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 COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND PAYMENT OF EXPENSES

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Rules

Other Authority

Pursuant to Civil Practice Law and Rules ("CPLR") 909, Lead Counsel Labaton Sucharow LLP hereby respectfully requests, on behalf of Plaintiffs' Counsel, in connection with the proposed settlement of the above-captioned class action: (i) an award of attorneys' fees in the amount of 33 1/3 % of the Settlement Fund, including accrued interest; (ii) payment of litigation expenses incurred by Plaintiffs' Counsel in the amount of $47,318.59, plus accrued interest; and (iii) a combined award of $10,000 to Lead Plaintiffs for their efforts on behalf of the proposed Settlement Class.[1]

This 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 order will be submitted with Lead Counsel's reply papers, after the deadline for objecting has passed.

PRELIMINARY STATEMENT AND HISTORY OF THE CASE

The proposed Settlement, if approved by the Court, will resolve this case in its entirety in exchange for a $8.275 million cash payment pursuant to the terms of the Stipulation. The Settlement represents a very favorable outcome for the Settlement Class and brings to a close two

---

[1] Unless otherwise noted, capitalized terms have the meanings ascribed to them in the Stipulation and Agreement of Settlement, dated July 27, 2021 (the "Stipulation"), filed with the Court on July 28, 2021. NYSCEF No. 105. Lead Counsel Labaton Sucharow LLP and Levi & Korsinsky LLP, counsel of record for Lead Plaintiff Li, are Plaintiffs' Counsel in the Action.

[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 litigation efforts; and the risks and uncertainties of continued litigation, among other things. Citations to "¶" in this memorandum refer to paragraphs in the Fatale Affirmation. 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.

years of litigation, including complex motion practice, discovery, and robust arm's-length negotiations between counsel facilitated by an experienced mediator.

The Settlement is particularly beneficial in light of the significant litigation risks present in this case and the risk that the Settlement Class might recover less (or nothing) if litigation continued. Defendants had substantial defenses to liability, particularly with respect to Lead Plaintiffs' ability to prove materiality, falsity, and damages, and to overcome a negative causation defense. Moreover, even though Lead Plaintiffs prevailed, in large part, in opposing Defendants' Motion to Dismiss the Amended Complaint, Defendants had 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. The Settlement eliminates these risks while providing a very favorable recovery to the Settlement Class.

To achieve the recovery here, Lead Counsel devoted substantial resources to the litigation by, among other things: (i) conducting a thorough investigation of the allegations, including gathering and analyzing information concerning the allegedly material false and misleading statements and omissions in the Registration Statement issued in connection with the Company's IPO; (ii) preparing and filing a detailed Amended Complaint; (iii) opposing Defendants' motion to dismiss the Amended Complaint, which was denied in substantial part by the Court; (iv) moving for class certification; (v) engaging in discovery; (vi) consulting with experts on damages and causation issues; and (viii) engaging in settlement discussions under the guidance of a highly regarded and experienced Mediator. At the time the Settlement was reached, Lead Counsel had a deep understanding of the strengths and weaknesses of the claims and defenses in the Action. *See generally* Fatale Affirmation at §§III-VI.

Against this backdrop, Lead Counsel requests a fee of 33 1/3% of the Settlement Fund, payment of Plaintiffs' Counsel's litigation expenses in the amount of $47,318.59, and a combined service award of $10,000 to Lead Plaintiffs for the time and resources they devoted to representing the class. As demonstrated below, the fee request is well within the range of fees awarded in comparable class action settlements by courts in New York and within the Second Circuit. Additionally, the requested fee has the full support of Lead Plaintiffs. *See* Ex. 1 at ¶6, and Ex. 2 at ¶6.

Finally, the reaction of the Settlement Class to date supports the motion. Pursuant to the Court's Notice Order, 17,375 copies of the Notice have been mailed to potential Settlement Class Members and their nominees, and the Summary Notice was published in *The Wall Street Journal* and transmitted over the *PR Newswire*. Ex. 3 at ¶¶2-10. The Notice advised potential Settlement Class Members that Lead Counsel would seek fees in an amount not to exceed 33 1/3% of the Settlement Fund and payment of litigation expenses in an amount not to exceed $150,000. *See* Ex. 3-A at ¶¶4, 47. While the October 25, 2021 deadline for Settlement Class Members to object to the requested attorneys' fees and expenses has not yet passed, to date, no objection to the Fee and Expense Application has been received.

