UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ASHLEY PIERRELOUIS, individually, and on behalf of all others similarly situated, Plaintiff, v. GOGO, INC., MICHAEL J. SMALL, NORMAN SMAGLEY, BARRY ROWAN, and JOHN WADE, Defendants.	Case No. 1:18-cv-04473 Honorable Jorge L. Alonso

DECLARATION OF CASEY E. SADLER IN SUPPORT OF: (I) LEAD PLAINTIFF'S 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 REIMBURSEMENT OF LITIGATION EXPENSES

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I, Casey E. Sadler, declare as follows:

I. INTRODUCTION

1. I am an attorney admitted to practice before this Court. I am a partner at the law firm Glancy Prongay & Murray LLP ("GPM"), one of the Court-appointed Lead Counsel in this Action.[1] GPM represents the Court-appointed Lead Plaintiff Daniel Rogers ("Lead Plaintiff" or "Plaintiff") and the proposed Settlement Class. I have personal knowledge of the matters set forth herein based on my participation in the prosecution and settlement of the claims asserted in the Action.

2. I respectfully submit this Declaration in support of Lead Plaintiff's motion, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, for final approval of the proposed $17,300,000 settlement (the "Settlement") that the Court preliminarily approved by Order dated May 3, 2022 (the "Preliminary Approval Order,"); as well as of the proposed plan for allocating the proceeds of the Net Settlement Fund to eligible Settlement Class Members (the "Plan of Allocation") (collectively, the "Final Approval Motion"). ECF No. 154.

3. I also respectfully submit this Declaration in support of Lead Counsel's motion, on behalf of all Plaintiff's Counsel,[2] for an award of attorneys' fees in the amount of 33⅓% of the Settlement Fund, which equates to $5,766,666.67, plus interest earned at the same rate as the Settlement Fund; reimbursement of Lead Counsel's expenses in the amount of $139,347.45; and an award in accordance with the Private Securities Litigation Reform Act of 1995 ("PSLRA") for costs and expenses, including lost wages, incurred by Lead Plaintiff Daniel Rogers of $20,000 related to his representation of the Settlement Class.

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[1] Unless otherwise defined, all capitalized terms herein have the same meanings as set forth in the Stipulation and Agreement of Settlement dated April 12, 2022 (the "Stipulation"). ECF No. 150-1.

[2] Plaintiff's Counsel consists of Lead Counsel; Court-appointed liaison counsel, Lubin Austermuehle; and additional counsel Labaton Sucharow LLP and Lawrence Kamin, LLC.

4. The proposed Settlement now before the Court provides for the resolution of all claims in the Action in exchange for a cash payment of $17,300,000. As detailed below, Lead Plaintiff and Lead Counsel respectfully submit that the Settlement represents an extremely favorable result for the Settlement Class, especially when juxtaposed against the significant risks of continued litigation. In fact, the maximum potential damages potentially recoverable for the Settlement Class, ***if*** Plaintiff fully prevailed on each of his claims at both summary judgment and after a jury trial, and ***if*** the Court and jury fully accepted Plaintiff's loss causation and damages arguments—*i.e.*, Plaintiff's ***best-case scenario***—is approximately $213.5 million for purchasers of Gogo Common Stock. Under this best-case scenario, the $17.3 million Settlement Amount represents approximately 8% of the total maximum damages potentially recoverable in this Action. Of course, Defendants had advanced, and would continue to advance, serious arguments with respect to liability, loss causation and damages. If any of these arguments were accepted, Plaintiff's potential recovery would have been substantially reduced or completely eliminated.

5. For example, Defendants argued or would have argued, *inter alia*, that: (i) the drop in Gogo's stock price following the alleged disclosures on February 22, 2018 and May 4, 2018, could be attributed to other confounding information unrelated to the de-icing issues, including declining average revenue per plane, a transition in the pricing model, and competition from other in-flight internet service providers; (ii) May 8, 2018 was not a valid disclosure date because the information that led to the Moody's downgrade on that day was already in the public domain; and (iii) Lead Plaintiff's absolute best-case damages scenario—assuming he prevailed on liability—would be $50 million, which equates to a recovery of approximately 35%. A recovery within the range of 8% to 35% is well above the median recovery in securities class action settlements. Therefore, and as explained further below, the Settlement provides a considerable benefit to the

Settlement Class by conferring a substantial, certain, and immediate recovery, while avoiding the significant risks and expense of continued litigation.

6. The proposed Settlement is the result of Lead Counsel's extensive efforts, which included, among other things: conducting an extensive investigation into Gogo's allegedly wrongful acts, which involved, *inter alia*, hiring numerous experts and working with investigators to interview former employees; drafting three comprehensive amended complaints based on this investigation; engaging in substantial briefing opposing multiple rounds of motions to dismiss, including one round of briefing that resulted in the Court denying Defendants' motion to dismiss in its entirety; drafting and exchanging initial disclosures; negotiating a confidentiality order and ESI protocol; drafting and serving requests for the production of documents and interrogatories on Defendants; preparing responses to discovery requests from Defendants, including both requests for documents and interrogatories; engaging in extensive mediation efforts with an experienced neutral, which included producing documents and reviewing and analyzing documents produced by Defendants; drafting the Stipulation and supporting documents and engaging in negotiations with Defendants' Counsel with respect to these documents; and successfully moving the Court for preliminary approval of the Settlement and overseeing the notice process for the Settlement. Based on the aforementioned efforts, Lead Plaintiff and Lead Counsel are well informed of the strengths and weaknesses of the claims and defenses in the Action, and they believe that the Settlement represents an excellent outcome for the Settlement Class.

7. As discussed in further detail below, the Plan of Allocation was developed with the assistance of Lead Plaintiff's damages expert and provides for the distribution of the Net Settlement Fund to Settlement Class Members who submit Claim Forms that are approved for payment by the Court on a *pro rata* basis based on their losses attributable to the alleged fraud.

8. With respect to the Fee and Expense Application, as discussed in the Fee Memorandum, the requested fee of 33⅓% of the Settlement Fund (or $5,766,666.67 plus interest earned at the same rate as the Settlement Fund), was approved by the Lead Plaintiff and is well within the range of percentage awards granted by courts in the Seventh Circuit in comparable class action litigation. Additionally, although a lodestar multiplier analysis is not required in the Seventh Circuit, the requested fee results in a multiplier of 2.35 on Lead Counsel's lodestar. This is well within the range of multipliers routinely awarded by courts in the Seventh Circuit.

9. For all of the reasons discussed in this Declaration and in the accompanying memoranda, including the quality of the result obtained and the numerous significant litigation risks discussed fully below, Lead Plaintiff and Lead Counsel respectfully submit that the Settlement and the Plan of Allocation are fair, reasonable, and adequate and should be approved. In addition, Lead Counsel respectfully submit that their request for attorneys' fees and reimbursement of Litigation Expenses is also fair and reasonable and should be approved.

II. PROSECUTION OF THE ACTION[3]

A. Background

10. During the Settlement Class Period, Gogo Inc. ("Gogo" or the "Company") provided in-flight internet connectivity equipment and services to airlines and airline passengers. At issue in this lawsuit is Gogo's "2Ku global satellite system," referred to herein as "2Ku." 2Ku was initially introduced to the market in early 2016. Gogo billed 2Ku as a new product capable of providing in-flight connectivity at up to twice the speed of its previous connectivity technology and generating upwards of 30% more revenue per aircraft.

[3] The statements contained in this section of my declaration are based on the allegations set forth in the Lead Plaintiff's Third Amended Complaint. Defendants have, at all times, denied these allegations.

