**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, CHRISTINA SPADE, 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

Hon. Andrew Borrok (Part 53)

Motion Seq. No. __

**JOINT AFFIRMATION OF DANIELLA QUITT AND JOHN RIZIO-HAMILTON IN SUPPORT OF (I) PLAINTIFFS' MOTION FOR FINAL APPROVAL OF SETTLEMENT AND PLAN OF ALLOCATION AND (II) CLASS COUNSEL'S MOTION FOR ATTORNEYS' FEES AND LITIGATION EXPENSES AND AWARDS TO PLAINTIFFS**

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DANIELLA QUITT and JOHN RIZIO-HAMILTON, attorneys licensed to practice law in the State of New York, and not parties to the above-captioned action, affirm that the following is true under penalty of perjury:

1. We are Class Counsel pursuant to this Court's Order dated January 4, 2024 (NYSCEF Doc. No. 378).[1] Daniella Quitt is a partner at Glancy Prongay & Murray LLP ("GPM"), and counsel for Plaintiff Camelot Event Driven Fund, A Series of Frank Funds Trust. John Rizio-Hamilton is a partner at Bernstein Litowitz Berger & Grossmann LLP ("BLB&G"), and counsel for Plaintiff Municipal Police Employees' Retirement System. We have personal knowledge of the matters stated in this affirmation based on our active supervision of, and participation in the prosecution and settlement of this Action.

2. We are pleased to submit this affirmation in support of entry of Plaintiffs' motion, pursuant to New York Civil Practice Law & Rules ("CPLR") Article 9, for final approval of the proposed settlement of the Action for $120 million in cash, which the Court preliminarily approved on April 3, 2025. NYSCEF Doc. No. 1602. Defendants do not oppose this Motion. To date, there have been no objections to the Settlement.

3. The Settlement is a substantial recovery for the Class, particularly considering the risks and potential recovery in the Action. The Settlement confers a substantial, certain, and immediate benefit while avoiding significant risks, including that the Class could recover nothing or substantially less after years of additional litigation. The Settlement was reached after the completion of fact discovery and after multiple rounds of mediation, when the Parties and their counsel had a well-informed understanding of their respective positions in the litigation.

[1] All capitalized terms have the same meanings as in the Stipulation. NYSCEF Doc. No. 1599.

4. We also respectfully submit this affirmation in support of: (i) the Plan of Allocation, and (ii) Class Counsel's motion for an award of 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 (the "Fee and Expense Motion").

5. Plaintiffs submit that the Plan of Allocation is fair and reasonable. Class Counsel developed the Plan of Allocation in consultation with a well-respected damages expert. It provides for a *pro rata* distribution of the Net Settlement Fund to Class Members who submit valid and timely Claim Forms. Each Claimant's shares will be calculated based on the losses attributable to the alleged misconduct in the Complaint.

6. Class Counsel also respectfully submit that the Fee and Expense Motion should be approved by the Court. Class Counsel worked diligently and efficiently to achieve the proposed Settlement in a highly complex case which presented an unusual set of circumstances. We prosecuted the litigation on a fully contingent basis, incurring significant expenses, and bore all the risks an unfavorable result.

7. Class Counsel are applying for an award of attorneys' fees of 29% of the Settlement fund. This is well within the range of fees awarded in similar securities and other complex actions. Given the stage of the litigation and extensive proceedings herein, the requested fee is substantially less than Class Counsel's lodestar and will result in a "negative" multiplier of approximately 0.7 of counsel's lodestar.

8. For the reasons discussed herein and in the accompanying memoranda of law, Plaintiffs and Class Counsel respectfully submit that both the Settlement (and Plan of Allocation) and Fee and Expense Motion should be approved as fair and reasonable.

## I. PROSECUTION OF THE ACTION

9. Plaintiffs allege that Defendants violated the Sections 11 and 12(a)(2) of the Securities Act of 1933 (the "Securities Act") by disseminating offering materials for Viacom's Preferred Stock Initial Public Offering and Common Stock Secondary Public Offering (the "Offering Materials") that contained false and misleading statements and omitted required disclosures. The alleged misstatements and omissions related to certain of the underwriters' holdings of, and intentions to sell, Viacom securities outside of the Offerings, in connection with their brokerage relationships with Archegos. Defendants were underwriters for the Offerings.

10. After a comprehensive pre-filing investigation, Camelot filed the initial class action complaint in this Court on August 13, 2021, nearly four years ago. The initial complaint alleged violations of the Securities Act in connection with Viacom's two public offerings in March 2021 that issued $3 billion in securities and led to massive losses by the investors who participated in the Offerings.

