UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SHANE LAVIN, Individually and On Behalf of All Others Similarly Situated, Plaintiff, v. VIRGIN GALACTIC HOLDINGS, INC., MICHAEL A. COLGLAZIER, GEORGE WHITESIDES, DOUG AHRENS, and JON CAMPAGNA, Defendants.	CASE No.: 1:21-cv-03070-NRM-TAM

MEMORANDUM OF LAW IN SUPPORT OF LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND COMPENSATORY AWARD TO PLAINTIFFS

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Court-appointed lead counsel, The Rosen Law Firm, P.A. ("Rosen") and Glancy Prongay Wolke & Rotter LLP ("GPWR"; and together with Rosen, "Lead Counsel") respectfully submit this memorandum in support of their motion for: (i) an award of attorneys' fees of one-third of the Settlement Amount, or $2,833,333, plus accrued interest; (ii) reimbursement of necessary and reasonable litigation expenses of $1,223,037.21; and (iii) awards to plaintiffs Jennifer Ortiz, Raymond Ochs, Hesham Ibrahim, and Montgomery Brantley (collectively, "Plaintiffs") and former lead plaintiffs Robert Scheele and Mark Kusnier ("Lead Plaintiffs") in the aggregate amount of $55,000, as authorized by the Private Securities Litigation Reform Act of 1995 ("PSLRA"), 15 U.S.C. § 78u-4(a)(4).[1]

I. INTRODUCTION

Lead Counsel litigated this case for five years to secure a significant $8.5 million settlement ("Settlement"). To do so, Lead Counsel had to invest more than 8,750 hours of professional time, with an estimated value of $8,8432,710 and risk $1,223,037.21 in expenses.

This case perfectly shows that nothing is ever certain in litigation. In its decision on Defendants' motion to dismiss the First Amended Complaint, the Court upheld claims linked to Virgin Galactic's going public. Yet, the Court later dismissed these same claims based on an intervening Second Circuit case. Two years into this litigation, the Court shortened the Class Period from two ***years*** to two months, and reduced potential damages by 80%.

[1] Unless otherwise defined herein, all capitalized terms herein have the same meaning as set forth in the Stipulation and Agreement of Settlement dated November 3, 2025 ("Stipulation"; ECF No. 198-1), or the concurrently filed Joint Declaration of Jonathan Horne and Ex Kano S. Sams II (the "Joint Declaration" or "Joint Decl."). Citations to "Ex. _" in this memorandum refer to exhibits to the Joint Declaration. Unless otherwise indicated, internal quotations and citations are omitted and emphasis is added.

Notwithstanding this substantial setback, Lead Counsel continued to invest the resources necessary to pursue the case. Lead Counsel reviewed more than 100,000 pages of documents, flew across the country (and internationally) to take and defend 14 depositions, and worked extensively with financial experts and a rocket scientist. By persevering, Lead Counsel secured the $8.5 million Settlement.

For their efforts, Lead Counsel requests an award of attorneys' fees of one third of the Settlement amount, or $2,833,333. The award is amply justified. Courts regularly grant one-third awards in cases like this one, and the award amounts to a small fraction of Lead Counsel's lodestar.

In addition, the Court should award reimbursement of $1,223,037.21 in out-of-pocket expenses Lead Counsel incurred in prosecuting this action. These expenses were reasonable and necessary to successfully prosecute this Action. Counsel had no incentive to incur unnecessary expenses because they could only recover their expenses if they won at trial or reached a settlement.

Finally, the Court should grant Plaintiffs and Lead Plaintiffs awards in the aggregate amount of $55,000 from the Settlement Fund. Among other things, they reviewed filings, conferred with Lead Counsel about litigation and settlement strategies, and Plaintiffs all sat for their depositions. But for their substantial "commitment to pursuing these claims, the successful recovery for the [Settlement] Class would not have been possible." *Bell v. Pension Comm. of ATH Holding Co., LLC*, 2019 WL 4193376, at *6 (S.D. Ind. Sept. 4, 2019).

II. PROCEDURAL HISTORY

A. Initiation of the Action and Filing of the Amended Complaint

The initial complaint in the Action was filed on May 28, 2021. ECF No. 1. On September 17, 2021, the Court appointed Kusnier and Scheele to serve as Co-Lead Plaintiffs and approved their selection of Glancy Prongay & Murray LLP (n/k/a GPWR) and Rosen to serve as Lead

Counsel. ECF No. 22. Kusnier and Scheele filed their Amended Complaint ("1AC") on December 6, 2021, joined by, among others, named plaintiffs Richard O'Keefe-Jones and Ortiz. ECF No. 35.[2]

B. The 1AC and the Court's Motion to Dismiss Decision

Virgin Galactic is a development-stage space tourism company. It went public via a reverse merger with a SPAC, or Special Purpose Acquisition Corp., announced in July 2019 and consummated in October 2019 ("Reverse Merger"). The 1AC alleged, among other things, that in the period leading to the Reverse Merger, Defendants concealed that on Virgin Galactic's February 2019 test flight, a critical part of its vehicle had "popped," which could have led to a failure of vehicle integrity that would have killed all on board. 1AC ¶¶16-19. Plaintiffs allege the truth was revealed in an August 2020 delay of the subsequent test flight and in a February 2021 disclosure of the incident in a *Washington Post* book review. 1AC ¶21.

The 1AC alleged that Defendants also concealed that a July 2021 test flight carrying Richard Branson dangerously veered from its trajectory and airspace, again endangering the passengers. 1AC ¶¶393-400. According to the 1AC, the truth was revealed in a September 2, 2021 announcement that the Federal Aviation Administration ("FAA") was grounding Virgin Galactic's vehicle. 1AC ¶408. The 1AC further alleged that Defendants' statements and misleading omissions on these subjects (and others) violated Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"). The 1AC also alleged that certain Defendants were liable as controlling persons under Section 20(a) of the Exchange Act. Finally, the 1AC alleged that certain Defendants had sold shares while in possession of material non-public information in violation of Section 20A of the Exchange Act.

