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

In re LUCKIN COFFEE INC. SECURITIES LITIGATION	Index No. 651939/2020
	CLASS ACTION
This Document Relates To: THE CONSOLIDATED ACTION.	Motion Sequence No. 012
	MEMORANDUM OF LAW IN SUPPORT OF (1) PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION; (2) PLAINTIFFS' COUNSEL'S APPLICATION FOR ATTORNEYS' FEES AND EXPENSES; AND (3) PLAINTIFFS' REQUESTS FOR SERVICE AWARDS

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STATUTES, RULES AND REGULATIONS

Pursuant to CPLR Article 9, Plaintiffs Kimson Chemical, Inc., Teamsters Local 710 Pension Fund, Michael Bergenholtz, and City of Fort Myers Police Officers' Retirement System ("Plaintiffs") and their respective counsel ("Plaintiffs' Counsel") respectfully submit this brief in support of (1) Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation; (2) Plaintiffs' Counsel's Application for Attorneys' Fees and Expenses; and (3) Plaintiffs' Requests for Service Awards.[1]

The proposed Settlement's terms are set forth in the Stipulation of Settlement (the "Stipulation") filed with the Court on September 22, 2022 (NYSCEF No. 190).

I. INTRODUCTION

After more than two years of litigation, the settling parties in this Action have agreed to settle all remaining claims asserted against all Defendants for $7,000,000 in cash. The Action alleges that Defendants violated federal securities laws by making misrepresentations and/or omissions of material fact in the Offering materials for Luckin's 0.75% Convertible Senior Notes due 2025 (the "Note Offering"). Soon after the Note Offering closed, Luckin was publicly accused of artificially inflating key financial information. *See* accompanying Joint Affidavit of Brian E. Cochran, Michael Dell'Angelo, and Edward F. Haber in Support of (1) Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation; (2) Plaintiffs' Counsel's Application for Attorneys' Fees and Expenses; and (3) Plaintiffs' Requests for Service Awards ("Joint Affidavit"), ¶13. Although the Company initially denied these accusations, ultimately Luckin admitted that several of its senior officers and directors had engaged in an elaborate scheme to fabricate hundreds of millions of dollars' worth of financial transactions. *Id.* These revelations caused the price of Luckin securities, including the Notes, to plummet, and Luckin American Depository Shares ("ADSs") were

[1] Unless otherwise indicated herein: (1) all capitalized terms have the meanings set forth in the Stipulation; and (2) in quoted material, all citations and internal quotation marks are omitted and all emphasis is added.

subsequently delisted, several of the Company's officers and directors were forced to leave their positions, and Luckin became the subject of multiple civil, criminal, and regulatory proceedings in the United States and China. *Id.*

In July 2020, Luckin initiated provisional liquidation proceedings in the Cayman Islands, where the Company is incorporated, before the Grand Court of the Cayman Islands (the "Cayman Proceedings"). In March 2021, that restructuring proceeding was recognized by the U.S. Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"), which issued an order temporarily staying litigation against Luckin. *Id.*, ¶14.

Plaintiffs allege claims under §§11, 12(a)(2), and 15 of the Securities Act of 1933 (the "Securities Act") against Luckin, certain of the Company's officers and directors and their investment vehicles, the underwriters for the Note Offering and two related public offerings of Luckin ADS, and Luckin's authorized U.S. representatives for material misrepresentations and omissions allegedly made by Defendants in the Offering materials. Defendants have denied all of Plaintiffs' allegations.

In connection with its restructuring proceedings, Luckin reached an agreement with current holders of the Notes ("Existing Noteholders") to resolve the potential claims Existing Noteholders may have against the Company and related parties in exchange for consideration paid through a court-sanctioned scheme of arrangement, which became effective in December 2021 (the "Scheme of Arrangement"). In addition, in July 2022, the United States District Court for the Southern District of New York approved a settlement reached on behalf of ADS purchasers (the "Federal Action"), which resolved the offering claims on behalf of ADS purchasers at issue in this case. *Id.*, ¶17. Therefore, the only claims remaining after completion of the Scheme of Arrangement and approval of the Federal Action is the claims of Note purchasers who did not release their claims through the Scheme of Arrangement or otherwise. *Id.*, ¶18.

The proposed $7 million Settlement was reached only after vigorously contested motion-to-dismiss practice, document review, expert consultation with Cayman Islands and bankruptcy counsel and a damages expert, as well as protracted arm's-length settlement negotiations overseen by a highly experienced mediator, Robert Meyer, Esq., of JAMS (the "Mediator"). Plaintiffs and their counsel respectfully submit that the Settlement represents an excellent recovery in the face of ***very*** substantial litigation risk, not least because of Luckin's recent insolvency and the foreign domicile of several defendants. Moreover, although individual "Notice Packets" have been mailed to over 5,900 potential Settlement Class Members or their nominees, to date ***no*** objections (or even "opt-out" requests) have been received. *See* accompanying Affidavit of Ross D. Murray Regarding Notice Dissemination, Publication, and Requests for Exclusion Received to Date ("Murray Aff."), ¶¶5-10.

For these and the other reasons detailed herein, the Settlement easily meets the CPLR's standards for approval. The proposed Plan of Allocation ("POA"), designed by Plaintiffs' damages consultant, provides for a customary *pro rata* distribution of the Net Settlement proceeds to Settlement Class Members, and should also be approved.