11. Plaintiffs allege that Defendants generated hundreds of millions of dollars in fees doing business with Archegos. Archegos' investment portfolio primarily consisted of "total return swaps" which are a type of derivative securities. While these transactions are very profitable to the banks, these transactions allowed Archegos to conceal from the investing public its massive ownership position in Viacom, which was held with the investment banks who were underwriting two public offerings of Viacom. Plaintiffs allege that the Offerings pushed Archegos into a death spiral, triggering a chain of events that decimated the price of Viacom stock, and that Defendants immediately liquidated vast amounts of Viacom securities from their balance sheets following the Offering at prices far below the Offering prices, thereby avoiding losses they would have incurred by holding those securities as the prices cratered. Plaintiffs allege that the Class suffered damages

as the price of Viacom common stock dropped from the Offering price of $85 per share to $45, or a decline of 45% by the time the Offering closed on March 26, 2021, and the preferred stock price declined from the Offering price of $100 per share to $63.34 by March 29, 2021, or nearly 37% below the Offering price.

12. An amended class action complaint was filed by Plaintiffs on November 5, 2021.[2] NYSCEF Doc. No. 29. The Complaint alleges that the Offering Materials contained false and misleading statements and omitted required disclosures.[3]

13. On December 22, 2021, defendants filed eight separate motions to dismiss the Complaint. NYSCEF Doc. Nos. 76-127. After further briefing (NYSCEF Doc. Nos. 141, 144-157) and oral argument, on February 7, 2023, the Court entered a Decision and Order granting the Motions to Dismiss of Viacom and the Individual Defendants and denying the Motions to Dismiss of the Underwriter Defendants (the "Motions to Dismiss Order") (NYSCEF Doc. No. 174). The Court held that the conflict arising from the underwriters' dealings with Archegos existed at the start of the Offerings and required disclosure. Defendants disputed these key holdings and would have continued to do so if the Settlement was not reached. The Court also found that the issuer was not required to conduct due diligence of the underwriters. All these issues were the subject of appeals.

14. On February 15, 2023, the Underwriter Defendants filed notices of appeal from the Motions to Dismiss Order. NYSCEF Doc. Nos. 192-206. On March 10, 2023, Plaintiffs filed a notice of appeal from the Motions to Dismiss Order in so far as it granted the Motions to Dismiss of Viacom and the Individual Defendants. NYSCEF Doc. No. 233.

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[2] A corrected amended complaint was filed on December 21, 2021. NYSCEF Doc. No. 74.

15. On April 17, 2023, the Underwriter Defendants filed Answers to the Complaint. Morgan Stanley and Goldman Sachs each asserted 36 affirmative defenses. NYSCEF Doc. Nos. 253-254. Wells Fargo asserted 30 affirmative defenses.[4] NYSCEF Doc. No. 255.

16. After the Answers were filed, Plaintiffs filed a motion to certify the Class the next day. NYSCEF Doc. Nos. 258-269.

17. On June 1, 2023, Defendants moved for a stay of discovery pending their appeals from the Motions to Dismiss Order.[5] NYSCEF Doc. Nos. 281-297. Plaintiffs opposed these applications on June 9, 2023. NYSCEF Doc. Nos. 298-305. On June 13, 2023, the Court entered a Decision and Order denying the motions to stay (the "Denial of Stay Order"). NYSCEF Doc. No. 306.

18. On June 27 and 30, 2023, Defendants filed notices of appeal from the Denial of Stay Order. NYSCEF Doc. Nos. 311-318.

19. Defendants also sought a stay from the Appellate Division. On July 11, 2023, Defendants moved for interim relief seeking to stay the litigation pending appeal, which Plaintiffs opposed on July 24, 2023. The motion was denied on August 10, 2023. *Camelot Event Driven Fund v. Morgan Stanley & Co. LLC*, 2023 NY Slip Op 71434 [U] (1st Dept. 2023).

20. After briefing and oral argument on October 23, 2023, on November 2, 2023, the First Department entered an Order affirming the Denial of Stay Order and finding that the automatic stay provisions of the PSLRA did not apply during the pendency of an appeal of a decision denying a motion to dismiss.

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[4] The Former Underwriter Defendants also asserted affirmative defenses. NYSCEF Doc. Nos. 248-251, 256.

[5] The Parties previously exchanged letter briefs on the subject of a stay (NYSCEF Doc. Nos. 213-226)

21. In the interim, class certification proceedings continued. Representatives of both plaintiffs were deposed in July 2023. Defendants filed their oppositions on October 5, 2023 (NYSCEF Doc. Nos. 331-348) and Plaintiffs filed their reply on October 6, 2023 (NYSCEF Doc. Nos. 349-356).

22. On January 4, 2024, after oral argument, the Court entered a Decision and Order certifying the Class, appointing Plaintiffs as Class Representatives, and appointing our firms as Class Counsel. NYSCEF Doc. No. 380. On February 14, 2024, Defendants filed a notice of appeal. NYSCEF Doc. No. 384. That appeal was recently withdrawn.

23. In the meanwhile, the appeals of the Court's decision on the Motion to Dismiss Order continued. The Parties filed their respective opening and responsive briefs from July through November 2023. Multiple amici briefs were filed on the implications of the Motion to Dismiss Order, including with respect to the requirement that due diligence of the underwriters be conducted in connection with public offerings. Argument was heard on March 14, 2024.