11. The new technology was the center of the plan Defendants presented to investors in 2016 to put the Company on the path to profitability after years of burning cash to fuel growth. Defendants touted 2Ku as "market leading technology" and claimed its dramatically faster speeds and increased availability would win over new and existing airline customers and inspire more passengers to use in-flight wi-fi. Gogo's revenues would rise as the Company installed 2Ku on more planes, and each installed plane would see higher "average revenue per aircraft" ("ARPA") as users or airlines paid for usage. Defendants further explained that as 2Ku was deployed on more planes, and each plane generated more revenue, the Company would see its margins improve and its average costs decrease. Before and during the Settlement Class Period, Defendants referred to these four drivers of growth—more planes, increased ARPA, reduced average cost, and improving margins—as key to achieving profitability.

12. 2Ku was Gogo's chance to compete for new customers and against its competitor Viasat, but the strategy required the Company to heavily subsidize 2Ku installations and enter into long-term satellite bandwidth contracts to cover its customers' flight paths. To fund these costs, Gogo increased its financial leverage, including by pledging substantially all of its assets to 12.5% senior secured bonds that limited the Company's ability to borrow economically elsewhere. Having made substantial long-term commitments operationally and financially, Gogo's large backlog of 2Ku orders were expected to provide relief and a path to prosperity.

13. The basis of Plaintiff's claims in this Action is that the 2Ku technology wasn't working as advertised. When the cold weather hit in the winter of 2016-2017, 2Ku systems began to fail in alarming numbers. This was a far cry from the 98% availability that Defendants were touting to the market, and enough to spur the Company into immediate action to attempt to privately correct the problem.

14. Gogo quickly worked with a customer to ground an affected plane, and sent engineers from ThinKom, the company that developed the satellite technology, to inspect the 2Ku system. After removing the radome that protects the externally mounted antennae array, the engineers immediately saw that de-icing fluid was leaking into the radome when the plane was being sprayed, causing the antennas to stick and malfunction. Once the cause was identified, Gogo began to work on finding a solution in February 2017, the beginning of the Settlement Class Period.

15. Despite discovering the de-icing issue in the winter of 2016-2017, Defendants concealed the issue from investors. Defendants' motive was straightforward. They understood that if Gogo disclosed a substantial defect with the 2Ku system, new and existing customers would delay installing 2Ku or, worse, cancel their contracts. Even Gogo's existing contracts had a clause that allowed customers to cancel if they could replace Gogo products with a superior product. And if investors learned of the defect, the price of Gogo's securities would decline to reflect the higher risk of failure, which would further limit Gogo's ability to raise the capital it needed.

16. Despite covertly working on the remedy, and knowing the extent of the necessary repair, Defendants not only hid the defect, they touted the speed and efficiencies of the installations, telling investors to expect average costs to go down and revenues to rise as the Company expanded the fleet of 2Ku equipped planes. Defendants made these representations knowing that the defective 2Ku system would need to be repaired when a fix was found, requiring Gogo to continue burning cash and to coordinate with its customers to ground planes for the repairs that were, in effect, a second installation. This would undoubtedly damage customer relationships.

17. Instead of disclosing the problem, Defendants touted the success of the 2Ku launch.

18. By concealing the de-icing issue, Gogo was able to raise $100 million in additional cash during the Settlement Class Period by issuing senior secured notes on September 25, 2017. When winter hit in 2017, the Company had installed defective 2Ku units on hundreds of planes.

And, as Defendants knew they would, the 2Ku units failed in cold weather. According to the Company's after-the-fact disclosures, they failed at the same rate they had the previous winter—dropping to availability in the mid-80 percent range. The difference was that instead of impacting 100 planes, the problem was impacting hundreds—a significant portion of Gogo's commercial aviation division, and enough for airlines and passengers to take notice.

19. As the issue became apparent to customers, Delta, which had over 200 2Ku planes, became involved in the trouble shooting process, and issued a memo to cabin crew to alert them to the problem so they could deal with customer complaints. With the de-icing issue beginning to be noticed by the public and Gogo's customers, Defendants finally began to disclose the problem, though they initially downplayed its seriousness. In a February 22, 2018, call with investors, Defendant Wade admitted some details about the radome and de-icing fluid causing "stickiness" within the antenna, but portrayed the problem as "early-stage growing pains." On this news, Gogo's share price declined from $10.51 per share on February 21, 2018 to close at $9.13 per share on February 22, 2018 (and, in fact, declined further the next day to close at $8.88 per share on February 23, 2018).

20. On March 5, 2018, Defendant Small stepped down as CEO and was replaced by Oakleigh Thorne, a board member and shareholder with a 30% stake in the Company. Only thereafter did the Company disclose the true extent of the damage, admitting that the de-icing problem was going to be expensive and complex to address, and was going to have a material impact on the Gogo's revenue and outlook. Defendants also finally admitted Gogo had to scrap the growth and profitability plan Defendants had touted throughout the Settlement Class Period.

21. Following these revelations and a subsequent downgrade from Moody's, the Company lost nearly half its market value, with its stock price falling from $9.59 per share on May 3, 2018 to $5.06 per share on May 8, 2018.

B. Commencement Of The Instant Action

22. This Action began on June 27, 2018. ECF No. 1. On October 10, 2018, the Court appointed Maria Zingas and Daniel Rogers as lead plaintiffs for the Action and approved their selection of Glancy Prongay & Murray LLP ("GPM") and Levi & Korsinsky, LLP ("L&K") as Lead Counsel and DiTommaso Lubin Austermuehle, P.C. as Liaison Counsel for the class. ECF No. 41.

C. Lead Counsel's Investigation, First And Second Amended Complaints And Defendants' Motions To Dismiss

23. Lead Counsel conducted an extensive detailed investigation prior to filing the first and second amended complaint. Following Lead Counsel's appointment, counsel conducted a comprehensive investigation into Gogo's allegedly wrongful acts, which included, among other things: (1) reviewing and analyzing (a) Gogo's filings with the U.S. Securities and Exchange Commission ("SEC"), (b) public reports, blog posts, research reports prepared by securities and financial analysts, and news articles concerning the Company, (c) Gogo's investor call transcripts, and (d) other publicly available material related to Gogo and the Individual Defendants; and (2) retaining and working with private investigators who conducted numerous interviews of former Company employees and other sources of relevant information. Lead Counsel also consulted with aviation, loss causation and damages experts and issued multiple Freedom of Information Act requests that resulted in the receipt of relevant documents from various government agencies.

24. On December 10, 2018, lead plaintiffs Maria Zingas and Daniel Rogers filed and served their Amended Class Action Complaint for Violation of the Federal Securities Laws (the "First Amended Complaint") asserting claims against all Defendants under Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder, and against the Individual Defendants under Section 20(a) of the Securities Exchange Act of 1934 ("Exchange Act"). Specifically, the First Amended Complaint alleged that Defendants made false and misleading statements and

omissions about Gogo's "2Ku global satellite system" or "2Ku" based on allegations that 2Ku was suffering from a significant product design defect—de-icing fluid used on the exterior of the planes was making 2Kus inoperable. ECF No. 55.

25. On February 8, 2019, Defendants moved to dismiss the First Amended Complaint. ECF Nos. 63-65. On April 9, 2019, lead plaintiffs Maria Zingas and Daniel Rogers filed their opposition to the motion to dismiss (ECF No. 66) and, on May 9, 2019, Defendants filed a reply in further support of their motion to dismiss (ECF No. 67). On October 16, 2019, the Court granted Defendants' motion to dismiss without prejudice. ECF No. 68.

26. On December 20, 2019, lead plaintiffs Maria Zingas and Daniel Rogers filed and served their Second Amended Class Action Complaint for Violation of the Federal Securities Laws (the "Second Amended Complaint"), again asserting claims under the Exchange Act against Defendants based upon allegations similar to those in the First Amended Complaint. ECF No. 73. On February 21, 2020, Defendants filed a motion to dismiss the Second Amended Complaint. ECF Nos. 80-82.

