SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

IN RE SCIPLAY CORPORATION SECURITIES LITIGATION	Index No. 655984/2019 IAS Commercial Part 48 Hon. Andrea Masley

MEMORANDUM OF LAW IN SUPPORT OF LEAD PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION

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Pursuant to Civil Practice Law and Rules ("CPLR") Article 9, Plaintiffs Police Retirement System of St. Louis and Hongwei Li (collectively, "Lead Plaintiffs"), on behalf of themselves and the proposed Settlement Class, respectfully submit this memorandum of law in support of: (i) final approval of the proposed Settlement of the above-captioned class action (the "Action"); (ii) approval of the proposed plan of allocation for distributing the proceeds of the Settlement to eligible claimants (the "Plan of Allocation"); and (iii) final certification of the Settlement Class.[1]

The Motion is based on the following memorandum of law and the Affirmation of Alfred L. Fatale III in Support of (I) Lead Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation and (II) Lead Counsel's Motion for an Award of Attorneys' Fees and Payment of Expenses, (the "Fatale Affirmation"), submitted herewith.[2] A proposed final order and judgment, negotiated by the Parties as part of the Settlement, will be submitted with Lead Plaintiffs' reply papers, after the deadlines to object or seek exclusion have passed.

PRELIMINARY STATEMENT

As detailed in the Stipulation, Lead Plaintiffs and Defendants have agreed to settle all claims asserted in the Action against Defendants, or that could have been asserted, arising out of the Company's May 3, 2019 initial public offering of 22,720,000 shares of Class A common stock ("IPO"), in exchange for the payment of $8,275,000 (the "Settlement Amount") for the benefit of the Settlement Class. The terms of the Settlement are detailed in the Stipulation, which was

[1] All capitalized terms not otherwise defined herein have the same meanings as set forth in the Stipulation and Agreement of Settlement (the "Stipulation"), which was filed with the Court on July 27, 2021. NYSCEF Doc. No. 105.

[2] The Fatale Affirmation is an integral part of this submission and, for the sake of brevity in this memorandum, the Court is respectfully referred to it for a detailed description of, *inter alia*: the history of the Action; the nature of the claims asserted; the negotiations leading to the Settlement; and the risks and uncertainties of continued litigation, among other things. Citations to "¶" in this memorandum refer to paragraphs in the Fatale Affirmation.

executed by the Parties on July 27, 2021, and was overseen by a highly regarded and respected mediator, Robert A. Meyer.

The Settlement will bring to a close two years of litigation that included, among other things, a thorough investigation conducted by Lead Counsel prior to filing the initial and amended complaints, motion practice concerning Defendants' motion to dismiss the Amended Complaint and Lead Plaintiffs' motion for class certification; and robust arm's-length negotiations between counsel, facilitated by a well-respected and experienced mediator. *See generally* Fatale Aff. at §§III-V.

The $8.275 million Settlement Amount represents a recovery of approximately 7% of statutory damages under the Securities Act, which calculate to approximately $122 million. However, full statutory damages may not have been recoverable here as Defendants would have pressed a robust "negative causation" defense, which, if credited by the Court or a jury, would have significantly decreased class wide damages. Lead Plaintiffs' consulting damages expert analyzed various negative causation arguments that, if successful, could have reduced damages to as low as approximately $30.2 million, making the Settlement a recovery of approximately 27.4% of class wide damages. *See* ¶¶73-75. Lead Counsel, which has extensive experience and expertise in prosecuting securities class actions, believes that the Settlement represents a very favorable resolution of this complex litigation in light of the specific risks of continued litigation, particularly given Defendants' challenges regarding materiality, falsity, negative causation, and damages. Lead Plaintiffs, who were actively involved in the Action, diligently represented the Settlement Class and have approved the Settlement. *See* Affidavit of Mark Lawson (Ex. 1) and Affirmation

of Hongwei Li (Ex. 2).[3]

Accordingly, Lead Plaintiffs respectfully request that the Court grant final approval of the Settlement and certify the Settlement Class. In addition, the Plan of Allocation, which was developed with the assistance of Lead Plaintiffs' consulting damages expert, is a fair and reasonable method for distributing the Net Settlement Fund and should also be approved by the Court.