ARGUMENT

I. THE REQUESTED ATTORNEYS' FEES ARE REASONABLE UNDER THE PERCENTAGE OF RECOVERY METHOD OR THE LODESTAR METHOD

A. The Requested Attorneys' Fees Are Reasonable Applying the Percentage of Recovery Method

Pursuant to CPLR 909, Lead Counsel respectfully requests that the Court award attorneys' fees, to be allocated among Plaintiffs' Counsel, based on a percentage of the common fund achieved in the Settlement. In *Blum v. Stenson*, 465 U.S. 886 (1984), the 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 v. Legends Hospitality, LLC*, No. 152208/2014, 2015 WL 3932897, at *5 (Sup. Ct. N.Y. Cnty. June 22, 2015) (finding that the preferable method for awarding attorneys' fees in a common fund class action settlement is the percentage method). 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); *see also Goldberger v. Integrated Res. Inc.*, 209 F.3d 43,48-50 (2d Cir. 2000) (either percentage of fund method or lodestar method may be used to determine fees, but noting the "lodestar method proved vexing" and results in "inevitable waste of judicial resources"); *In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 586 & n.7 (S.D.N.Y. 2008) ("[T]here is a strong consensus – both in this Circuit and across the country – in favor of awarding attorneys' fees in common fund cases as a percentage of the recovery.").[3]

The rationale for compensating counsel in common fund cases on a percentage basis is sound. Principally, it more closely aligns the lawyers' interest in being paid a fair fee with the interest of the class in achieving the maximum possible recovery in the shortest amount of time. Indeed, one of the nation's leading scholars in the field of class actions and attorneys' fees, Professor Charles Silver of the University of Texas School of Law, has concluded that the percentage method of awarding fees is the only method of fee awards that is consistent with class members' due process rights. Professor Silver notes:

[3] All internal quotations and citations are omitted unless otherwise stated.

> ***The consensus that the contingent percentage approach creates a closer harmony of interests between class counsel and absent plaintiffs than the lodestar method is strikingly broad.*** It includes leading academics, researchers at the RAND Institute for Civil Justice, and many judges, including those who contributed to the Manual for Complex Litigation, the Report of the Federal Courts Study Committee, and the report of the Third Circuit Task Force. Indeed, it is difficult to find anyone who contends otherwise. No one writing in the field today is defending the lodestar on the ground that it minimizes conflicts between class counsel and absent claimants.
>
> In view of this, it is as clear as it possibly can be that judges should not apply the lodestar method in common fund class actions. The Due Process Clause requires them to minimize conflicts between absent claimants and their representatives. The contingent percentage approach accomplishes this.

Charles Silver, Class Actions In The Gulf South Symposium, *Due Process and the Lodestar Method: You Can't Get There From Here*, 74 Tul. L. Rev. 1809, 1819-20 (2000) (emphasis added and footnotes omitted).

The requested fee of 33 1/3% here is within the range of percentage fees typically awarded by courts in New York and within the Second Circuit. *See, e.g.*, *Lopez v. The Dinex Group, LLC*, No. 155706/2014, 2015 WL 5882842, at *6 (Sup. Ct. N.Y. Cnty. Oct. 6, 2015) ("one-third of the settlement fund" is "well within the range of reasonableness and within the percentage regularly approved in class action [] suits"). A review of attorneys' fees awarded in class actions with comparably sized (and larger) settlements in both New York state and federal courts supports the fee request. *See, e.g.*, *Plutte v. Sea Limited, et al.*, No. 655436/2018, NYSCEF No. 121, at *6 (Sup. Ct. N.Y. Cnty. Apr. 13, 2021) (awarding 33 1/3% of $10.75 million settlement); *In re Netshoes Sec. Litig.*, No. 157435/2018, NYSCEF No. 142, at *9 (Sup. Ct. N.Y. Cnty. Dec. 10, 2020) (awarding 33 1/3% of $8 million settlement); *In re Everquote, Inc. Sec. Litig.*, No. 651177/2019, NYSCEF No. 132, at *9 (Sup. Ct. N.Y. Cnty. June 11, 2020) (awarding 33 1/3% of $4.75 million settlement); *City of Providence v. Aeropostale, Inc.*, No. 11 CIV. 7132 CM GWG,