Plaintiffs' Counsel also respectfully submit that they have fully earned an attorneys' fee of one-third (33-1/3%) of the Settlement Amount. As detailed below, Lead Counsel diligently pursued this Action, beginning with a comprehensive fact investigation and continuing through, *inter alia*: (i) the preparation of their detailed Consolidated Complaint (NYSCEF No. 36); (ii) extensive briefing of Defendants' motions to dismiss this Action; (iii) consultation with a damages expert; (iv) participation in Luckin's bankruptcy proceedings both in the United States and in the Cayman Islands; (v) consultation with bankruptcy and Cayman Islands-law counsel; (vi) service on a Creditors Committee established in the wake of Luckin's bankruptcy; (vii) the review of documents made available in connection with Luckin's bankruptcy proceedings; (viii) protecting the interests of the Settlement Class in the Federal Action; and (ix) the preparation of comprehensive mediation

briefs and related materials on both liability and damages issues. As a result of Lead Counsel's hard work, and with the Mediator's assistance, an excellent $7 million settlement was successfully negotiated. *See* Joint Affidavit, ¶¶19-41.

In total, over the last two and half years, Plaintiffs' Counsel have spent over 3,200 hours, with a "lodestar" value of $2,228,431.50 – all on a ***fully contingent*** fee basis – pursuing the claims at issue. *Id.*, ¶61. The requested 33-1/3% fee is well within the range of percentage-based fees awarded in other securities class actions, and is also merited by the other relevant factors customarily considered by New York courts, including a "lodestar crosscheck." Indeed, the requested one-third fee ($2,333,100), if awarded in full, would represent a slight multiplier of 1.04 of counsel's combined $2,228,431.50 lodestar – an exceedingly reasonable fee for a case in which an above-average result was achieved in the face of above-average litigation risks.

Plaintiffs' Counsel's request for litigation expenses in the amount of $157,762.38 should also be granted because they seek payment for expenses (such as electronic research costs, expert fees, investigator fees and mediation costs) that are routinely reimbursed in common fund cases.

Finally, each Plaintiff's request for a relatively modest award for their service to the Settlement Class is fully merited, and should also be approved.

II. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiffs respectfully refer the Court to the accompanying Joint Affidavit for a detailed discussion of the history of the Action, the extensive work performed by Plaintiffs' Counsel, the risks of continued litigation, and the negotiations under the independent Mediator's auspices that led to the Settlement.

III. ARGUMENT

A. The Settlement Is Fair, Reasonable and Adequate, and Should Be Approved

New York courts strongly favor settlements as a matter of public policy. *IDT Corp. v. Tyco Grp., S.A.R.L.*, 13 N.Y.3d 209, 213 (2009) ("[s]tipulations of settlement are judicially favored and may not be lightly set aside"). "Strong policy considerations favor" settlements because "[a] negotiated compromise of a dispute avoids potentially costly, time-consuming litigation and preserves scarce judicial resources; courts could not function if every dispute devolved into a lawsuit." *Denburg v. Parker Chapin Flattau & Klimpl*, 82 N.Y.2d 375, 383 (1993); *accord Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 116 (2d Cir. 2005) (citing "strong judicial policy" favoring settlements).

When considering whether to finally approve a class-action settlement, New York courts focus on "the fairness of the settlement, its adequacy, its reasonableness, and the best interests of the class members." *Hosue v. Calypso St. Barth, Inc.*, 2017 WL 4011213, at *2 (Sup. Ct. N.Y. Cnty. Sept. 12, 2017). Specifically, New York courts consider: (i) the likelihood that plaintiffs will succeed on the merits; (ii) the extent of support from the parties; (iii) counsel's judgment; (iv) the presence of good-faith bargaining; and (v) the complexity of the legal and factual issues. *See Fernandez v. Legends Hosp., LLC*, 2015 WL 3932897, at *2 (Sup. Ct. N.Y. Cnty. June 22, 2015). In addition, in analyzing the likelihood of success on the merits, courts have noted that finding "adequacy" involves "balancing the value of [a] settlement against the present value of the anticipated recovery following a trial on the merits, discounted for the inherent risks of litigation." *Klein v. Robert's Am. Gourmet Food, Inc.*, 28 A.D.3d 63, 73 (2d Dep't 2006).

These factors, commonly referred to as the "*Colt* factors" (after *In re Colt Indus. S'holder Litig.*, 155 A.D.2d 154 (1st Dep't 1990)), all strongly favor approval here.

1. *Colt* Factor One: Likelihood of Success on the Merits and Amount Recovered in Light of Litigation Risks

Litigation Risk. When assessing a proposed class-action settlement, courts first consider the plaintiffs' likelihood of ultimate success on the merits. *Gordon v. Verizon Comm'cns*, 148 A.D.3d 146, 162 (1st Dep't 2017); *Colt*, 155 A.D.2d at 160. As a general matter, securities actions are "notoriously complex and difficult to prove," *In re Bayer AG Sec. Litig.*, 2008 WL 5336691, at *5 (S.D.N.Y. Dec. 15, 2008); *see also In re Dozier Fin., Inc.*, 2018 WL 4599860, at *3 (D.S.C. Sept. 6, 2018), *report adopted*, 2019 WL 1075072 (D.S.C. Mar. 7, 2019) (collecting cases finding that "securities [cases] . . . are neither straightforward nor routine") – and this case was no exception.

