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
	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

Brian E. Cochran, an attorney duly admitted to practice law before this Court, and Michael Dell'Angelo, and Edward F. Haber, attorneys duly admitted to practice *pro hac vice* before this Court, hereby submit the following under the penalty of perjury pursuant to CPLR 2106. Unless otherwise indicated, we have personal knowledge of the matters set forth herein based upon our extensive participation in the prosecution and settlement of the claims asserted. If called upon by the Court, we could and would competently testify that the following facts are true and correct.

1. Brian E. Cochran is a member of Robbins Geller Rudman & Dowd LLP ("Robbins Geller"), co-lead counsel for plaintiffs Kimson Chemical, Inc., Teamsters Local 710 Pension Fund, Michael Bergenholtz, and City of Fort Myers Police Officers' Retirement System ("Plaintiffs") in the above-captioned action (the "Action").

2. Michael Dell'Angelo is a member of Berger Montague PC ("Berger Montague"), co-lead counsel for Plaintiffs in the Action.

3. Edward F. Haber is a member of Shapiro Haber & Urmy LLP ("Shapiro Haber"), co-lead counsel for Plaintiffs in the Action.

4. We submit this joint affidavit 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.

I. INTRODUCTION

5. By Order dated October 7, 2022 (the "Preliminary Approval Order," NYSCEF No. 193), after more than two years of hard-fought litigation, this Court preliminarily approved the Parties' proposed global Settlement, which would resolve the outstanding claims of the purchasers of Luckin Coffee Inc. ("Luckin" or the "Company") 0.75% Convertible Senior Notes due 2025 (the "Notes"). As further detailed below, the $7 million all-cash Settlement represents an excellent

result, not least because it was achieved in the face of Luckin's bankruptcy and restructuring proceedings and despite the foreign domicile of several defendants.

6. Importantly, the Settlement was only reached after the filing of a consolidated complaint, the briefing of Defendants' motions to dismiss, participation by Plaintiffs in several related proceedings, and extensive settlement discussions involving a highly experienced mediator, Robert Meyer of JAMS ("Meyer" or the "Mediator"). Thus, the Settlement was the result of vigorous arm's-length negotiations, conducted by experienced counsel, and supervised by an equally experienced mediator.

7. Pursuant to the Preliminary Approval Order, the Claims Administrator has (a) completed the mailing of 5,931 Notices and Proof of Claim forms ("Notice Packets") to potential Settlement Class Members or their nominees who could be identified with reasonable effort, and (b) published the Summary Notice electronically in *Business Wire* and in print in *The Wall Street Journal* (which directed Settlement Class Members to www.LuckinConvertibleNotes Settlement.com, where they could, and still can, download Notice Packets). *See* accompanying Affidavit of Ross D. Murray Regarding Notice Dissemination, Publication, and Requests for Exclusion Received to Date ("Murray Aff."). To date, ***no*** objections to any aspect of the Settlement – or even any opt-out requests – have been received from any Settlement Class Members.[1]

8. Notice having been duly disseminated, for all of the reasons set forth herein and in the accompanying memorandum, we respectfully submit that the proposed Settlement is fair, reasonable, and adequate in all respects, and should be finally approved.

9. Plaintiffs also request the Court's final approval of the proposed Plan of Allocation ("POA"), which provides for a customary *pro rata* distribution of the Settlement Fund based on

[1] The deadlines for Settlement Class Members to submit "opt out" requests or objections do not expire until December 27, 2022. Should any be received, Plaintiffs will address them in reply papers to be filed on or before January 24, 2023.

"Recognized Loss Amounts" that take into account the different per-note losses that Settlement Class Members suffered, depending on when they bought and (if applicable) sold their Luckin Notes. In sum, the POA here is consistent with allocation plans that other courts have approved in similar cases.

10. We also respectfully submit that Plaintiffs' Counsel's request for ***total*** attorneys' fees equal to one-third (33-1/3%) of the $7 million Settlement ($2.333 million) and payment of $157,762.38 in litigation expenses (plus interest at the same rate as earned by the Settlement Fund) is fair and reasonable. Indeed, the reasonableness of the requested one-third fee is confirmed by a lodestar cross-check, which yields a 1.04 multiplier. Finally, we support the named Plaintiffs' request for modest awards as fair and reasonable, based on their service to the Settlement Class.

II. BACKGROUND

A. Plaintiffs' Allegations

11. Based in China, Luckin engages in the retail sale of coffee items. In May 2019, Luckin completed its initial public offering ("IPO"). In the IPO, Luckin issued nearly 38 million American Depository Shares ("ADSs") at $17 per share, yielding over $645 million in gross proceeds.

12. In January 2020, Luckin conducted a secondary offering of ADSs (the "SPO") and an offering of the Notes (the "Note Offering," and, together with the IPO and SPO, the "Offerings"), raising more than $1.1 billion from investors. In the SPO, Luckin sold more than 15.8 million Luckin ADSs at $42 per ADS, generating over $666 million in gross proceeds. Concurrently with the SPO, Luckin also conducted the Note Offering, selling $460 million worth of the Notes.