[2] On December 7, 2021, Plaintiffs filed a Corrected Amended Complaint ("CAC"). The CAC alleged the same causes of action as the Amended Complaint. Dkt. No. 36.

To draft the 1AC, Plaintiffs comprehensively reviewed Virgin Galactic's SEC filings, analyst reports about Virgin Galactic, Defendants' public statements, and copious publicly available information. Joint Decl. ¶4. Plaintiffs conducted more than 20 witness interviews and obtained a damages report from, and consulted with, a financial economist. *Id*. They also hired and consulted with a rocket scientist. *Id*.

Defendants moved to dismiss the 1AC. The Court granted Defendants' motion in part, upholding at least one statement from each of the two theories set out above. ECF No. 58. The Court otherwise granted the motion to dismiss. *Id*. The following claims remained:

	Basis	Class Period	Defendants	Plaintiffs
Section 10(b) claims	Failure to disclose February 2019 flight damage/accident	July 10, 2019 through February 1, 2021	Branson, Virgin Galactic	
	July 11, 2021 misstatement concerning same-day Branson flight	July 11, 2021 through September 1, 2021	Branson, Virgin Galactic	O'Keefe-Jones and Ortiz
Section 20A claims	Branson's August 2021 stock sales	Contemporaneous traders	Branson	O'Keefe-Jones and Ortiz

C. The 2AC and the Court's Decisions

In February 2023, Plaintiffs—now additionally joined by named plaintiff Ibrahim, among others—filed their Second Amended Complaint ("2AC"). The 2AC again raised claims based on Defendants' failure to disclose the problems with the February 2019 and July 2021 flights. 2AC ¶2, 225-253.

To draft the 2AC, Plaintiffs examined SEC filings, public statements, and public information about Defendants that had been released since the 1AC's filings. Joint Decl. ¶5. Plaintiffs found that these new events reflected the materialization of risks the 1AC alleged were

misleadingly concealed from investors. *Id*. Thus, Plaintiffs expanded the Class Period to August 2022 and re-examined Virgin Galactic's SEC filings and public statements and conducted additional witness interviews. *Id*.

Defendants moved to dismiss the 2AC, and in August 2023, the Court again granted in part and denied in part Defendants' motion. The Court again upheld Plaintiffs' allegation that Defendants concealed the dangerous glide-cone deviation during the July 2021 test flight ("Active Claims").

But as to statements concerning the February 2019 flight ("Dismissed Claims"), the Court found that an intervening case, *Menora Mivtachim Ins. Ltd. v. Frutarom Indus. Ltd.*, 54 F.4th 82, 84 (2d Cir. 2022), compelled dismissal. *Frutarom* held that standing to sue for false statements was only available to plaintiffs who purchased or acquired the securities about which the statements were made. Standing had not been raised in the briefing of Defendants' motion to dismiss the 1AC nor in the Court's opinion. But after *Frutarom*, the Court held that because Plaintiffs purchased publicly traded shares, they did not have standing to sue based on statements made about the private company Virgin Galactic, notwithstanding that these statements were made when Virgin Galactic was going public through a Reverse Merger. And since all the statements Plaintiffs alleged regarding misleadingly concealed problems with the February 2019 flight were made before the Reverse Merger, the Court held that Plaintiffs had no standing for such claims.

The Dismissed Claims were the 2AC's core. The claims the Court upheld account for just 34 of the Complaint's 406 paragraphs and just 1 of the Introduction's 20 paragraphs. ¶¶16; 225-259. The Court upheld a 2-year Class Period in the 1AC; the Court's Order dismissing the 2AC in part left a 2-month Class Period. Damages fell by 80% from those left after the Court's decision on the 1AC.

The Court's order dismissed all claims brought by Lead Plaintiffs and every named Plaintiff except O'Keefe-Jones, Ortiz, and Ibrahim. It also dismissed every Defendant except Branson, Palihapitiya, and Virgin Galactic. The following claims remained:

	Basis	Class Period	Defendants	Plaintiffs
Section 10(b)	July 11, 2021 misstatement concerning same-day Branson flight	July 11, 2021 through September 1, 2021	Branson, Virgin Galactic	O'Keefe-Jones, Ortiz, and Ibrahim
Section 20(a) claims	Controlling person	July 11, 2021 through September 1, 2021	Palihapitiya, Branson, and Virgin Galactic	O'Keefe-Jones, Ortiz, and Ibrahim
Section 20A	Branson's October 2019 stock sales	Contemporaneous traders	Branson	None
	Branson's August 2021 stock sales	Contemporaneous traders	Branson	O'Keefe-Jones and Ortiz

D. Subsequent Developments

After the Court's decision on Defendants' motion to dismiss the SAC, Plaintiffs timely moved for: (i) reconsideration of the Court's dismissal of a December 2019 statement containing a hyperlink to a February 2019 statement; (ii) certification of the Court's order on Defendants' motion to dismiss the SAC to allow an immediate appeal of the Court's application of *Frutarom*; and/or (iii) entry of judgment under Federal Rule of Civil Procedure 54(b) against Lead Plaintiffs and all other named Plaintiffs whose claims the Court dismissed. The Court denied the motion in December 2023. ECF No. 98.

In February 2024, Defendants filed a pre-motion letter requesting a conference regarding their anticipated motion for judgment on the pleadings as to Plaintiffs' Section 10(b) insider trading claim based on Branson's October 2019 sales, arguing that no plaintiff had standing to pursue them. ECF No. 108. Prior to briefing on Defendants' motion for judgment on the pleadings,

Plaintiffs moved to file a Third Amended Complaint ("3AC"), which would add Brantley as a named plaintiff with standing to pursue the claims Defendants challenged. ECF Nos. 113, 118. In July, the Court granted Plaintiffs' motion and Plaintiffs filed the 3AC. Dkts. No. 121, 128.