First, Luckin, the primary defendant, had entered bankruptcy proceedings and did not have any assets located in the United States. Luckin had limited available cash and its ability to expatriate any cash from its operations in China was subject to onerous regulatory requirements that could not be guaranteed. Joint Aff., ¶46. Moreover, the only remaining claims in the Action, claims under the Securities Act arising from the offer and sale of the Notes in the Note Offering, posed significant challenges. Among other highly contested issues, Defendants have argued that ostensibly private offerings such as the Note Offering cannot be subject to Securities Act liability, which remains an open question that has divided courts. *Id.*

Second, on the merits, Defendants have argued, *inter alia*, that (i) the Offering materials did not contain any actionable misrepresentations; (ii) that Plaintiffs could not establish their standing to assert Securities Act claims; (iii) that various defendants had not acted negligently in the performance of their duties; (iv) that because the Notes were issued pursuant to SEC Rule 144A and Regulation S, they could not engender Securities Act liability; (v) that certain overseas defendants had not been validly served and/or were not subject to the jurisdiction of the Court; and (vi) that Plaintiffs could not establish control person liability under Section 15 of the Securities Act. *Id.*, ¶48.

Third, assuming that Plaintiffs survived Defendants' pending motions to dismiss, Plaintiffs recognized that actually ***proving*** the necessary facts would be challenging, and that surviving summary judgment was not assured. For example, Plaintiffs' ability to obtain potentially vital deposition discovery was uncertain, as virtually all relevant witnesses are located in the People's Republic of China (which does not permit depositions to be taken within its borders). Moreover, Plaintiffs' ability to obtain document (let alone deposition) discovery from relevant third parties, including former Luckin employees, was also doubtful. In sum, the risk of being unable to collect relevant evidence was far greater here than in cases where all relevant witnesses and documents are located in the United States (or at least in countries that are more willing to assist foreign litigants than China).

Fourth, even if Plaintiffs prevailed on liability, Defendants would likely argue that only a fraction of the Settlement Class's alleged damages were actually caused by the alleged misstatements and omissions at issue. Causation issues all too frequently come down to inherently unpredictable "battles of the experts," and an adverse result could have easily gutted the value of Plaintiffs' otherwise meritorious claims. *See, e.g.*, *In re Am. Bank Note Holographics, Inc.*, 127 F. Supp. 2d 418, 426-27 (S.D.N.Y. 2001) ("In [a] 'battle of experts,' it is virtually impossible to predict with any certainty which testimony would be credited [and] which damages would be found to have been caused by actionable, rather than the myriad nonactionable factors . . . ."); *In re Giant Interactive Grp., Inc. Sec. Litig.*, 279 F.R.D. 151, 161-62 (S.D.N.Y. 2011) (approving settlement where litigation risk included credible causation defenses).

Fifth, even if Plaintiffs survived summary judgment and prevailed across the board on liability, causation, and damages issues at trial, there would still be no assurance that a favorable jury verdict would survive Defendants' inevitable post-trial motions and appeals.

Sixth, even if Plaintiffs succeeded at trial court and appellate court levels, there would be no guarantee that Plaintiffs could actually collect on a favorable judgment given Luckin's recent emergence from insolvency proceedings and the foreign domicile of several defendants.

In short, at all times, this was a ***very*** high-risk case.

Adequacy of Settlement in Light of Litigation Risk. In assessing "adequacy," courts also weigh settlements "against the present value of the anticipated recovery following a trial[,] [as] discounted for the inherent risks of litigation." *Klein*, 28 A.D.3d at 73.

Here, the proposed Settlement represents 23% of Plaintiffs' expert's estimates of the Settlement Class's maximum reasonably recoverable Securities Act damages of $30.4 million. However, even if one compares the proposed Settlement – $7 million – to Plaintiffs' maximum ***theoretically*** recoverable damages under the Securities Act and potential fraud-based claims (which are as high as $134.3 million), the Settlement would still result in the recovery of roughly 5.2% of investor losses – a decidedly superior percentage compared to most securities settlements. For example, NERA Economic Consulting recently reported that, between 2012 and 2021, the median securities class action settlement equated to 2.8% of maximum damages in cases involving estimated investor losses of between $100 million and $199 million. J. McIntosh & S. Starykh, *Recent Trends in Securities Class Action Litigation: 2021 Full-Year Review*, NERA Econ. Consulting at 23, Fig. 21 (Jan. 25, 2022) (available at https://www.nera.com/content/dam/nera/publications/2022/PUB_2021_Full- Year_Trends_012022.pdf).

Accordingly, published data further confirms that the Settlement represents an excellent result when compared to other securities settlements from the last decade.

