensive investigation, prepared an initial complaint and detailed amended complaint, opposed motions to dismiss from multiple sets of Defendants, successfully moved for class certification,

[1] Unless otherwise defined, all capitalized terms have the same meaning as set forth in the Stipulation and Agreement of Settlement dated March 27, 2025 (the "Stipulation"; NYSCEF Doc. No. 1599), or the Joint Affirmation of Daniella Quitt and John Rizio-Hamilton ("Joint Affirmation" or "Joint Aff."). Citations to "¶__" and "Ex. __" refer, respectively, to paragraphs in and Exhibits to the Joint Affirmation.

litigated cross-appeals to the First Department, and completed fact discovery before achieving the Settlement.

Through Class Counsel's sustained efforts, they achieved the proposed $120 million Settlement for the benefit of Plaintiffs and the Class, which is second largest settlement ever of a Securities Act class action in state court. The $120 million recovery represents a very favorable result for the Class and provides meaningful and certain compensation to Class Members while avoiding the substantial risks and delay of continued litigation. Having achieved this significant monetary recovery after litigating this case without any payment for nearly four years, Class Counsel now apply for attorneys' fees in the amount of 29% of the Settlement Fund, as well as payment for the litigation expenses that Class Counsel incurred in prosecuting the Action.

The requested 29% fee has been approved by both sophisticated institutional Plaintiffs who were closely involved in overseeing and participating in the Action. The request is also well within the range of percentage fees awarded in comparable class action cases and is strongly supported by factors often considered by courts in determining the reasonableness of the fee, including the significant risks presented by this contingent fee litigation, the quality of the result achieved, the extent and quality of Class Counsel's efforts, and the lodestar cross-check. Indeed, the fee request represents a substantial discount below Class Counsel's lodestar.

Class Counsel prosecuted the Action on a contingency-fee basis and bore the risk that counsel would receive no compensation. As discussed further herein and in the Joint Affirmation, there were multiple risks inherent in the Action from the outset. Defendants had substantial arguments that they were not liable under the Securities Act as a matter of law because (i) the potential risk of Archegos' liquidation, by itself, did not require disclosure; (ii) Defendants had not formed an intent to sell Viacom stock held by Archegos at the start of the Offerings and thus

there was no duty to disclose under the First Department's decision in this case; (iii) they properly maintained ethical walls in accordance with the law and their internal policies (See Appeal Docket 00983/2023: NYSCEF Doc. Nos. 1773, 1807-08), and thus, Archegos' Viacom positions and the risks and conflicts they presented were unknown to their deal teams; (iv) personnel responsible for examining potential conflicts for the Offerings determined in accordance with their policies that no conflict existed because Archegos was in good financial standing and had not failed to meet at margin call at the start of the Offerings; (v) given these circumstances, they had an obligation to maintain the confidentiality of Archegos' positions rather than escalate any potential conflict to senior management or other personnel who sat above the wall. *See* NYSCEF Doc. Nos. 1773, 1807-08; and (vi) since the disclosures did not involve the issuer directly, no broader duty to disclose existed. ¶¶ 41-53. Defendants would also argue that—even if they had a duty to disclose Archegos' holdings and the related risks—Plaintiffs could not establish that all of the price declines at issue were connected to that non-disclosure, especially with respect to the declines that occurred before Defendants began their block sales of the stock. ¶¶ 54-55. Thus, Plaintiffs would have faced substantial tests at summary judgment, trial, and on appeal in prevailing on their claims, including proving damages. In the face of these risks, Class Counsel were able to secured a meaningful recovery for the Class.

The requested attorneys' fees are also supported by the extensive efforts that Class Counsel dedicated to the Action over the last four years. Among other things, Class Counsel (1) conducted an investigation into the claims asserted, which included a detailed review of public documents and consultation with experts; (2) drafted and filed an initial complaint and a detailed amended complaint; (3) researched and briefed Plaintiffs' opposition to Defendants' and Former Defendants' motions to dismiss; (4) researched and briefed Plaintiffs' motion for class

certification; (5) researched and briefed seven motions to compel (NYSCEF Doc. Nos. 359, 403, 409, 415, 1124, 1144, 1233); (6) litigated and argued appeals in the First Department concerning the Court's motion to dismiss decision; (7) conducted extensive discovery, including propounding detailed document requests to Defendants and subpoenas on 12 third parties, obtaining over 1.7 million pages of documents, and identifying and reviewing the most relevant documents produced, taking 37 fact depositions, and defending two others; (8) consulted with experts and consultants in the areas of damages and causation, prime brokerage trading and risk management, underwriter due diligence, and ethical walls and conflicts procedures, among others; and (9) engaged in extended arm's-length settlement negotiations to achieve the Settlement, including preparation of extensive mediation briefing and participating in three formal mediation sessions. ¶¶ 9-35.