In January 2025, Plaintiffs filed a notice of O'Keefe-Jones's untimely death. ECF No. 142. Plaintiffs moved to replace him with his surviving spouse and sole beneficiary, Ochs. ECF No. 163. The Court granted Ochs's motion. *See* unnumbered docket entry dated August 29, 2025.

Weeks after taking Virgin Galactic's Rule 30(b)(6) deposition, Plaintiffs filed a letter seeking a pre-motion conference concerning a motion for leave to file a Fourth Amended Complaint ("4AC"). ECF No. 148. While the Court had found the 2AC sufficiently alleged that a July 11, 2021 statement by Branson was actionable, it had dismissed claims against Virgin Galactic CEO Michael Colglazier for misleading August 5 statements about Branson's flight, ruling that Plaintiffs failed to allege his scienter. In their proposed 4AC, Plaintiffs sought to revive the claim based on the testimony of Virgin Galactic's Rule 30(b)(6) deponent. In June 2025, the Court granted Plaintiffs' motion. ECF No. 186.

	Basis	Class Period	Defendants	Plaintiffs
Section 10(b)	July 11, 2021, and August 5, 2021 misstatements concerning July 11, 2021 Branson flight	July 11, 2021 through September 1, 2021	Branson, Colglazier, Virgin Galactic	O'Keefe-Jones, Ortiz, and Ibrahim
Section 20(a) claims	Controlling person	July 11, 2021 through September 1, 2021	Palihapitiya, Branson, and Virgin Galactic	O'Keefe-Jones, Ortiz, and Ibrahim
Section 20A	Branson's October 2019 stock sales	Contemporaneous traders	Branson	Brantley
	Branson's August 2021 stock sales	Contemporaneous traders	Branson	O'Keefe-Jones and Ortiz

E. Discovery

Discovery began in February 2024. Plaintiffs served three sets of requests for production, four sets of interrogatories, and one set of requests for admission (containing 97 requests). Joint Decl. ¶6. Plaintiffs also served six subpoena duces tecum on third parties. *Id*. Defendants propounded two sets of interrogatories and two sets of requests for production of documents upon Plaintiffs. *Id*. The Parties held more than a dozen meet-and-confer calls to discuss discovery matters. *Id*. Virgin Galactic produced 10,615 documents (approximately 69,000 pages) and hours upon hours of video and audio footage. *Id*. Third parties produced another 1,735 documents (approximately 33,000 pages), which Plaintiffs reviewed. Plaintiffs also produced approximately 85,000 pages of documents. *Id*.

Plaintiffs took eight fact depositions. Joint Decl. ¶7. These depositions were held in the New York Metro Area, California (Orange County), New Mexico (Las Cruces), Florida (Cape Canaveral), and internationally (British Virgin Islands). *Id*. The deponents included three Virgin Galactic pilots, a former NASA administrator, and Richard Branson. *Id*.

F. Class Certification

Plaintiffs Ortiz, Ibrahim, Brantley, and O'Keefe-Jones timely moved for class certification relying on the expert report of David I. Tabak, PhD. ECF Nos. 131-134. All of them, as well as Dr. Tabak, sat for depositions. Joint Decl. ¶8. The motion was fully briefed in March 2025. Dkt No. 154.

G. Settlement Discussions

The Parties held informal discussions concerning settlement and mediation beginning after the Court's decision on the 2AC. Joint Decl. ¶9. These discussions intensified in early 2025, and on March 28, 2025, the Parties held a full-day mediation assisted by Jed D. Melnick of JAMS, a well-respected mediator of complex actions. *Id*. Prior to the mediation, the Parties exchanged, and

provided to Mr. Melnick, detailed mediation statements that summarized both documents produced to date and deposition testimony. *Id*. The Parties did not reach a settlement on March 28, but continued informal discussions. *Id*. After subsequent negotiations, Mr. Melnick made a double-blind mediator's recommendation to resolve the Action for $8.5 million, which the Parties accepted. *Id*.

The Parties promptly informed the Court (ECF No. 189) and negotiated an agreement in principle to settle the Action, which was memorialized in a term sheet dated July 18, 2025. Joint Decl. ¶10. The Parties subsequently negotiated the Stipulation and exhibits thereto, including the Long Notice, Summary Notice, and Postcard Notice ("Notice Documents"). *Id*.

H. Preliminary Approval and Notice

Plaintiffs filed their motion for preliminary approval of the Settlement ("Preliminary Approval Motion") in November 2025. ECF No. 196. Magistrate Judge Merkl held a hearing on January 5, 2026, at which she instructed the Parties to revise certain items in the Notice Documents, which they did. ECF Nos. 201, 203. On February 24, Magistrate Judge Merkl entered a Report & Recommendation recommending the Court approve the Preliminary Approval Motion. ECF No. 205. The Court (Morrison, J.) promptly adopted Magistrate Judge Merkl's Report and Recommendation.

Plaintiffs delivered notice to the Settlement Class in strict compliance with the Preliminary Approval Order. In addition to publishing the Summary Notice, the Claims Administrator delivered 2,222,751 notices to potential Settlement Class Members. Bravata Decl. ¶9. To date, seven Settlement Class Members, with collective documented holdings of less than 150 shares, have sought exclusion. Ex. 3 (Declaration of Josephine Bravata Concerning: (A) Mailing/Emailing of Notice; (B) Publication of the Summary Notice; and (C) Report on Requests for Exclusion and

Objections ("Bravata Decl.")), ¶17 & Ex. E. One Settlement Class Member has filed an objection. ECF No. 211. Plaintiffs will address all objections in their Reply brief.