2. *Colt* Factors Two Through Four: Extent of Support from the Parties, Judgment of Counsel, and Presence of Good-Faith Bargaining

Colt factors two through four also strongly support approval. First, the Settlement has the support of all Parties, as evidenced by the Stipulation (NYSCEF No. 190) and Plaintiffs' affidavits in support of the Settlement.[2] Moreover, in this context, courts also consider the reaction of absent class members – even minimal objections are indicative of a class's approval of a proposed settlement. *See, e.g.*, *Pressner v. MortgageIT Holdings, Inc.*, 2007 WL 1794935, at *2 (Sup. Ct. N.Y. Cnty. May 29, 2007) (approving settlement where there were no objections to proposed settlement). Here, although the Court-established December 27, 2022 deadline for filing objections has not yet passed, ***no*** objections to any aspect of the Settlement have been submitted to date. Joint Aff., ¶7; Murray Aff., ¶16.[3]

Second, Plaintiffs' Counsel strongly believe that the proposed Settlement is fair, reasonable, and adequate, particularly given the risks, costs, and uncertainties of continued litigation. Joint Aff., ¶53; *supra* §III.A. New York courts give counsel's views regarding settlement considerable weight, *see* *MortgageIT*, 2007 WL 1794935, at *2, and it is respectfully submitted that the combined experience and expertise of the Lead Counsel firms here make this factor weigh even more heavily in favor of approval.

Third, the Settlement is the product of protracted, good-faith negotiations overseen by a mediator – Robert Meyer – with extensive experience in mediating securities and other complex

[2] *See* respective affidavits of named plaintiffs Kimson Chemical, Inc. (Affidavit of Herbert Kimiatek ("Kimiatek Aff."), ¶10), Teamsters Local 710 Pension Fund (Affidavit of Michael O'Malley ("O'Malley Aff."), ¶8), Michael Bergenholtz (Affidavit of Michael Bergenholtz ("Bergenholtz Aff."), ¶7), and City of Fort Myers Police Officers' Retirement System (Affidavit of Victor Medico ("Medico Aff."), ¶8), in support of final approval and the Fee and Expense Application.

[3] Should any objections be filed after the date of this brief, Plaintiffs will address them on reply.

class actions. *See* Joint Aff., ¶40. Indeed, the facts here plainly reflect an arm's-length mediation process, as both sides continued to press the litigation until a binding MOU to settle the Action was actually signed. And far from reaching a quick settlement during the parties' initial negotiations in the spring and summer of 2021, while Plaintiffs served on a Creditors Committee in connection with Luckin's bankruptcy proceedings, or during the January 9, 2022 mediation session, it was not until April 2022 that a final MOU memorializing the Settlement was reached. Nor can it be seriously doubted that all parties were at all times represented by highly experienced counsel. *Id.*, ¶¶40-41. Thus, the "good-faith negotiation factor" also strongly supports approval of the Settlement. *See Gordon*, 148 A.D.3d at 157 (courts will presume that negotiations were conducted at arm's-length and in good faith absent contrary evidence).

3. *Colt Factor* Five: Complexity and Nature of Case

Finally, courts look to the complexity and nature of the case (which is closely related to Plaintiffs' likelihood of success). *See Saska v. Metro. Museum of Art*, 54 N.Y.S.3d 566, 570 (Sup. Ct. N.Y. Cnty. 2017) (evaluating the first and fifth *Colt* factors together in granting final approval); *City Trading Fund v. Nye*, 72 N.Y.S.3d 371, 393 (Sup. Ct. N.Y. Cnty. 2018) (same).

As noted above, courts have recognized the "notorious complexity" of securities class action litigation. *In re Hi-Crush Partners L.P. Sec. Litig.*, 2014 WL 7323417, at *15 (S.D.N.Y. Dec. 19, 2014). The numerous factual and legal complexities raised in the Action – as compounded by the procedural complications inherent in pursuing claims against a Chinese company – presented undeniable challenges (and risks) for Plaintiffs. By contrast, the Settlement will result in the certainty of an immediate, valuable $7 million "bird in the hand," thereby avoiding further costly litigation and eliminating the very real risk that even years of additional litigation might produce only a lesser recovery – or no recovery at all. Accordingly, this factor also strongly supports approval.

B. The Plan of Allocation Is Fair and Adequate

The proposed POA was set forth in full in the Notice sent to Settlement Class Members. *See* Murray Aff., Ex. A [the Notice] at 2-5. The customary standard for approving a POA is the same as for a settlement, namely it must be fair and adequate. A proposed "allocation formula need only have a reasonable, rational basis, particularly if recommended by experienced and competent class counsel." *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 344 (S.D.N.Y. 2005); *accord In re Advanced Battery Techs., Inc. Sec. Litig.*, 298 F.R.D. 171, 180 (S.D.N.Y. 2014).

Lead Counsel developed the POA in close consultation with their damages consultant, using allocation methodologies routinely applied in securities cases of this type. Joint Aff., ¶¶57-58; Notice at 2-5. The lack of any objections to date to the POA further supports its approval. *See, e.g.*, *Maley v. Del Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 367 (S.D.N.Y. 2002).

C. The Settlement Class Should Be Certified

For purposes of settlement, Plaintiffs seek certification of the Settlement Class, which consists of

> . . . all persons and entities (and their beneficiaries) who, at any time, purchased or otherwise acquired the Convertible Notes and who did not release claims based on their purchase or acquisition of the Convertible Notes in connection with Luckin's noteholder Scheme of Arrangement, or otherwise. Excluded from the Settlement Class are Defendants; the current and former officers and directors of Luckin; members of their immediate families; all subsidiaries and affiliates of Luckin; all persons, firms, trusts, corporations, officers, directors and any other individual or entity in which Luckin has a controlling interest; the legal representatives, agents, affiliates, heirs, successors-in-interest, or assigns of all such excluded parties; any person or entity who held Convertible Notes as of November 22, 2021 at 5:00 p.m. EST; and any persons or entities who appear on the list of creditors of the Noteholder Scheme of Arrangement as maintained by the claims administrator for the Scheme of Arrangement. Also excluded from the Settlement Class are those Persons who would otherwise be Settlement Class Members but who timely and validly exclude themselves therefrom.