2014 WL 1883494, at *12 (S.D.N.Y. May 9, 2014), *aff'd sub nom.* *Arbuthnot v. Pierson*, 607 F. App'x. 73 (2d Cir. 2015) (awarding 33% of $15 million settlement); *Fogarazzo v. Lehman Bros. Inc.*, No. 03 Civ. 5194 (SAS), 2011 WL 671745, at *4 (S.D.N.Y. Feb. 23, 2011) (awarding 33% of $6.75 million settlement); *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 149 (S.D.N.Y. 2010) (awarding 33.3% of $35 million ERISA class action settlement); *see also* *Mohney v. Shelly's Prime Steak, Stone Crab & Oyster Bar*, No. 06 Civ. 4270 (PAC), 2009 WL 5851465, at *5 (S.D.N.Y. Mar. 31, 2009) (collecting cases awarding over 30% and noting that "Class Counsel's request for 33% of the Settlement Fund is typical in class action settlements in the Second Circuit").

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

B. The Requested Attorneys' Fee Would Be Reasonable Under the Lodestar Method

To ensure the reasonableness of a fee awarded under the percentage-of-the-fund method, the New York courts encourage a "cross-check" of the proposed award against counsel's lodestar. *See Clemons v. A.C.I. Found., Ltd.*, No. 154573/2015, 2017 WL 1968654, at *5 (Sup. Ct., N.Y. Cnty. May 12, 2017); *Ryan v. Volume Servs. Am. Inc.*, No. 652970/2012, 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*, No. 402648/2004, 2009 WL 722294, at *9 (Sup. Ct., N.Y. Cnty. Mar. 17, 2009); *see also In re Bristol-Myers Squibb Sec. Litig.*, 361 F. Supp. 2d 229, 233 (S.D.N.Y. 2005) ("Typically, courts utilize the percentage method and then 'cross-check' the adequacy of the resulting fee by applying the lodestar method.").

Here, Plaintiffs' Counsel spent more than 1,600 hours of attorney and other professional staff time litigating the case from its inception through September 30, 2021. *See* Ex. 4-A, Ex. 5-

A, Ex. 6 (summary table of lodestars and expenses). Plaintiffs' Counsel's lodestar, derived by multiplying the hours spent by each attorney and other professional by their current hourly rates, is $1,069,415.00. *Id.*[4] The requested fee of 33 1/3% of the Settlement Fund therefore represents a multiplier of 2.6 of the total lodestar.

This multiplier is comparable to those awarded in securities class actions and other complex class litigation in both New York state and federal courts. *See, e.g.*, *Plutte v. Sea Limited, et al.*, No. 655436/2018, NYSCEF No. 95 at *16 (Sup. Ct. N.Y. Cnty. Feb. 25, 2021) and NYSCEF No. 121 at *6 (Sup. Ct. N.Y. Cnty. Apr. 13, 2021) (awarding fees representing a 3.05 multiplier); *Fernandez*, 2015 WL 3932897, at *6 (awarding fees representing a 2.5 multiplier); *Lopez*, 2015 WL 5882842, at *7 (awarding fees representing a 3.15 multiplier); *In re BHP Billiton Sec. Litig.*, No. 1:16-cv-01445, 2019 WL 1577313, at *1 (S.D.N.Y. Apr. 10, 2019) (awarding fees representing a 2.7 multiplier); *In re BISYS Sec. Litig.*, No. 04 Civ. 3840, 2007 WL 2049726, at *3 (S.D.N.Y. July 16, 2007) (awarding fees representing a 2.99 multiplier and finding that the multiplier "falls well within the parameters set in this district and elsewhere"). Fees representing multiples above a lodestar are awarded to reflect the contingency risk and other relevant enhancement factors. *See* *In re FLAG Telecom Holdings, Ltd. Sec. Litig.*, No. 02-cv-3400, 2010 WL 4537550, at *26 (S.D.N.Y. Nov. 8, 2010) ("[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.*,

