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 PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION

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Pursuant to Rule 23 of the Federal Rules of Civil Procedure, plaintiffs Jennifer Ortiz, Raymond Ochs, Hesham Ibrahim, and Montgomery Brantley (collectively, "Plaintiffs"), on behalf of themselves and the Settlement Class, respectfully submit this memorandum in support of their motion for: (i) final approval of the proposed Settlement set forth in the Stipulation and Agreement of Settlement dated November 3, 2025 ("Stipulation") (ECF No. 198-1); (ii) final certification of the Settlement Class; and (iii) approval of the proposed plan of allocation for the Settlement proceeds (the "Plan of Allocation").[1]

I. INTRODUCTION

After almost five years of hard-fought litigation—after reviewing more than 100,000 pages of documents, taking or defending 14 depositions, holding an unsuccessful mediation, and continuing settlement discussions for weeks thereafter—Plaintiffs are pleased to present for the Court's final approval a settlement that would resolve all clams in this Action for $8.5 million ("Settlement"). Joint Decl. ¶¶6-8.

The Settlement is substantively fair, reasonable, and adequate. It provides a substantial immediate recovery to investors and, concomitantly, bypasses the significant risk that Plaintiffs might lose on class certification, on summary judgment, or at trial, and recover nothing. Investors who have Active Claims (defined below at n.6) are expected to recover roughly the same percentage of their damages as in cases of similar size. The Settlement was also obtained in a procedurally fair manner—it was negotiated at arm's length between competent, well-informed counsel with the assistance of a skilled mediator. In fact, the Settlement results from a mediator's

[1] Unless otherwise defined herein, all capitalized terms herein have the same meaning as set forth in the Stipulation, or the concurrently filed Joint Declaration of Jonathan Horne and Ex Kano S. Sams II (the "Joint Declaration" or "Joint Decl."). Citations to "Ex. __" refer to exhibits to the Joint Declaration.

recommendation that was accepted by all Parties. Under such circumstances, final approval is appropriate.

The Court should also approve the proposed Plan of Allocation of the Net Settlement Fund. *See* Ex. 3-C (Notice), ¶¶28-53. The Plan of Allocation was developed in conjunction with Plaintiffs' consulting damages expert and is designed to distribute the proceeds of the Net Settlement Fund fairly and equitably to Settlement Class Members in light of Lead Counsel's assessment of the strengths and weaknesses of their claims. No Settlement Class Member is favored over another under the proposed Plan; rather, all Settlement Class Members—including Plaintiffs—are treated in the same manner. Since the Plan of Allocation is fair and reasonable, it too should be approved

Last, the Court should finally certify the Settlement Class. The Court provisionally certified the Settlement Class in its Report and Recommendation ("R&R"; ECF No. 205; *Lavin v. Virgin Galactic Holdings, Inc.*, 2026 WL 537978, at *11-14 (E.D.N.Y. Feb. 24, 2026)), which was adopted, in its entirety, by Judge Morrison's Order Adopting Report and Recommendation that was entered on the docket on March 11, 2026 (collectively, with the R&R, the "Preliminary Approval Order"). No pertinent changes have transpired since entry of the Preliminary Approval Order that would upset or alter the Court's earlier findings and determinations. The Court should, therefore, certify the Settlement Class for settlement purposes only.

II. SUMMARY OF THE LITIGATION

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"). Fourth Amended Complaint ("FAC"; ECF ECF 192), ¶¶29, 49-51. Plaintiffs alleged, among other things, that in the period leading to the Reverse Merger, Defendants claimed that they "had built and successfully tested a system that was

ready to take passengers to space ... creating the misleading impression that Virgin Galactic was on the cusp of commercial spaceflight," when in reality, the firm was not "anywhere near ready for regular commercial service." *Id.* ¶¶2, 8.