13. Soon after the SPO and the Note Offering closed, Luckin was publicly accused of artificially inflating key financial information. 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. These revelations caused the price of Luckin securities to plummet. Luckin ADSs were subsequently delisted, several of its officers and directors were forced out of the Company, and Luckin became the subject of multiple civil, criminal, and regulatory proceedings in the United States and China.

14. 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 Proceeding"). 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.

15. In addition to the Action, a related securities class action was filed in the Southern District of New York asserting claims under the federal securities laws on behalf of Luckin ADS purchasers, *In re Luckin Coffee Inc. Securities Litigation*, Case No. 1:20-cv-01293-LJL-JPC ("Federal Action").

16. Plaintiffs here 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 Offerings, and Luckin's authorized U.S. representatives ("Defendants")[2] for material misrepresentations and omissions allegedly made by Defendants in solicitation materials for the Offerings.

17. In connection with its restructuring proceedings, Luckin reached an agreement with current holders of the Notes ("Existing Noteholders") to resolve claims Existing Noteholders may

[2] Specifically, Defendants are Luckin, Thomas P. Meier, Haode Investment Inc., Primus Investment Fund, L.P., Summer Fame Limited, Lucky Cup Holdings Limited, Fortunate Cup Holdings Limited, Mayer Investments Fund, L.P., Richard Arthur, Cogency Global Inc., Credit Suisse Securities (USA) LLC, Morgan Stanley & Co. LLC, China International Capital Corporation Hong Kong Securities Limited, Haitong International Securities Company Limited, Key Banc Capital Markets Inc., and Needham & Company, LLC.

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 court in the Federal Action ("Federal Court") granted final approval of a class action settlement resolving the claims of ADS purchasers at issue in this Action.

18. Thus, the only remaining unresolved claims in this Action consist of the claims of Note purchasers who did not release their claims through the Scheme of Arrangement or otherwise. After extensive negotiations and the other activities taken by the Plaintiffs described below, the Settlement was reached to resolve this last remaining aspect of the litigation.

B. History of and Work Performed in the Action and Related Proceedings

19. On May 26, 2020, Plaintiff Kimson Chemical, Inc. filed the first putative class action in this Court under Index No. 651939/2020 asserting claims under the Securities Act against Defendants on behalf of purchasers of Luckin ADSs issued in the IPO. Related cases were filed by Plaintiff Michael Bergenholtz, Index No. 652576/2020, and Plaintiff Teamsters Local 710 Pension Fund, Index No. 652663/2020, on June 18, 2020 and June 23, 2020, respectively.

20. On July 10, 2020, Luckin initiated the Cayman Proceeding. On July 15, 2020, Luckin announced that the Grand Court of the Cayman Islands had appointed joint provisional liquidators to oversee a restructuring of Luckin's indebtedness in the Cayman Proceeding (the "JPLs").

21. On October 16, 2020, Justice O. Peter Sherwood entered an order consolidating the *Bergenholtz* Action and the *Teamsters* Action with and into the *Kimson* Action and appointed the law firms of Robbins Geller, Berger Montague, and Shapiro Haber as Co-Lead Counsel for the Consolidated Action ("Lead Counsel") [NYSCEF No. 27].

22. On December 23, 2020, Plaintiffs, including additional Plaintiff City of Fort Myers Police Officers' Retirement System, filed a consolidated complaint against Defendants which asserted Securities Act claims arising from the IPO, the SPO, and the Note Offering [NYSCEF No. 36].

23. Plaintiffs' Counsel's extensive pre-filing investigation included, *inter alia*, collecting, reviewing, and analyzing: (a) Luckin's numerous SEC filings, including the voluminous solicitation materials for the Offerings and incorporated exhibits; (b) Luckin's press releases, investor conference call transcripts, and other public statements; (c) analyst reports and news stories about Luckin; and (d) documents made available in connection with Luckin's bankruptcy proceedings.

24. On January 29, 2021, the JPLs announced that they had reached an agreement in principle with certain holders of the Notes. The agreement was later finalized and approved by Noteholders through a November 2021 creditors meeting in the Cayman Proceeding. The Grand Court of the Cayman Islands later sanctioned the Scheme of Arrangement and it was given effect by the U.S. Bankruptcy Court, becoming effective on December 17, 2021. While the Scheme of Arrangement restructured the Notes and resolved certain claims of Existing Noteholders, it did not apply to prior purchasers of the Notes who had subsequently sold their Notes and thus would not receive any consideration through the Scheme of Arrangement. Lead Counsel discussed at length the scope of the release granted by the Scheme of Arrangement with the JPLs and Luckin and expressly reserved the rights of non-Scheme creditors, including prior Note purchasers, in bankruptcy proceedings to not be bound by the Scheme of Arrangement.

25. On March 2, 2021, plaintiffs' counsel in the Federal Action filed a stipulation seeking provisional certification of a negotiation class for settlement purposes. The next day, the Federal Court set a teleconference for March 4, 2021 on the requested relief. That same day, Lead Counsel filed a letter seeking to attend the March 4, 2021 conference, which was granted by the Federal

Court. Lead Counsel attended the March 4, 2021 hearing on behalf of claimants in this Action and raised numerous concerns, both procedural and substantive, related to provisionally certifying a negotiation class under the circumstances, and filed a follow-up letter elaborating on these concerns in the Federal Action.