[4] Additional work will be required of Lead Counsel on an ongoing basis, including: correspondence with Settlement Class Members; preparation for, and participation in, the final approval hearing; supervising the claims administration process being conducted by the Claims Administrator; and supervising the distribution of the Net Settlement Fund to Settlement Class Members who have submitted valid Claim Forms. However, Lead Counsel will not seek payment for this additional work.

Inc. Sec. Litig., No. 06-cv-1825, 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[.]").

Plaintiffs' Counsel's lodestar is based on counsel's current hourly rates, which are comparable to those in the legal community for similar services by attorneys of reasonably comparable skill, experience, and reputation.[5] Plaintiffs' Counsel's rates here range from $825 to $1,100 for partners, $565 to $800 for of counsels, and $450 to $650 for associates. *See* ¶95; Exs. 4-A, 5-A. Sample defense firm rates in 2020, gathered by Labaton Sucharow annually from bankruptcy court filings nationwide, often exceeded these rates. ¶95; Ex. 7.

Accordingly, it is respectfully submitted that the lodestar approach also supports the requested attorneys' fee.

II. THE REQUESTED FEE IS FAIR AND REASONABLE WHEN APPLYING THE RELEVANT FACTORS

The Court in *Fiala v. Metro. Life Ins. Co., Inc.*, 899 N.Y.S. 2d 531, 540 (Sup. Ct., N.Y. Cnty. 2010), set forth a series of factors that New York courts consider when determining whether a requested percentage fee is reasonable: (i) the risks of the litigation; (ii) whether counsel had the benefit of a prior judgment; (iii) the standing at bar of counsel for the plaintiff and defendants; (iv) the magnitude and complexity of the litigation and responsibility undertaken; (v) the amount recovered; (vi) the knowledge the court has of the case's history and the work done by counsel prior to trial; and (vii) what it would be reasonable for counsel to charge a victorious plaintiff.

Each of the *Fiala* factors supports approval of the requested fee.

---

[5] The Supreme Court and other courts have held that the use of current rates is proper since such rates compensate for inflation and the loss of use of funds. *See Missouri v. Jenkins*, 491 U.S. 274, 283-84 (1989).

1. *Fiala* Factor One: The Risks of the Action

The 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; *see also* *FLAG Telecom*, 2010 WL 4537550, at *27 ("Courts in the Second Circuit have recognized that the risk associated with a case undertaken on a contingent fee basis is an important factor in determining an appropriate fee award."); *Marsh ERISA*, 265 F.R.D. at 148 ("There was significant risk of non-payment in this case, and Plaintiffs' Counsel should be rewarded for having borne and successfully overcome that risk.").

The fact that Lead Plaintiffs prevailed, in large part, with respect to Defendants' Motion to Dismiss the Amended Complaint did not guarantee ultimate success. Defendants have filed a notice of appeal of the Court's order on the Motion to Dismiss and there is no guarantee of a successful outcome for Lead Plaintiffs before the Appellate Division. Lead Plaintiffs also face the substantial burdens of prevailing with respect to class certification, summary judgment, *Daubert* motions, trial, and likely post-trial appeals – a process that could possibly extend for years and might lead to a smaller recovery, or no recovery at all. Indeed, in recent years, even securities class actions that survive pleading-stage motions to dismiss have faced increasing risk of failure at class certification, *Daubert* motions, summary judgment, trial, and appeals. According to analyses of federal securities class actions conducted by NERA Consulting, 2020 saw a new record number of dismissals, "The number of cases dismissed in 2020 also set a new 10-year record with approximately 6% more cases dismissed than in 2018, the second highest year in the period." *See* Ex. 9 at 11. In 2020, out of 320 cases, 247 were dismissed or 77% of cases. *Id*. at 12.