Plaintiffs' claims center on two allegedly unsuccessful test flights, Defendants' allegedly false or misleading statements about those flights, and the impact of those statements on Virgin Galactic's stock price. First, Defendants told investors that its prototype ship, Unity, "had flown to space twice," and the second flight was an "unqualified success"; however, Plaintiffs allege that on that second flight, in February 2019, the ship "nearly disintegrated midflight" and was grounded at the time of the reverse merger. *Id.* ¶¶58–59; *see also id.* ¶¶64–90. Second, Plaintiffs allege that on July 11, 2021, a test flight carrying Defendant Richard Branson as a passenger "had dangerously strayed from its landing cone and FAA airspace," yet Defendants made public statements describing the event as "a landmark achievement," a "successful mission," and "absolutely and utterly flawless." *Id.* ¶¶228–39; *see also id.* ¶¶240–50 (discussing later investigation of this incident). Plaintiffs further aver that Defendants "collectively sold $800 million of shares after the July 2021 flight while in possession of material nonpublic information," *i.e.*, that these missions had not gone exactly to plan. *Id.* ¶252; *see also id.* ¶¶233–36.

Plaintiffs contend that these public statements comprised "a scheme to deceive the market" and "artificially inflated the price of Virgin Galactic's common stock," claiming that public disclosure of Defendants' prior alleged misrepresentations precipitated a significant decline in the stock price. *Id.* ¶¶18, 206, 218, 220–74. Defendants have denied and continue to deny Plaintiffs' claims and all alleged wrongdoing.

III. PROCEDURAL HISTORY OF THE LITIGATION AND SETTLEMENT

The concurrently filed Memorandum of Law in Support of Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses, and the Joint Declaration, sets out the five-year procedural history of the Action, and the negotiations leading to the Settlement.

IV. FINAL APPROVAL OF THE PROPOSED SETTLEMENT IS APPROPRIATE

A. Standards for Final Approval

A class action settlement must be presented to the Court for approval, and it should be approved if the Court finds it "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). In making this determination, there is a "strong judicial policy in favor of settlements, particularly in the class action context." *In re Tenaris S.A. Sec. Litig.*, 2024 WL 1719632, at *4 (E.D.N.Y. Apr. 22, 2024) (*citing In re Painewebber Ltd. Partnerships Litig.*, 147 F.3d 132, 138 (2d Cir. 1998)).[2] This is because complex class action litigation ties up scarce judicial resources, spends the parties' time and money, and litigating through a jury verdict and appeal significantly delays recovery. *See Palacio v. E*TRADE Fin. Corp.*, 2012 WL 2384419, at *3 (S.D.N.Y. June 22, 2012) ("Litigation through trial would be complex, expensive, and long."). When reviewing a proposed class settlement, courts should "not decide the merits of the case or resolve unsettled legal questions." *Carson v. Am. Brands, Inc.*, 450 U.S. 79, 88 n.14 (1981).

Rule 23(e)(2) governs final approval and requires courts to determine if a proposed settlement is fair, reasonable, and adequate, after considering whether:

> (A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm's length; (C) the relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and

[2] Unless otherwise indicated, all emphasis is added, and all internal quotation marks and citations are omitted from citations herein.

> appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3); and (D) the proposal treats class members equitably relative to each other.

Factors (A) and (B) "identify matters . . . described as procedural concerns, looking to the conduct of the litigation and of the negotiations leading up to the proposed settlement," while factors (C) and (D) "focus on ... a substantive review of the terms of the proposed settlement" (*i.e.*, "[t]he relief that the settlement is expected to provide to class members"). Advisory Committee Notes to 2018 Amendments (324 F.R.D. 904, at 919); *see also In re 3D Sys. Sec. Litig.*, 2024 WL 50909, at *5 (E.D.N.Y. Jan. 4, 2024) ("In conducting this inquiry, courts consider the substantive and procedural fairness of a proposed settlement to determine whether the terms of the settlement and the negotiation process leading up to it are fair.").