26. On February 5, 2021, Luckin filed a petition with the United States Bankruptcy Court for the Southern District of New York ("Bankruptcy Court") seeking to recognize the Cayman Proceeding as a foreign main proceeding within the meaning of section 1502(4) of the Bankruptcy Code and granting related relief. On March 9, 2021, Lead Counsel, through bankruptcy counsel, objected to the petition to the extent it sought to stay this Action as to non-debtor defendants. Following a hearing attended by bankruptcy counsel for Lead Counsel, on March 30, 2021, the Bankruptcy Court entered a recognition order as to Luckin and the JPLs (the "Recognition Order"). The Recognition Order provided, among other things, that the automatic stay authorized by the Bankruptcy Code (the "Automatic Stay") shall apply throughout the duration of the Chapter 15 Case or until otherwise ordered by the Bankruptcy Court. On March 31, 2021, Luckin filed a Notice of Imposition of Automatic Stay in this Action [NYSCEF No. 117].

27. On March 30, 2021, five separate motions to dismiss were filed by various groups of defendants, including: (i) domestic underwriters; (ii) overseas underwriters; (iii) Luckin's authorized U.S. representatives; and (iv) various investment entities utilized by certain of the individual defendants (the "Moving Defendants") [NYSCEF Nos. 53, 75, 79, 94, 110]. The Moving Defendants argued, *inter alia*, that the Action should be stayed, that Plaintiffs lack standing to assert Securities Act claims, that Plaintiffs failed to allege an actionable misrepresentation in Offering materials, that certain overseas defendants had not been validly served and/or were not subject to the Court's jurisdiction, and that Plaintiffs had not sufficiently alleged control person liability.

28. On April 20, 2021, defendant Thomas P. Meier filed a sixth motion to dismiss arguing that the Action should be stayed, that the Court lacks personal jurisdiction over Mr. Meier, that Plaintiffs lack standing to assert Securities Act claims, that Mr. Meier is not a proper defendant under Section 12(a)(2) of the Securities Act, and that Plaintiffs have not sufficiently alleged Mr. Meier is a control person under Section 15 of the Securities Act [NYSCEF No. 120].

29. Plaintiffs filed an omnibus opposition to the Moving Defendants' motions to dismiss on June 1, 2021 [NYSCEF No. 140] and to Mr. Meier's motion to dismiss on June 21, 2021 [NYSCEF No. 147]. The Moving Defendants and Mr. Meier filed reply papers on July 16, 2021 and August 5, 2021, respectively [NYSCEF Nos. 154, 155, 156, 157, 159].

30. On May 14, 2021, plaintiffs in the Federal Action filed a stipulation and proposed order seeking to disseminate class notice. On May 20, 2021, Lead Counsel filed a letter seeking a pre-motion conference for a proposed motion to intervene in the Federal Action to oppose the dissemination of class notice, which the Federal Court granted. On May 28, 2021, Lead Counsel attended the pre-motion conference, after which the Federal Court granted the filing of Lead Counsel's proposed motion to intervene and related briefing, which Lead Counsel filed on June 7, 2021. On July 6, 2021, the Federal Court denied Plaintiffs' motion to intervene and granted the dissemination of class notice. On July 9, 2021, Plaintiffs filed a notice of appeal of the Federal Court's order, which was subsequently voluntarily dismissed in connection with the Settlement.

31. After extensive negotiations with Defendants, the JPLs in the Cayman Proceeding, and counsel for plaintiffs in other pending actions against Luckin, in June 2021, Lead Counsel joined an Ad Hoc Creditors Committee (the "Creditors Committee") to attempt to negotiate a resolution of securities law claims allegedly possessed by such purchasers in connection with Luckin's bankruptcy.

32. In the course of serving on the Creditors Committee and otherwise in connection with the Cayman Proceedings, Lead Counsel received and analyzed numerous documents and informational responses provided by the Company regarding, *inter alia*, Luckin's finances, available cash, business plans, relevant insurance policies, and the internal investigation into the alleged wrongdoing at the Company. Lead Counsel also participated in multiple meetings, teleconferences, and phone calls with counsel for Defendants, the JPLs, and other plaintiffs' counsel to attempt to seek a global resolution of all investor claims against Defendants.

33. On October 25, 2021, following Lead Counsel's participation on the Creditors Committee and various negotiations amongst the parties, plaintiffs in the Federal Action filed a motion seeking preliminary approval of a settlement of the federal securities law claims alleged by Luckin ADS purchasers (the "ADS Settlement"). The ADS Settlement did not include the claims of Luckin convertible note purchasers. On July 22, 2022, the court in the Federal Action granted final approval to the ADS Settlement.

34. On October 26, 2021, Defendants filed a letter with the Court seeking to adjourn an upcoming hearing on the motions to dismiss and to stay the Action in light of the ADS Settlement [NYSCEF No. 160]. Plaintiffs responded to Defendants' letter on November 1, 2021 opposing the requested relief [NYSCEF No. 165], to which Defendants replied on November 3, 2021 [NYSCEF No. 167].