PRELIMINARY APPROVAL AND THE NOTICE PROGRAM

On August 11, 2021, the Court entered an order preliminarily approving the Settlement and approving the proposed forms and methods of providing notice to the Settlement Class (the "Notice Order"). *See* NYSCEF No. 112. Pursuant to and in compliance with the Notice Order, through records maintained by SciPlay's transfer agent and information provided by brokerage firms and other nominees, the Court-appointed Claims Administrator, A.B. Data, Ltd. ("A.B. Data"), caused the Notice and Claim Form (together, the "Notice Packet") to be mailed by first-class mail to potential Settlement Class Members. *See* Affidavit of Adam D. Walter Regarding: (A) Mailing of the Notice and Claim Form; (B) Publication of the Summary Notice; and (C) Report on Requests for Exclusion and Objections, dated October 8, 2021, Ex. 3 at ¶¶2-7. A total of 17,375 Notice Packets have been mailed as of October 8, 2021. *Id*. at ¶9. On September 8, 2021, the Summary Notice was published in *The Wall Street Journal* and was disseminated over the internet using *PR Newswire*. *Id*. at ¶10 and Exhibits B and C attached thereto. The Notice and Claim Form

[3] All exhibits referenced herein are annexed to the Fatale Affirmation. For clarity, citations to exhibits that themselves have attached exhibits, will be referenced herein as "Ex.__-__." The first numerical reference is to the designation of the entire exhibit attached to the Fatale Affirmation and the second alphabetical reference is to the exhibit designation within the exhibit itself.

were also posted, for review and easy downloading, on the website established by A.B. Data for purposes of this Settlement. *Id*. at ¶12.

The Notice described, *inter alia*, the claims asserted in the Action, the contentions of the Parties, the course of the litigation, the terms of the Settlement, the maximum amounts that would be sought in attorneys' fees and expenses, the Plan of Allocation, the right to object to the Settlement, and the right to seek to be excluded from the Settlement Class. *See generally* Ex. 3-A. The Notice also gave the deadlines for objecting, seeking exclusion, submitting claims, and advised potential Settlement Class Members of the scheduled Settlement Hearing before this Court. *Id*. While the deadline for requesting exclusion or objecting to the Settlement (October 25, 2021) has not yet passed, to date no requests for exclusion or objections to the Settlement have been received.[4]

ARGUMENT

I. THE SETTLEMENT IS REASONABLE AND ADEQUATE AND SHOULD BE APPROVED

A. The Standards for Final Approval of a Class Action Settlement

New York courts strongly favor settlements as a matter of public policy. *See IDT Corp. v. Tyco Grp.*, 13 N.Y.3d 209, 213 (2009) ("'[s]tipulations of settlement are judicially favored and may not be lightly set aside'").[5] "Strong policy considerations favor" settlements because "[a] negotiated compromise of a dispute avoids potentially costly, time-consuming litigation and preserves scarce judicial resources; courts could not function if every dispute devolved into a lawsuit." *Denburg v. Parker Chapin Flattau & Klimpl*, 82 N.Y.2d 375, 383 (1993); *see also Wal-*

[4] Should any objections or requests for exclusion be received, Lead Plaintiffs will address them in their reply papers, which are due to be filed with the Court on November 8, 2021.

[5] Unless otherwise noted, all citations are omitted and emphasis is added.

Mart Stores, Inc. v. Visa U.S.A. Inc., 396 F.3d 96, 116 (2d Cir. 2005) (holding that courts should be "mindful of the 'strong judicial policy in favor of settlements'").