These factors are not, however, exclusive. The four factors set forth in Rule 23(e)(2) are not intended to "displace" any factor previously adopted by the courts, but "rather to focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal." Advisory Committee Notes to 2018 Amendments (324 F.R.D. 904, at 919); *see also In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 330 F.R.D. 11, 29 (E.D.N.Y. 2019) (Rule 23(e)(2) factors "add to, rather than displace, the *Grinnell* factors"). The Second Circuit's *Grinnell* factors (certain of which overlap with Rule 23(e)(2)) are, therefore, still relevant:

> (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; [and] (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

City of Detroit v. Grinnell Corp., 495 F.2d 448, 463 (2d Cir. 1974); *see also Beach v. JPMorgan Chase Bank, N.A.*, 2020 WL 6114545 (S.D.N.Y. Oct. 7, 2020) (evaluating settlement based on factors set forth in Fed. R. Civ. P. 23(e)(2) and *Grinnell*).[3] As set forth below, the proposed Settlement satisfies the criteria for final approval under the Rule 23(e)(2) factors, as well as the relevant, non-duplicative *Grinnell* factors.

B. The Settlement is Fair, Reasonable, and Adequate in Light of the Factors Outlined by Rule 23(e)(2) and the Remaining *Grinnell* Factors

1. Plaintiffs and Lead Counsel Adequately Represented the Class

Rule 23(e)(2)(A) requires the Court to consider whether the "class representatives and class counsel have adequately represented the class." "Determination of adequacy typically entails inquiry as to whether: 1) plaintiff's interests are antagonistic to the interest of other members of the class and 2) plaintiff's attorneys are qualified, experienced and able to conduct the litigation." *Cordes & Co. Fin. Servs. v. A.G. Edwards & Sons, Inc.*, 502 F.3d 91, 99 (2d Cir. 2007).

Here, Plaintiffs have no interests antagonistic to other class members; rather, their interest in obtaining the largest possible recovery is aligned with other Settlement Class Members' interests since they all allegedly lost money from Defendants' violations of the federal securities laws. *See In re GSE Bonds Antitrust Litig.*, 414 F. Supp. 3d 686, 692 (S.D.N.Y. 2019); *Lea v. Tal Educ. Grp.*, 2021 WL 5578665, at *6 (S.D.N.Y. Nov. 30, 2021) ("Plaintiffs interests are directly aligned with the interests of the Settlement Class as they all involved purchased TAL's ADSs during the Class Period and allegedly suffered harm as a result of Defendants' alleged misdeeds."). "Because of these injuries, plaintiffs have an interest in vigorously pursuing the claims of the class." *GSE Bonds*, 414 F. Supp. 3d at 692. Furthermore, Plaintiffs have *proven* their commitment to the

[3] Plaintiffs will address the Settlement Class's reaction in their reply brief, which is due on July 2, 2026, after the objection and opt-out deadlines have passed.

litigation by, *inter alia*: overseeing the litigation and communicating with their counsel; providing written responses to document requests and producing documents; responding to interrogatories; being deposed; reviewing significant pleadings and briefs filed in this Action, as well as Court orders and discussed them with Lead Counsel; and participating in settlement discussions with Lead Counsel. *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.

2. The Proposed Settlement Results from Good Faith Arm's-Length Negotiations by Informed, Experienced Counsel

Rule 23(e)(2)(B) requires the Court to consider whether "the proposal was negotiated at arm's length." Here, the Parties negotiated the Settlement over months, including in a day-long mediation assisted by Jed D. Melnick, Esq. of JAMS, an experienced securities class action mediator. Joint Decl. ¶9. The mediation was conducted near the close of fact discovery, after the Parties exchanged detailed mediation submissions supported by evidence drawn from substantial document productions and days of depositions. *Id*. These negotiations set the stage for Mr. Melnick's double blind proposal that the Parties settle the case for $8.5 million, which the Parties accepted. *Id*. The arm's-length nature of the settlement negotiations, and the involvement of a mediator with substantial experience mediating complex securities class actions, show that the Settlement is fair and was achieved free of collusion. *See D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (a "mediator's involvement in . . . settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure"); *see also Lavin*, 2026 WL 537978, at *7 ("As to the parties' selected mediator, Jed D. Melnick, several courts in this circuit have held that Mr. Melnick's involvement has supported a finding that class-action settlement agreements were fair."). And, finally, "[t]he fact … that the Settlement is based on a mediator's proposal

further supports a finding that the settlement agreement is not the product of collusion." *Lusk v. Five Guys Enters. LLC*, 2022 WL 4791923, at *9 (E.D. Cal. Sept. 30, 2022).