Class Counsel dedicated a total of over 67,000 hours of attorney and other professional staff time over the course of litigation to bring the Action to this resolution. ¶ 77. In class actions like this one, which are prosecuted on a contingent-fee basis, courts commonly award fees representing a positive "multiplier" of counsel's lodestar to compensate counsel for the risks of non-recovery and other factors. Here, in contrast, the requested fee represents a "negative" multiplier of 0.7 of Class Counsel's lodestar (¶ 78), which is below the range of multipliers typically awarded in comparable cases and strongly supports the reasonableness of the fee requested. In other words, despite the substantial contingency risk that Class Counsel faced and the fact that courts often apply positive multipliers in similar circumstances, the requested fee here represents a substantial discount of roughly 30% on Lead Counsel's lodestar.

Class Counsel also seek to recover the litigation expenses that they incurred in prosecuting and resolving this litigation, which totaled $1,806,535.77. As discussed below, these expenses were reasonable and necessary for the prosecution and resolution of the litigation and are of the

type that are routinely charged to clients in non-contingent litigation. More than 57% of these expenses were for the costs of retaining the highly qualified experts that were essential to proving Plaintiffs' case. Finally, Plaintiffs respectfully request service awards of $20,000 each in reimbursement for the substantial time Plaintiffs' employees dedicated to the Action, which included reviewing draft pleadings and motions, participating in discovery, and having their representatives deposed by Defendants.

For all the reasons set forth herein, Class Counsel respectfully request that the Court award attorneys' fees in the amount of 29% of the Settlement Fund; payment of litigation expenses in the amount of $1,806,535.77; and payment of awards of $20,000 to each of the two Plaintiffs.

ARGUMENT

I. CLASS COUNSEL ARE ENTITLED TO AN AWARD OF ATTORNEYS' FEES FROM THE COMMON FUND

Courts have long recognized that attorneys who obtain a common fund recovery for a class are entitled to an award of fees and expenses from that fund. *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *see also* CPLR § 909 ("If a judgment in an action maintained as a class action is rendered in favor of the class, the court in its discretion may award attorneys' fees to the representatives of the class."); *M.F. v. Amida Care, Inc.*, 75 Misc. 3d 1209(A), 167 N.Y.S.3d 771 (Sup. N.Y. Cnty. 2022) ("Any recovery for attorney's fees ordinarily should come from the common fund that was awarded in favor of the class.").

Courts recognize that awards of fair attorneys' fees from a common fund "serve to encourage skilled counsel to represent those who seek redress for damages inflicted on entire classes of persons," and therefore "to discourage future misconduct of a similar nature." *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, 2010 WL 4537550, at *23 (S.D.N.Y. Nov. 8, 2010). Compensating class counsel is crucial to sustaining such cases by incentivizing attorneys to bring

claims on behalf of classes of injured investors. *See* *Hicks v. Morgan Stanley*, 2005 WL 2757792, at *9 (S.D.N.Y. Oct. 24, 2005).

II. THE REQUESTED ATTORNEYS' FEES ARE REASONABLE

The court may calculate reasonable attorneys' fees either on a percentage of the recovery basis or using the lodestar method (multiplying the hours reasonably billed by a reasonable hourly rate, then applying a multiplier). *See* *Fernandez v. Legends Hospitality, LLC*, No. 152208/2014, 2015 WL 3932897, at *5 (Sup. Ct. N.Y. Cnty. June 22, 2015); *Fiala v. Metropolitan Life Ins. Co.*, 27 Misc. 3d 599, 610, 899 N.Y.S.2d 531, 540 (Sup. Ct. N.Y. Cnty. 2010). The 29% fee requested here is reasonable under either method.