When considering whether to finally approve a settlement, New York courts focus their inquiry on "'the fairness of the settlement, its adequacy, its reasonableness, and the best interests of the class members.'" *Hosue v. Calypso St. Barth, Inc.*, No. 160400/2015, 2017 WL 4011213, at *2 (Sup. Ct., N.Y. Cnty. Sept. 12, 2017). Specifically, New York courts consider the following factors: (i) the likelihood that plaintiff will succeed on the merits; (ii) the extent of support from the parties; (iii) the judgment of counsel; (iv) the presence of good faith bargaining; and (v) the complexity and nature of the issues of law and fact. *See Fernandez v. Legends Hosp.*, No. 152208/2014, 2015 WL 3932897, at *2 (Sup. Ct., N.Y. Cnty. June 22, 2015).

These factors, articulated in *In re Colt Indus. S'holder Litig.*, 155 A.D.2d 154 (1st Dep't. 1990), *aff'd, Colt Indus. S'holder Litig. v. Colt Indus. Inc.*, 77 N.Y.2d 185, (1991), and reaffirmed in *Gordon v. Verizon Commc'ns, Inc.*, 148 A.D.3d 146, 162 (1st Dep't. 2017), strongly favor approving the Settlement.

B. *Colt* Factor One: The Likelihood Lead Plaintiffs Will Succeed on the Merits Strongly Supports Final Approval

When assessing a proposed settlement of a class action, courts first take into consideration Lead Plaintiffs' ultimate "likelihood of success on the merits." *Gordon*, 148 A.D.3d at 162; *Colt*, 155 A.D.2d at 160. Although Lead Plaintiffs believe that the case against Defendants is strong, that confidence must be tempered by the fact that the Settlement is certain and that every case involves significant risk of no recovery, particularly in a complex case such as the one at bar. *See In re Advanced Battery Techs. Inc. Sec. Litig.*, 298 F.R.D. 171, 177 (S.D.N.Y. 2014) (noting that "[s]ecurities class actions present hurdles to proving liability that are particularly difficult for plaintiffs to meet."); *In re Alloy, Inc. Sec. Litig.*, No. 03 CIV. 1597, 2004 WL 2750089, at *2

(S.D.N.Y. Dec. 2, 2004) (finding that issues present in a securities action presented significant hurdles to proving liability).[6]

Here, there was no Company admission, or parallel governmental proceeding, which would have aided Lead Plaintiffs in proving key elements of the case. There is no question that to prevail here, Lead Plaintiffs would have confronted numerous legal and factual challenges, while trying to prove difficult securities claims.

(a) Risks to Proving Liability

To prevail on their claims, Lead Plaintiffs would need to prove the existence of material omissions, misrepresentations, or undisclosed known trends and uncertainties at the time of the Company's IPO. As an initial matter, surviving Defendants' challenge to the Amended Complaint was no guarantee of ultimate success. Defendants have a filed a notice of appeal of the Court's order on the Motion to Dismiss, and there was no guarantee that the Appellate Division would rule in Lead Plaintiffs' favor.

On appeal and at summary judgment or trial, Defendants would likely argue, as they have throughout the course of the litigation, that the Registration Statement did not contain materially false or misleading statements or omissions. ¶¶60-63. For example, with respect to Lead Plaintiffs' claim that the Registration Statement failed to disclose the third-party software disruption at the time of the IPO, which made SciPlay's games difficult or impossible to play, Defendants would argue that the disruption was limited to one platform and was quickly resolved, and therefore, no reasonable investor would have expected the disruption to be disclosed. ¶61.

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[6] In considering final approval of a settlement, "New York's courts have … looked to federal case law for guidance." *Fiala v. Metro. Life Ins. Co.*, 27 Misc. 3d 599 (Sup. Ct. N.Y. Cnty. 2010).

Indeed, Defendants might have continued to argue that the software disruption was quantitatively immaterial as any financial impact represented less than 1% of the Company's revenue on an annualized basis. *Id*.