III. ARGUMENT

A. The Court Should Use the Percentage Method to Award a Reasonable Fee to Lead Counsel

Where counsel "succeeds in creating a common fund from which members of a class are compensated for a common injury … [they] are entitled to a reasonable fee—set by the court—to be taken from the fund." *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 47 (2d Cir. 2000). "[T]he court's jurisdiction over the subject matter of the suit makes possible an award that will operate to spread the costs proportionately among [class members]." *Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375, 393-94 (1970). Fee awards also "serve to encourage skilled counsel to represent those who seek redress for damages inflicted on entire classes of persons . . . ." *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, 2010 WL 4537550, at *23 (S.D.N.Y. Nov. 8, 2010).

Courts may properly set attorneys' fees as a percentage of the settlement fund recovered. *See Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984) ("[U]nder the 'common fund doctrine,'… a reasonable fee is based on a percentage of the fund bestowed on the class…."); *Goldberger*, 209 F.3d at 50. "The trend among district courts in the Second Circuit is to award fees using the percentage method." *City of Providence v. Aeropostale, Inc.*, 2014 WL 1883494, at *11 (S.D.N.Y. May 9, 2014), *aff'd sub nom. Arbuthnot v. Pierson*, 607 F. App'x 73 (2d Cir. 2015).

The percentage method has several advantages. First, it "aligns the interests of class counsel with those of the class." *Hayes v. Harmony Gold Min. Co.*, 509 F. App'x 21, 24 (2d Cir. 2013). Second, because attorneys in individual contingency cases are paid a percentage of the recovery, the percentage method serves "as a proxy for the market in setting counsel fees." *In re Am. Bank Note Holographics, Inc.*, 127 F. Supp. 2d 418, 432 (S.D.N.Y. 2001). Third, the

alternative method—the lodestar method— "proved vexing" and resulted in "an inevitable waste of judicial resources." *Goldberger*, 209 F.3d at 48-49. Fourth, because the PSLRA limits fee awards to "a reasonable percentage of the amount recovered for the class," 15 U.S.C. § 78u-4(a)(6), some courts have concluded that it "implicitly supports the use of the percentage of the fund method." *In re EVCI Career Colleges Holding Corp. Sec. Litig.*, at *16 (S.D.N.Y. July 27, 2007).

When using the percentage method to set a fee, courts use the lodestar as a cross-check to ensure that the award is reasonable. *Goldberger*, 209 F.3d at 50. When used "as a mere cross-check, the hours documented by counsel need not be exhaustively scrutinized by the district court." *Id.* Relying on "summaries submitted by the attorneys [rather than] actual billing records," *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 306–07 (3d Cir. 2005), *as amended* (Feb. 25, 2005) "relieves the court of the cumbersome, enervating, and often surrealistic process of evaluating fee petitions." *Johnson v. Brennan*, 2011 WL 4357376, at *14–15 (S.D.N.Y. Sept. 16, 2011).

For all these reasons, the Court should follow the overwhelming trend in this Circuit and use the percentage-of-the-fund method to set attorneys' fees, employing the lodestar as a cross-check. *See In re Bristol-Myers Squibb Sec. Litig.*, 361 F. Supp. 2d 229, 233 (S.D.N.Y. 2005) ("Typically, courts utilize the percentage method and then 'cross-check' the adequacy of the resulting fee by applying the lodestar method.").

B. The *Goldberger* Factors Support Lead Counsel's Fee Request

The *Goldberger* factors the Second Circuit established to evaluate fee requests support a one-third fee. The *Goldberger* factors are: (i) the requested fee in relation to the settlement; (ii) the time and labor expended by counsel; (iii) the magnitude and complexity of the litigation; (iv) the risks of the litigation; (v) the quality of representation; and (vi) public policy considerations. *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 121 (2d Cir. 2005) (*citing Goldberger*, 209 F.3d at 50). These factors show that an award of $2,833,333 is fair and reasonable.

1. The Requested Fee Is Consistent With Awards In Other Cases

"When determining whether a fee request is reasonable in relation to a settlement amount, the court compares the fee application to fees awarded in similar securities class-action settlements of comparable value." *In re Comverse Tech., Inc. Sec. Litig.*, 2010 WL 2653354, at *3 (E.D.N.Y. June 24, 2010). Here, Lead Counsel's request for one third of the Settlement Fund is fair and reasonable among other reasons because it falls well within the range of percentages that courts in this Circuit routinely award in similar securities class action and complex litigation settlements. *See e.g.*, *Maley v. Del Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 370 (S.D.N.Y. 2002) (finding 33⅓% fee request of settlement fund valued at $11.5 million "falls comfortably within the range of fees typically awarded in securities class actions"); *Lea v. Tal Education Grp.*, 2021 WL 5578665, at *12 (S.D.N.Y. Nov. 30, 2021) (awarding 33⅓% of $7.5 million gross settlement fund and stating: "one-third … has been approved as reasonable in this Circuit" and citing cases); *Kelwin Inkwel, LLC v. PNC Merchant Services Company, L.P.*, 2022 WL 3127633, at *4 (E.D.N.Y. Apr. 12, 2022) (awarding one-third of $10 million recovery, "which the Court finds to be reasonable and consistent with awards in similar cases in this Circuit."); *Nichols v. Noom, Inc.*, 2022 WL 2705354, at *10 (S.D.N.Y. July 12, 2022) (awarding one-third of $56 million cash settlement fund and stating that "[a] fee equal to one-third of a settlement fund is routinely approved in this Circuit.").[3]

Thus, Lead Counsel's request is in line with fees awarded in similar complex class action settlements and should be granted. *See In re Tenaris S.A. Sec. Litig.*, 2024 WL 1719632, at *10,

[3] *See also* Ex. 2 (collecting cases).