As noted in the Fatale Affirmation, the successful prosecution of the Action faced many legal, factual, and practical obstacles.[6] *See* §VI. Indeed, in addition to the general difficulties encountered by securities class action plaintiffs, here, Lead Plaintiffs faced challenging negative causation arguments, as well as the difficulty of presenting very complex and intricate expert evidence concerning damages to a jury so as to prevail over Defendants' liability and damages arguments. The Parties were deeply divided on virtually every issue in the litigation, as detailed in the Fatale Affirmation at Section VI, as well as the accompanying Memorandum of Law in Support of Lead Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation ("Approval Brief"), and there was no guarantee Lead Plaintiffs' positions would prevail.

In the face of these many uncertainties, Lead Counsel undertook this case on a wholly contingent basis, knowing that the litigation would require the devotion of a substantial amount of time and expense with no guarantee of compensation. ¶¶97-104. Lead Counsel's assumption of this contingency fee risk strongly supports the reasonableness of the requested fee.

2. *Fiala* Factor Two: Lead Counsel Did Not Have the Benefit of a Prior Judgment

Lead Counsel investigated, brought, and litigated this action without the benefit of any prior court judgment against Defendants or relevant regulatory decision or even an investigation addressing the merits of Lead Plaintiffs' claims. Nor did it have the benefit of any earnings restatement on which to base Lead Plaintiffs' claims. Thus, this factor supports the requested fees.

[6] *In re Bayer AG Sec. Litig.*, No. 03 Civ 1546, 2008 WL 5336691, at *5 (S.D.N.Y. Dec. 15, 2008) ("shareholder actions are notoriously complex and difficult to prove").

3. *Fiala* Factor Three: Lead Counsel and Defense Counsel Are Preeminent Firms in the Securities Class Action Bar

Lead Counsel is a nationally recognized leader in the field of securities class action litigation and has substantial experience litigating and trying securities class actions in courts throughout the country. ¶107; Ex. 4-C. The attorneys who were principally responsible for prosecuting this case relied upon their experience and skill to develop and implement sophisticated strategies to overcome myriad obstacles raised by Defendants throughout the litigation.

Moreover, Lead Counsel's success should be evaluated in light of the quality of opposing counsel. Defendants are represented by lawyers from two very highly regarded law firms with national reputations, Cravath Swaine & Moore LLP and Goodwin Proctor LLP, which presented a thorough and thoughtful defense of their clients throughout the Action. Notwithstanding this formidable opposition, Lead Counsel's ability to present a strong case and its willingness to vigorously prosecute the Action enabled it to achieve a very favorable result for the Settlement Class. Thus, this factor supports the requested fees.

4. *Fiala* Factor Four: The Magnitude and Complexity of the Action and the Responsibility Undertaken

Here, at every turn, the litigation raised difficult legal and factual issues that required creativity and sophisticated analysis. As detailed in the Fatale Affirmation, the Action alleged violations of the Securities Act, raising a range of difficult legal and factual issues that required sophisticated analysis of the Offering Materials, SciPlay's financial results, and the web and mobile-based gaming industry, among other things. Moreover, as the case proceeded, the complexity, expense, and duration of continued litigation through briefing on Defendants' appeal of the Motion to Dismiss order, briefing on class certification and summary judgment, preparing and trying the case before a jury, subsequent post-trial motion practice, and a likely appeal of the

Court's rulings on class certification, summary judgment, post-trial motions, and a jury verdict would be significant.

5. *Fiala* Factor Five: 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, Lead Counsel, on behalf of Lead Plaintiffs, has secured a Settlement that provides for a substantial and certain payment of $8,275,000. The Settlement is in line with the median value of securities class action settlements in federal actions asserting claims under the Securities Act. For the ten years from 2011 through 2020, the median settlement amount in such cases was $8 million. *See* Laarni T. Bulan & Laura E. Simmons, *Securities Class Action Settlements – 2020 Review and Analysis*, at 7 (Cornerstone Research 2021), Ex. 8.