Regarding the allegations in the Amended Complaint concerning Google's deprecation of Flash from Google's Chrome web browser making it difficult or impossible to play SciPlay games on Chrome, Defendants would have continued to argue that Google's plans to phase out Flash compatibility were well-known to the investing public at the time of the IPO and that the risk disclosures in the Registration Statement warned of such a risk. ¶62. Defendants would have argued that the generalized statements concerning SciPlay's business pled in the Amended Complaint lacked the requisite nexus to the post-IPO deprecation of Flash on Chrome to be deemed actionable at summary judgement or trial. Defendants would have also argued that because the changes to the Chrome web browser occurred after the IPO, and that SciPlay remedied any issues that quarter, that the Amended Complaint's claims similarly fail. Finally, Defendants would have argued Google's deprecation of Flash was quantitatively immaterial as analysts attributed just $1-2 million of decline in SciPlay shares to issues arising from the deprecation of Flash, placing that deviation at less than 1% of annual revenues. *Id*.

Defendants would also likely have argued and sought to present evidence that Lead Plaintiffs could not establish that the "trends" alleged in the Amended Complaint had materialized at the time of the IPO, such that they should have been disclosed pursuant to Item 303 or any other legal doctrine. ¶63. Defendants would also have argued that Lead Plaintiffs could not establish, as required, Defendants' actual knowledge of the purported trends, even if they did exist, and that Defendants did not reasonably expect that the issues alleged in the Amended Complaint would have a material impact on the Company's net sales, revenues, or income, as required under Item

303. Among other things, Defendants would likely put forth evidence that they expected the trends to be temporary and expected to make up any shortfalls in other product categories in future quarters. ¶64.

The Underwriter Defendants and the Individual Defendants would have raised additional arguments at summary judgment and trial, including that they conducted robust and thorough due diligence during the offering process to confirm the accuracy and truthfulness of the Registration Statement's disclosures, including participating in extensive meetings with key management at the Company and reviewing relevant key documents. ¶65.

(b) Risks Concerning Negative Causation and Damages

Even assuming that Lead Plaintiffs successfully established each of the elements of liability, they still faced substantial obstacles to proving damages. Defendants would have pursued a negative causation defense, arguing that factors other than the allegedly undisclosed trends and business practices caused the decline of SciPlay's share price after the IPO. ¶¶68-76. Defendants would have sought to present evidence supporting their affirmative negative causation defense, challenging each decline in the value of the Company's stock. *See*, *e.g.*, *McMahan & Co. v. Wherehouse Ent., Inc.*, 65 F.3d 1044, 1048-49 (2d Cir. 1995) (under Section 11, "any decline in value is presumed to be caused by the misrepresentation," and the "defendant . . . bears the burden of proving that the price decline was not related to the misrepresentations").

Defendants' arguments, if credited by the Court or a jury, would have significantly reduced damages. Using the statutory damages formula under Section 11(e) of the Securities Act, based on the 22,720,000 shares of SciPlay Class A common stock issued at $16 per share in the IPO and the $9.61 closing stock price on October 14, 2019 (the date the *St. Louis PRS* Action was first commenced), applying a standard proportional two trader model and assuming constant dollar inflation, Lead Plaintiffs' consulting damages expert estimated statutory class wide damages of

approximately $122 million. ¶73. This maximum estimation is contingent on Lead Plaintiffs' ability to establish liability and gives no credit to Defendants' negative causation arguments (thus assuming 100% of the stock drop from the IPO to the date of suit is attributable to the alleged false statements and omissions). *Id*.

Defendants, however, would likely counter that a large percentage of the total decline in SciPlay's share price occurred prior to what they would consider the first "corrective disclosure" on July 18, 2019, an analyst report by J.P. Morgan reporting that SciPlay shares had seen weakness due to negative estimate revisions by some analysts partially based on third party data showing "a slowdown" in the Company's games being downloaded, making the decline not recoverable as a matter of law. ¶¶69-70.