35. On December 21, 2021, Justice Margaret Chan issued an order staying the Action pending further developments in the Federal Action regarding the ADS Settlement [NYSCEF No. 174].

36. On March 4, 2022, the JPLs, in connection with and with the support of Luckin, filed the Final Report of the Foreign Representatives and Presentment of Order Closing Chapter 15 Case (the "Final Report") in the Chapter 15 Case. The Final Report confirmed that, among other things,

the purpose of the JPLs' appearance in the Bankruptcy Court was complete, and requested entry of an order closing the Chapter 15 Case. On April 8, 2022, the Bankruptcy Court entered an order closing the Chapter 15 Case. As a result, the Automatic Stay terminated on April 8, 2022.

37. On May 3, 2022, the Automatic Stay of this litigation was terminated by virtue of Luckin filing the Notice of Closing of Chapter 15 Case and Termination of Automatic Stay [NYSCEF No. 178].

38. On September 6, 2022, Plaintiffs and certain appearing defendants entered into a stipulation for the Settlement for the remaining Note purchaser claims, subject to Court approval. At the time, six motions to dismiss filed by various defendants in this Action as outlined above remained pending.

C. Settlement Negotiations

39. In spring and summer 2021, Plaintiffs entered into discussions to explore a global resolution of claims in this Action through direct negotiations with Defendants' counsel and the JPLs, and later Plaintiffs' participation on the Creditors Committee and in Luckin's bankruptcy proceedings. In the course of these discussions, Plaintiffs received numerous documents from Luckin and conducted a comprehensive analysis of Luckin's financial position, ability to pay, and the risks of continued litigation, including as to collectability and complications arising from the locations of various defendants residing overseas. Plaintiffs engaged Cayman Islands counsel to assist in the analysis of issues arising under Cayman Islands law, as well as U.S. bankruptcy counsel to assist in the analysis of issues arising from Luckin's bankruptcy proceedings. Lead Counsel conducted numerous discussions with the JPLs, counsel for Defendants, and counsel for plaintiffs in various other actions in order to seek a global resolution of the claims at issue over a several month period, including through the Creditors Committee and directly with various parties. Despite intensive negotiations, the parties were unable to reach an agreement to settle the Action.

40. In December 2021, Plaintiffs and Luckin agreed to engage a mediator to assist with settlement negotiations. The parties selected Robert A. Meyer, Esq. of JAMS, a nationally recognized and Chambers-rated mediator with extensive experience in mediating and resolving complex litigation matters. On January 9, 2022, the parties participated in a mediation session overseen by Mr. Meyer. The mediation successfully resulted in an agreement to certain material terms of the Settlement in principle, however important details of the Settlement remained unresolved.

41. Following the agreement to settle the remaining claims in the Action in principle, the parties engaged in several months of negotiations regarding the execution of a memorandum of understanding reflecting the material terms of the Settlement. A resolution of the Action presented numerous complexities, including, *inter alia*: (i) the overseas location of several defendants; (ii) Luckin's ability to fund a settlement given its cash position, its bankruptcy proceedings, and its need to secure the necessary regulatory approvals and other complexities involved in expatriating cash from a business based in mainland China; (iii) accounting for the impact of the Scheme of Arrangement and the settlement of the ADS claims in the Federal Action, for example in developing an appropriate plan of allocation, opt-out provisions, a settlement class definition, and class-wide release; and (iv) the multi-jurisdictional nature of the litigation, which has involved Plaintiffs appearing in four different jurisdictions. On April 12, 2022, Plaintiffs and Luckin executed a final Memorandum of Understanding reflecting the material terms of the Settlement (the "MOU").

42. Following the execution of the MOU, Plaintiffs and Luckin engaged in months of negotiations to reach agreement on a formal, final settlement agreement. The length and intensity of these negotiations again reflected the particular complexities of seeking a resolution of this Action under the circumstances as outlined above. After months of protected, arm's-length negotiations, on

September 6, 2022, Plaintiffs and Luckin executed a final Stipulation of Settlement (with all exhibits) [NYSCEF No. 190].

43. Promptly thereafter, Plaintiffs sought preliminary approval of the proposed Settlement by filing order-to-show-cause papers in this Court [NYSCEF No. 191]. Following a hearing on October 7, 2022, the Court signed the Preliminary Approval Order (which also preliminarily certified the Settlement Class) [NYSCEF No. 193].

III. COUNSEL'S COMPLIANCE WITH THE PRELIMINARY APPROVAL ORDER'S NOTICE REQUIREMENTS

44. In accordance with the Preliminary Approval Order, Lead Counsel, through the Claims Administrator, has implemented a comprehensive notice-by-individual-mail-and-publication program. Notice Packets – which contain all required information regarding the Settlement and how Settlement Class Members can (a) exclude themselves from the Settlement Class; (b) object to the Settlement, the POA, or the Fee and Expense Application; (c) file a Proof of Claim; and/or (d) attend the Fairness Hearing – have been mailed to 5,931 potential Settlement Class Members or their nominees. Notice Packet materials have also been, and continue to be, posted at www.LuckinConvertibleNotesSettlement.com, along with other Settlement-related documents. In addition, on November 11, 2022, the Summary Notice – which directed Settlement Class Members to the Settlement website – was published on *Business Wire* (internet) and in *The Wall Street Journal* (print). *See generally* the accompanying Murray Aff.