24. On April 4, 2024, the First Department entered an Order in connection with the appeals from the Motions to Dismiss Order: (i) affirming the dismissal of Viacom and the Individual Defendants[6]; (ii) affirming in part and reversing in part the non-dismissal of Morgan Stanley, Goldman Sachs, and Wells Fargo, and (iii) reversing the non-dismissal of the other Underwriter Defendants. As to Morgan Stanley, Goldman Sachs, and Wells Fargo, the First Department held that the Complaint: (i) stated a claim that the Offering Materials included misleading statements about stabilization transactions, the lock-up agreement, and the over-allotment option; (ii) stated a claim that the Offering Materials omitted disclosures required by

[6] Plaintiffs moved for leave to reargue or for leave to appeal to the New York Court of Appeals. Defendants opposed and cross-moved; Plaintiffs filed their reply. The Motions were denied on July 24, 2024.

Item 508 of Regulation S-K; and (iii) failed to state a claim that the Offering Materials omitted disclosures required by Items 505 and 512 of Regulation S-K and FINRA Rule 5270.

25. Following the Court's resolution of the Motions to Dismiss, extensive discovery took place simultaneously with class certification and the appeals on the Motions to Dismiss. Plaintiffs served requests for document production on Defendants and the Former Defendants. These requests resulted in extensive correspondence and multiple meet and confers before the Parties could agree on any search terms and custodians.

26. Defendants and Former Defendants produced over 1.5 million pages of documents, which included 123,242 documents and audio files. Of that amount, approximately 850,000 pages were produced by Defendants. Plaintiffs also received over 270,000 pages of documents from 12 third parties including Archegos, brokers with relationships with Archegos, FINRA, and Hughes Hubbard & Reed LLP ("HHR").

27. Plaintiffs also produced over 22,000 pages documents in response to Defendants' discovery requests.

28. The Parties also conducted 39 fact depositions. Given the number of fact witnesses, the Parties agreed to conduct three phases of fact depositions. Class Counsel took 37 depositions, including 27 depositions of current and former employees of Morgan Stanley, Goldman Sachs, and Wells Fargo. Defendants deposed one representative from each Plaintiff.

29. Plaintiffs deposed members of Defendants' deal teams for the Offerings, including those with responsibility for due diligence, as well as personnel who were responsible for clearing conflicts with respect to Defendants' participation in the Offerings. Plaintiffs also deposed Defendants' personnel who worked with Archegos in the prime brokerage business, including personnel responsible for: (i) managing the Defendants' relationship with Archegos; (ii) analyzing

the risk associated with Archegos' portfolio, setting Archegos' margins, and approving Archegos' requests for credit limit increases; and (iii) executing block sales and overseeing the liquidation of Archegos' portfolio. Plaintiffs deposed senior executives who sat "above the wall" and oversaw the liquidation of Archegos. Plaintiffs also deposed Viacom's CFO and Head of Investor Relations at the time of the Offerings. Plaintiffs also deposed an HHR representative.

30. The Parties were able to resolve most of their disputes concerning discovery. However, there were several hotly contested issues which necessitated the filing of motions to compel. These included: 1) Motion to Compel Deutsche Bank to Produce Documents (NYSCEF Doc. No. 359); 2) Motion to Compel Defendants and HHR to produce documents withheld on privilege grounds (NYSCEF Doc. No. 403); 3) Motion to Compel Morgan Stanley and Goldman Sachs to Produce Certain Audio Recordings and Ethical Wall Logs (NYSCEF Doc. No. 409); 4) Motion to Compel Defendants to Respond to Interrogatory No. 6 which related to the identity of personnel who sat above the wall (NYSCEF Doc. No. 415); 5) Motion to Compel Morgan Stanley to produce its April 2021 board materials improperly withheld as privileged (NYSCEF Doc. No. 1124); 6) Motion to Compel Defendants to produce documents related to Archegos improperly withheld as privileged (NYSCEF Doc. No. 1144); and 7) Motion to Compel Defendants and HHR to i) comply with the Court's September 27, 2023 ruling with respect to the scope of the privilege and the issuance of an assurance letter in the offering documents; and ii) to produce documents improperly withheld as privileged (NYSCEF Doc. No. 1233).[7] Four of the motions to compel were pending at the time of the Parties' agreement-in-principle to settle.

[7] Defendants moved for a protective order to limit the depositions that Plaintiffs could conduct. NYSCEF Doc. Nos. 835, 897. The Parties resolved this dispute after multiple meet and confers.

Throughout the course of the discovery, the Parties had multiple discovery conferences with the Court to resolve various disputes.

31. Though certain motions to compel were still pending, the Parties completed fact discovery on January 24, 2025, and were about to exchange expert reports at the time the agreement to settle was reached. The Parties had dedicated substantial time and resources to the preparation of the expert reports before the Settlement was reached. Throughout the litigation, Class Counsel had worked extensively with numerous experts, including financial economists who were experts in the fields of damages and causation; experts in prime brokerage trading and risk management; and experts in underwriter due diligence, ethical walls, and conflicts procedures, among others.