27. Following several extensions of lead plaintiffs' time to respond to Defendants' motion to dismiss the Second Amended Complaint because of the Covid-19 public emergency, on July 17, 2020, Lead Plaintiff filed and served a motion for leave to amend the Second Amended Complaint.[4] ECF Nos. 97-99. The Court granted Lead Plaintiff's motion on July 21, 2020. ECF No. 100.

D. The Operative Complaint And The Court's Denial Of The Motion To Dismiss

28. On July 22, 2020, Lead Plaintiff filed and served his 93-page Third Amended Class Action Complaint for Violation of the Federal Securities Laws (the "Complaint"). ECF No. 101.

[4] In the filing, Lead Plaintiff also informed the Court that lead plaintiff Maria Zingas was no longer able to serve as a lead plaintiff.

The Complaint, like the First and Second Amended Complaints, asserted claims against all Defendants under Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder, and against the Individual Defendants under Section 20(a) of the Exchange Act. The Complaint alleged claims similar to those alleged in the Second Amended Complaint, but also included allegations relating to information obtained from one of Gogo's largest investors during the Settlement Class Period, as well as information from five former Gogo employees who were alleged to have been directly involved in discovering and attempting to remedy the alleged 2Ku de-icing defect.

29. On September 21, 2020, Defendants filed and served their motion to dismiss the Complaint. ECF Nos. 106-08. Therein, Defendants argued that Plaintiff had still not pleaded that any of the challenged statements was false when made, Defendants knew the severity, magnitude or persistence of the design problems throughout the Settlement Class Period, that the CEO's significant purchases of Gogo stock defeated scienter, that there was no motive to commit fraud and that all of the forward-looking statements were protected by the PSLRA safe harbor. *See* ECF No. 107.

30. On November 20, 2020, Lead Plaintiff filed and served his opposition to Defendants' motion (ECF No. 111), and, on December 21, 2020, Defendants filed and served their reply (ECF No. 112).

31. On April 26, 2021, the Court denied Defendants' motion to dismiss in its entirety. ECF No. 115 ("MTD Order"; *Pierrelouis v. Gogo, Inc.*, 2021 WL 1608342 (N.D. Ill. Apr. 26, 2021)). Judge Alonso found material falsity pled because Plaintiff's new allegations established that the de-icing issue began to manifest itself before the start of the Settlement Class Period in a significant portion of Gogo's 2Ku fleet. ECF No. 115 at 11. The former employee allegations showed that before the start of the Settlement Class Period, Gogo was already making extensive

remediation efforts and preparing to clear related potential regulatory hurdles. *Id.* These allegations established "that the de-icing problem had shown itself to be of a ***'sufficient magnitude'*** to make defendants' statements misleading at the time they were made." *Id.* at 12.

32. The Court further held that Plaintiff adequately alleged scienter based on the new former employee allegations "demonstrating that, by the beginning of the class period, an ominously large percentage of the 2Ku systems in operation had experienced problems, and Gogo was engaged in an extensive internal effort to assess and correct the de-icing fluid problem in late 2016 and early 2017." ECF No. 115 at 12. The Court also found that Plaintiff's new allegations about Defendants' motive to conceal the de-icing defect—because "***the timing of [the 2Ku] rollout was critical***, and any disruption to Gogo's installation plans risked endangering Gogo's financial position"—supported scienter. *Id.* at 12-14. Notably, the Court soundly rejected Defendants' various scienter arguments, including that Defendants genuinely or "merely careless[ly]" believed that the de-icing issue was a mere glitch that was easy to fix, because "***it seems unlikely, given the importance of the 2Ku product to Gogo's fortunes and the scale of the internal effort to fix the de-icing problem***, that Gogo and members of 'senior management' such as the individual defendants were unaware of the magnitude of the problem." *Id.* at 14. Finally, the Court also found unpersuasive Defendants' argument regarding the lack of insider sales and Defendant Small's purchase of Gogo stock in November 2017, correctly recognizing that "Plaintiff does not need to allege any motive" and:

> [T]he Court sees no reason why it is particularly unlikely that Small's stock purchase was a 'gamble' he took in the hope that he could 'conceal bad news' long enough for it to be overtaken by good news,' such as the discovery of a miracle fix for the de-icing problem. ***The fact that the gamble failed is not inconsistent with its having been a 'considered,' if 'reckless' gamble.***

Id. at 15-16.

33. Defendants did not seek reconsideration of the Court's motion to dismiss order or appeal it in any way. On June 24, 2021, Defendants filed and served their Answer and Defenses to the Complaint. ECF No. 125.

E. Discovery Commences And The Parties Agree To Mediate

34. With the automatic discovery stay imposed by the PSLRA having been lifted following the Court's order denying the motion to dismiss the Complaint, discovery began promptly. The Parties held a Rule 26(f) conference, filed a Joint Initial Status Report (ECF No. 126), and submitted a confidentiality order (ECF No. 135).

35. Judge Alonso held an Initial Status Hearing on July 8, 2021, wherein he entered certain case deadlines proposed by the Parties, including the service of initial discovery requests and the close of fact discovery. ECF No. 127.[5] Consistent with that schedule, the Parties exchanged initial disclosures and initial discovery requests on July 9, 2021 and negotiated an ESI protocol. The initial discovery requests included both requests for production of documents and interrogatories. Plaintiff's Counsel worked with Lead Plaintiff and Stelliam Investment Management ("Stelliam"), one of Gogo's largest investors, that had agreed to have a representative be interviewed as part of Plaintiff's Counsel's efforts in drafting the Complaint, in responding to these discovery requests.

36. During the discovery meet and confer process, the Parties began exploring whether a settlement could be reached through mediation. After negotiating the contours of a pre-mediation document exchange, the Parties agreed to go forward with a private mediation. On August 12, 2021, Magistrate Judge David M. Weisman held an Initial Status Hearing, wherein he approved

[5] The Court also referred the case to Magistrate Judge M. David Weisman for "discovery supervision" with authority to set the case schedule (including for dispositive motions), but not to decide class certification or dispositive motions.

the Parties' request to temporarily stay discovery, including the exchange of discovery responses, pending the outcome of the mediation. ECF Nos. 133, 134.

F. The Mediation Process, Which Included Discovery And Substantial Briefing, Ultimately Results In A Settlement

37. The Parties selected David M. Murphy, Esq. of Phillips ADR, one of the leading neutrals in the country, as mediator and scheduled a mediation session for September 30, 2021.

38. In advance of the mediation, Defendants produced the Company's insurance policies and relevant documents relating to the 2ku de-icing problem, including the Board of Director meeting minutes. Plaintiff's Counsel reviewed and analyzed Defendants' production as part of the mediation process. Additionally, as part of the mediation process, Plaintiff's Counsel produced documents related to Lead Plaintiff's and Stelliam's transactions in Gogo securities to Defendants.

39. Following the Parties' pre-mediation document productions and review of the productions, the Parties exchanged and provided to the mediator detailed mediation statements and exhibits that addressed the issues of liability, loss causation and damages.

40. On September 30, 2021, Plaintiff's Counsel and Defendants' Counsel participated in a full-day mediation session Mr. Murphy. The session ended without an agreement being reached.

41. While a settlement was not reached at the mediation itself, the Parties continued to explore the possibility of a settlement and continued negotiations with the assistance of Mr. Murphy for the next several days. These further discussions culminated in a mediator's recommendation to resolve the Action for $17,300,000 in cash for the benefit of the Settlement Class. The Parties accepted Mr. Murphy's recommendation on October 10, 2021.