45. To date, we have received no objections or opt-out requests – nor has the Claims Administrator. *See* Murray Aff., ¶¶15-16. Should any be received before the Fairness Hearing, Plaintiffs will address them in their reply papers.

IV. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

A. Plaintiffs' Likelihood of Success and the Complexity of the Action

46. We respectfully submit that the Settlement Class's claims are meritorious. Defendants, however, have taken a very different view throughout the case. If the Settlement had not been achieved, Plaintiffs faced numerous hurdles to establishing Defendants' liability and damages and ultimately collecting on any judgment obtained, and success was far from guaranteed. Luckin – the primary defendant – had entered bankruptcy proceedings and did not have any assets located in the United States. Furthermore, 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. Moreover, the only remaining claims in the Action, which consist of claims under the Securities Act arising from the offer and sale of the Notes in the Note Offering, posed significant challenges. For example, although Plaintiffs believe that they had a valid basis to assert Securities Act liability for Defendants' offer and sale of the Notes, 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. Indeed, the Action presented several particularly severe – and unusual – risk factors due to the difficulties of taking depositions and conducting third-party document discovery in China, and of enforcing a favorable judgment in China even if the evidence to sustain Plaintiffs' claims against the central defendant (Luckin) could be obtained. In sum, there is no assurance that the Settlement Class could recover through further litigation an amount equal to, let alone greater than, the proposed $7 million Settlement.

47. In negotiating the Settlement, Lead Counsel considered, among other factors: (a) the substantial immediate cash benefit conferred on Settlement Class Members under the Settlement; (b) the possibility that the Defendants would succeed in dismissing the claims in the Action in whole or in part; (c) the expense and time that would be required to prosecute the Action through trial,

particularly given that Luckin is headquartered in China; (d) the risk that the Court might not certify the Class; (e) the probability that Defendants would move for summary judgment at the close of discovery, leading to unpredictable "battles of the experts" with respect to loss causation, materiality, and damages issues; (f) the difficulties and risks involved in proving the same issues at trial; (g) the probability that the Defendants would file post-verdict motions and appeals if Plaintiffs succeeded at trial; (h) the risk that the Defendants might ultimately be unable to satisfy a judgment after trial, or that Plaintiffs would be unable to enforce their judgment in China; and (i) and the risk that Luckin may be unable to pay to satisfy a judgment given its recent bankruptcy proceedings. In short, there were very serious risks as to whether Plaintiffs would ultimately prevail and, even if they did, equally serious risks as to whether any judgment could be collected.

48. On the merits, for example, in both their motions to dismiss and during the mediation process, Defendants asserted numerous defenses. For example, Defendants argued, *inter alia*:

- that the Offering documents did not contain any actionable misrepresentations;
- that Plaintiffs could not establish their standing to assert Securities Act claims;
- that various defendants had not acted negligently in the performance of their duties;
- because the Notes were issued pursuant to SEC Rule 144A and Regulation S, they could not engender Securities Act liability;
- that certain overseas defendants had not been validly served and/or were not subject to the jurisdiction of the Court; and
- that Plaintiffs could not establish control person liability under Section 15 of the Securities Act.

49. Although Plaintiffs dispute and have a response to each of these defenses, as well as to the Defendants' attacks on Plaintiffs' other claims, Plaintiffs also recognize that each of these defenses created material uncertainty regarding the ultimate outcome of the Action.

50. Further, as noted above, conducting and obtaining adequate discovery to support Plaintiffs' claims presented unusually high hurdles, as Luckin's business was run and operated in China and the Company has been recently embroiled in bankruptcy proceedings. Even if Plaintiffs prevailed in opposing Defendants' various motions to dismiss, they would still need to resolve the legal and logistical problems inherent in taking the depositions of China-based witnesses – given that China forbids depositions in its territory. While a defendant (such as Luckin) ***might*** be willing to produce its own current employees to be deposed outside of China, neither Plaintiffs nor this Court had any clear way to compel former employees or third parties that are based in China to give deposition testimony. Moreover, Plaintiffs anticipate that the bulk of most relevant documents yet to be produced would be in Chinese, requiring translation and creating an additional layer of complexity not present in the ordinary securities class action.

51. In sum, the Parties disagreed strongly on the merits of the Action. And had a jury agreed with Defendants on either liability or damages, the Class would have walked away with little or nothing.

52. Finally, independent research also strongly confirms that the $7 million Settlement represents a well-above-average recovery compared to other securities cases involving similar levels of investor losses. Indeed, the proposed Settlement represents 23% of Plaintiffs' expert's estimated $30.4 million in damages relating to the Securities Act claims at issue in the Action arising from the Note Offering. The Settlement also represents a substantial percentage of Plaintiffs' expert's estimated damages of Settlement Class Members' combined Securities Act and potential fraud-based claims, representing 5.2% of the estimated $134.3 million in combined damages. By contrast, the median securities settlement between December 2012 and December 2021 equated to 2.8% of maximum damages in cases involving estimated investor losses 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).