3. The Proposed Settlement is a Fair and Reasonable Result for the Settlement Class in Light of the Settlement's Benefits and the Risks of Continued Litigation

Under Rule 23(e)(2)(C), when evaluating the fairness, reasonableness, and adequacy of a settlement, the Court must also consider whether "the relief provided for the class is adequate, taking into account . . . the costs, risks, and delay of trial and appeal" along with other relevant factors. Fed. R. Civ. P. 23(e)(2)(C).[4] As discussed below, each supports final approval.

a) The Costs, Risks, and Delay of Trial and Appeal; the Risks of Establishing Liability and Damages and Maintaining the Class Through Trial

"As a general matter, the more complex, expensive, and time consuming the future litigation, the more beneficial settlement becomes as a matter of efficiency to the parties and to the Court." *In re Citigroup Inc. Sec. Litig.*, 965 F. Supp. 2d 369, 381-82 (S.D.N.Y. 2013). "[S]ecurities class actions are by their very nature complicated and district courts in this Circuit have long recognized that securities class actions are notably difficult and notoriously uncertain to litigate." *City of Providence v. Aeropostale, Inc.*, 2014 WL 1883494, at *5 (S.D.N.Y. May 9, 2014).

[4] Rule 23(e)(2)(C)(i) incorporates six of the *Grinnell* factors: complexity, expense, and likely duration of the litigation (first factor); risks of establishing liability and damages (fourth and fifth factors); risks of maintaining class action status through trial (sixth factor); and range of reasonableness of the settlement fund in light of the best possible recovery and the attendant risks of litigation (eighth and ninth factors). *See Grinnell*, 495 F.2d at 463; *see also In re GSE Bonds Antitrust Litig.*, 414 F. Supp. 3d 686, 693 (S.D.N.Y. 2019) ("This inquiry overlaps significantly with a number of *Grinnell* factors, which help guide the Court's application of Rule 23(e)(2)(C)(i).").

Complexity Was Not Plaintiffs' Friend

This case was literally about rocket science. Key documents that Plaintiffs would show the jury are filled with complex mathematical equations and physics concepts. Defendants are likely to benefit from this complexity because the jury will presume they are authorities: in the credibility battle between Plaintiffs' expert against one of NASA's previous administrators and Virgin Galactic pilots who are astronauts, three of the principal witnesses in this case, the jury is apt to believe the latter.

Risks To Proving Liability

When the Parties reached the Settlement, Plaintiffs' motion for leave to file the 4AC was still pending. Thus, there was only one allegedly false statement in the case. Defendants would dispute that the statement was false, that Branson had any knowledge of the flight deviation at the time he made the statement shortly after his spaceflight concluded, or that it caused Plaintiffs' losses. *See Gross v. GFI Grp., Inc.*, 784 F. App'x 27, 29 (2d Cir. 2019) (affirming grant of summary judgment on the 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); *see also In re NeoPharm, Inc. Sec. Litig.*, 705 F. Supp. 2d 946, 966 (N.D. Ill. 2010) (granting partial summary judgment where plaintiffs failed to prove a triable issue on falsity or scienter). Moreover, the statement was made hours after Branson had flown to space, fulfilling what he had claimed for decades was one of his key life goals. The jury might well have found that his statement resulted from elation rather than recklessness or an intent to defraud. *See, e.g.*, *Smith v. Dominion Bridge Corp.*, 2007 WL 1101272, at *5 (E.D. Pa. Apr. 11, 2007) ("Since stockholders normally have little more than circumstantial and accretive evidence to establish the requisite scienter, proving scienter is an uncertain and

difficult necessity for plaintiffs."). Had Plaintiffs been unable to establish liability, the Settlement Class would receive no recovery at all.