42. On October 12, 2021, the Parties filed a Joint Status Report informing the Court that the Parties had reached an agreement in principle to settle the case. ECF No. 140.

43. Over the next few months, the Parties negotiated the terms of the Settlement, as set forth in the Stipulation, as well as exhibits thereto. On April 12, 2022, the Parties executed the Stipulation, which was filed with the Court, along with Plaintiff's motion seeking preliminary approval of the Settlement, on April 14, 2022. ECF Nos. 148-51.

G. Preliminary Approval Of The Settlement

44. On May 3, 2022, the Court held oral argument on the preliminary approval motion.

45. On May 4, 2022, the Court entered the Preliminary Approval Order, directing notice of the Settlement to be disseminated to potential members of the Settlement Class. ECF No. 154.

46. The Settlement Class is defined as:

> all persons who and entities that purchased or otherwise acquired Gogo Common Stock, and/or Gogo Convertible Notes, and/or Gogo Senior Secured Notes, and/or Gogo Call Options, and/or wrote Gogo Put Options, during the period from February 27, 2017 through May 4, 2018, inclusive (the "Settlement Class Period"), and were damaged thereby. Excluded from the Settlement Class are: (a) Persons who suffered no compensable losses; and (b)(i) Defendants; (ii) any person who served as a partner, control person, executive officer and/or director of Gogo during the Settlement Class Period, and members of their Immediate Family; (iii) present and former parents, subsidiaries, assigns, successors, affiliates, and predecessors of Gogo; (iv) any entity in which Defendants have or had a controlling interest during the Settlement Class Period; (v) any trust of which any Individual Defendant is the settlor or that is for the benefit of any Individual Defendant and/or member(s) of their Immediate Family; (vi) Defendants' liability insurance carriers; and (vii) the legal representatives, heirs, successors, and assigns of any person or entity excluded under provisions (i) through (vi) hereof. Also excluded from the Settlement Class are any persons who and entities that exclude themselves by submitting a request for exclusion that is accepted by the Court.

Id. at ¶ 1.

III. THE SETTLEMENT IS REASONABLE IN LIGHT OF THE POTENTIAL RECOVERY IN THE ACTION

47. The Settlement is fair and reasonable in light of the potential recovery of available damages. If Plaintiff had fully prevailed on his claims at both summary judgment and after a jury trial, if the Court certified the Settlement Class, and if the Court and jury accepted Plaintiff's damages theory, including proof of loss causation for all of stock price drop dates alleged in this

case—*i.e.*, Plaintiff's ***best-case scenario***—the estimated total ***maximum*** damages would be approximately $213.5 million for purchasers of Gogo Common Stock. Thus, the $17,300,000 Settlement Amount represents approximately 8% of the total ***maximum*** damages potentially available in this Action. This amount compares favorably to other securities class action settlements, and indeed, is an excellent recovery for the Settlement Class. *See, e.g.*, Ex. 8 (excerpt from Stefan Boettrich and Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2021 Full-Year Review* (NERA Jan. 25, 2022) at p. 24, Fig. 22 (median recovery in securities class actions in 2021 was approximately 1.8% of estimated damages).

48. In contrast, Defendants would have contended that Plaintiff's damages were greatly overstated. As noted below, Plaintiff believes that Defendants could put forward several damages and loss causation arguments that, if accepted, would have greatly reduced damages. For example, Defendants argued or would have argued, among other things, that Lead Plaintiff's alleged Settlement Class Period—which spanned two winters—was far too long because the evidence would show that the de-icing issue was not a material problem during the first winter, and, even if it may have been a material issue at some time during the second winter, it was timely disclosed. Defendants further asserted that they took timely steps to address the de-icing problem, that they believed throughout the Settlement Class Period that they were addressing the problem appropriately, and that as a result, there was no basis to allege that they had any intent to commit, or that they had committed, securities fraud. If Defendants had prevailed on any or all of these issues, damages would have been significantly reduced, if not eliminated.

49. Moreover, Defendants also argued or would have argued, *inter alia*, that: (i) the drop in Gogo's stock price following the alleged disclosures on February 22, 2018 and May 4, 2018, could be attributed to other confounding information unrelated to the de-icing issues, including declining average revenue per plane, a transition in the pricing model, and competition

from other in-flight internet service providers; and (ii) May 8, 2018 was not a valid disclosure date because the information that led to the Moody's downgrade on that day was already in the public domain. As such, Defendants could have argued that Lead Plaintiff's absolute best-case damages scenario—assuming they prevailed on liability—would be $50 million, which equates to a recovery of approximately 35%.

50. Accordingly, Lead Counsel's efforts have resulted in a recovery of between 8% and 35% of the Settlement Class's Common Stock damages.[6]

51. The foregoing numbers, however, tell only part of the story. As summarized in the next section, there were very real additional risks that could have resulted in a much smaller recovery (or none at all), if the case had proceeded through formal discovery, class certification, summary judgment, trial, and likely appeal. The Settlement, however, eliminates those risks and provides an immediate, substantial benefit to the Settlement Class.

IV. THE RISKS OF CONTINUED LITIGATION

A. Risks To Proving Liability

52. Lead Plaintiff and Lead Counsel recognized that this Action presented a number of substantial risks to establishing liability.

53. Defendants forcefully argued in their motions to dismiss, and undoubtedly would continue to argue at summary judgment and trial, that the alleged misstatements were not actionable since the Company had appropriately acted once they had learned of the 2ku defect. Specifically, Defendants claimed that they promptly began to work on a solution to the defect once they learned of it and that they believed that they had a fix that would be deployed before the

[6] These figures do not include damages from Gogo Options and Notes. As explained in the Notice, Gogo Call and Put Option trading accounted for less than 2.0% of total dollar trading volume for Gogo Securities during the Settlement Class Period. Consequently, claims for Gogo Call and Put Option transactions are allotted 2.0% of the Settlement pursuant to the Plan of Allocation.

winter. As such, Defendants had no reason to believe that the defect would be an issue going forward and once they learned that the fix was not working, they promptly disclosed the issue in Gogo's next quarterly disclosure. Although Lead Plaintiff believes that he had strong counter-arguments to Defendants' assertions, there is no guarantee that the trier of fact would have found these arguments more persuasive than Defendants' compelling narrative.

54. Even if Lead Plaintiff could demonstrate falsity, Defendants would have continued to argue that there was no intent to deceive or scienter. Specifically, Defendants would continue to argue that even though Defendants became aware of the de-icing issue that they had no reason to doubt that the problems would be resolved prior to the next winter due to their efforts to remedy the defect. Moreover, Defendants would also argue that the prompt disclosure once they learned the remedy was ineffective further undermines scienter. Additionally, Defendants would continue to argue that the fact that the Company's CEO, Michael Small, purchased 100,000 shares of Gogo stock even further undermines any intent to commit fraud.

55. Indeed, despite believing that this Action is meritorious, Lead Plaintiff and Lead Counsel were well aware of the high hurdle they would have to surmount in order to successfully prove that Defendants acted with the requisite mental state of scienter—*i.e.*, an intent to deceive or extreme recklessness—to ultimately prove Defendants' liability under the federal securities laws.

B. Risks To Proving Loss Causation And Damages

56. Even assuming that Lead Plaintiff overcame the risk of establishing Defendants' liability, as discussed above, Lead Plaintiff would have confronted considerable challenges in establishing loss causation and class-wide damages.

57. Pursuant to *Dura Pharmaceuticals, Inc. v. Broudo*, 544 U.S. 336 (2005), it is Plaintiff's burden to prove loss causation and damages. This would require Plaintiff to proffer

expert testimony as to: (a) what the "true value" of Gogo Securities would have been had there been no alleged material misstatements or omissions; (b) the amount by which Gogo Securities shares were inflated (or deflated) by the alleged material misstatements and omissions; and (c) the amount of artificial inflation removed by the purported corrective disclosures. Defendants almost certainly would have presented their own damages expert(s) to present conflicting conclusions and theories as to the reasons for the declines in Gogo Securities on the alleged disclosure dates, requiring a jury to decide the "battle of the experts"—an expensive and intrinsically unpredictable process.