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

Class Counsel respectfully request that the Court award attorneys' fees based on a percentage of the common fund achieved in the Settlement. In *Blum v. Stenson*, 465 U.S. 886 (1984), the U.S. Supreme Court recognized that under the common fund doctrine a reasonable fee may be based "on a percentage of the fund bestowed on the class . . ." *Id.* at 900 n.16. Many courts have recognized that where a common fund has been created for the benefit of a class as a result of counsel's efforts, the award of attorneys' fees on a percentage-of-the fund basis is the preferred approach. *See, e.g.*, *Fernandez*, 2015 WL 3932897, at *5 (finding that percentage method is preferable). The Second Circuit has approved the percentage method, recognizing that the "trend in this Circuit is toward the percentage method" and that the method "directly 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 Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 121 (2d Cir. 2005).

The 29% attorney fee requested here is well within and below the range of percentage fees that have been awarded by courts in New York and within the Second Circuit in securities class

actions. *See* *In re Full Truck Alliance Co. Ltd. Sec. Litig.*, Index No. 654232/2021 NYSCEF Doc. No. 161, slip op. at 7 (N.Y. Sup. Ct. N.Y. Cnty Aug. 1, 2024) (Reed, J.) (awarding 33.33% of settlement); *Kohl v. Loma Negra Compañía Industrial Argentina S.A.*, Index No. 653114/2018, NYSCEF Doc. No. 272, slip op. at 7 (Sup. Ct. N.Y. Cnty Apr. 10, 2024) (Borrok, J.) (awarding 33.33% of settlement); *St. John v. Cloopen Grp. Holding Ltd.*, Index No. 652617/2021, NYSCEF Doc. No. 150, at 3 (N.Y. Sup. Ct. N.Y. Cnty Jan. 16, 2024) (Borrok, J.) (awarding 33.33% of settlement); *In re Luckin Coffee Inc. Sec. Litig.*, Index No. 651939/2020, NYSCEF Doc. No. 229, at 6 (N.Y. Sup. Ct. N.Y. Cnty. Apr. 28, 2023) (Borrok, J.) (awarding 33.33% of settlement); *City of Pittsburgh Comprehensive Mun. Pension Trust Fund v. Benefitfocus, Inc. et al.*, Index No. 651425/2021, NYSCEF Doc. No. 228, slip op. at 3 (Sup. Ct. N.Y. Cnty. Dec. 1, 2022) (Borrok, J.) (awarding 33% of settlement); *Erie Cnty. Emps.' Ret. Sys. v. NN, Inc. et al.*, Index No. 656462/2019, NYSCEF Doc. No. 136, slip op. at 8 (Sup. Ct. N.Y. Cnty. Dec. 1, 2022) (Borrok, J.) (awarding 33.33% of settlement); *In re DouYu Int'l Holdings Ltd. Sec. Litig.*, Index No. 651703/2020, NYSCEF Doc. No. 217, slip op. at 6 (Sup. Ct. N.Y. Cnty. Dec. 1, 2022) (Borrok, J.) (awarding 33-1/3% of settlement); *In re Saks Inc. S'holder Litig.*, Index No. 652724/2013, NYSCEF Doc. No. 277, slip op. at 9 (Sup. Ct. N.Y. Cnty. May 11, 2021) (Borrok, J.) (awarding 33-1/3% of settlement); *In re EverQuote, Inc. Sec. Litig.*, Index No. 651177/2019, NYSCEF Doc. No. 132, slip op. at 7 (Sup. Ct. N.Y. Cnty. June 12, 2020) (Borrok, J.) (awarding one-third of settlement); *In re Netshoes Sec. Litig.*, Index No. 157435/2018, NYSCEF Doc. No. 141, slip op. at 7 (Sup. Ct. N.Y. Cnty. Dec. 10, 2020) (Borrok, J.) (awarding 33-1/3% of settlement); *Pearlstein v. Blackberry Ltd.*, 2022 WL 4554858, at *11 (S.D.N.Y. Sept. 29, 2022) (awarding 33.3% of $165 million settlement); *In re Initial Pub. Offering Sec. Litig.*, 671 F. Supp. 2d 467, 516 (S.D.N.Y. 2009) (awarding 33.3% of $586 million settlement). *See also* *Chabot v. Walgreens Boots Alliance,*

Inc., 2024 WL 3250930, at *1 (M.D. Pa. Feb. 7, 2024) (awarding 30% of $192.5 million settlement); *Boston Ret. Sys. v. Uber Techns., Inc.*, 2024 WL 5341197, at *1 (N.D. Cal. Dec. 4, 2024) (awarding 29% of $200 million settlement).

In sum, the percentage fee requested here is reasonable and within the range of percentage fees awarded in New York courts in connection with similar settlements.