12 (E.D.N.Y. Apr. 22, 2024) (awarding 33⅓% of $9.5 million settlement fund, collecting cases, and stating: "[d]istrict courts within the Second Circuit routinely approve attorneys' fees awards of one third or 33 1/3% as reasonable.").

2. Time and Labor Lead Counsel Expended/Lodestar Cross-Check

The time and labor Lead Counsel expended, as confirmed by a lodestar cross-check, shows that the requested fee is reasonable. *Goldberger*, 209 F.3d at 50. The "lodestar" is calculated by multiplying the number of hours expended on the litigation by each particular attorney or paralegal by their current reasonable and customary hourly rate, and totaling the amounts for all time-keepers.[4] Additionally, "[u]nder the lodestar method of fee computation, a multiplier is typically applied to the lodestar." *In re Glob. Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 468 (S.D.N.Y. 2004). "The multiplier represents the risk of the litigation, the complexity of the issues, the contingent nature of the engagement, the skill of the attorneys, and other factors." *Id.* (citing *Goldberger*, 209 F.3d at 47). Thus, "[w]here, as here, counsel has litigated a complex case under a contingency fee arrangement, they are entitled to a fee in excess of the lodestar." *Comverse*, 2010 WL 2653354, at *5.

A fractional (sometimes called "negative") multiplier is strong evidence that the fee request is reasonable. *Aeropostale*, 2014 WL 1883494, at *13; *In re Bear Stearns Companies, Inc. Sec., Derivative, & ERISA Litig.*, 909 F. Supp. 2d 259, 271 (S.D.N.Y. 2012) (a fractional multiplier is "a strong indication of the reasonableness of the proposed fee.").

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[4] "[T]he use of current rates to calculate the lodestar figure has been endorsed repeatedly by the Supreme Court, the Second Circuit and district courts within the Second Circuit as a means of accounting for the delay in payment inherent in class actions and for inflation." *In re Hi-Crush Partners L.P. Sec. Litig.*, 2014 WL 7323417, at *15 (S.D.N.Y. Dec. 19, 2014); *Missouri v. Jenkins*, 491 U.S. 274, 283-84 (1989); *LeBlanc-Sternberg v. Fletcher*, 143 F.3d 748, 764 (2d Cir. 1998) ("[C]urrent rates, rather than historical rates, should be applied in order to compensate for the delay in payment.").

Here, Lead Counsel collectively devoted 8,750.82 hours to prosecuting this Action, resulting in a lodestar of $8,432,710.60 A one-third fee award (or $2,833,333) yields a fractional lodestar multiplier of 0.34.[5] Lead Counsel has provided detailed billing summaries along with contemporaneous time entries.

The hours spent reflect the amount of work that needed to be completed, not excessive billing. By the numbers, Lead Counsel

- Filed four amended complaints (ECF Nos. 36, 68, 128, 192);
- Opposed two motions to dismiss (ECF Nos. 51, 72);
- Fully briefed 5 other motions:
  - A motion for reconsideration, interlocutory appeal, and/or entry of judgment (ECF No. 93);
  - A motion for class certification (ECF No. 131);
  - Two motions for leave to amend, both granted at least in part (ECF Nos. 113, 172); and
  - A letter motion for a discovery pre-motion conference (ECF No. 113);
- Filed a motion for preliminary approval, a motion for final approval, and a motion for fees;
- Took or defended 14 depositions; and

[5] Lead Counsel's rates range from $1,512 to $900 for partners, and $1,403 to $425 for non-partners (Exs. 12-A (Rosen's lodestar chart); 13-A (GPWR's lodestar chart), and "are reasonable and commensurate with attorneys of similar experience in this geographic region." *Fernandez v. DouYu Int'l Holdings Ltd.*, 2025 WL 3564643, at *7 (D.N.J. Dec. 12, 2025) (commenting on Rosen and GPWR's 2025 rates); *see also* Ex. 10 (chart of rates charged by peer plaintiff and defense counsel in complex litigation).

- Obtained and reviewed more than 100,000 pages of documents and hours of audio and video content, and produced more than 85,000 pages.

Throughout the litigation, Lead Counsel sought to bring about the most successful outcome for the Settlement Class as efficiently as possible. The time and effort Lead Counsel devoted to this case, as the lodestar cross-check confirms, shows that the request for a fee of one third of the Settlement Fund is reasonable.

3. The Magnitude and Complexity of the Action

Courts recognize the "notorious complexity" of securities fraud class actions. *In re AOL Time Warner, Inc. Sec. & "ERISA" Litig.*, 2006 WL 903236, at *8 (S.D.N.Y. Apr. 6, 2006); *Lea*, 2021 WL 5578665, at *9 ("Class action suits have a well-deserved reputation as being most complex, and securities class actions are notably difficult and notoriously uncertain …."); Moreover, "the legal requirements for recovery under the securities laws present considerable challenges, particularly with respect to loss causation and the calculation of damages." *AOL*, 2006 WL 903236, at *9.

This case is about literal rocket science. The core issues—which Lead Counsel had to understand and explain—are about the operation of a rocket ship. Moreover, in addition to its proverbially difficult factual underpinning, the case raised complex and novel legal issues. Briefing Defendants' motions to dismiss raised the usual complex legal issues present in motions to dismiss securities fraud actions. But in 2023, the case's focus temporarily switched to a standard limiting standing to investors who purchased the securities about which statements were made. This case raised the novel question of *Frutarom*'s application to a private company that sought to go public through a reverse merger with a holding company created for the purpose. Under *Frutarom*, may investors who purchased public company shares recover for statements made after

the reverse merger is announced but before it closes? There was only one district-level case elucidating the standard, and that case answered the question in the negative.