Risks Related To Loss Causation And Damages

Proving loss causation and damages at trial would also be risky, complicated, and uncertain, involving conflicting expert testimony. *See In re Cendant Corp. Litig.*, 264 F.3d 201, 239 (3d Cir. 2001) ("[E]stablishing damages at trial would lead to a battle of experts with each side presenting its figures to the jury and with no guarantee whom the jury would believe."). Even if Plaintiffs proved Defendants' liability at trial, the jury might reduce damages significantly. *See In re Indep. Energy Holdings PLC*, 2003 WL 22244676, at *4 (S.D.N.Y. Sept. 29, 2003) (noting that "[f]ew cases tried before a jury result in a verdict awarding the full amount of damages claimed.").

Class Certification Risks

At the time of settlement, class certification had been briefed but not decided. While Plaintiffs and Lead Counsel are confident that they met the requirements for certification, there was a risk the Court could disagree. Moreover, any class certification decision could be subject to reconsideration if anything changed. *Chatelain v. Prudential-Bache Sec., Inc.*, 805 F. Supp. 209, 214 (S.D.N.Y. 1992) ("Even if certified, the class would face the risk of decertification.").

Here, with the law on class certification in securities actions rapidly shifting, even if the Court were to grant class certification, a development in the law could upend Plaintiffs' victory. For example, 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. *See Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258, 267 (2014). Twin decisions, one from the Supreme Court and the other from the Second Circuit, have made the right

more potent. *See Goldman Sachs Grp., Inc. v. Arkansas Tchr. Ret. Sys.*, 594 U.S. 113, 123 (2021) (holding that courts should consider the content of statements themselves in determining whether they had no price impact); *Arkansas Tchr. Ret. Sys. v. Goldman Sachs Grp., Inc.*, 77 F.4th 74, 93 (2d Cir. 2023) (holding that courts should, under certain circumstances, consider whether the corrective disclosure is more specific than the allegedly false statements). And the impact from changes in the law can be devasting. *See Ark. Teacher Ret. Sys. v. Goldman Sachs Grp., Inc.*, 77 F.4th 74 (2d Cir. 2023) (decertifying a class of investors after 12 years of litigation based on new Supreme Court decision). Thus, the risks and uncertainty surrounding class certification also support approval of the Settlement.

Post-Trial/Appellate Risk

Plaintiffs might still lose their case even after winning at trial. *In re BankAtlantic Bancorp, Inc.*, 2011 WL 1585605, at *38 (S.D. Fla. Apr. 25, 2011) (granting motion for judgment as a matter of law against plaintiffs after partial jury verdict in their favor), *aff'd on other grounds sub nom. Hubbard v. BankAtlantic Bancorp, Inc.*, 688 F.3d 713 (11th Cir. 2012). Even if Plaintiffs won at trial, secured a verdict for damages, and then defended the verdict from the Defendants' inevitable post-trial motions, Plaintiffs might still lose on appeal. *Robbins v. Koger Props., Inc.*, 116 F.3d 1441 (11th Cir. 1997) (overturning $81 million jury verdict). Thus, even beyond the trial itself, Plaintiffs faced additional, substantial risks that could take years to litigate.

The sheer duration of securities class actions also imperils recovery. Securities class actions are so lengthy and so complex that plaintiffs risk that the law will shift beneath their feet, eliminating a victory that was unimpeachable under the standards that existed when it was secured. *See, e.g., In re Vivendi Universal, S.A. Sec. Litig.*, 765 F. Supp. 2d 512, 533 (S.D.N.Y. 2011) (in case brought in 2005, Supreme Court decision after entry of verdict in plaintiffs' favor reduced the

billion-dollar verdict into an approximately $78 million recovery), *aff'd sub nom. In re Vivendi, S.A. Sec. Litig.*, 838 F.3d 223 (2d Cir. 2016).[5]