58. Moreover, expert testimony can often rest on many assumptions, any of which risks being rejected by a jury. A jury's reaction to such expert testimony is highly unpredictable, and Lead Plaintiff recognizes that, in a such a battle, there is the possibility that a jury could be swayed by Defendants' expert(s) and could find that only a fraction of the amount of damages Lead Plaintiff contended were suffered by the Settlement Class. Thus, the amount of damages that the Settlement Class would actually recover at trial, even if successful on liability issues, was uncertain. Similarly, there was no assurance that Lead Plaintiff's key evidence and testimony relating to liability and damages would be admitted as evidence by the Court at trial. These issues could have seriously affected Lead Plaintiff's ability to successfully prosecute this Action.

59. In sum, had any of Defendants' loss causation and damages arguments been accepted at summary judgment or trial, they could have dramatically limited—if not eliminated—any potential recovery by the Settlement Class.

C. Other Risks, Including Trial And Appeals

60. In addition, any future recovery would require Plaintiff to prevail at several later stages of the litigation, each of which presents significant risks in complex class actions such as this. For example, Plaintiff would have to move to certify the class, which, if granted, would likely

result in Defendants filing a Rule 23(f) petition for appellate review. As there was only one plaintiff, if Defendants were able to demonstrate that he was atypical in any way, it could put the entire case into jeopardy.

61. Plaintiff would also have to complete substantial fact and expert discovery, which would entail, among other things, document production, review and analysis of documents produced by Defendants and third parties, taking and/or defending percipient and expert depositions, propounding and responding to interrogatories and requests for admission, and defending Plaintiff's deposition. The costs of each of these tasks would assuredly be high, and the fruits of each endeavor would be highly uncertain. Furthermore, Plaintiff would have to successfully navigate and prevail against Defendants' anticipated motion(s) for summary judgment, as well as at trial. And finally, even if Plaintiff prevailed on all of those stages, he would have to succeed on any appeals that would surely follow. This process could extend for years and might ultimately lead to a smaller recovery, or no recovery at all. Indeed, even prevailing at trial would not guarantee a recovery larger than the $17,300,000 Settlement.[7]

62. Lead Counsel know from experience that despite the most vigorous and competent efforts, success in complex litigation such as this case is never assured. In fact, within the last couple of years, GPM recently lost a six-week antitrust jury trial in the Northern District of California after five years of litigation, which included many overseas depositions, the expenditure of millions of dollars of attorney and paralegal time, and the expenditure of more than a million dollars in hard costs. *See In re: Korean Ramen Antitrust Litigation*, Case No. 3:13-cv-04115 (N.D. Cal.). Lead Counsel also litigated a securities class action in this Southern District of New York

[7] *See also Robbins v. Koger Props., Inc.*, 116 F.3d 1441 (11th Cir. 1997) (reversing jury verdict of $81 million for plaintiffs); *In re BankAtlantic Bancorp, Inc. Sec. Litig.*, 2011 WL 1585605 (S.D. Fla. Apr. 25, 2011) (granting defendants' motion for judgment as a matter of law following plaintiffs' verdict); *In re Apple Computer Sec. Litig.*, 1991 WL 238298 (N.D. Cal. Sept. 6, 1991) (overturning jury verdict for plaintiffs after extended trial).

for approximately five years, and, after surviving a motion to dismiss, successfully obtaining class certification and undertaking significant discovery efforts, which included depositions throughout the U.S. and in the U.K. and substantial document review, summary judgment was entered for defendants, and the judgment was affirmed on alternative grounds on appeal to the Second Circuit. *Gross v. GFI Grp., Inc.*, 784 F. App'x 27, 29 (2d Cir. 2019). Put another way, complex litigation is uncertain, and success in cases like this one is never guaranteed.

63. In sum, having evaluated the relative strengths and weaknesses of the Action in light of Defendants' arguments, and considered the very real risks presented by the significant hurdles of class certification, summary judgment, trial and any eventual appeals that lie ahead, it is the informed judgment of Lead Counsel, based upon all of the proceedings to date and their extensive experience in litigating class actions under the federal securities laws, that the proposed Settlement is fair, reasonable, and adequate and in the best interests of the Settlement Class.

64. Lead Counsel's conclusion that the Settlement is fair, reasonable and adequate is also supported by Lead Plaintiff.

V. LEAD PLAINTIFF'S COMPLIANCE WITH THE COURT'S PRELIMINARY APPROVAL ORDER REQUIRING ISSUANCE OF NOTICE

65. The Preliminary Approval Order found Lead Plaintiff's proposed method of notice to be adequate (ECF No. 154 at ¶7), and directed that the Notice Packet, comprised of the Notice and the Claim Form, be disseminated to all Settlement Class Members who could be identified with reasonable effort, as well as brokerage firms and other nominees. The Preliminary Approval Order also found the contents of the Notice to be adequate because it set forth the ability and process for Settlement Class Members to submit objections to the Settlement, Plan of Allocation and/or the Fee and Expense Application or to request exclusion from the Settlement Class. The Preliminary Approval Order also set the deadline for both objections and exclusion for August 9, 2022, and set a final fairness hearing date of August 30, 2022. ECF No. 154 at ¶¶ 5, 13,17.

66. Pursuant to the Preliminary Approval Order, Lead Counsel instructed A.B. Data, Ltd. ("A.B. Data"), the Court-approved Claims Administrator, to begin disseminating copies of the Notice and Claim Form (together, the "Notice Packet") and to publish the Summary Notice. Contemporaneously with the mailing of the Notice Packets, Lead Counsel instructed A.B. Data to post downloadable copies of the Stipulation, Notice and Claim Form online at www.gogosecuritieslitigation.com (the "Settlement Website"). The Notice contains, among other things, a description of the Action; the definition of the Settlement Class; a summary of the terms of the Settlement and the proposed Plan of Allocation; and a description of Settlement Class Members' rights to participate in the Settlement, object to the Settlement, the Plan of Allocation and/or the Fee and Expense Application or exclude themselves from the Settlement Class. The Notice also informed Settlement Class Members of Lead Counsel's intent to apply for an award of attorneys' fees in an amount not to exceed 33⅓% of the Settlement Fund, and for reimbursement of Litigation Expenses in an amount not to exceed $350,000.

67. To disseminate the Notice, A.B. Data obtained from Gogo's agent lists containing the names and addresses of record holders ("Record Holder List") who purchased or otherwise acquired Gogo Common Stock and Gogo Notes during the Settlement Class Period. *See* Exhibit 1 (Declaration of Adam D. Walter Regarding: (A) Mailing of Notice and Claim Form; (B) Publication of Summary Notice; and (C) Report on Requests for Exclusion Received to Date ("Mailing Declaration")) at ¶3. In addition, A.B. Data maintains a proprietary list with names and addresses of known broker firms, dealers, banks, and other institutions involving publicly-traded securities (the "Broker Mailing Database"). *Id.* at ¶4. On June 1, 2022, A.B. Data disseminated copies of the Notice Packet to the 5,099 potential Settlement Class Members contained in the Record Holder List and the Broker Mailing Database by first-class mail. *See id.* at ¶5.

68. As of July 21, 2022, A.B. Data received an additional 10,985 names and addresses of potential Settlement Class Members from individuals or brokerage firms, banks, institutions, and other nominees. A.B. Data also received requests from brokers and other nominee holders for 5,596 Notice Packets to be forwarded by the nominees to their customers and another 3 requests came via the case-specific telephone help line. *See id.* at ¶¶6-8.