## II. THE SETTLEMENT PROCESS

32. The Parties engaged the Hon. Layn R. Phillips, a former federal judge, as a mediator. *See* Exhibit 1. The Parties exchanged more than a dozen mediation submissions addressing liability and damages, plus *ex parte* submissions, and participated in three in-person mediation sessions on November 7, 2024, January 6, 2025, and February 6, 2025. The participants included: (i) attorneys from our firms; (ii) attorneys from counsel for Defendants, including Skadden Arps, Sidley, and in-house counsel for certain Defendants; and (iii) Judge Phillips and two of his colleagues.

33. The mediation ended without an agreement; however, Judge Phillips continued to work with the Parties. Following subsequent negotiations, on February 14, 2025, Judge Phillips made a mediator's recommendation to resolve the Action for $120,000,000.

34. On February 24, 2025, the Parties accepted the mediator's proposal, and on March 5, 2025, the Parties executed a settlement term sheet (the "Term Sheet"). The Term Sheet set forth

the Parties' agreement to settle and release all claims against Defendants in return for a cash payment of $120 million, subject to certain terms and conditions and the execution of a customary "long form" stipulation and agreement of settlement and related papers.

35. After additional negotiations, the Parties entered into the Stipulation on March 27, 2025. The Stipulation reflects the final and binding agreement between the Parties. NYSCEF Doc. No. 1599. The Stipulation can be viewed at www.ViacomArchegosSecuritiesLitigation.com.

36. On April 3, 2025, the Court preliminarily approved the Settlement, authorized Notice to be disseminated to potential Class Members, and scheduled the Settlement Hearing to consider whether to grant final approval of the Settlement. NYSCEF Doc. No. 1602.

37. In accordance with the Preliminary Approval Order, the Notice and Claim Form were mailed to all Class Members identified by Defendants' record keeper and posted on the dedicated Settlement website. The Summary Notice was published in *The Wall Street Journal* and over a national newswire service on May 8, 2025. Exhibit 4, at ¶ 13.

38. The Notice Plan utilized here comports with the requirements of Article 9 of the CPLR and due process, which provide that reasonable notice of the pendency of a class action should be provided to class members. *See* CPLR §§ 904, 908. Given the existence of records identifying the purchasers of the securities at issue in the proposed Settlement, Plaintiffs believe that this was a highly effective and practical program for disseminating the Notice and Claim Form especially in concert with the publication of the Summary Notice and the availability of the Settlement website.

## III. THE RISKS OF CONTINUED LITIGATION

39. Though Plaintiffs believe that the claims asserted herein are meritorious, they are aware that there were risks to bringing this action to trial which could result in the Class receiving

less than the proposed Settlement or even nothing. Further, absent the Settlement, it would likely take several more years before the litigation concluded.

40. Defendants raised numerous defenses to Plaintiffs' claims, all of which would likely be the subject of competing expert testimony.

**A. Risks to Proving Liability**

41. Defendants maintained throughout the litigation that their statements were not false and/or misleading and that the Offering Materials did not contain any omissions. Though two courts, including this one, rejected certain of their arguments on this score, those decisions were based on the pleadings, and at trial, Defendants would present their view of the facts and how the Archegos fiasco unfolded.

42. Given the stakes and potential damages, it was inevitable that Defendants would seek a ruling at summary judgment that they were not liable under Sections 11 and 12 as a matter of law. Defendants would likely argue that the risk of Archegos' liquidation did not require disclosure, that they had not formed an intent to sell Viacom stock held by Archegos at the start of the Offerings, and that they had a duty to maintain the confidentiality of Archegos' positions.

43. Plaintiffs faced a 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 Offering Materials. *See Camelot Event Driven Fund v. Morgan Stanley & Co. LLC*, 210 N.Y.S.3d 1, 226 A.D.3d 418, 419-20 (Sup. Ct. App. Div. 1st Dept. 2024). With respect to Section 12, the First Department left open the question of when the relevant date for assessing liability was. *See* 226 A.D.3d at 419. This created significant

uncertainty and risk because it was possible that this question could have been resolved against Plaintiffs at summary judgement or trial, and even if Plaintiffs prevailed on this timing issue at summary judgement and trial, it could have been resolved against them on a renewed, post-trial appeal.

44. Defendants argued that they did not have an intent to sell their Viacom shares until after the effective date of the Offerings. Defendants would have argued that the Offering Materials were only required to be accurate as of the morning of March 24, 2021, which is when Defendants announced the pricing of the Offerings and confirmed the investor orders. However, as of that morning, Archegos had not yet missed any margin calls and was not yet in default. Defendants have argued that they did not yet intend to liquidate their Archegos-related positions, including Viacom, and thus they had no intent to sell that conflicted with their statements in the Offering Materials, as arguably required by the First Department.