The case continued to raise complex questions after the Court's finding that plaintiffs no longer had standing to bring claims based on statements made before the reverse merger. Because the *Frutarom* issue was dispositive as to at least 80% of the case, Plaintiffs had no choice but to seek reconsideration, rarely-granted leave for an immediate appeal under 1292(b), or entry of partial judgment under Rule 54(b). Then, Plaintiffs' motion to file the 3AC hinged on whether a dismissal related to Article III standing or failure to plead a claim. Additionally, class certification was complicated by many issues, one of which was that the Class Period consisted of five days in October 2019 and two months in 2021, but not the intervening year-and-a-half period.

4. The Risks of Litigation

When setting fees, courts within the Second Circuit understand that counsel "invest[] a substantial amount of time and money … without a guarantee of compensation or even the recovery of expenses." *Aeropostale*, 2014 WL 1883494, at *14. "No one expects a lawyer whose compensation is contingent upon his success to charge, when successful, as little as he would charge a client who in advance had agreed to pay for his services, regardless of success." *Id.* (*quoting City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 470 (2d Cir. 1974)). Numerous courts have recognized that "class actions confront even more substantial risks than other forms of litigation[,]" *Comverse*, 2010 WL 2653354, at *5, and that "[s]ecurities class actions such as this are notably difficult and notoriously uncertain." *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, 2010 WL 4537550, at *27 (S.D.N.Y. Nov. 8, 2010) Thus, it is "appropriate to take this [contingent fee] risk into account in determining the appropriate fee to award." *Am. Bank Note*, 127 F. Supp. 2d at 433; *In re Prudential Sec. Inc. Ltd. Partnerships Litig.*, 985 F. Supp. 410, 417 (S.D.N.Y. 1997) ("[A]ttorney's contingent fee risk is an important factor in determining the fee award.").

"[L]itigation risk must be measured as of when the case is filed,' rather than with the hindsight benefit of subsequent events." *Global Crossing*, 225 F.R.D. at 467 (quoting *Goldberger*, 209 F.3d at 55).

Law firms handling complex contingent litigation frequently lose, whether on a motion to dismiss, class certification, summary judgment, trial, or on appeal. Here, Lead Counsel pursued claims on behalf of the Settlement Class for five years, risking $1,223,037.21 in expenses and 8,750.82 hours in professional time. The risk that counsel might never recover a penny for their efforts is substantial and can occur at any stage of the case. *See Gross v. GFI Grp., Inc.*, 784 F. App'x 27, 28 (2d Cir. 2019) (affirming grant of summary judgment against plaintiffs in securities fraud class action, where GPWR served as one of lead plaintiff's counsel, on alternative ground that defendant's "statement did not, as a matter of law, amount to a material misrepresentation or omission actionable under section 10(b)," despite the trial court twice finding the statement actionable); *In re Puda Coal Securities Inc. Litig.*, Case No. 1:11-cv-2598-DLC, ECF Nos. 654, 669 (S.D.N.Y. February 8, 2017 and May 10, 2017) (Rosen and GPWR, as co-lead counsel, obtained a default judgment against the corporate defendants and one individual defendant in the amount of $227,875,000 after many years of litigation, but could never collect on the judgment).

Start with the motion to dismiss. In setting fees in class actions alleging securities fraud, courts consider that "[l]egal precedents are continually making it more difficult to plead securities class actions." *Yedlowski v. Roka Bioscience, Inc.*, 2016 WL 6661336, at *21 (D.N.J. Nov. 10, 2016). That is because the PSLRA imposes uniquely high pleading standards at the motion to dismiss stage. *In re BP p.l.c. Sec. Litig.*, 852 F. Supp. 2d 767, 820 (S.D. Tex. 2012) ("The Court is acutely aware that federal legislation and authoritative precedents have created for plaintiffs in all securities actions formidable challenges to successful pleading."). These standards make

pleading a case a challenge: in each year between 2016 and 2021 (the last year in which almost all cases have been resolved), more than half of securities class actions were dismissed. Joint Decl., Ex. 1 at 15. Sixty-two percent of decisions on motions to dismiss from 2016 through 2025 granted the motion in full. *Id.* at 18. Thus, Plaintiffs risked that the Court would enter judgment on a motion to dismiss.

On to class certification. In all cases resolved in January 2016-December 2025, a motion for class certification was only filed in 16%. 2025 NERA Rpt. at 19. Although certification was granted, in whole or in part, in 85% of cases (2025 NERA Rpt. at 19), a 1-in-6.25 risk of not achieving or retaining class certification is significant to counsel who prosecute securities cases at great expense and wholly on contingency. Indeed, such is the case here, where the bulk of Plaintiffs' expert expenses relate to litigating class certification issues. Moreover, as more fully set out in the Final Approval Brief, since 2014, defendants have had the ability to rebut class certification by showing that misrepresentations did not have price impact, raising the risk that courts will deny class certification. Regardless, the law is in flux on this issue.

Then, summary judgment and trial. From inception, it was clear that for the July 2021 claim, the case would turn on what Branson knew when he stated, immediately after he flew to space, that the flight had been "flawless." Plaintiffs survived Defendants' motion to dismiss on a motive theory, but to create a triable issue of fact—or to win at trial—Plaintiffs knew from the start that they would have to show that Branson, in some way, had an understanding that something on the flight had gone wrong and that it was important. There was no guarantee that Plaintiffs would be able to show Branson had this subjective understanding; after all, neither the passengers nor the vehicle suffered any actual harm. Moreover, Branson would have a compelling case for the jury that any misstatement resulted from understandable elation: for decades, Branson had been

saying that going to space was a lifelong goal—which he had just achieved. The jury might well excuse Branson because of his excitable state. Notably, Plaintiffs understood that Branson would likely make a good witness in his own defense)

Changes in the securities law are not uncommon, and, as here, where *Frutarom* reduced damages by 80%, they can have extremely negative and/or dispositive consequences on cases that have been pending for many years. *See Arkansas Tchr. Ret. Sys. v. Goldman Sachs Grp., Inc.*, 77 F.4th 74, 81 (2d Cir. 2023) (de-certifying the class and effectively ending the case—after approximately 13 years of litigation—based on 2021 Supreme Court decision allowing courts to consider certain price impact arguments at the class certification stage); *In re Vivendi Universal, S.A. Sec. Litig.*, 765 F. Supp. 2d 512, 533-34 (S.D.N.Y. 2011), *aff'd*, 838 F.3d 223 (2d Cir. 2016) (after jury verdict for plaintiff, court significantly reduced scope of class by amending class definition to exclude purchasers of ordinary shares, based on Supreme Court's reversal, in *Morrison v. Nat'l Australia Bank Ltd*., 561 U.S. 247 (2010), of unbroken circuit court precedent over 40 years).