69. As of July 21, 2022, a total of 21,683 Notice Packets have been mailed to potential Settlement Class Members and their nominees. *See id.* at ¶9

70. On June 13, 2022, in accordance with the Preliminary Approval Order, A.B. Data caused the Summary Notice to be published in *Investor's Business Daily* and to be transmitted once over the *PR Newswire*. *See id.* at ¶10.

71. It should also be noted that the Settlement Website allows for the submission of a claim online, and includes downloadable copies of the Complaint, Motion for Preliminary Approval, Stipulation and Preliminary Approval Order. *Id.* at ¶12. Additionally, Lead Counsel caused A.B. Data to established a case-specific, toll-free telephone helpline to accommodate potential Settlement Class Members with questions about the Action and the Settlement and/or request a Notice and Claim Form. *Id.* at ¶ 11.

72. The deadline for Settlement Class Members to file objections to the Settlement, Plan of Allocation and/or the Fee and Expense Application, or to request exclusion from the Settlement Class is August 9, 2022. To date, not a single request for exclusion has been received by the Claims Administrator. *Id.* at ¶15. A.B. Data will submit a supplemental affidavit after the deadline addressing any requests for exclusion, if received. To date, no objections to the Settlement, the Plan of Allocation or the maximum amounts listed in the Notice that Lead Counsel would seek for an award for attorneys' fee and reimbursement of Litigation Expenses has been received by the Claims Administrator, Plaintiff's Counsel, or filed with the Court. *Id.* Lead

Counsel will file papers on August 23, 2022, that will address any requests for exclusion and any objections that may be received.

VI. ALLOCATION OF THE PROCEEDS OF THE SETTLEMENT

73. The proposed Plan of Allocation is detailed in the Notice. *See* Mailing Declaration, Ex. A (Notice) at pp. 8-14. The Notice was posted on and is downloadable from the Settlement Website, and has been mailed to Settlement Class Members.

74. As set forth in the Notice, under the proposed Plan of Allocation, each Authorized Claimant will receive their *pro rata* share of the Net Settlement Fund, which is the Settlement Fund (*i.e.*, the $17,300,000 Settlement Amount plus any and all interest earned thereon) less any: (a) Taxes; (b) Notice and Administration Costs; (c) Litigation Expenses awarded by the Court; and (d) attorneys' fees awarded by the Court. Specifically, an Authorized Claimant's *pro rata* share shall be the Authorized Claimant's Recognized Claim divided by the total of Recognized Claims of all Authorized Claimants, multiplied by the total amount in the Net Settlement Fund.[8]

75. The proposed Plan of Allocation reflects, and is based upon, Lead Plaintiff's allegation that the price of Gogo Securities was artificially inflated (or deflated in the case of Put Options) during the Settlement Class Period due to Defendants' alleged materially false and misleading statements. The Plan of Allocation is based on the generally accepted concept that the losses of shareholders are reflected in the difference between estimated artificial inflation per share present on the date of purchase and estimated artificial inflation per share present following a corrective disclosure or date of sale.

76. Lead Counsel believe that the Plan of Allocation provides a fair and reasonable method to equitably allocate the Net Settlement Fund among Settlement Class Members who

[8] If the amount to be distributed to an Authorized Claimant calculates to less than $10.00, no such distribution will be made to the Authorized Claimant.

suffered losses as result of the conduct alleged in the Complaint.

77. Moreover, to date, there has not been a single objection to the Plan of Allocation from any of the Settlement Class Members. Accordingly, Lead Counsel respectfully submit that the Plan of Allocation is fair and reasonable and should be approved by the Court.

VII. THE FEE AND LITIGATION EXPENSE APPLICATION

78. In addition to seeking final approval of the Settlement and Plan of Allocation, Lead Counsel are applying to the Court for an award of attorneys' fees of 33⅓% of the Settlement Fund (or $5,766,666.67, plus interest earned at the same rate as the Settlement Fund) on behalf of all Plaintiff's Counsel. Lead Counsel are also requesting reimbursement of out-of-pocket expenses that Plaintiff's Counsel incurred in connection with the prosecution of the Action from the Settlement Fund in the amount of $139,347.45. Finally, pursuant to 15 U.S.C. § 78u-4(a)(4), Lead Counsel are requesting reimbursement to Lead Plaintiff of $20,000 for costs, including lost wages, incurred in representing the Settlement Class. The legal authorities supporting the requested fee and reimbursement of Litigation Expenses are set forth in the concurrently-filed Fee Memorandum. The primary factual bases for the requested fee and reimbursement of Litigation Expenses are summarized below.

A. The Outcome Achieved Is the Result Of The Significant Time And Labor That Plaintiff's Counsel Devoted To The Action, And The Requested Award Is Supported By A Lodestar "Cross-Check" Based On That Time And Labor

79. For their efforts on behalf of the Settlement Class, Lead Counsel are applying for a percentage of the common fund fee award to compensate them for the services they have rendered on behalf of the Settlement Class. The percentage-of-the-fund method has been recognized as appropriate by the Supreme Court and Seventh Circuit for cases of this nature.

80. As set forth in the accompanying Fee Memorandum, the percentage method is the best method for determining a fair attorneys' fee award because, unlike the lodestar method, it

aligns the lawyers' interest with that of the Settlement Class. The lawyers are motivated to achieve maximum recovery in the shortest amount of time required under the circumstances. This paradigm minimizes unnecessary drain on the Court's resources. Moreover, the percentage-of-the-fund method most closely mimics the market for complex class action litigation—where almost all litigation is conducted on a contingency fee basis.

81. 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, Lead Counsel respectfully submit that the requested fee award is fair and reasonable and should be approved. As discussed in the Fee Memorandum, a 33⅓% award is well within the range of percentages awarded in complex class actions with comparable settlements in this Circuit. *See* Fee Memorandum § II.C.1.; *see also* Ex. 9 (collecting Seventh Circuit cases with 33% or higher fee awards). In addition, the requested fee award was approved by Lead Plaintiff. *See* Ex. 7, ¶10.

82. As set forth in Exhibits 2 through 6, Plaintiff's Counsel expended a combined 3,699.55 hours prosecuting this Action, for a collective total lodestar of $2,448,271.50. The following is a summary chart of the hours expended and lodestar amounts for the five firms:[9]

LAW FIRM:	LODESTAR
Glancy Prongay & Murray LLP (Ex. 2)	$891,817.50
Levi & Korsinsky LLP (Ex. 3)	$232,245.50
Labaton Sucharow LLP ("LS," Ex. 4)	$1,305,214.50
Lubin Austermuehle, P.C. (Ex. 5)	$10,035.00
Lawrence, Kamin, Saunders & Uhlenhop (Ex. 6)	$8,959.00
TOTAL LODESTAR	**$2,448,271.50**

83. The hourly rates that the above lodestar calculations are based upon are similar to the rates that have been accepted in other shareholder litigation in this District. *See, e.g., Gupta v.*

[9] Time expended in preparing Plaintiff's Counsel's request for fees and expenses has not been included in the collective total lodestar.

Power Sols. Int'l, Inc., 2019 WL 2135914, at *2 (N.D. Ill. May 13, 2019) (awarding 33.3% of settlement fund as supported by lodestar cross-check including GPM's rates); *Pension Trust Fund for Operating Engineers v. Devry Education Grp.*, Case No. 1:16-CV-05198 (N.D. Ill. Dec. 6, 2019) (approving Labaton Sucharow's rates in the context of a lodestar crosscheck) (Ex. 12). Additionally, the rates billed by Plaintiff's Counsel are comparable to peer plaintiff and defense firms litigating matters of similar magnitude. *See* Ex. 11 (table of peer plaintiff firm and defense firm billing rates).