45. In response, Plaintiffs would argue that a material conflict of interest existed as of the effective date as a result of the size and riskiness of Archegos' positions. However, the First Department sustained the claims against Defendants based on the Complaint's allegation that they already planned and intended to sell, and did not address the conflict-of-interest theory. Thus, Defendants had arguments that, irrespective of any conflict, Plaintiffs would still be required to show that Defendants had developed their intent to sell the Viacom shares as of the effective date of the Offerings.

46. Defendants would also likely argue 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. Defendants would likely argue that personnel responsible

for examining conflicts for the Offerings determined that no conflict existed because Archegos had not failed to meet its margin call at the start of the Offerings. Defendants would likely claim they had an obligation to maintain the confidentiality of Archegos' positions rather than escalate any potential conflict to personnel who sat above the wall. *See* NYSCEF Doc. Nos. 1773, 1807-08. Defendants would likely continue to argue that since the disclosures did not involve the issuer directly, no duty to disclose existed.

47. Plaintiffs maintain that the size of Archegos' Viacom positions and risk of liquidation were known to Defendants at the start of the Offerings and presented a conflict of interest. Plaintiffs' position is that the risk and conflict should have been discovered through adequate due diligence, which Defendants failed to conduct. Plaintiffs would have argued that the record supported their assertion that ethical walls were breached and certain members of the deal team were aware of Archegos' Viacom positions. Plaintiffs also maintain that the risks could have been disclosed without revealing the identity of Archegos and that such disclosure was required by Item 105 and Item 508(a) of Regulation S-K.

48. Because the due diligence involved the underwriters themselves and not the issuer, Defendants argued that Plaintiffs were putting forth a novel due diligence requirement. While this argument proved unsuccessful at the First Department, at least with respect to the remaining Defendants, it would have been renewed at summary judgment and again at trial. An issue that loomed in the background is whether Defendants' policies and procedures were properly maintained and prevented personnel from different divisions of the bank from discovering or sharing information about Archegos' Viacom positions and the risks they posed to the Offerings.

49. Even if Plaintiffs prevailed at summary judgment and trial, Defendants would have appealed, invoking the same type of policy arguments that were before the First Department in

connection with their appeal of the denial of their motion to dismiss, this time supported by evidence that they considered favorable.

50. Defendants would also seek a ruling at summary judgment or after trial that they were also not liable under Section 12 of the Securities Act. Fundamentally, the Parties disagreed on the date upon which liability attaches. Defendants argued that the liability is measured from the time of sale of the Viacom securities and does not extend, as Plaintiffs contend, to the Final Prospectus Supplement or the closing.

51. Plaintiffs were cognizant of the fact that Defendants would likely argue at trial that they were victims of Archegos and that they had no reason to believe that Archegos would not meet its margin calls. While Plaintiffs believe the record does not support this position and argue that Defendants liquidated Archegos' positions to protect themselves at the expense of the Class, Defendants would argue that most of their Viacom sales occurred after the close of the Offerings.

52. Other potential arguments included who controlled the ownership of the Viacom shares until the actual default by Archegos. On this issue, the Parties had extremely divergent views. Plaintiffs contend that Morgan Stanley and Goldman Sachs held Viacom stock on their books and exercised effective if not actual control of these shares before the closing of the Offerings, but Defendants argued that they could not liquidate the stock until formal default had occurred.

53. This case also presented a unique scenario because, at issue, was not the insufficiency of the disclosures of the issuer itself, but the risks associated with participating in Offerings where the underwriters held huge positions on behalf of a client that materially affected the price of the issuer's stock. Defendants argued that due diligence of the underwriters' position was not required, but Plaintiffs believe that because these positions materially affected the price

of Viacom and that presented a conflict of interest that the Defendants were required to disclose. There would be intense debates supported by fact and expert testimony as to the adequacy of the due diligence conducted by Defendants, whether those who sat "above-the-wall" did or should have discovered the conflict resulting from these massive Viacom positions, and whether those who were charged with escalating the conflict failed to abide by the individual banks' respective policies and procedures. These issues could be resolved against Plaintiffs at summary judgment, trial, or appeal.

**B. Risks of Proving Damages**

54. There were also risks to proving damages. Even assuming a complete victory on liability, Defendants would likely argue that their liability was limited to the shares in the Offerings allocated to each of them by Viacom and could not extend to shares that were sold by the dismissed underwriters. This could cut Plaintiffs' damages almost in half. Plaintiffs maintain that at least the lead underwriter, was responsible for all the shares as a statutory seller under Section 12. This is a legal argument that would be hotly contested through appeal.

55. Defendants also had arguments that there were other facts that contributed to the drop in the share price. Defendants would likely argue that because the block sales largely took place after the Offerings closed, they cannot be responsible for the entire drop in the stock price, much if which occurred before the Offerings closed. Similarly, Defendants would argue that they cannot be liable to any Class Member who sold their shares before the block sales began. These arguments could have severely limited the available damages to the Class.