Stipulation, ¶1.29. Securities cases, which typically have similar class definitions, are "particularly appropriate" for class certification. *Pruitt v. Rockefeller Ctr. Props., Inc.*, 167 A.D.2d 14, 21 (1st

Dep't 1991); *see also* *Fort Worth Emps.' Ret. Fund v. J.P. Morgan Chase & Co.*, 301 F.R.D. 116, 130 (S.D.N.Y. 2014) (courts "have frequently held that suits alleging violations of Sections 11, 12(a)(2), and 15 of the Securities Act are 'especially amenable' to class certification").

This Court preliminarily certified the Settlement Class in its Preliminary Approval Order, NYSCEF No. 193, ¶2, and nothing has changed since it did so. As all required elements of CPLR 901 and 902 are satisfied, the Court should confirm its prior certification ruling.

1. The Settlement Class Easily Satisfies CPLR 901

CPLR 901 requires that the elements of numerosity, predominating common issues, typicality, adequacy, and superiority are satisfied.

Numerosity: Defendants issued roughly $460 million worth of the Notes in the Note Offering, which were bought by hundreds, if not thousands of investors. As joinder of all parties would plainly be "impractical," CPLR 901(1)'s numerosity requirement is satisfied. *Compare* *Borden v. 400 E. 55th St. Assocs., L.P.*, 24 N.Y.3d 382, 399 (2014) (classes with as few as 18 members may satisfy numerosity); *Pa. Pub. Sch. Emps.' Ret. Sys. v. Morgan Stanley & Co.*, 772 F.3d 111, 120 (2d Cir. 2014) ("Numerosity is presumed for classes larger than forty members.").

Commonality: Because (as here) Securities Act claims turn on "the truth or falsity of the prospectus' statements," "common questions of law and fact . . . predominate over individual issues." *Pruitt*, 167 A.D.2d at 21; *see also* *Sykes v. Mel S. Harris & Assocs. LLC*, 780 F.3d 70, 84 (2d Cir. 2015) (commonality "is satisfied if there is a common issue that drive[s] the resolution of the litigation such that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke"). Here, all Settlement Class Members' claims turn on a common set of alleged material misstatements and omissions in the Offering materials.

Typicality: Plaintiffs' Securities Act claims are typical of the claims of other Settlement Class Members as they all relate to the same circumstances – namely, the issuance of the same

materially false and misleading Offering materials – and are also based on the same legal theories as those of the other Settlement Class Members. Accordingly, CPLR 901(3)'s typicality requirement is met. *In re SunEdison, Inc. Sec. Litig.*, 329 F.R.D. 124, 141 (S.D.N.Y. 2019); *Pruitt*, 167 A.D.2d at 22 (typicality requirement met in Securities Act cases because "plaintiff's claims are identical to those of the other [class] members").

Adequacy: Plaintiffs have "fairly and adequately protect[ed] the interest of the class," as shown by (a) their selection of highly experienced counsel, and (b) their willingness to devote significant time to working on matters related to this case, from reviewing pleadings to periodically consulting with their counsel on litigation and settlement matters. *See* Joint Aff., ¶76; Kimiatek Aff., ¶¶5-9; O'Malley Aff., ¶¶5-7; Bergenholtz Aff., ¶¶5-6; Medico Aff., ¶¶5-7. Moreover, Plaintiffs' Counsel are unaware of any conflicts between any Plaintiffs and any Settlement Class Members. Accordingly, CPLR 901(4)'s adequacy requirements are easily satisfied. *See Pruitt*, 167 A.D.2d at 24.

Superiority: It would be prohibitively costly to require individual Settlement Class Members, many of whom can safely be assumed to have suffered comparatively modest losses, to litigate their own individual claims. Proceeding by class action is thus a far more efficient mechanism to resolve their claims. *See Stecko v. RLI Ins. Co.*, 121 A.D.3d 542, 543 (1st Dep't 2014) (class action was "superior vehicle . . . since the damages allegedly suffered by an individual class member are likely to be insignificant, and the costs of prosecuting individual actions would result in the class members having no realistic day in court"); *SunEdison*, 329 F.R.D. at 144 ("Generally, securities actions 'easily satisfy' the superiority requirement" because "the alternatives are either no recourse for thousands of stockholders" or "a multiplicity and scattering of suits with the inefficient administration of litigation"). CPLR 901(5)'s superiority requirements are thus met.

2. CPLR 902's Discretionary Factors Also Support Certification

The five discretionary CPLR 902 factors also support certification. Factors one (the interest of class members in individually prosecuting their claims), two (inefficiency of multiple actions), four (desirability of concentrating claims in the particular forum), and five (difficulty of managing class-wide action), are substantively identical to CPLR 901's commonality, typicality, and superiority factors. As discussed above, these factors are equally well-satisfied for CPLR 902 purposes. *Nawrocki v. Proto Constr. & Dev. Corp.*, 2010 WL 1531428, at *5 (Sup. Ct. N.Y. Cnty. Apr. 7, 2010), *aff'd*, 82 A.D.3d 534 (1st Dep't 2011) (describing CPLR 902 factors as "implicit in CPLR 901").