Finally, this case did not present typical signs that a recovery was likely, such as civil or criminal charges, or a financial restatement or other acknowledgment of wrongdoing. *In re Auto. Refinishing Paint Antitrust Litig.*, 2008 WL 63269, at *5 (E.D. Pa. Jan. 3, 2008) ("The risk of nonpayment is even higher when a defendants' *prima facie* liability has not been established by the government in a criminal action."); *Maley v. Del Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 371 (S.D.N.Y. 2002) (awarding one-third of settlement fund and noting that "[i]n this Action, Plaintiffs' Class Counsel did not 'piggy back' on any prior governmental action."); *Schwartz v. TXU Corp.*, 2005 WL 3148350, at *29 (N.D. Tex. Nov. 8, 2005) ("From the outset, this post-PSLRA action was an especially difficult and highly uncertain securities case, which did not

involve restatement of TXU's previously issued financial statements or any other acknowledgments of wrongdoing.").

In sum, "[t]here was significant risk of non-payment in this case, and Plaintiffs' Counsel should be rewarded for having borne and successfully overcome that risk." *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 148 (S.D.N.Y. 2010).

5. *The Settling Parties Were Represented by Experienced, High-Caliber Counsel*

In setting fees, the Court also considers counsel's experience and skill, the quality of opposing counsel, and the results achieved. *Goldberger*, 209 F.3d at 50; *In re Warner Commc'ns Sec. Litig.*, 618 F. Supp. 735, 745, 748 (S.D.N.Y. 1985).

Lead Counsel are experienced and qualified. *See Bing Li v. Aeterna Zentaris, Inc.*, 324 F.R.D. 331, 346 (D.N.J. 2018) (finding, with respect to GPWR and Rosen Law, that the firms "have extensive experience in securities litigation and have demonstrated competency in litigating the present matter."). As their firm résumés demonstrate, Lead Counsel have extensive experience in securities litigation.

Opposing counsel in this case was Latham & Watkins LLP, whose reputation needs no burnishing here. That Lead Counsel achieved the Settlement for the Settlement Class against a skilled adversary shows the quality of representation and supports the requested fee. *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, 2010 WL 4537550, at *28 (S.D.N.Y. Nov. 8, 2010) (standing of opposing counsel underscores complexity of litigation and challenges faced by class counsel).

Finally, the result achieved supports the requested fee. Counsel persevered despite a critical unforeseeable setback and thereby achieved a substantial recovery for the class.

6. Public Policy Considerations: Private Securities Suits Are an "Essential Supplement" to Criminal Prosecution and Civil Enforcement

"Congress, the Executive Branch, and [the Supreme] Court…have recognized that meritorious private actions to enforce federal antifraud securities laws are an essential supplement to criminal prosecutions and civil enforcement actions brought, respectively, by the [DOJ] and the [SEC]." *Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 478 (2013); *Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. 299, 310 (1985) (emphasizing that private securities actions provide "a most effective weapon in the enforcement of the securities laws and are a necessary supplement to [SEC] action").

To preserve this essential supplement, courts must award fees sufficient to encourage private lawsuits. *Basic Inc. v. Levinson*, 485 U.S. 224, 230-31 (1988). Courts in this District recognize the public policy interest in awarding sufficient fees when attorneys succeed. *See, e.g.*, *Hicks v. Stanley*, 2005 WL 2757792, at *9 (S.D.N.Y. Oct. 24, 2005). "A large segment of the public might be denied a remedy for violations of the securities laws if contingent fees awarded by the courts did not fairly compensate counsel for the services provided and the risks undertaken." *In re Union Carbide Corp. Consumer Prods. Bus. Sec. Litig.*, 724 F. Supp. 160, 169 (S.D.N.Y. 1989). Thus, the public interest also supports the requested fee.

C. Lead Counsel's Expenses Are Reasonable and Were Necessarily Incurred to Achieve the Benefit Obtained

Lead Counsel also requests reimbursement of $1,223,037.21 in expenses incurred while prosecuting the Action. In support of this request, Lead Counsel is submitting Declarations categorizing and attesting to the accuracy of these expenses. Lead Counsel also submits invoices and expense receipts for certain of these expenses in compliance with the Court's order. Unnumbered entry dated May 7, 2026.

"It is well accepted that counsel who create a common fund are entitled to the reimbursement of expenses that they advanced to a class." *Flag Telecom*, 2010 WL 4537550, at *30. "Attorneys may be compensated for reasonable out-of-pocket expenses incurred and customarily charged to their clients, as long as they were incidental and necessary to the representation of those clients." *In re Indep. Energy Holdings PLC Sec. Litig.*, 302 F. Supp. 2d 180, 183 n.3 (S.D.N.Y. 2003)

Lead Counsel incurred expenses of $1,223,037.21. Of these, $912,385.56 (74%) are expert fees. Counsel would have been imprudent to litigate a case involving rocket science without the guidance of an expert. Moreover, class certification in this case raised exceptional challenges. Thus, expert fees were reasonable.