B. The Requested Attorneys' Fees Are Reasonable Under the Lodestar Method

To ensure the reasonableness of a fee awarded under the percentage-of-the-fund method, New York courts may cross-check the proposed award against counsel's lodestar. *See Clemons v. A.C.I. Found., Ltd.*, 2017 WL 1968654, at *5 (Sup. Ct. N.Y. Cnty. May 12, 2017); *Ryan v. Volume Servs. Am. Inc.*, 2013 WL 12147011, at *4-5 (Sup. Ct. N.Y. Cnty. Mar. 7, 2013). Under the lodestar method, a court will consider the aggregate hourly value of the services provided by multiplying the hours spent by a reasonable hourly rate. *See Ousmane v. City of New York*, 2009 WL 722294, at *9 (Sup. Ct. N.Y. Cnty. Mar. 17, 2009).

The extensive efforts of Class Counsel created the substantial benefit achieved in the proposed Settlement, and in the face of significant risks. Those efforts are reflected in Class Counsel's lodestar. Through March 27, 2025 (the date the Stipulation was signed), Class Counsel have spent a total of 67,989.51 hours of attorney and other professional support time prosecuting the Action for the benefit of the Class. ¶ 77. Class Counsel's total lodestar, derived by multiplying the hours spent by each attorney and paraprofessional by their current hourly rates, **is** $47,610,955.[2] *See id.* The requested fee of 29% of the $120 million Settlement Fund equates to

[2] In *Missouri v. Jenkins*, 491 U.S. 274, 284 (1989), the U.S. Supreme Court approved the use of current hourly rates to calculate the base lodestar figure. "[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

$34,800,000, and thus represents a "negative" multiplier of 0.7 of the total lodestar—in other words, the fee requested is only approximately 70% of Class Counsel's time at their normal hourly rates. ¶ 78.

In complex contingent litigation such as this Action, fees representing multiples ***above*** the lodestar are regularly awarded to reflect the contingency-fee risk and other relevant factors. *See FLAG Telecom*, 2010 WL 4537550, at *26 ("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, as here, counsel has litigated a complex case under a contingency fee arrangement, they are entitled to a fee in excess of the lodestar").

Here, the requested 0.7 multiplier is substantially lower than multipliers typically awarded in securities and other complex class litigation in both New York state and federal courts. *See, e.g.*, *St. John v. Cloopen Grp. Holding Ltd.*, Index No. 652617/2021, NYSCEF Doc. No. 150, at 3 (N.Y. Sup. Ct. N.Y. Cnty Jan. 16, 2024) (Borrok, J.) (awarding 1.52 multiplier); *City of Pittsburgh Comprehensive Mun. Pension Trust Fund v. Benefitfocus, Inc. et al.*, Index No. 651425/2021, NYSCEF Doc. No. 228, slip op. at 3-4 (Sup. Ct. N.Y. Cnty. Dec. 1, 2022) (Borrok, J.) (awarding 2.3 multiplier); *In re SciPlay Corp. Sec. Litig.*, Index No. 655984/2019, NYSCEF Doc. No. 152, slip op. at 2-3 (Sup. Ct. N.Y. Cnty. Nov. 17, 2021) (awarding 2.6 multiplier); Brief of Plaintiff at 16, *Plutte v. Sea Ltd.*, Index No. 655436/2018 (Sup. Ct. N.Y. Cnty. Feb. 25, 2021), NYSCEF Doc. No. 95, and Judgment and Order, *Plutte v. Sea Ltd.*, Index No. 655436/2018 (Sup. Ct. N.Y. Cnty.

payment inherent in class actions and for inflation." *HiCrush Partners L.P.*, 2014 WL 7323417, at *15.

Apr. 13, 2021), NYSCEF Doc. No. 121 (awarding 3.05 multiplier); *Lopez v. Dinex Grp., LLC*, 2015 WL 5882842, at *7 (Sup. Ct. N.Y. Cnty. Oct. 6, 2015) (awarding 3.15 multiplier).

In sum, here, despite the significant contingency-fee risk in the Action, Class Counsel do not seek a multiplier of their time, but instead request an attorney fee that is less than their collective lodestar. The requested fee also does not include any time in seeking approval for the proposed Settlement. Numerous courts have found that these circumstances provide strong support for the reasonableness of the fee request. *See, e.g.*, *In re Bear Stearns Cos. Sec., Deriv., & ERISA Litig.*, 909 F. Supp. 2d 259, 271 (S.D.N.Y. 2012) (a negative multiplier was a "strong indication of the reasonableness of the [requested] fee"); *FLAG Telecom*, 2010 WL 4537550, at *26 ("Lead Counsel's request for a percentage fee representing a significant discount from their lodestar provides additional support for the reasonableness of the fee request."); *In re Initial Pub. Offering*, 671 F. Supp. 2d at 515 (finding that, where requested fee represented a negative lodestar to the multiplier, there was "no real danger of overcompensation" and approving a fee of one-third of $586 million settlement).