Factor three (the extent and nature of any parallel litigation already commenced) also supports approval, as the settlement of the Federal Action specifically excluded the Note Offering claims alleged here.

Finally, this Court's expertise in adjudicating business disputes within its jurisdiction also reinforces a "factor four" finding that this Court is a plainly appropriate forum for this dispute.

The relevant CPLR 901 and 902 factors thus support final certification of the Settlement Class.

D. The Court Should Approve the Fee and Expense Application

1. Plaintiffs' Counsel's Fee Request

Courts have long recognized that attorneys who obtain a common fund recovery for a class are entitled to an award of fees and expenses from that fund. *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Fernandez*, 2015 WL 3932897, at *5 (successful attorneys in common fund class action settlements should generally be awarded percentage of recovery). When awarding attorneys' fees from a common fund, both state and federal courts in New York favor awarding percentage-based fees, as doing so "aligns the interests of class counsel with those of the class."

Hayes v. Harmony Gold Mining Co., 509 F. App'x 21, 24 (2d Cir. 2013); *see also* fn. 4 below (citing New York state court cases).

Plaintiffs' Counsel, pursuant to CPLR 909, respectfully submit that their work in the Action fully merits a total aggregate fee award of one-third of the Settlement Fund, or $2,333,100. Not only is such an award consistent with awards in similar cases by New York state and federal courts,[4] but it is also fully justified by each of the relevant "*Fiala* factors" that New York courts consider when evaluating fee requests.

Importantly, as discussed below, the reasonableness of the requested fee is also ***strongly*** confirmed by application of a "lodestar crosscheck," which courts across the country routinely use to assess the reasonability of a given fee request. Significantly, the requested 33-1/3% fee here would equate to a fee of $2,333,100 – which is slightly more than the combined $2,228,431.50 lodestar value of the 3,238 hours of time expended by all Plaintiffs' Counsel on behalf of the Settlement Class, and equates to a small 1.04 "lodestar multiplier." Given that lodestar multipliers of as high as 3x or 4x are not uncommon in fully contingent cases such as this, a 1.04 lodestar multiplier strongly supports the conclusion that the requested one-third fee is fair and reasonable – particularly where, as here, Plaintiffs' Counsel have achieved a decidedly superior result. *See, e.g.*, *Shapiro v. JPMorgan Chase & Co.*, 2014 WL 1224666, at *24 (S.D.N.Y. Mar. 24, 2014) (multiples "between 3 and 4.5" are "common"); *Lopez v. Fashion Nova*, 2021 WL 4896288, at *3 (S.D.N.Y. Oct. 19, 2021)

[4] *In re DouYu Int'l Holdings Ltd. Sec. Litig.*, No. 651703/2020, NYSCEF No. 217 at ¶16 (Sup. Ct. N.Y. Cnty. Dec. 1, 2022) (awarding one-third fee, plus expenses); *In re Everquote, Inc. Sec. Litig.*, No. 651177/2019, NYSCEF No. 132 at ¶14 (Sup. Ct. N.Y. Cnty. June 11, 2020) (awarding one-third fee, plus expenses); *Fernandez*, 2015 WL 3932897, at *6-*7 (awarding one-third fee, plus expenses); *Lopez v. Dinex Grp., LLC*, 2015 WL 5882842, at *5-*8 (Sup. Ct. N.Y. Cnty. Oct. 6, 2015) (awarding one-third fee, plus expenses); *Charles v. Avis Budget Car Rental, LLC*, 2017 WL 6539280, at *4-*5 (Sup. Ct. N.Y. Cnty. Dec. 21, 2017) (awarding one-third fee, plus expenses); *In re China MediaExpress Holdings, Inc.*, 2015 WL 13639423, at *1 (S.D.N.Y. Sept. 18, 2015) (awarding one-third fee, plus expenses); *Landmen Partners Inc. v. Blackstone Grp. L.P.*, 2013 WL 11330936, at *3 (S.D.N.Y. Dec. 18, 2013) (awarding one-third fee, plus expenses).

("In this Circuit, [c]ourts regularly award lodestar multipliers of up to eight times the lodestar, and in some cases, even higher multipliers.").

a. The *Fiala* Factors Support the Reasonableness of the Requested Fee

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 the bar of plaintiffs' and defendants' counsel; (iv) the magnitude and complexity of the action and the responsibilities undertaken; (v) the amount recovered; (vi) what reasonable counsel would charge in comparable circumstances; and (vii) the work performed. An eighth factor, the lodestar crosscheck, is also arguably inherent in considering the amount of "work performed" factor. Here, all of these factors support the requested fee.

b. Litigation Risk

This Action, like virtually every securities class case, involved ***very*** significant litigation risk and also particularly acute risks unique to this case for the reasons already discussed in detail above at §III.A and Joint Aff., ¶¶46-50.