B. Lead Counsel's Judgment Supports the Settlement

53. By the time the Settlement was reached, Lead Counsel had a strong understanding of the strengths and weaknesses of the Settlement Class's claims based on, *inter alia*, their (a) extensive pre-filing factual investigations; (b) thorough briefing of multiple motions to dismiss; (c) consultation with a damages expert; (d) consultation with bankruptcy counsel and Cayman Islands counsel; (e) the review of documents made available in connection with Luckin's bankruptcy proceedings; and (f) participation in a comprehensive and protracted mediation and settlement negotiation process. Based on the foregoing – combined with their own considerable professional experience in litigating actions of this type – all Lead Counsel strongly believe that the Settlement is decidedly "fair, reasonable, and adequate," and should be approved.

C. The Protracted Arm's-Length Negotiation Process, Supervised by a Nationally Respected Mediator, Further Supports Approval

54. In evaluating whether a settlement is fair, courts consider whether it was the product of an arm's-length negotiation, including whether a neutral mediator was involved, or whether, by contrast, the plaintiffs appear to have rushed into an ill-advised settlement.

55. As discussed above, the Settlement was the product of difficult and lengthy negotiations, which involved an experienced mediator, over a protracted time period. Because this litigation was hard-fought at every stage by experienced counsel even as negotiations were also being pursued, and because the negotiation process itself involved a highly experienced mediator, this factor strongly weighs in favor of finding that the Settlement is fair and reasonable, and should be approved.

V. THE PLAN OF ALLOCATION IS CUSTOMARY, FAIR, AND REASONABLE

56. To receive a distribution from the Net Settlement Fund, Settlement Class Members are required to submit a Proof of Claim and Release form ("Claim Form"), which was mailed with the Notice and is also available on the Settlement website. The Claims Administrator will review the Claim Forms and supporting documents submitted, provide an opportunity to cure any deficiencies, and mail or wire Settlement Class Members their *pro rata* share of the Net Settlement Fund in accordance with the proposed Plan of Allocation.

57. The proposed Plan of Allocation (POA) was formulated by Lead Counsel in consultation with the Plaintiffs' damages consultant, DLA, LLC, which has extensive experience in developing plans of allocation in securities class actions. For Settlement Class Members that purchased Notes on the open market, the POA provides for a customary *pro rata* allocation based on "recognized losses" calculated using formulas that take into account the different amounts of artificial inflation in the Notes at different times. Specifically, the recognized loss amounts in the POA are based on the decline in value of the Notes that occurred following partial disclosure events, which gradually disclosed the truth concerning the problems with Luckin (which, in turn, reduced the amount of artificial inflation in the price of the Notes allegedly caused by the alleged misstatements and omissions at issue).

58. For Settlement Class Members that purchased Notes directly in the Note Offering, the POA provides a more favorable statutory loss calculation as supported by Section 12(a) of the Securities Act. In addition, the POA provides a 2.21x multiplier for Settlement Class Members who purchased Notes directly in the Note Offering, which reflects the more favorable standards of pleading and proof available to claimants who can assert claims under Section 12(a)(2) of the Securities Act as compared to claimants who can only assert the fraud-based claims available to open-market purchasers. This same multiplier as between fraud-based claims and Securities Act

claims was approved by a Special Master and a United States District Court after extensive analysis and the review of empirical evidence supporting the relative value of Securities Act claims in *The Police Retirement System of St. Louis v. Granite Construction Inc., et al.*, Case No. 3:190-cv-04744-WHA (N.D. Cal.).

59. The proposed POA will therefore result in a fair and equitable distribution of the Net Settlement Fund. Moreover, although the POA was set forth in full in the Notice (*see* Murray Aff., Ex. A, Notice at 2-5), to date, no objections to the POA have been received. Accordingly, we respectfully submit that the POA should be approved.

VI. LEAD COUNSEL'S FEE AND EXPENSE APPLICATION AND REQUEST FOR MODEST SERVICE AWARDS TO PLAINTIFFS

A. The Requested Fee Is Reasonable under the Factors Considered by New York Courts

60. As set forth in the accompanying memorandum, New York courts have long recognized that attorneys who successfully represent a class are entitled to compensation for their services, and that attorneys who obtain a recovery for a class in the form of a common fund should be awarded fees and expenses from that fund.

61. Plaintiffs' Counsel seek an attorneys' fee award of one third (33-1/3%) of the Settlement for the more than 3,200 hours of total time that Plaintiffs' Counsel devoted to this Action.[3] This request is justified under well-established case law, and is fully supported by Plaintiffs. *See* accompanying Affidavit of Victor Medico ("Medico Aff."), ¶¶9-10; Affidavit of Michael O'Malley ("O'Malley Aff."), ¶¶9-10; Affidavit of Michel Bergenholtz ("Bergenholtz Aff."), ¶¶8-9; Affidavit of Herbert Kimiatek ("Kimiatek Aff."), ¶8. The Settlement Class also appears to agree, as to date no objections to the requested fee have been received. We further

[3] *See* the accompanying attorney affidavits/affirmations submitted herewith by Brian E. Cochran of Robbins Geller; Michael Dell'Angelo of Berger Montague; and Edward F. Haber of Shapiro Haber.