Defendants would also argue that with respect to August 1, 2019 (the day on which SciPlay held its first post-IPO earnings call, discussed problems with the Company's games and provided information on the Company's marketing approach) and November 7, 2019 (the day on which SciPlay held its second post-IPO earnings call and discussed how Google's deprecation of Flash was impacting the Company's games), there were no statistically significant declines in SciPlay's share price on or after either of those two dates. ¶71.

Furthermore, Defendants would also likely argue that with respect to dates that show a statistically significant residual return for SciPlay shares after June 17, 2019, there is no association between those price declines and any disclosures concerning the alleged misstatements or omissions. For example, Defendants might argue that SciPlay was facing a difficult market environment for small cap gaming stocks during the relevant period and that there were risks to SciPlay's business model unrelated to any alleged misstatements or omissions that contributed to the price declines over the relevant period. ¶72.

Lead Plaintiffs' consulting causation and damages expert analyzed Defendants' anticipated arguments and estimated that that if such arguments were successful, realistic recoverable damages based only on the July 18, 2019 disclosure would be approximately $30.2 million. ¶74. This estimate assumes that the entire stock drop on the corrective disclosure date relates to the issues Lead Plaintiffs claimed were false and misleading in the Registration Statement. Accordingly, had Defendants' negative causation arguments been accepted, in whole or in part, they could have drastically limited any potential recovery.

Though Lead Plaintiffs believe that Defendants' arguments take too narrow a view of the connection between the allegations and the price declines, there was no certainty that Lead Plaintiffs would prevail on these issues. As the case proceeded, the Parties' respective damages experts would strongly disagree with each other's assumptions and their respective methodologies, and there was no certainty concerning which expert would be credited by the jury, or the Court. Accordingly, the risk that the jury would credit Defendants' damages position over that of Lead Plaintiffs had considerable consequences, even assuming liability was proven. *See*, *e.g.*, *In re Am. Bank Note Holographics, Inc., Sec. Litig.*, 127 F. Supp. 2d 418, 426-27 (S.D.N.Y. 2001) ("'In [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 to have been caused by actionable, rather than the myriad nonactionable factors such as general market conditions.'"). Indeed, Courts favor settlement where, as here, the parties will likely rely on significant expert testimony and analysis. *See, e.g.*, *In re Giant Interactive Grp., Inc., Sec. Litig.*, 279 F.R.D. 151, 161-62 (S.D.N.Y. 2011) (approving settlement where the litigation risks included a "credible defense of 'negative causation'").

C. *Colt* Factors Two, Three, and Four: The Judgment of Counsel, the Extent of Support from the Parties, and the Presence of Good Faith Bargaining All Support Final Approval of Settlement

Next, when considering final approval of a settlement in a class action, courts in New York look to the support of the parties, the judgment of the respective counsel, and whether the parties bargained in good faith. *Gordon*, 148 A.D.3d at 157; *Colt*, 155 A.D.2d at 160. Here, these factors strongly support granting final approval.

First, the Settlement has the full support of all Parties, including the Settlement Class. Pursuant to the Notice Order, the Court-appointed Claims Administrator, A.B. Data, began mailing copies of the Notice and Claim Form to potential Settlement Class Members and nominees on August 25, 2021. *See* Ex. 3 at ¶¶2-4. As of October 8, 2021, A.B. Data has mailed a total of 17,375 copies of the Notice Packet (consisting of the Notice and Claim Form) to potential Settlement Class Members and their nominees. *Id*. at ¶9. In addition, a Summary Notice was published in *The Wall Street Journal* and transmitted over the internet using *PR Newswire* on September 8, 2021. *Id*. at ¶10. Although the October 25, 2021 deadline for objecting to the Settlement and seeking exclusion from the Settlement Class has not yet passed, there has been no objection to any aspect of the Settlement to date and no requests for exclusion have been received. A lack of objections is indicative of the class's approval of a proposed settlement. *See Pressner v. MortgageIT Holdings, Inc.*, 16 Misc. 3d 1103(A) (Sup. Ct., N.Y. Cnty. May 29, 2007) (approving settlement "since there has been no objection to the propose[d] settlement"). Furthermore, Lead Plaintiffs support the Settlement. *See* Affidavit of Mark Lawson and Affirmation of Hongwei Li, filed concurrently herewith as Exhibits 1 & 2 to the Fatale Affirmation.