Significantly, unlike Defendants' counsel, Plaintiffs' Counsel also litigated this matter on a ***fully contingent*** basis, and thus risked receiving ***nothing*** had Defendants prevailed. As case law makes clear, the risk of recovering nothing in securities class actions is all too real, as even the most skilled and diligent contingent-fee counsel – even in cases where they have achieved initial successes – can fail to recover anything in securities actions after committing literally years to litigating them. *See, e.g.*, *In re Oracle Corp. Sec. Litig.*, 2009 WL 1709050 (N.D. Cal. June 19, 2009), *aff'd*, 627 F.3d 376 (9th Cir. 2010) (granting summary judgment for defendants after eight years of litigation, resulting in plaintiffs' counsel (Robbins Geller) receiving no reimbursement of $7 million in expenses, and no fee on over 100,000 hours with lodestar value of $40 million); *Hubbard*

v. BankAtlantic Bancorp, Inc., 688 F.3d 713, 730 (11th Cir. 2012) (overturning jury verdict for plaintiffs).

c. [Non-]Existence of Prior Favorable Judgment

The respective Lead Counsel also investigated, brought, and litigated this Action without the benefit of any prior findings of liability with respect to the Notes against any Defendant. Joint Aff., ¶66. Thus, this factor also supports the requested fee.

d. Counsel's Standing in the Securities Bar

Each Lead Counsel firm (Robbins Geller, Berger Montague PC, and Shapiro Haber & Urmy LLP) is highly experienced in securities litigation. *See* firm resumes available at www.rgrdlaw.com, www.bergermontague.com, and www.shulaw.com, respectively; *see also* Joint Aff., ¶67. Lead Counsel also respectfully submit that their skill and experience were key factors in obtaining such a strong result for the Settlement Class. Moreover, *Fiala* factor three indicates that Lead Counsel's success should also be evaluated in light of the quality of opposing counsel – which were led here by a number of pre-eminent firms, Davis Polk & Wardwell LLP (for Luckin); Cahill Gordon & Reindel LLP (the underwriters); K&L Gates LLP (Luckin's authorized U.S. representatives); White & Case LLP and Holwell Shuster Goldger LLP (the investment vehicle defendants); and Gibson, Dunn & Crutcher LLP (Mr. Meier), which each vigorously pressed their clients' defenses. That Lead Counsel were able to obtain a $7 million Settlement in this challenging litigation, and against such formidable opposition, further supports the requested fee.

e. Magnitude and Complexity of the Action

For all of the same reasons that the "litigation risk" and "complexity" factors strongly support approval of the Settlement (*see supra*, §III.A, III.C; Joint Aff., ¶¶46-50), these factors also weigh in favor of approving a one-third fee.

f. Amount Recovered

As discussed above at §III.A, published data confirm that the proposed $7 million Settlement represents an excellent recovery when compared to other securities class actions involving similar estimated recoverable damages. And the recovery is particularly commendable where, as here, Plaintiffs brought securities class actions against a China-based corporate defendant, which involved heightened procedural problems and collectability issues. Indeed, Plaintiffs' Counsel respectfully submit that the proposed Settlement represents a superior result in the face of above-average risk.

Accordingly, this factor also strongly supports the requested fee.

g. Fees Charged or Awarded in Comparable Cases

A court-awarded fee is intended to approximate what counsel would receive if they were bargaining for their services in the marketplace. *See* *Mo. v. Jenkins by Agyei*, 491 U.S. 274, 285-86 (1989). If this were a non-class action, 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.") (Brennan, J., concurring).

Moreover, as noted in fn. 4 above, both state and federal courts in New York (and indeed across the country) frequently award percentage-based fees of 33-1/3% (or more) in other securities actions that have settled for comparable amounts. Accordingly, because the requested fee is well within the "range of reasonableness," this factor also supports the fee request.

h. Work Performed

As stated in the Joint Affirmation and accompanying affidavits/affirmations, Plaintiffs' Counsel spent over 3,200 hours and $2,228,431.50 in lodestar litigating the Action, from pre-filing investigation, through motions to dismiss, and into discovery, culminating in protracted settlement negotiations. Joint Aff., ¶61. Accordingly, this factor also supports the requested fee.

2. The Reasonableness of the Requested 33-1/3% Fee Is Strongly Confirmed By a "Lodestar Crosscheck"

As noted earlier, courts may confirm the reasonableness of a requested percentage-based fee by performing a "lodestar crosscheck." To calculate the relevant lodestar, a court takes the hours billed by each timekeeper (attorney or para-professional) and multiplies them by that timekeeper's current hourly rate, which, added together, yields counsel's overall lodestar. *Ousmane v. N.Y.C.*, 2009 WL 722294, at *9 (Sup. Ct. N.Y. Cnty. Mar. 17, 2009). The Court then cross-checks the effective dollar value of the requested percentage-based fee against counsel's lodestar to determine whether the requested fee would result in an unreasonably high "multiplier" on counsel's lodestar. *Clemons v. A.C.I. Found., Ltd.*, 2017 WL 1968654, at *5 (Sup. Ct. N.Y. Cnty. May 12, 2017); *Ryan v. Volume Servs. Am.*, 2013 WL 12147011, at *4-*5 (Sup. Ct. N.Y. Cnty. Mar. 7, 2013).

Lead Counsel alone devoted a total of 2,575 hours to the investigation, litigation, and ultimate resolution of the Action over more than two years. The value of that time results in a total aggregate lodestar – among Lead Counsel only – of $1,721,441.00. Because the requested 33-1/3% fee equates to $2,333,100, Lead Counsel's requested fee represents a "lodestar multiplier" of 1.35 on their lodestar – a number that is even lower when the lodestar of ***all*** Plaintiffs' Counsel is included. *Taft v. Ackermans*, 2007 WL 414493, at *11 (S.D.N.Y. Jan. 31, 2007) (describing 1.44x multiplier as "modest in relation to lodestar multipliers frequently used in this district").