respectfully submit that a one-third fee is also reasonable in light of the superior results obtained in the face of above-average litigation risks – especially where the fee, even if granted in full, would result in a slight multiplier of 1.04 on counsel's $2,228,431.50 lodestar. The requested fee is also consistent with awards approved by this Court in other securities class actions. *See In re DouYu International Holdings Ltd. Sec. Litig.*, No. 651703/2020, NYSCEF No. 217, ¶16 (Sup. Ct. N.Y. Cnty. Dec. 1, 2022) (awarding one-third fee); *In re Netshoes Sec. Litig.*, No. 157435/2018, NYSCEF No. 141, ¶15 (Sup. Ct. N.Y. Cnty. Dec. 10, 2020) (same); *In re EverQuote, Inc. Sec. Litig.*, No. 651177/2019, NYSCEF No. 132, ¶14 (Sup. Ct. N.Y. Cnty. June 11, 2020) (same).

62. We also further address below the specific factors that New York courts typically consider in analyzing attorneys' fee requests, notably (i) the risks of the action; (ii) the existence of a precedential decision in a similar, prior litigation; (iii) counsel's experience and reputation; (iv) the magnitude and complexity of the action; (v) the amount recovered for the class; and (vi) the work done by counsel and resulting lodestar cross-check. *See, e.g.*, *Fiala v. Metro. Life Ins. Co.*, 899 N.Y.S.2d 531, 540 (Sup. Ct. N.Y. Cnty. 2010).

1. Litigation Risks

63. Although we believe that the evidence that would be adduced in discovery would support Plaintiffs' allegations, it cannot be disputed that Plaintiffs faced substantial challenges in proving their claims. The specific risks Plaintiffs faced, along with the risks of proceeding to trial, are discussed above at ¶¶46-50.

64. Moreover, Plaintiffs' Counsel, who worked on a fully contingent basis, at all times bore the risk that no recovery would be achieved. Plaintiffs' Counsel thus understood that they were embarking on complex, expensive, risky, and lengthy litigation with no guarantee of ever being compensated for the substantial investment of time and money the Action would require. This included Plaintiffs' retention of Cayman Islands counsel and U.S. bankruptcy counsel to navigate the

legal issues and proceedings arising from Luckin's international bankruptcy. As noted above, that risk was particularly pronounced here given Luckin's insolvency and bankruptcy proceedings – and as further compounded by the uniquely difficult challenges of litigating claims against predominantly China-based defendants.

65. We submit that Lead Counsel's achievement of a decidedly superior result, in the face of such substantial risks, strongly supports the requested one-third fee.

2. Lead Counsel Lacked the Benefit of a Prior Judgment

66. The Action was the only securities case filed and prosecuted arising from the allegedly false and misleading offering materials for the Note Offering, which is the subject of the Settlement. Lead Counsel were thus required to independently develop the facts and legal theories necessary to win the excellent $7 million Settlement for the Settlement Class now pending before this Court.

3. Counsel's Experience and Reputation in Securities Litigation

67. Lead Counsel – Robbins Geller, Berger Montague, and Shapiro Haber – are each experienced plaintiffs' class-action firms, with a significant history of achieving successful results in securities class actions. We respectfully submit that their skill and perseverance was also confirmed by their hard work and resulting success for the Settlement Class here.

68. That success, we submit, was also all the more significant here because Defendants were represented by several of the finest defense firms in the country, including Davis Polk & Wardwell LLP (Luckin); Cahill Gordon & Reindel LLP (the underwriters); K&L Gates LLP (Luckin's authorized U.S. representatives); White & Case LLP and Holwell Shuster Goldberg LLP (the investment vehicle defendants); and Gibson, Dunn & Crutcher LLP (Mr. Meier). They presented a thorough and thoughtful defense, and challenged Lead Counsel at every turn.

69. The Settlement is a direct result of Lead Counsel's tireless efforts in the prosecution of the Action, assisted by their reputation as aggressive and skillful practitioners, against world-class defense counsel. Thus, this factor also supports the requested one-third fee.

4. The Action's Complexity and Magnitude

70. Courts have recognized that securities class actions are, in general, highly complex, and as shown above this Action was no exception. In scope, the Action involved multiple defendants, notably a Company located in China, plus underwriter defendants, foreign individuals, a bevy of investment vehicles, and an authorized U.S. representative. Each defendant had credible and challenging defenses to the claims asserted against it. The litigation implicated multiple jurisdictions, including the United States, China, the Cayman Islands, Hong Kong, and the British Virgin Islands. Plaintiffs participated in related proceedings in ***four different jurisdictions***, including one foreign proceeding, to help ensure the best result for the Settlement Class. And not only was the magnitude of reasonably recoverable damages here significant, but the magnitude of the recovery Plaintiffs' Counsel actually achieved constituted a superior result under multiple metrics. Thus, both the complexity and magnitude of the Action support the requested fees.