Accordingly, the lodestar cross-check strongly supports the requested attorneys' fee.

C. The Requested Fee Is Fair and Reasonable When Applying Additional Relevant Factors

The Court in *Fiala v. Metropolitan Life Insurance Co.*, 27 Misc. 3d 599, 610 (Sup. Ct. NY Cnty. 2010), set forth a series of factors that courts in New York consider when determining whether a requested percentage fee is reasonable:

> the risks of the litigation, whether counsel had the benefit of a prior judgment, standing at bar of counsel for the plaintiffs and defendants, the magnitude and complexity of the litigation, responsibility undertaken, the amount recovered, the knowledge the court has of the case's history and the work done by counsel prior to trial, and what it would be reasonable for counsel to charge a victorious plaintiff.

Id. Each of these factors is discussed below, and each supports approval of the requested fee.

1. The Risks of the Action Support the Requested Fee

The significant risks associated with this case support the requested fee. "Little about litigation is risk-free, and class actions confront even more substantial risks than other forms of litigation." *Comverse*, 2010 WL 2653354, at *5.

As detailed in the Joint Affirmation and the accompanying Settlement Memorandum, this Action involved complex issues of law and fact that presented considerable risk to Plaintiffs' case from the outset. Indeed, some of the risks present in the Action were realized when Viacom, the issuing company, and its executives were dismissed from case and when the First Department further dismissed the Former Underwriter Defendants from the Action (i.e., the underwriters who did not themselves hold Viacom stock for Archegos). ¶¶ 13-14, 24.

The ongoing risks in the Action were also substantial. Defendants had argued and would likely continue to argue at summary judgment and trial that they were not liable under either Section 11 or 12 of the Securities Act as a matter of law. Defendants had argued or would argue (i) that the risk of Archegos' liquidation was not a risk related to the issuer (Viacom) and therefore did not require disclosure in the Offering Materials, (ii) Defendants had not formed an intent to sell Viacom stock held by Archegos at the start of the Offerings because, among other reasons, Archegos had met its margin calls, and thus there was no duty to disclose; (iii) that they properly maintained ethical walls in accordance with the law and their internal policies (*see* NYSCEF Doc. Nos. 1773, 1807-08), and thus, Archegos' Viacom positions and the risks and conflicts they presented were unknown to their deal teams; (iv) personnel responsible for examining potential conflicts for the Offerings determined in accordance with their policies that no conflict existed because Archegos was in good financial standing and had not failed to meet at margin call at the start of the Offerings; and (v) that given these circumstances, Defendants had a duty to Archegos

to maintain the confidentiality of its positions rather than escalate any potential conflict to senior management or other personnel who sat above the ethical wall, which foreclosed any potential affirmative duty to disclose them in the Offering Materials. ¶¶ 41-53. Defendants would further argue that they were not liable under Section 12 because liability must be measured from the time of sale of the Viacom securities and does not extend to the timing of the Final Prospectus Supplement or the closing. ¶ 43, 50.

All of these argument presented substantial risks to Plaintiffs' ability to prevail at trial. First and foremost, Plaintiffs faced significant risk on both their Section 11 and Section 12 claims regarding whether and by when they had to show Defendants' intent to sell their Archegos-linked Viacom holdings. The First Department's ruling on Defendants' motions to dismiss indicated that, to demonstrate Section 11 liability, Plaintiffs had to show that Defendants intended to sell their Viacom holdings as of the effective date of the Offerings. *See Camelot Event Driven Fund v. Morgan Stanley & Co. LLC*, 226 A.D.3d 418, 419-20 (1st Dept. 2024). While the First Department left open the question of when the effective date was for Section 12, *see id.* at 419, this question also could have been resolved against Plaintiffs at summary judgment, trial, or on a post-trial appeal. ¶ 43.