Furthermore, as detailed in the Fatale Affirmation, as well as the Approval Brief, according to Lead Plaintiffs' consulting causation and damages expert, assuming Lead Plaintiffs were able to establish liability, and without factoring in Defendants' arguments on negative causation, the 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 were not likely recoverable as Defendants would have pursued a vigorous negative causation defense. If Defendants succeeded in this regard, realistic recoverable damages based only on the July 18, 2019 disclosure, would be approximately $30.2 million, representing a recovery of approximately 27.4% of class wide damages. This estimate assumes that the entire stock drop on this alleged corrective disclosure date relates to the issues that Lead Plaintiffs claimed were false and misleading in the Registration Statement, which was subject to substantial debate. ¶¶73-75.

The recovery here of between 7% of statutory damages to 27.4% of realistic recoverable damages is a very favorable result that supports the fee request. *See, e.g.*, *Vaccaro v. New Source Energy Partners L.P.*, No. 15 CV 8954 (KMW), 2017 WL 6398636, at *6 (S.D.N.Y. Dec. 14, 2017) (approving settlement representing 6.5% of the maximum recoverable damages and noting that the settlement amount is "in line with other settlements in securities class actions"); *In re Giant Interactive Grp., Inc. Sec. Litig.*, 279 F.R.D. 151, 162 (S.D.N.Y. 2011) (settlement representing 16.5% of maximum provable damages was "in excess of the average percentage of recovery in many securities class-action lawsuits"); *see also In re Patriot Nat'l, Inc. Sec. Litig.*, No. 19-3748, 2020 WL 5868283, at *1-3 (2d Cir. Oct. 2, 2020) (approving settlement "which is 6.1 percent of what appellees agree is the settlement class's maximum potentially recoverable damages").

6. *Fiala* Factor Six: The Action's History and Work Done by Plaintiffs' Counsel

The time and effort expended by Plaintiffs' Counsel in prosecuting the Action and achieving the Settlement support the requested fee. As explained in detail in the accompanying Fatale Affirmation, Plaintiffs' Counsel, among other things: (i) conducted a thorough investigation concerning the allegedly misleading misrepresentations and omissions made by Defendants in connection with the Registration Statement for the Company's IPO that included, among other things, (a) gathering and analyzing information about SciPlay and the web- and mobile-based gaming industry and (b) the identification and contacting of 35 former employees of the Company with potentially relevant knowledge, six of whom were interviewed on a confidential basis; (ii) drafted a thorough and detailed Amended Complaint; (iii) opposed Defendants' motion to dismiss the Amended Complaint, and handled appeals from that Order; (iv) engaged in written discovery; (v) moved for class certification; (vi) consulted with experts on damages and causation

issues; and (vii) engaged in settlement discussions under the guidance of a highly regarded and experienced Mediator. *See generally* Fatale Affirmation at §§III-VI.

Plaintiffs' Counsel expended more than 1,600 hours prosecuting this Action with a lodestar value of $1,069,415.00. *See* Ex. 6. At all times, Lead Counsel took care to staff the matter efficiently and to avoid duplication of effort. The substantial time and effort devoted to this case by Plaintiffs' Counsel, and their effective management of the litigation, was critical to obtaining the favorable result achieved by the Settlement. Lead Counsel's efforts will continue, if the Court approves the Settlement, as it will work through the settlement administration process, assist Settlement Class Members, and distribute the Settlement proceeds, without seeking any additional compensation.

Accordingly, the amount of time and effort devoted to this Action by Plaintiffs' Counsel confirm that the fee award requested is reasonable. Thus, this factor supports the fee request.

7. *Fiala* Factor Seven: The Contingent Fees Charged to a Successful 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 v. Jenkins*, 491 U.S. 274, 285-86 (1989). If this were an individual case, the customary contingent fee arrangement would be in the range of one-third of the recovery. *See* *Blum v. Stenson*, 465 U.S. 886, 903 n.* (1984) ("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, Lead Counsel respectfully submits that its requested one-third fee is strongly supported by a review of all relevant criteria and should be approved.

III. PLAINTIFFS' COUNSEL'S EXPENSES WERE REASONABLY INCURRED AND NECESSARY FOR THE PROSECUTION OF THE ACTION

Lead Counsel's fee application includes a request for payment of Plaintiffs' Counsel's litigation expenses, which were reasonably incurred and necessary to prosecute the Action. As set forth in the Fatale Affirmation, Plaintiffs' Counsel incurred $47,318.59 in litigation expenses. *See* Ex. 6 (summary table); Exs. 4-B, 5-B. This amount is well below the $150,000 cap that the Notice informed potential Settlement Class Members counsel may apply for, and which—to date—there has been no objection to.