84. Throughout this litigation, Plaintiff's Counsel ensured that staffing was appropriate to litigate effectively and efficiently without negatively impacting the prosecution of the Action. At all times, Plaintiff's Counsel maintained strict control of and monitored the work performed by all lawyers and other personnel on this case. Experienced attorneys at each of the Plaintiff's Counsel firms were, as necessary and appropriate, involved in the litigation of the Action, the Settlement negotiations, and other matters. More junior attorneys, project attorneys, and paralegals worked on matters appropriate to their skill and experience level. Throughout the litigation, Plaintiff's Counsel took care to maintain an appropriate level of staffing and assigned work to those attorneys best suited for the task based on their level of experience and skill. This avoided unnecessary duplication of effort and ensured the efficient prosecution of this Action.

85. As noted in the Fee Memorandum, a lodestar analysis is not required. Nonetheless, Lead Counsel's requested attorneys' fee is also reasonable under the lodestar method. The requested 33⅓% attorneys' fee (which equates to $5,766,666.67, plus interest at the rate earned by the Settlement Fund) represents a 2.35 multiplier on the base lodestar value of Plaintiff's Counsel's time. This multiplier is well within the range of multipliers regularly awarded in securities class actions and other comparable litigation in the Seventh Circuit and elsewhere. *See, e.g., Harman v. Lyphomed, Inc.*, 945 F.2d 976 (7th Cir. 1991) (stating that multipliers of up to 4.0 have been

approved); *Hale v. State Farm Mut. Auto. Ins. Co.*, 2018 WL 6606079, at *1 (S.D. Ill. Dec. 16, 2018) (multiplier of 2.83 on lodestar cross-check confirms reasonableness of percentage award); *see also In re Sumitomo Copper Litig.*, 74 F. Supp. 2d 393, 399 (S.D.N.Y. 1999) ("'In recent years multipliers of between 3 and 4.5 have been common' in federal securities cases.") (citation omitted); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 n.6 (9th Cir. 2002) (finding multipliers ranged as high as 19.6, though most run from 1.0 to 4.0). Accordingly, where (as here) the requested fee amounts to a 2.35 multiplier on Plaintiff's Counsel's total lodestar, the cross-check fully supports the requested fee.

B. The Requested Percentage Is Reasonable And Appropriate In Light Of Prevailing Market Rates, The Risks Of Litigation, And The Need To Ensure The Availability Of Competent Counsel In High-Risk Contingent Securities Cases

86. Based on the work performed and the quality of the result achieved, Lead Counsel respectfully submit that a 33⅓% fee is fully merited under the "percentage of the fund" methodology. Furthermore, as set forth above, though not required in the Seventh Circuit, Lead Counsel, on behalf of all Plaintiff's Counsel, also respectfully submit that the requested fee is fully supported by a "lodestar multiplier cross-check."

87. This prosecution was undertaken by Lead Counsel on a pure contingency-fee basis. From the outset, Lead Counsel understood that they were embarking upon a complex, expensive, and lengthy litigation with no guarantee of even being compensated for the substantial investment of time and money the case would require. In undertaking that responsibility, Lead Counsel was obligated to ensure that sufficient resources were dedicated to the prosecution of the Action, that funds were available to compensate attorneys and staff, and to cover the considerable litigation costs required by a case like this one. With an average lag time of many years for complex cases like this case to conclude, the financial burden on contingent-fee counsel is far greater than on a firm that is paid on an ongoing basis. Indeed, Plaintiff's Counsel received no compensation during

the course of the Action, during which they devoted more than 3,699.55 professional hours and incurred $139,347.45 in out-of-pocket litigation-related expenses in prosecuting the Action.

88. The requested 33⅓% fee is fair and reasonable and in accordance with prevailing market rates for similar contingent litigation where plaintiff's counsel face the risk of non-payment. *See, e.g., Taubenfeld v. Aon Corp.*, 415 F.3d 597, 599-600 (7th Cir. 2005) (noting "awards made by courts in other class actions" which "amount[ed] to 30-39% of the settlement fund"). Here, Lead Plaintiff entered into a contingent fee agreement with Glancy Prongay & Murray LLP that provided for attorneys' fees—subject to Court approval—of up to 33⅓% of any recovery, plus expenses.

89. Lead Counsel also bore the risk that no recovery would be achieved. As discussed above, from the outset, this case presented multiple risks and uncertainties that could have prevented any recovery whatsoever. Despite the most vigorous and competent of efforts, success in contingent-fee litigation like this one is never assured. In fact, the Court had already dismissed this Action once, Lead Counsel continued to litigate even though the Court had already indicated that its success was unlikely. Moreover, Lead Counsel knows from experience that the commencement of a class action does not guarantee a settlement. To the contrary, it takes hard work and diligence by skilled counsel to develop the facts and theories that are needed to sustain a complaint or win at trial, or to induce sophisticated defendants to engage in serious settlement negotiations at meaningful levels.

90. Additionally, Plaintiff alleged the Exchange Act claims without information gained through subpoena power, as Defendants would likely have argued that any attempt to do so would have been precluded by the PSLRA's automatic stay of discovery.

91. Moreover, courts have repeatedly recognized that it is in the public interest to have experienced and able counsel enforce the securities laws and regulations pertaining to the duties

of officers and directors of public companies. *See Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 320 n.4 (2007) ("private securities litigation is an indispensable tool with which defrauded investors can recover their losses – a matter crucial to the integrity of domestic capital markets.") (internal quotation marks omitted). As recognized by Congress through the passage of the PSLRA, vigorous private enforcement of the federal securities laws can only occur if private investors take an active role in protecting the interests of shareholders. If this important public policy is to be carried out, the courts should award fees that adequately compensate plaintiffs' counsel, taking into account the risks undertaken in prosecuting a securities class action.

C. The Experience And Expertise Of Plaintiff's Counsel, And The Standing And Caliber Of Defendants' Counsel

92. As demonstrated by the firm resumes attached hereto, Plaintiff's Counsel have extensive and significant experience in the specialized area of securities litigation. Exs. 2; 3; 4; 5; and 6. The attorneys who were principally responsible for leading the litigation have prosecuted securities claims throughout their careers, and have recovered hundreds of millions of dollars on behalf of investors. This experience allowed Plaintiff's Counsel to develop and implement litigation strategies to address the complex obstacles that are inherent in securities class actions and those specific to this case that were raised by Defendants. Indeed, the recovery achieved here for the Settlement Class reflects the high quality of Plaintiff's Counsel's representation.

93. Additionally, the quality of the work performed by Plaintiff's Counsel in obtaining the Settlement should also be evaluated in light of the quality of the opposition. Here, Defendants were represented by Shearman & Sterling LLP, a renowned law firm whose attorneys vigorously represented the interests of their clients throughout this Action. In the face of this experienced and formidable opposition, Plaintiff's Counsel was nonetheless able to persuade Defendants to settle the case on terms favorable to the Settlement Class.

D. Lead Plaintiff Supports The Fee Request

94. As set forth in the declaration submitted by Lead Plaintiff, Lead Plaintiff concluded that the requested fee is fair and reasonable based on the work performed by Plaintiff's Counsel, the recovery obtained, and the risks of the Action. Ex. 7. Lead Counsel have represented Lead Plaintiff throughout the litigation. Lead Plaintiff has been intimately involved in this case since its earliest stages, and his endorsement of the fee request supports the reasonableness of the request and should be given weight in the Court's consideration of the fee award.