Defendants had credible arguments based on the evidence that their intent to sell did not crystallize until after the effective date of the Offering Materials. Among other things, Defendants have argued that as of the morning of Wednesday, March 24, 2021, when Defendants announced the pricing of the Offerings, Archegos had not yet missed any margin calls and was not yet in default, and thus (Defendants contend) Defendants did not yet have any intent to liquidate their Archegos-related positions in Viacom. ¶ 44.

Defendants had also argued that they properly maintained ethical walls in accordance with the law and their internal policies (*see* NYSCEF Doc. Nos. 1773, 1807-08), and thus, Archegos' Viacom positions and the risks and conflicts they presented were unknown to their deal teams at the time of the Offerings. ¶ 46. In addition, Defendants would likely argue that personnel responsible for examining potential conflicts for the Offerings determined in accordance with their policies that no conflict existed because Archegos was in good financial standing and had not failed to meet at margin call at the start of the Offerings. *Id*. Given these circumstances, Defendants would likely claim they had an obligation to maintain the confidentiality of Archegos' positions rather than escalate any potential conflict to senior management or other personnel who sat above the wall. *See* NYSCEF Doc. Nos. 1773, 1807-08. In addition, Defendants would likely continue to argue that since the disclosures did not involve the issuer directly, no such duty to disclose existed. *Id*.

While Plaintiffs believe they had responses to each of these arguments, Defendants' liability challenges presented risks to the Class's ability to recover their damages and or at the very least would result in significant delay in any recovery after extensive appeals on novel complex issues. ¶¶ 48-53.

In short, this Action presented a number of unique challenges and novel questions of law because, unlike a standard Securities Act case, (1) the focus of the alleged material misrepresentations in the Offering Materials concerned the conduct of the underwriter defendants themselves, rather than the issuing company, and (2) the events happened in rapid succession during the week of the Offerings, in essentially unprecedented fashion. ¶ 53. While Plaintiffs had partially prevailed on these issues against Defendants at the pleading stage, there would still have been many substantial risks related to the novel issues to be litigated in connection with summary

judgment and trial. Finally, assuming Plaintiffs had succeeded at trial, Defendants would certainly have sought appellate review of any judgment in Plaintiffs' favor.

The Action was litigated by Class Counsel on a fully contingent basis. Unlike Defendants' Counsel, Class Counsel would have received no compensation or payment of its expenses had the Action not been successfully resolved. In sum, the risk of litigation weighs heavily in favor of Class Counsel's fee request.

2. Class Counsel Did Not Have the Benefit of a Prior Judgment

There has not been a prior judgment against Defendants that would have benefitted the specific claims alleged in this Action. Bill Hwang, the founder and head of Archegos, was criminally convicted of securities fraud, market manipulation, and wire fraud in July 2024. That judgment did not establish any of the elements of Plaintiffs' claims in this Action. On the contrary, Defendants would likely point to Mr. Hwang's conviction to support their position that they too were victims of Archegos and that they did not realize the true nature of Archegos' financial position or its risk of missing margin calls because that information had been concealed from them. ¶ 57. Thus, this factor supports the requested fee award.

3. Class Counsel and Defendants' Counsel Are Highly-Regarded Firms in the Securities Class Action Bar

Class Counsel are nationally recognized leaders in complex litigation and securities class actions, with substantial experience litigating complex actions in courts throughout the country. Exs. 6-3, 7-3. Class Counsel's skill and experience were important factors in obtaining the outstanding recovery for the Class. Class Counsel submit that the quality of their representation is best evidenced by the $120 million recovery achieved here.

Class Counsel's success should also be evaluated in light of the quality of opposing counsel. *See 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"); *In re Veeco Instruments Inc. Sec. Litig.*, 2007 WL 4115808, at *8 (S.D.N.Y. Nov. 7, 2007) (defendants' representation by "one of the country's largest law firms" supported a 30% award of attorneys' fees); *In re Adelphia Commc'ns Corp. Sec. & Derivative Litig.*, 2006 WL 3378705, at *3 (S.D.N.Y. Nov. 16, 2006) ("The fact that the settlements were obtained from defendants represented by 'formidable opposing counsel from some of the best defense firms in the country' also evidences the high quality of lead counsels' work").

Defendants here were represented by lawyers from Skadden, Arps, Slate, Meagher & Flom LLP and Sidley Austin LLP, two very highly regarded law firms with national reputations that presented vigorous defenses of their clients. Notwithstanding this highly capable and well-financed opposition, Class Counsel's persistent litigation efforts and ability to present a strong case enabled them to achieve the Settlement for the benefit of the Class.