Second, in reaching the Settlement, Lead Counsel concluded that it was fair, reasonable, and adequate, particularly when contrasted with the aforementioned risks, costs, and uncertainties

of continued litigation. The judgment of Lead Counsel—a law firm that is highly experienced in securities class action litigation—that the Settlement is in the best interests of the Settlement Class is entitled to "great weight." *City of Providence v. Aeropostale Inc.*, No. 11 CIV. 7132, 2014 WL 1883494, at *5 (S.D.N.Y. May 9, 2014), *aff'd*, *Arbuthnot v. Pierson*, 607 F. App'x. 73 (2d Cir. 2015).

Third, there can be no doubt that the Parties bargained in good faith. The Settlement was negotiated at arm's-length with the assistance of an experienced mediator, Robert A. Meyer, Esq. Prior to the all-day mediation session, which was held on April 14, 2021, the Parties submitted confidential mediation statements, which contained their positions on liability and damages. Indeed, in advance of the mediation, Lead Counsel put extensive time and effort into preparing for the mediation and submitting a detailed mediation statement and related material on behalf of Lead Plaintiffs. ¶¶52-54. At the end of the day, through the assistance of the Mediator, the Parties agreed to a global settlement, subject to the negotiation of a mutually acceptable stipulation of settlement. ¶55. Thus, this *Colt* factor supports approval of the Settlement. *Gordon*, 148 A.D.3d at 157 (parties are entitled to the standard presumption that "negotiations are presumed to have been conducted at arm's length and in good faith where there is no evidence to the contrary"); *Fiala* 27 Misc. 3d at 608 (noting that the help of an accomplished and scrupulous mediator, among other things, spoke to the "lack of collusion and coercion in negotiating the final settlement").

D. *Colt* Factor Five: The Complexity and Nature of the Issues of Law and Fact Further Support Final Approval

The fifth factor New York courts look to, the complexity and nature of the issues of law and fact presented, is closely related to the first factor, Lead Plaintiffs' likelihood of success. *See, e.g.*, *Saska v. Metro. Museum of Art*, 57 Misc. 3d 218, 222 (Sup. Ct., N.Y. Cnty. 2017) (evaluating

the first and fifth *Colt* factors together in grant of final approval); *City Trading Fund v. Nye*, 59 Misc. 3d 477, 510 (Sup. Ct., N.Y. Cnty. 2018) (same).

Securities class actions like this one are by their nature complicated, and courts in New York have long recognized that "[a]s a general rule, securities class actions are 'notably difficult and notoriously uncertain' to litigate." *In re Facebook, Inc. IPO Sec. & Derivative Litig.*, No. MDL 12-2389, 2015 WL 6971424, at *3 (S.D.N.Y. Nov. 9, 2015), *aff'd sub nom*. *In re Facebook, Inc.*, 674 F. App'x. 37 (2d Cir. 2016); *In re Bear Stearns Cos. Sec., Derivative, & ERISA Litig.*, 909 F. Supp. 2d 259, 266 (S.D.N.Y. 2012). This case was no exception. As discussed in the Fatale Affirmation, the case involved complicated and intricate issues related to negative causation, falsity, and materiality. Additionally, prevailing on summary judgment and then achieving a litigated verdict at trial (and sustaining any such verdict in the appeals that would inevitably ensue) would have been a very complex and risky undertaking that would have required substantial additional time and expense. *See In re Initial Pub. Offering Sec. Litig.*, 671 F. Supp. 2d 467, 481 (S.D.N.Y. 2009) (finding that the complexity, expense and duration of continued litigation supports final approval where, among other things "motions would be filed raising every possible kind of pre-trial, trial and post-trial issue conceivable"). Even if Lead Plaintiffs were to prevail at all future stages of the litigation, any potential recovery (in the absence of a settlement) would only occur years into the future, substantially delaying payment to the Settlement Class.