5. The Amount Recovered

71. As previously discussed at ¶52, published data confirm that the proposed $7 million Settlement represents an excellent recovery when considered against other comparable securities class-action settlements. And the recovery is particularly commendable where, as here, Defendants had a variety of credible liability, loss causation, and damages arguments – and where Plaintiffs also faced the heightened procedural difficulties and collectability issues inherent in suing primarily China-based defendants and in light of Luckin's recent insolvency.

72. Indeed, as judged on the basis of theoretical investor losses recovered (median 2.8% in cases recovering between $100 million and $199 million vs. an estimated 5.2% here), we respectfully reiterate that the Settlement represents a superior result despite above-average risk.

6. The Work Done by Plaintiffs' Counsel

73. Since May 2020, Lead Counsel, with relatively modest assistance by a few additional Plaintiffs' Counsel firms, have among them expended over 3,200 hours, with a combined lodestar value of over $2.2 million in (a) conducting pre-filing investigations; (b) drafting multiple complaints; (c) briefing multiple motions to dismiss by multiple defendants; (d) reviewing documents made available by Luckin in connection with the Company's bankruptcy proceedings; (e) otherwise participating in Luckin's bankruptcy proceedings, including as a member of the Creditors Committee; (f) retaining and consulting with Cayman Islands counsel and U.S. bankruptcy counsel; (g) participating in the Federal Action to protect the interests of the Settlement Class; (h) consulting with experts; (i) preparing extensive mediation briefs; (j) negotiating the Settlement and drafting the subsequent MOU and Stipulation of Settlement; and (k) successfully obtaining preliminary approval. *See* ¶¶19-42 above. And additional work still lies ahead to obtain Final Approval and to (hopefully) thereafter supervise the administration and distribution of the proceeds of a fully approved Settlement. We respectfully submit that Plaintiffs' Counsel have earned the requested fee.

B. The Requested Expenses Are Fair and Reasonable

74. Lead Counsel also seek an award of $157,762.38 for the expenses that they and certain other Plaintiffs' Counsel incurred in litigating the Action. These expense items are all separately reflected in the accompanying affidavits/affirmations. The claimed expenses were all reasonably necessary for the successful prosecution of the Action. Lead Counsel also closely

managed expenses in the Action, while also ensuring that they took all steps necessary to prosecute Plaintiffs' claims aggressively.

75. The requested expenses are typical of those incurred in securities litigation, such as expert fees, filing and service fees, mediator fees, fees for U.S. bankruptcy counsel and Cayman Islands counsel, legal research, and copying.

C. Plaintiffs' Requested Service Awards Are Reasonable

76. The four Plaintiffs have requested modest service awards for their time and effort prosecuting the Action on behalf of the Settlement Class. As detailed in their respective affidavits, each Plaintiff has diligently fulfilled their fiduciary obligations to the Settlement Class. *See* Medico Aff., ¶¶6-7, 11, O'Malley Aff., ¶¶6-7, 11, Bergenholtz Aff., ¶¶5-6, 10, Kimiatek Aff., ¶9. We can also attest that, with respect to each named Plaintiff, those Plaintiffs worked diligently to, *inter alia*, review relevant pleadings and to otherwise be responsive to their counsel's requests for information and/or consultations whenever needed during the litigation.

77. The Notice advised Settlement Class Members of Plaintiffs' intent to request service awards of up to $20,000 in the aggregate – and to date there have been no objections to the requested awards. Because the Plaintiffs' efforts during this litigation are of the type that courts routinely find to support service awards, the relatively modest awards should also be approved.

VII. CONCLUSION

78. Lead Counsel respectfully submit that (a) the Settlement and Plan of Allocation should be approved as fair, reasonable, and adequate; and (b) the requests for a 33-1/3% attorneys' fee award, for payment of $157,762.38 in expenses (plus accrued interest), and for service awards to each of the four named Plaintiffs, should also be approved as fair and reasonable.

DATED: San Diego, California
December 13, 2022

BRIAN C. COCHRAN

DATED: Philadelphia, Pennsylvania
December 13, 2022

MICHAEL DELL'ANGELO

Subscribed and sworn to before me on this 13th day of December, 2022.

Notary Public

Commission expires: Nov 4, 2025

DATED: Boston, Massachusetts
December 13, 2022

EDWARD F. HABER

Subscribed and sworn to before me on this ___ day of December, 2022.

Notary Public

Commission expires: _____

DATED: San Diego, California
December 13, 2022

BRIAN C. COCHRAN

DATED: Philadelphia, Pennsylvania
December 13, 2022

MICHAEL DELL'ANGELO

Subscribed and sworn to before me on this ___ day of December, 2022.

Notary Public

Commission expires: _____

DATED: Boston, Massachusetts
December 13, 2022

EDWARD F. HABER

Subscribed and sworn to before me on this 13 day of December, 2022.

Michaela Herrmann
Notary Public

Commission expires: 6/6/2025

MICHAELA K. HERRMANN
Notary Public
Commonwealth of Massachusetts
My Commission Expires
June 6, 2025

PRINTING SPECIFICATIONS STATEMENT

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

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

2. The total number of words in the joint affidavit, inclusive of point headings and footnotes and exclusive of the caption, signature block, and this Certification, is 6,982 words.

DATED: December 13, 2022

ROBBINS GELLER RUDMAN
& DOWD LLP
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