Given that both state and federal courts in New York routinely award percentage-based awards that result in multipliers of two to four times (or more) the value of counsel's lodestar, *a fortiori* a percentage-based award that, as here, results in a multiplier of 1.04 on Plaintiffs' Counsel's lodestar is plainly reasonable. *See, e.g.*, *Taft*, 2007 WL 414493, at *11 (describing 1.44 multiplier as "modest"); *In re BioScrip, Inc. Sec. Litig.*, 273 F. Supp. 3d 474, 497 (S.D.N.Y. 2017), *aff'd sub nom. Fresno Cnty. Emps.' Ret. Ass'n v. Isaacson/Weaver Family Tr.*, 925 F.3d 63 (2d Cir. 2019) (lodestar crosscheck multiplier of 1.39x "is at the lower range of comparable awards"); *see also In re FLAG*

Telecom Holdings, Ltd. Sec. Litig., 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"); *Shapiro*, 2014 WL 1224666, at *24 (describing significantly higher multipliers of 3 to 4.5 as "common").

In sum, all of the foregoing *Fiala* factors strongly support the requested one-third fee.[5]

3. Plaintiffs' Counsel's Expenses Were Reasonably Incurred and Necessary to the Prosecution of the Action

Plaintiffs' Counsel request payment of $157,762.38 in total litigation charges and expenses. These consist primarily of the costs of retaining a damages expert and bankruptcy and Cayman Islands law counsel, legal and factual research, service fees, and the Mediator's fees – all of which were reasonably necessary to Plaintiffs' successful efforts to reach the settlement in the Action. *See* Joint Aff., ¶¶74-75; *see also 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.").

Moreover, the Notice informed potential Settlement Class Members that Plaintiffs' Counsel would seek up to $200,000 in expenses. To date, no objections to this amount have been received. *See* Murray Aff., ¶16. Since the amount of expenses for which counsel now actually seeks payment

[5] Courts also frequently consider the reaction of the class and the views of the named plaintiffs. *See, e.g.*, *In re Signet Jewelers Ltd. Sec. Litig.*, 2020 WL 4196468, at *6 (S.D.N.Y. July 21, 2020); *In re Bear Stearns Cos., Inc. Sec., Derivative, & ERISA Litig.*, 909 F. Supp. 2d 259, 266 (S.D.N.Y. 2012). Here, all of the named Plaintiffs support the requested fee. *See* Kimiatek Aff., ¶8; O'Malley Aff., ¶¶9-10; Bergenholtz Aff., ¶¶8-9; Medico Aff., ¶¶9-10. Additionally, although the December 27, 2022 deadline for objections has not yet passed, to date no objections to Plaintiffs' Counsel's requested 33-1/3% fee (which was disclosed in the Notice) have been received. Murray Aff., ¶16.

($157,762.38) is ***less*** than what was estimated in the Notice, the lack of objections also supports counsel's expense request.

4. The Requested Awards to Each Named Plaintiff Are Reasonable

As set forth in the respective Plaintiffs' affidavits, each took their fiduciary role as a plaintiff seriously by, *inter alia*, reviewing pleadings and briefs, staying regularly apprised of case developments, engaging in strategy discussions, and regularly consulting with Plaintiffs' Counsel regarding both litigation and settlement matters. Joint Aff., ¶76; Kimiatek Aff., ¶¶5-9; O'Malley Aff., ¶¶5-7; Bergenholtz Aff., ¶¶5-6; Medico Aff., ¶¶5-7. Without the Plaintiffs' efforts in commencing and prosecuting this Action, there would be no recovery, and the requested awards are relatively modest. *Compare*, *e.g.*, *Charles*, 2017 WL 6539280, at *2-*3, *5 (awarding $10,000); *Lopez*, 2015 WL 5882842, at *3-*4, *8 (awarding $20,000); *see also Hosue*, 2017 WL 4011213, at *3, *6 (awarding $5,000). In addition, no objections to the aggregate awards from any Settlement Class Members have been received to date. Accordingly, the requested awards should also be approved.

II. CONCLUSION

For the reasons described above and in the accompanying affirmations/affidavits submitted herewith, Plaintiffs respectfully ask the Court to (a) approve the Settlement and Plan of Allocation as fair, adequate, and reasonable; (b) confirm its prior order certifying the Settlement Class; (c) grant Plaintiffs' Counsel's application for an award of attorneys' fees (covering all Plaintiffs' Counsel) equal to 33-1/3% of the Settlement Fund, plus $157,762.38 in expenses (with interest earned on both amounts until paid at the same rate as earned on the Settlement Fund from the date it was funded), and (d) award the requested amounts to each named Plaintiff for his or its service to the Settlement Class.

DATED: December 13, 2022

Respectfully submitted,

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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 in Support of (1) Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation; (2) Plaintiffs' Counsel's Application for Attorneys' Fees and Expenses; and (3) Plaintiffs' Requests for Service Awards was prepared on a computer using Microsoft Word. A proportionally spaced typeface was used as follows:

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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 6,736 words.

DATED: December 13, 2022

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