The Settlement, therefore, offers certainty to the Settlement Class and it compares favorably to other securities class action settlements. Lead Counsel has researched settlements reached in other cases alleging Securities Act claims and believes the proposed Settlement falls in the higher range of such settlements. For instance, for the ten years from 2011 through 2020, the median settlement amount in Securities Act cases was $8 million. *See* Laarni T. Bulan & Laura

E. Simmons, *Securities Class Action Settlements –2020 Review and Analysis*, at 7 (Cornerstone Research 2021), Exhibit 8.

For all the foregoing reasons, it is respectfully submitted that the proposed Settlement is fair, reasonable, and adequate and should be approved by the Court.

II. THE PLAN OF ALLOCATION FOR THE PROCEEDS OF THE SETTLEMENT IS FAIR AND REASONABLE AND SHOULD BE APPROVED

The proposed Plan of Allocation was set forth in full in the Notice sent to Settlement Class Members. *See* Ex. 3-A at 10-12. A plan for allocating settlement proceeds, like the settlement itself, should be approved if it is fair, reasonable, and adequate. *See In re IMAX Sec. Litig.*, 283 F.R.D. 178, 192 (S.D.N.Y. 2012); *Bear Stearns*, 909 F. Supp. 2d at 270. A plan of allocation with a "rational basis" satisfies this requirement. *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, No. 02-CV-3400 CM PED, 2010 WL 4537550, at *21 (S.D.N.Y. Nov. 8, 2010); *In re Initial Pub. Offering Sec. Litig.*, 671 F. Supp. 2d at 497. A plan of allocation that reimburses class members based on the relative strength and value of their claims is also reasonable. *See IMAX*, 283 F.R.D. at 192. However, a plan of allocation does not need to be tailored to fit each and every class member with "mathematical precision." *In re PaineWebber Ltd. P'ships Litig.*, 171 F.R.D. 104, 133 (S.D.N.Y. 1997), *aff'd sub nom. In re PaineWebber Inc. Ltd. P'ships Litig.*, 117 F.3d 721 (2d Cir. 1997).

The proposed Plan of Allocation was drafted with the assistance of Lead Plaintiffs' consulting damages expert. It is designed to equitably distribute the Settlement proceeds among the members of the Settlement Class who were allegedly injured by Defendants' alleged misrepresentations and who submit valid Claim Forms that are approved for payment. The plan is consistent with the statutory measure of damages under Section 11 of the Securities Act. ¶¶86-87

As explained in the Fatale Affirmation, the Claims Administrator will calculate claimants' "Recognized Losses" using the transactional information provided by claimants in their Claim Forms, which can be mailed to the Claims Administrator, submitted online using the settlement website, or, for large investors, with hundreds of transactions, via e-mail to the Claims Administrator's electronic filing team. Because most securities are held in "street name" by the brokers that buy them on behalf of clients, the Claims Administrator, Lead Counsel, and Defendants do not have Settlement Class Members' transactional data and a claims process is required. Because the Settlement does not recover 100% of alleged damages, the Claims Administrator will determine each eligible claimant's *pro rata* share of the Net Settlement Fund based upon each claimant's total Recognized Losses. ¶¶85-87.