56. Fundamentally, the Parties had differing views on who was responsible for Archegos' manipulation of the Viacom stock price. Plaintiffs believe Defendants were integral to Archegos' ability to prop up the price of Viacom before the Offerings even began. But Defendants

argued that that they had no reason to investigate the rapid increase and subsequent decline of Viacom stock. This issue would have resulted in a battle of the experts on what is unchartered territory.

**C. Additional Risks**

57. There were unique twists to this action that could be difficult for a jury to understand because there were complex financial instruments and internal bank procedures at issue, including total return swaps, ethical walls, conflicts checks, due diligence, block sales and other bank operations. While Plaintiffs believe that Defendants assumed the risk of doing business with Archegos, a jury could be persuaded that the conviction of Mr. Hwang supported Defendants' position that they too were his victims. Also, the absence of Viacom, the issuer, could be confusing to a juror since Viacom received the multi-billion dollar proceeds from the Offerings.

58. In agreeing to the Settlement, Plaintiffs took into consideration that no matter the outcome, there would be a lengthy appeal process. Regardless of who prevailed at summary judgment, the other side would appeal and there was no way to predict if the trial would be put on hold while the appeal proceeded.

**D. The Settlement Amount Compared To the Likely Maximum Damages That Could Be Proved at Trial**

59. The $120 million Settlement represents a significant recovery for the Class. Class Counsel's research indicates that the Settlement is the second largest Securities Act settlement achieved in any state court.

60. Plaintiffs' damages expert has estimated that if Plaintiffs had fully prevailed on all of their claims that the total *maximum* damages *potentially* available in this Action would be between approximately $600 million and $1.2 billion. The $600 million represents the damages that were available if Plaintiffs were limited to the share that the remaining Defendants were

allocated in the Offerings, while the $1.2 billion represents the damages if Plaintiffs were able to recover for all Offering shares against the remaining Defendants. Thus, the Settlement Amount represents a recovery of 10% to 20% of maximum potential damages, which is a very substantial recovery in light of ongoing risks of the litigation.

61. After weighing the immediate and substantial benefits of the Settlement against the substantial risks of continued litigation, Plaintiffs determined that the Settlement represented a strong result that is fair, reasonable, adequate, and in the best interests of the Class.

## IV. PLAINTIFFS' COMPLIANCE WITH THE PRELIMINARY APPROVAL ORDER

62. The Court's Preliminary Approval Order directed that the Notice and Claim Form be disseminated to the Settlement Class. In accordance with the order, Class Counsel instructed JND to disseminate the Notice and Claim Form by mail and publish the Summary Notice. JND obtained information from Defendants and nominees regarding the names and addresses of potential Class Members. Exhibit 4, at ¶¶ 5-7.

63. JND commenced the mailing of the Notice Packet on April 24, 2025. *Id.* ¶¶ 5-8. Through June 30, 2025, JND had disseminated 103,634 Notice Packets by mail or email. *Id.* ¶ 12.

64. On May 8, 2025, JND caused the Summary Notice to be published in *The Wall Street Journal* and transmitted over *PR Newswire*. *Id.* ¶ 13.

65. Class Counsel also caused JND to establish a dedicated website, www.ViacomArchegosSecuritiesLitigation.com, to provide Class Members with information concerning the Settlement and access to downloadable copies of the Notice, Claim Form, Stipulation, Preliminary Approval Order, and Complaint. *Id.* ¶ 14.

66. To date, no requests for exclusion or objections have been received. Plaintiffs will file reply papers on July 29, 2025 after the deadline for submitting requests for exclusion and objections has passed.

## V. ALLOCATION OF THE NET PROCEEDS OF THE SETTLEMENT

67. The Plan of Allocation was developed by Class Counsel in consultation with Plaintiffs' damages expert and provides a fair and reasonable method to allocate the Net Settlement Fund. The objective of the Plan of Allocation is to equitably distribute the Net Settlement Fund among those Class Members who suffered economic losses as a result of the alleged violations of the Securities Act with respect to purchases or acquisitions of (a) shares of publicly traded Viacom Class B Common Stock issued in Viacom's secondary public offering of Viacom Common Stock announced on March 22, 2021, and (b) shares of Viacom's 5.75% Series A Mandatory Convertible Preferred Stock issued in or traceable to Viacom's initial public offering of Viacom Preferred Stock announced on March 22, 2021.

68. The Offerings were both announced on March 22, 2021, priced on March 23, 2021, began trading on March 24, 2021, and closed on March 26, 2021. All shares of Viacom Common Stock purchased directly in the Common Offering at the $85.00 per share issue price are potentially eligible for recovery under the Plan of Allocation. For shares of Viacom Common Stock purchased in the open market from March 23, 2021, through the close of trading on March 29, 2021, only claimants who can establish through documentation that the specific shares that the claimant purchased were issued in the Common Offering will be potentially eligible for recovery under the Plan of Allocation. All shares of Viacom Preferred Stock either purchased directly in the Preferred Offering at the $100.00 per share issue price or purchased in the open market through the close of

trading on March 29, 2021, are potentially eligible for recovery under the Plan of Allocation. All Viacom Shares purchased after the close of trading on March 29, 2021 are not eligible for recovery.