4. The Magnitude and Complexity of the Action and the Responsibility Undertaken

The magnitude and complexity of the Action also support the requested fee. Courts have long recognized the "notorious complexity" of securities class actions. *In re Hi-Crush Partners L.P. Sec. Litig.*, 2014 WL 7323417, at *15 (S.D.N.Y. Dec. 19, 2014). This case was no exception. As discussed above and in the Joint Affirmation, this was a complex case that involved novel and complicated issues, both factually and legally. These issues included when liability can be measured under Section 11 and Section 12, respectively, and when an intent to sell securities underlying swaps positions would crystalize in the face of a counter-party's quickly-evolving economic distress. The fact that the events at issue occurred very rapidly, while the Offerings were open, across two different divisions of multiple investment banks, only complicated matters

further. To say the least, reaching a litigated verdict would have required significant additional time and expense including substantial expert discovery on damages, loss causation, due diligence, ethical walls, and underwriter liability; motions for summary judgment; a trial; and appeals. Additionally, with potential damages of hundreds of millions of dollars (¶ 60), the magnitude of the Action is similarly unquestionable.

5. The Amount Recovered

Courts have consistently recognized that the result achieved is an important factor to be considered in making a fee award. *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) ("most critical factor is the degree of success obtained"). Here, Class Counsel, on behalf of Plaintiffs, have secured a Settlement that provides for a substantial and certain payment of $120 million. The Settlement is far greater than the median value of securities class action settlements in federal actions asserting claims under the Securities Act. The recovery here, of approximately 10% to 20% of maximum potential damages (¶ 63), is well above the level of recovery in such cases that have been routinely approved by Courts. *See St. John v. Cloopen Grp. Holding Ltd.*, Index No. 652617/2021, NYSCEF Doc. No. 150, at 3 (N.Y. Sup. Ct. N.Y. Cnty Jan. 16, 2024) (Borrok, J.) (approving settlement representing 7% to 8.8% of damages); *In re Sturm, Ruger, & Co. Sec. Litig.*, 2012 WL 3589610, at *7 (D. Conn. Aug. 20, 2012) (approving settlement representing approximately 3.5% of estimated damages); *In re China Sunergy Sec. Litig.*, 2011 WL 1899715, at *5 (S.D.N.Y. May 13, 2011) (noting average settlements "have ranged from 3% to 7% of the class members' estimated losses"); *In re Merrill Lynch & Co. Rsch. Reps. Sec. Litig.*, 2007 WL 313474, at *10 (S.D.N.Y. Feb. 1, 2007) (approving a recovery of approximately 6.25%, which was "at the higher end of the range of reasonableness").

6. The Action's History and Work Done by Class Counsel

The time and effort expended by Class Counsel in prosecuting the Action and achieving the Settlement support the requested fee. As detailed in the Joint Affirmation, Class Counsel, among other things: (i) extensively investigated, researched, and analyzed the potential claims; (ii) drafted and filed an initial complaint and detailed amended complaint; (iii) briefed Defendants' motions to dismiss the First Amended Complaint; (iv) successfully moved for class certification; (v) consulted extensively with experts in the fields of damages and causation; prime brokerage trading and risk management; underwriter due diligence, ethical walls and conflicts procedures, among others; (vi) litigated and argued multiple appeals to the First Department; (vii) engaged in significant fact discovery, including reviewing and analyzing over 1.7 million pages of documents; (viii) took or defended 39 depositions; (ix) litigated numerous discovery disputes, including seven motions to compel (NYSCEF Doc. Nos. 359, 403, 409, 415, 1124, 1144, 1233); (x) engaged in a robust mediation process which included three mediation sessions and multiple rounds of mediation briefing; and (xi) drafted and negotiated the Stipulation and related settlement documentation. ¶¶ 9-35.

As noted above, Class Counsel expended more than 67,000 hours prosecuting this Action with a lodestar value of $47,610,955. *See* ¶ 77 and Ex. 5. The substantial time and effort devoted to this case by skilled and experienced counsel was critical to obtaining the outstanding result achieved by the Settlement. Class Counsel's efforts will continue if the Court approves the Settlement, as they will work through the settlement administration process, assist Class Members, and distribute the Settlement proceeds, without seeking any additional compensation.