The amount of litigation expenses is consistent with the stage of the litigation. Plaintiffs' Counsel incurred expenses related to, among other things, legal research, expert and consultant fees, and the mediation. Complete breakdowns by category of the expenses incurred by Plaintiffs' Counsel are set forth in Exhibits 4-B and 5-B to the Fatale Affirmation. It is respectfully submitted that the expenses are properly recoverable by counsel. *See, e.g.*, *Lopez*, 2015 WL 5882842, at *8 ("Courts typically allow counsel to recover their reasonable out-of-pocket expenses."); *Flag Telecom*, 2010 WL 4537550, at *30 ("It is well accepted that counsel who create a common fund are entitled to the reimbursement of expenses that they advanced to a class.").

The main expense here relates to the retention of Lead Plaintiffs' consulting damages and causation expert. This expense totals $17,438.75, or approximately 37% of the total litigation expenses. ¶110; Ex. 4-B. Principally, Lead Plaintiffs retained a causation and damages expert who contributed to the prosecution of this Action by, among other things, analyzing negative causation and damages issues, including in connection with the Parties' mediation, and developing the proposed Plan of Allocation.

Computerized research costs total $11,850.60, or approximately 25% of total expenses. *See* Ex. 4-B. These are the charges for computerized factual and legal research services, including

PACER, Westlaw, LexisNexis Risk Solutions and LexisNexis. These services allowed counsel to perform media searches on the Company, obtain analysts' reports and financial data for the Company, and conduct legal research. ¶111.

Lead Counsel also paid $7,175.00 in mediation fees assessed by the Mediator in this matter (approximately 15% of total expenses). ¶112.

Overall, the expenses sought are the types of expenses that are necessarily incurred in complex commercial litigation and securities class actions, and regularly awarded by courts. To date, there have been no objections to the expense request.

IV. SERVICE AWARDS TO LEAD PLAINTIFFS

Lead Plaintiffs respectfully request a service award of $5,000 each for the time and effort they expended in connection with litigating this Action on behalf of the Settlement Class. *See* Exs. 1 and 2. Here, as described more fully in Lead Plaintiffs' submissions, Lead Plaintiffs reviewed the significant pleadings and memoranda filed with the Court and the Court's orders, communicated with counsel regarding litigation developments and strategy, responded to discovery requests, and discussed with counsel the potential for settlement and ultimately the agreed-to terms. *Id.*

The requested service awards are comparable to service awards granted by New York courts. *See, e.g.*, *Netshoes*, slip op. at 9 (awarding $5,000 service award to lead plaintiff); *Charles*, 2017 WL 6539280, at *2-3, *5 (awarding $10,000 service award); *Lopez*, 2015 WL 5882842, at *3-4, *8 (awarding $20,000 service award); *see also City of Austin Police Ret. Sys. v. Kinross Gold Corp.*, No. 1:12-cv-01203-VEC, 2015 WL 13639234, at *4 (S.D.N.Y. Oct. 19, 2015) (awarding $16,800 to several plaintiffs "to compensate them for their reasonable costs and expenses directly relating to their representation of the Class").

The Notice informed potential Settlement Class Members that Lead Plaintiffs would seek awards and, to date, no objections have been received to this request. Therefore, Lead Plaintiffs respectfully request that the Court grant the service awards of $10,000, in the aggregate.

CONCLUSION

For the foregoing reasons, Lead Counsel respectfully requests, on behalf of Plaintiffs' Counsel, that the Court award attorneys' fees in the amount of 33 1/3% of the Settlement Fund, which includes accrued interest; $47,318.59 in litigation expenses incurred by Plaintiffs' Counsel; and $10,000 as a service award to Lead Plaintiffs. A proposed order will be submitted with Lead Counsel's reply papers, after the deadline for objecting has passed.

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 6,190 words.

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