69. After consultation with our damage expert, the Settlement Fund will be allocated between the two offerings based on the relative amounts of the estimated damages suffered by the two types of Viacom Shares:

(a) The Common Stock claims have been allocated $75 million; and

(b) The Preferred Stock claims have been allocated $45 million.

70. The formulas used in the Plan of Allocation, are based on the greater of the statutory measure of damages under Section 11 of the Securities Act, as set forth at Section 11(e), 15 U.S.C. § 77k(e), and the recission measure of damages under Section 12(a)(2) of the Securities Act, 15 U.S.C. § 77*l*(a)(2). This ensures the maximum recovery for each eligible claimant.

## VI. FEE AND EXPENSE MOTION

71. Class Counsel are applying for (i) an award of attorneys' fees in the amount of 29% of the Settlement Fund; (ii) payment of Litigation Expenses in the amount of $1,806,535.77; and (iii) awards of $20,000 to each Plaintiff for their time and effort in representing the Class.

### A. The Fee Application

72. Class Counsel are applying for a fee award to be paid from the Settlement Fund on a percentage basis. The percentage method is the standard and appropriate method of fee recovery because it aligns the lawyers' interest in being paid a fair fee with the interests of Plaintiffs and the Class in achieving the maximum recovery in the shortest amount of time required. The percentage method has been recognized as appropriate by New York courts where an all-cash common fund has been recovered for the Class.

73. As discussed in the Fee Motion, based on the quality of the result achieved, the extent and quality of the work performed, the significant risks of the litigation, and the fully contingent nature of the representation, Class Counsel respectfully submit that the requested 29% fee award is reasonable and should be approved.

**1. Plaintiffs Have Authorized and Support the Fee Application**

74. Plaintiffs have approved and fully support Class Counsel's motion for attorneys' fees and expenses. Exhibit 2, ¶ 5; Exhibit 3, ¶ 6. Plaintiffs evaluated the fee request by considering the $120 million recovery, the risks, and their observations of the high-quality work performed by Class Counsel. *Id.*

**2. The Work Performed by Class Counsel**

75. Class Counsel devoted substantial time to the prosecution of the Action. The work that Class Counsel performed included: (i) conducting a thorough investigation into the claims asserted; (ii) drafting an initial complaint and the detailed Complaint; (iii) preparing Plaintiffs' opposition to eight motions to dismiss; (iv) successfully moving for Class certification; (v) litigating appeals concerning the Court's motion to dismiss decision and the discovery stay; (vi) completing a substantial fact discovery process, including preparing and responding to requests for the production of documents and interrogatories, preparing and serving subpoenas on 12 third parties, obtaining and analyzing over 1.7 million pages of documents, and taking or defending 39 depositions; (vii) consulting with experts and consultants; and (viii) engaging settlement negotiations.

76. Attached hereto as Exhibits 6 and 7 are affirmations from Class Counsel in support of the Fee and Expense Motion. Each affirmation details the time spent on the Action by each

firm's attorneys and professional staff and lodestar calculations and summarizes the firm's litigation expenses.

77. Class Counsel expended a total of 67,989.51 hours in the investigation, prosecution, and resolution of this Action through March 27, 2025. Ex. 5. The resulting lodestar is $47,610,955. Class Counsel has and will continue to invest substantial time and effort after March 27, 2025 including in connection with securing final approval and overseeing the Claims process.

78. The requested fee of $34,800,000 represents a "negative" multiplier of approximately 0.7 of counsel's lodestar or approximately 70% of the value of Class Counsel's time .

**3. The Experience and Standing of Class Counsel**

79. The experience and standing of Class Counsel also supports the requested fee.

80. GPM's firm resume, which includes information about the firm and the attorneys who worked on the litigation is attached as Exhibit 6-3. GPM is among the most experienced and skilled law firms in the securities litigation field, with a long and successful track record representing investors. GPM has successfully prosecuted class action cases and complex litigation in federal and state courts throughout the country. GPM's attorneys have recovered billions of dollars for parties wronged by corporate fraud, antitrust violations and malfeasance. GPM served as Lead Counsel in *In re Alibaba Group Holding Ltd. Sec. Litig.*, Civ. A. No. 1:20-cv-09568-GBD-JW (S.D.N.Y. Mar. 27, 2025) and recovered $433,500,000 for the Class. GPM also obtained a recovery of $30 million in *Jacobs v. Verizon Commc'n, Inc.*, Civ. A. No. 1:16-cv-01082-PGG-RWL (S.D.N.Y. Nov. 21, 2023); and $250 million on behalf of the class in *Christine Asia Co. Ltd., et al. v. Jack Yun Ma, et al.*, Case No. 15-md-02631 (S.D.N.Y. Oct 16, 2019). The Institutional Shareholder Services unit of RiskMetrics Group has recognized GPM as one of the top plaintiffs'

law firms in the United States in its Securities Class Action Services report for every year since the inception of the report in 2003.