7. The Contingent Fees Charged to a Victorious Plaintiff

The Supreme Court has recognized that an appropriate court-awarded fee is intended to approximate what counsel would be paid if they were bargaining in the private marketplace. *See Missouri*, 491 U.S. at 285-86. If this were an individual case, the customary contingent fee arrangement would be in the range of one-third of the recovery. *See Blum*, 465 U.S. at 903 n.* ("In tort suits, an attorney might receive one-third of whatever amount the plaintiff recovers. In those cases, therefore, the fee is directly proportional to the recovery."). Given that the requested fee comports with such arrangements, this factor also supports the fee request.

In sum, Class Counsel respectfully submit that their requested 29% fee is strongly supported by a review of all relevant criteria and should be approved.

III. CLASS COUNSEL'S EXPENSES WERE REASONABLY INCURRED AND NECESSARY TO THE PROSECUTION OF THIS ACTION

Class Counsel's fee application includes a request for payment of the expenses incurred by Class Counsel, which were reasonable in amount and necessary to the prosecution of the Action. *See* ¶¶ 87-90. These expenses are properly recovered by counsel. *See Lopez*, 2015 WL 5882842, at *8 ("'Courts typically allow counsel to recover their reasonable out-of-pocket expenses.'").

As set forth in detail in the Joint Affirmation, Class Counsel incurred $1,806,535.77 in expenses in connection with the prosecution and settlement of the Action. ¶ 89. These expenses include, among others, expert fees, on-line legal and factual research, document management and hosting charges, and mediation fees, all of which were critical to achieving the Settlement. This is below the $2,300,000 in maximum expenses disclosed in the Notice, *see* Notice ¶ 31, and, to date, no objections to the request have been received. ¶ 90.

IV. AWARDS TO PLAINTIFFS ARE APPROPRIATE

Finally, each Plaintiff respectfully requests a service award of $20,000 for their time and efforts in representing the Class. Throughout the litigation, Plaintiffs consulted with Class Counsel regarding the posture and progress of the case; reviewed, among other things, the pleadings and major briefs submitted in this matter, mediation materials, and the Settlement terms; and participated in the settlement process. *See* Ex. 2, ¶ 3; Ex. 3, ¶ 4. In addition, Plaintiffs also assisted in responding to Defendants' discovery requests and a representative of each Plaintiff was deposed in connection the motion for class certification. *See id*. Without Plaintiffs' efforts in prosecuting this Action, there would be no recovery, and the requested awards are commensurate with the time and efforts expended by Plaintiffs and are modest in comparison to the size of the Settlement. *See, e.g.*, *Lopez v. The Dinex Grp., LLC*, 2015 WL 5882842 (N.Y. Sup. Ct. N.Y. Cnty. Oct.6, 2015) (awarding $20,000 service award each to two plaintiffs and $10,000 to a third, in case with a $1.4 million settlement); *NN, Inc.*, NYSCEF Doc. No. 136, slip op. at 8 (Borrok, J.) (awarding $15,000 service award to plaintiff in case with $9.5 million settlement); *In re Signet Jewelers Ltd. Secs. Litig.*, 2020 WL 4196468, at *24 (S.D.N.Y. July 21, 2020) (awarding $25,410 to lead plaintiff for time spent, among other things, communicating with counsel; "reviewing and commenting on pleadings and motion papers filed in the Action; gathering and producing documents in response to discovery requests; preparing for depositions and being deposed[]; . . . . and evaluating and approving the proposed Settlement."); *FLAG Telecom*, 2010 WL 4537550, at *31 (approving award of $100,000 to Lead Plaintiff for time spent on the litigation in $24 million settlement).

CONCLUSION

Class Counsel respectfully submit that the Court award attorneys' fees of 29% of the Settlement Fund (including interest) plus payment of litigation expenses in the amount of

$1,806,535.77, and award $20,000 to each Plaintiff. A proposed Order Awarding Attorneys' Fees and Litigation Expenses will be submitted with Class Counsel's reply papers on July 29, 2025, after the deadline for objecting to the motion has passed.

Dated: July 1, 2025

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ATTORNEY CERTIFICATION PURSUANT TO COMMERCIAL DIVISION RULE 17

I, Daniella Quitt an attorney licensed to practice law in the State of New York, certify that this Motion complies with the word count limit in Rule 17 of the Commercial Division of the Supreme Court (22 NYCRR 202.70(g), Rule 17). According to the word count of the word-processing system used to prepare this Motion, this Motion contains 6,130 words, excluding the caption, table of contents, table of authorities, signature block, and this Certification.

Dated: July 1, 2025
New York, New York

/s/ Daniella Quitt
Daniella Quitt