Once the Claims Administrator has processed all submitted claims, notified claimants of deficiencies or ineligibility, processed responses, and made claim determinations, distributions will be made to eligible claimants in the form of checks and wire transfers. After an initial distribution of the Net Settlement Fund, if there is any balance remaining in the Net Settlement Fund (whether by reason of tax refunds, uncashed checks or otherwise) after at least six (6) months from the date of initial distribution, the Claims Administrator will, if feasible and economical, after payment of Notice and Administration Expenses and Taxes, if any, re-distribute the balance among eligible claimants who have cashed their checks. These re-distributions will be repeated until the balance in the Net Settlement Fund is no longer feasible to distribute. *See* Stipulation at ¶26; Ex. 3-A at ¶78. Any balance that still remains in the Net Settlement Fund after re-distribution(s), which is not feasible or economical to reallocate, after payment of any outstanding Notice and Administration Expenses or Taxes, shall be donated to the Consumer Federation of America, a

private, non-profit, non-sectarian 501(c)(3) organization, or as otherwise approved by the Court. Stipulation at ¶26; Ex. 3-A at ¶78.

To date, there have been no objections to the Plan of Allocation, further supporting approval. *Maley v. Del Glob. Techs Corp.*, 186 F. Supp. 2d 358, 367 (S.D.N.Y. 2002).

III. THE COURT SHOULD GRANT FINAL CERTIFICATION OF THE SETTLEMENT CLASS

For purposes of the Settlement only, Lead Plaintiffs seek certification of the Settlement Class. The class action remedy is "frequently utilized" for claims of alleged securities violations. *Pruitt v. Rockefeller Ctr. Props., Inc.*, 167 A.D.2d 14, 21 (1st Dep't 1991); *see also Fort Worth Emps.' Ret. Fund v. J.P. Morgan Chase & Co.*, 301 F.R.D. 116, 130 (S.D.N.Y. 2014) ("[C]ourts in this district have frequently held that 'suits alleging violations of Sections 11, 12(a)(2), and 15 of the Securities Act are "especially amenable" to class action certification and resolution.'").

The Court previously granted provisional certification of the Settlement Class for settlement purposes. *See* NYSCEF No. 112 at ¶2. Nothing has occurred since then to cast doubt on whether the applicable prerequisites of CPLR 901 and 902 have been met. Accordingly, for all the reasons stated in Lead Plaintiffs' Unopposed Motion for Preliminary Approval of Proposed Class Action Settlement and Authorization to Notify Settlement Class, and Lead Plaintiffs' previously filed Motion to Certify the Class, Lead Plaintiffs request that the Court reaffirm its determinations and finally certify the Settlement Class for purposes of carrying out the Settlement, appoint Police Retirement System of St. Louis and Hongwei Li as Class Representatives, and Labaton Sucharow LLP as Class Counsel.

CONCLUSION

For all the foregoing reasons, Lead Plaintiffs respectfully request that the Court finally approve the proposed Settlement, approve the proposed Plan of Allocation, and finally certify the Settlement Class for purposes of the Settlement only.

Dated: October 11, 2021
New York, New York

Respectfully submitted,

LABATON SUCHAROW LLP

By: */s/ Alfred L. Fatale III*
Jonathan Gardner
Alfred L. Fatale III
Charles Wood
140 Broadway
New York, New York 10005
Telephone: (212) 907-0700
Facsimile: (212) 818-0477
jgardner@labaton.com
afatale@labaton.com
cwood@labaton.com

Lead Counsel for Lead Plaintiffs and the Settlement Class

LEVI & KORSINSKY, LLP

By: */s/ Gregory M. Nespole*
Gregory M. Nespole
55 Broadway, 10th Floor
New York, New York 10006
Telephone: (212) 363-7500
Facsimile: (212) 363-7171
gnespole@zlk.com

Counsel for Plaintiff Li

PRINTING SPECIFICATIONS STATEMENT

1. Pursuant to 22 N.Y.C.R.R. §202.70(g), Rule 17, the undersigned counsel certifies that the foregoing memorandum of law was prepared on a computer using Microsoft Word. A proportionally spaced typeface was used as follows:

Name of Typeface: Times New Roman
Point Size: 12
Line Spacing: Double

2. The total number of words in the memorandum, inclusive of point headings and footnotes and exclusive of the caption, signature block, and this Certification, is 5,588 words.

By: */s/ Alfred L. Fatale III*
Alfred L. Fatale III