The remaining expenses were for legal and factual research, translation, notice to the class, and travel. These expenses are customary and necessary expenses in securities class actions, are reasonable in amount, and are customarily reimbursed. *Ashe v. Arrow Fin. Corp.*, 2025 WL 487427, at *3 (N.D.N.Y. Feb. 13, 2025) (reimbursing costs including for legal research, expert, investigator, travel expenses, press releases and newswires); *In re Signet Jewelers Ltd. Sec. Litig.*, 2020 WL 4196468, at *22 (S.D.N.Y. July 21, 2020). As such, they should be reimbursed. *Flag Telecom*, 2010 WL 4537550, at *30; *In re Glob. Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 468 (S.D.N.Y. 2004) ("The expenses incurred—which include investigative and expert witnesses, filing fees, service of process, travel, legal research and document production and review—are the type for which 'the paying, arms' length market' reimburses attorneys" and are "properly chargeable to the Settlement fund").

D. Plaintiffs and Lead Plaintiffs Should be Awarded Their Reasonable Costs and Expenses Under 15 U.S.C. § 78u-4(a)(4)

Lead Counsel also requests PSLRA awards totaling $55,000 ($10,000 to each of the four Plaintiffs, and $7,500 to the Court-appointed Lead Plaintiffs), to compensate them for the time and effort they expended on behalf of the Settlement Class. "Court[s] have found that the PSLRA permits courts to award lead plaintiffs in federal securities actions reimbursement for their time devoted to participating in and directing the litigation on behalf of the class." *Guevoura Fund Ltd. v. Sillerman*, 2019 WL 6889901, at *22 (S.D.N.Y. Dec. 18, 2019); *In re Health Ins. Innovations Sec. Litig.*, 2021 WL 1341881, at *13 (M.D. Fla. Mar. 23, 2021) (PSLRA award to lead plaintiff "for his time"). Such reimbursement "encourages participation of plaintiffs in the active supervision of their counsel." *Varljen v. H.J. Meyers & Co., Inc.*, 2000 WL 1683656, at *5 n.2 (S.D.N.Y. Nov. 8, 2000).

Here, Plaintiffs and Lead Plaintiffs took an active role in the litigation by, among other things: (i) communicating with their counsel regarding the case; (ii) producing trading records to their attorneys; (iii) reviewing significant court filings, as well as Court orders; (iv) responding to discovery, which included the production of documents and sitting for deposition; (v) consulting with their attorneys regarding the settlement negotiations; and (vi) evaluating and approving the proposed Settlement.[6] These are "precisely the types of activities that support awarding reimbursement of expenses to class representatives." *In re Marsh & McLennan Cos., Inc. Sec. Litig.*, 2009 WL 5178546, at *21 (S.D.N.Y. 2009). Thus, the Court should grant Plaintiffs' and Lead Plaintiffs' requests for reimbursement of their "reasonable costs and expenses incurred in

[6] The work each Plaintiff and Lead Plaintiff performed is detailed in their respective declarations. *See* Ex. 4 (Ortiz Declaration), ¶¶3-6; Ex. 5 (Ochs Declaration), ¶¶3-6; Ex. 6 (Ibrahim Declaration), ¶¶3-6; Ex. 7 (Brantley Declaration), ¶¶3-6; Ex. 8 (Scheele Declaration), ¶¶3-6; Ex. 9 (Kusnier Declaration), ¶¶3-6.

managing this litigation and representing the Class." *Id.* at *21; *In re Qudian Inc. Sec. Litig.*, 2021 WL 2328437, at *2 (S.D.N.Y. June 8, 2021) (awarding lead plaintiff $25,000, and class representative $12,500, for "reasonable costs and expenses directly related to [their] representation of the Class").[7]

IV. CONCLUSION

For the foregoing reasons, the Court should: (a) award attorneys' fees of one-third of the gross Settlement Fund, or $2,833,333, plus interest; (b) reimburse Lead Counsel's out-of-pocket litigation expenses of $1,223,037.21; and (c) grant the requests of Plaintiffs and Lead Plaintiffs for PSLRA awards in the aggregate amount of $55,000.

Dated: May 27, 2026

Respectfully Submitted,

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[7] *See also In re Bank of Am. Corp. Sec., Deriv., & Emp. Ret. Income Sec. Act (ERISA) Litig.*, 2013 WL 12091355, at *2 (S.D.N.Y. Apr. 8, 2013) (awarding $259,610 to one plaintiff and $125,688 to a second plaintiff), *aff'd*, 772 F.3d 125 (2d Cir. 2014); *In re XL Fleet Corp. Sec. Litig.*, 2024 WL 1884483, at *2 (S.D.N.Y. Apr. 30, 2024) (PSLRA award of $25,000 to Lead Plaintiff and $15,000 each to the four additional named plaintiffs); *In re Alibaba Grp. Holding Ltd. Sec. Litig.*, 2025 WL 933955, at *2 (S.D.N.Y. March 27, 2025) (PSLRA awards of $25,000 to Lead Plaintiff and $25,000 to each of the three additional named plaintiffs); *Christine Asia Co., Ltd. v. Yun Ma*, 2019 WL 5257534, at *1 (S.D.N.Y. Oct. 16, 2019) (PSLRA awards of $12,500 for each of the five representative Plaintiffs).

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WORD COUNT CERTIFICATE

Pursuant to Local Civil Rule 7.1(c), I certify that the foregoing document contains 7,180 words, excluding the exempted portions, and that it complies with the applicable word count limitation.

*/s/ Jonathan Horne*___
Jonathan Horne

CERTIFICATE OF SERVICE

I hereby certify that on May 27, 2026, a true and correct copy of the foregoing document was served by CM/ECF to the parties registered to the Court's CM/ECF system.

/s/ Jonathan Horne
Jonathan Horne