81. BLB&G's firm resume is attached as Exhibit 7-3. BLB&G is among the most experienced and skilled law firms in the securities litigation field, with a long and successful track record representing investors. BLB&G was recently ranked as the top firm in the nation for plaintiff-side securities litigation work in *Chambers USA*'s 2025 guide. BLB&G has taken complex cases such as this Action to trial, and it is among the few firms with experience doing so on behalf of plaintiffs in securities class actions. BLB&G has obtained numerous significant settlements. BLB&G served as Lead Counsel in *In re WorldCom, Inc. Securities Litigation*, No. 02-cv-3288 (S.D.N.Y.), in which recoveries obtained for the class totaled in excess of $6 billion. BLB&G also secured a resolution of $2.43 billion for the class in *In re Bank of America Corp. Securities, Derivative & "ERISA" Litigation*, No. 09-md-2058 (S.D.N.Y.); a $1 billion dollar recovery for the class in 2023 in *In re Wells Fargo & Co. Securities Litigation*, No. 1:20-cv-04494-JLR-SN (S.D.N.Y.); and a $730 million settlement on behalf of the class in *In re Citigroup Inc. Bond Action Litigation*, No. 08-cv-9522 (S.D.N.Y.).

**4. Standing and Caliber of Defendants' Counsel**

82. Defendants were represented experienced attorneys from Skadden, Arps, and Sidley, who vigorously litigated the Action. In the face of skillful and well-financed opposition, Class Counsel developed a case that was sufficiently strong to persuade Defendants to settle this Action.

**5. The Risks of the Litigation and Contingent Nature of the Fee**

83. This case was undertaken on a contingent-fee basis and there were considerable risks assumed by Class Counsel in bringing this Action to a successful conclusion.

84. Class Counsel understood that they were embarking on a complex, expensive, and lengthy litigation with no guarantee of being compensated. Class Counsel were obligated to ensure that sufficient were manpower and economic resources were dedicated to the litigation

85. This case presented a number of significant risks and uncertainties that could have resulted in no recovery and thus no payment for counsel's efforts. Class Counsel's persistent efforts in the face of these risks resulted in a significant recovery for the Class.

**6. The Reaction of the Class to the Fee Application**

86. As of June 30, 2025, over 103,000 copies of Notice had been sent to potential Class Members. The Notice advised Class Members that Class Counsel would apply for attorneys' fees in an amount not to exceed one-third of the Settlement Fund. Ex. 4, ¶ 12 and Exhibit A (Notice ¶ 31). No objections have been received.

**B. The Expense Application**

87. Class Counsel also respectfully seek $1,806,535.77 in expenses from the Settlement Fund that they reasonably incurred. A breakdown of these expenses by category is summarized in Exhibit 8.

88. Class Counsel have been cognizant that they might not recover any of the expenses they incurred or that there may be an extensive delay even if the Action was successfully resolved. Class Counsel were motivated to, and did, take significant steps to minimize expenses whenever practicable without jeopardizing the prosecution of the case.

89. As shown in Exhibits 5 and 8, Class Counsel have incurred a total of $1,806,535.77 in Litigation Expenses. *See also* Exhibits 6 and 7. The largest category of expenses, $1,037,885.39 was expended for the retention of Plaintiffs' experts and consultants. Another large component of

the litigation expenses was for online legal and factual research in the amount of $226, 955.81. Plaintiffs incurred $126,126.25 for the services of Judge Phillips.

90. Class Counsel also seek payment of expenses that are typically incurred in litigation. All were reasonable and necessary to the successful litigation of the Action. The total amount for expenses is substantially below the $2,300,000 that was disclosed to Class Members in the Notice. No objection has been received.

91. Each Plaintiff respectfully requests an award of $20,000 for their time and efforts representing the Class. Plaintiffs consulted with Class Counsel regarding the progress of the case; reviewed the pleadings, mediation materials, and Settlement terms; and participated in the settlement process. *See* Exhibit 2, ¶ 3; Exhibit 3, ¶ 4. A representative of each Plaintiff was deposed by Defendants' Counsel and Plaintiffs spent time responding to Defendants' discovery requests. Accordingly, an award of $20,000 for each Plaintiff is appropriate.

Executed this 1st day of July 2025, at New York, New York.

*/s/ Daniella Quitt*
Daniella Quitt

*/s/ John Rizio-Hamilton*
John Rizio-Hamilton

**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 Affirmation 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 Affirmation, this Affirmation contains 6,993 words, excluding the caption, table of contents, table of exhibits, signature block, and this Certification.

Dated: July 1, 2025
New York, New York

*/s/ Daniella Quitt*
Daniella Quitt