E. The Reaction Of The Settlement Class Supports Lead Counsel's Fee Request

95. As noted above, as of July 21, 2022, a total of 21,683 copies of the Notice have been mailed advising Settlement Class Members of the Settlement in which Lead Counsel, on behalf of all Plaintiff's Counsel, would apply for an award of attorneys' fees in an amount not to exceed 33⅓% of the Settlement Fund. In addition, the Court-approved Summary Notice has been published in *Investor's Business Daily* and transmitted over the *PR Newswire*. To date, no objections to the attorneys' fees maximum set forth in the Notice have been received or entered on this Court's docket. Any objections received after the date of this filing will be addressed in Lead Counsel's reply papers to be filed on August 23, 2022.

96. In sum, Lead Counsel accepted this case on a contingency basis, committed significant resources to it, and prosecuted the Action without any compensation or guarantee of success. Based on the result obtained, the quality of the work performed, the risks of the Action, and the contingent nature of the representation, Lead Counsel respectfully submit that a fee award of 33⅓%, resulting in a multiplier of 2.35 on all Plaintiff's Counsel's time, is fair and reasonable, and is supported by the fee awards courts have granted in other comparable cases.

F. Reimbursement Of The Requested Litigation Expenses Is Fair And Reasonable

97. Lead Counsel seeks a total of $159,347.45 in Litigation Expenses to be paid from

the Settlement Fund. This includes $139,347.45 expenses reasonably and necessarily incurred by Plaintiff's Counsel in connection with commencing, litigating, and settling the Action; as well as $20,000 for the costs, including lost wages, and expenses incurred by Lead Plaintiff directly related to his representation of the Settlement Class. Lead Counsel respectfully submit that the request for reimbursement of Litigation Expenses is appropriate, fair, and reasonable and should be approved in the amounts submitted herein.

98. The Notice informed potential Settlement Class Members that Lead Counsel would be seeking reimbursement of Litigation Expenses in an amount not to exceed $350,000. The total amount requested by Lead Counsel and Plaintiff, $159,347.45, falls well below the maximum that Settlement Class Members were advised could be sought. No objections have been raised as to the maximum amount of expenses set forth in the Notice. If any objection to the request for reimbursement of Litigation Expenses is made after the date of this filing, Lead Counsel will address it in their reply papers.

99. From the inception of this Action, Plaintiff's Counsel were aware that they might not recover any of the expenses they incurred in prosecuting the claims against Defendants, and, at a minimum, would not recover any expenses until the Action was successfully resolved. Plaintiff's Counsel also understood that, even assuming the Action was ultimately successful, an award of expenses would not compensate Plaintiff's Counsel for the lost use or opportunity costs of funds advanced to prosecute the claims against Defendants. Thus, Plaintiff's Counsel were motivated to, and did, take significant steps to minimize expenses whenever practicable without jeopardizing the vigorous and efficient prosecution of the Action.

100. Lead Counsel created a litigation fund, which was maintained by GPM (the "Litigation Fund"), to partially fund the litigation. Plaintiff's Counsel collectively contributed $82,000 (consisting of $35,260 from GPM, $16,400 from L&K and $30,340 from LS) to the

Litigation Fund.[10] In Plaintiff's Counsel's opinion, the expenses paid out of the Litigation Fund were necessary and appropriate for the prosecution and resolution of this Action. The following is a breakdown by category of the payments from the Litigation Fund:

LITIGATION FUND EXPENSE	AMOUNT
MEDIATION	7,606.00
EXPERTS	74,394.00
TOTAL LITIGATION FUND EXPENSE	**82,000.00**

101. In addition to the expenses paid out of the Litigation Fund listed above, each Plaintiff's Counsel firm incurred additional costs and expenses, which are further detailed in Exhibits 2 through 6. The following is a combined breakdown by category of all additional costs and expenses incurred by Plaintiff's Counsel firm in the prosecution of this Action:

ADDITIONAL EXPENSES	AMOUNT
COURIER & SPECIAL POSTAGE	1,019.77
COURT FILING FEES	1,091.00
DOCUMENT MANAGEMENT	2,500.00
INVESTIGATIONS	17,726.60
LITIGATION SUPPORT	2,738.04
MEDIATION	6,844.00
ONLINE RESEARCH	10,991.60
PHOTOCOPYING/IMAGING	691.20
PRESS RELEASES	130.00
TELEPHONE CONFERENCING	15.44
TRAVEL AIRFARE	206.80
EXPERTS	13,393.00
TOTAL ADDITIONAL EXPENSES	**57,347.45**

102. As stated above, Lead Counsel is seeking reimbursement of a total of $139,347.45 in out-of-pocket costs and expenses on behalf of Plaintiff's Counsel. The following is a breakdown by category of all expenses incurred by Plaintiff's Counsel (*i.e.*, Litigation Fund expenses, plus costs and expenses incurred by each individual firm):

[10] There is no balance remaining in the Litigation Fund.

TOTAL EXPENSES	AMOUNT
COURIER & SPECIAL POSTAGE	1,019.77
COURT FILING FEES	1,091.00
DOCUMENT MANAGEMENT	2,500.00
INVESTIGATIONS	17,726.60
LITIGATION SUPPORT	2,738.04
MEDIATION	14,450.00
ONLINE RESEARCH	10,991.60
PHOTOCOPYING/IMAGING	691.20
PRESS RELEASES	130.00
TELEPHONE CONFERENCING	15.44
TRAVEL AIRFARE	206.80
EXPERTS	87,787.00
TOTAL EXPENSES	**139,347.45**

103. The largest component of expenses, $87,787.00 or approximately 63% of the total expenses, was expended on the retention of experts is market efficiency, loss causation and damages, and FAA regulations and practices. The experts were consulted at different points throughout the litigation, including on matters related to the preparation of the Complaint, on matters relating to negotiation of the Settlement, and on preparation of the Plan of Allocation.

104. $17,726.00, or approximately 12.7% of the total expenses, was expended on the retention of an outside investigative firm's services to identify and interview witnesses to assist in the development of the facts involved in the case.

105. $14,450.00, or approximately 10.4% of the total expenses, was expended on Plaintiff's share of mediation fees paid for the services of Mr. Murphy.

106. The other out-of-pocket litigation expenses for which Lead Counsel seek reimbursement are the types of expenses that are necessarily incurred in litigation and routinely charged to clients billed by the hour. These include, among others, court fees, copying costs, and postage and delivery expenses.

107. Finally, Lead Plaintiff seeks reimbursement of his reasonable costs and expenses incurred directly in connection with representing the Settlement Class in the amount of $20,000.

The effort devoted to this Action by Lead Plaintiff is detailed in his accompanying declaration. Ex. 7. If it was not for his involvement in this Action, it is likely that there would have been no recovery for the Settlement Class. Indeed, after Ms. Zingas withdrew from the Action, Mr. Rogers was the sole Lead Plaintiff. Based on the substantial work done by Mr. Rogers for the benefit of the Settlement Class, Lead Counsel respectfully request that the Court should grant Lead Plaintiff's request in full.

VIII. CONCLUSION

108. In view of the significant recovery for the Settlement Class and the substantial risks of this Action, as described herein and in the accompanying Final Approval Memorandum, I respectfully submit that the Settlement should be approved as fair, reasonable, and adequate and that the proposed Plan of Allocation should be approved as fair and reasonable. I further submit that the requested fee in the amount of 33⅓% of the Settlement Fund should be approved as fair and reasonable, and the request for reimbursement of total Litigation Expenses in the amount of $159,347.45 (which includes $20,000 for Lead Plaintiff's time and effort on behalf of the Settlement Class) also should be approved.

I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on July 26, 2022, in Los Angeles, California.

s/ Casey E. Sadler
Casey E. Sadler

CERTIFICATE OF SERVICE

I hereby certify that on July 26, 2022, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all registered ECF participants.

s/ Casey E. Sadler
Casey E. Sadler