This is a case in point. The Court first upheld Plaintiffs' claims as to the February 2019 accident but then, based on an intervening controlling decision, dismissed them. ECF 90. The dismissal eliminated one of Plaintiffs' theories and cut damages by 80%. *See In re Xcel Energy, Inc., Sec., Derivative & "ERISA" Litig.*, 364 F. Supp. 2d 980, 1003 (D. Minn. 2005) ("The court needs to look no further than its own order dismissing the … litigation to assess the risks involved."). By contrast, the Settlement provides a favorable, immediate cash recovery for the Class and eliminates the risk, delay, and expense of continued litigation. *See In re Glob. Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 461 (S.D.N.Y. 2004) (noting that "the certainty of [a] settlement amount has to be judged in [the] context of the legal and practical obstacles to obtaining a large recovery").

b) The Relief Provided to the Class is Adequate and Well Within the Range of Reasonableness in Light of the Best Possible Recovery and Attendant Risks of Litigation

"Courts typically analyze the last two *Grinnell* factors together." *Pearlstein v. BlackBerry*, 2022 WL 4554858, at*6 (S.D.N.Y. Sept. 29, 2022) (citing *Grinnell*, 495 F.2d at 463). In so doing, the adequacy of the amount offered in settlement must be judged "not in comparison with the possible recovery in the best of all possible worlds, but rather in light of the strengths and weaknesses of plaintiffs' case." *In re "Agent Orange" Prod. Liab. Litig.*, 597 F. Supp. 740, 762

[5] *See also Glickenhaus & Co. v. Household Int'l, Inc.*, 787 F.3d 408, 414, 433 (7th Cir. 2015) (reversing and remanding securities class action jury verdict of $2.46 billion after 13 years of litigation on loss causation grounds because intervening Supreme Court decision had made then-proper jury instructions erroneous); *Anixter v. Home-Stake Prod. Co.*, 77 F.3d 1215, 1231–32 (10th Cir. 1996) (case filed in 1973 and tried to a verdict for plaintiffs in 1988 with jury instructions compelled by then-controlling precedent which the Supreme Court overruled in a 1994 opinion causing the court to vacate the jury verdict in 1996).

(E.D.N.Y. 1984), *aff'd*, 818 F.2d 145 (2d Cir. 1987). There is, therefore, "a range of reasonableness with respect to a settlement—a range which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 119 (2d Cir. 2005).

Here, the proposed Settlement provides for a non-reversionary all cash payment of $8,500,000 for the benefit of the Settlement Class. This is a very good result considering the significant risks of continued litigation as detailed above, as well as the risks that had already materialized. Indeed, *the Court previously dismissed claims constituting 80% of Plaintiffs' maximum damages*, and denied Plaintiffs' attempt to revisit or appeal that decision.[6] *See* ECF 90 (granting in part and denying in part Defendants' motion to dismiss the Second Amended Complaint ("SAC")); *see also Kusnier v. Virgin Galactic Holdings, Inc.*, 2023 WL 8750398, at *1 (E.D.N.Y. Dec. 19, 2023) (denying Plaintiffs' Motion for Reconsideration, Certification for Interlocutory Appeal, and/or Entry of Final Judgment). Plaintiffs could only resurrect the Dismissed Claims on an appeal after judgment on the Active Claims.

Plaintiffs' damages expert estimates that *if* Plaintiffs had fully prevailed on their Active Claims at summary judgment and after a jury trial, *if* the Court certified the same class period as the Settlement Class Period, and *if* the Court and jury fully accepted Plaintiffs' damages theory—*i.e.*, Plaintiffs' best case scenario—the total *maximum* damages potentially available in this Action would be approximately $302.2 million. Under this scenario, the Settlement recovers 2.81% of

[6] As discussed below, the proposed Plan of Allocation takes into account the Court's ruling on Defendants' motion to dismiss the SAC. Pursuant to that ruling, the only remaining actionable claims pertained to: (i) the July 2021 flight; and (ii) insider trading claims against Defendant Branson. As used herein, these are referred to as "Active Claims." All other claims, including those concerning the February 2019 flight, are referred to as "Dismissed Claims."

the Settlement Class's maximum estimated damages. In comparison, the median recovery in securities class actions settled between January 2016 and December 2025 with damages of between $200-399 million was approximately 2.7% of estimated damages. *See* Ex. 1 (excerpts from Edward Flores, Svetlana Starykh, and Ivelina Velikova, *Recent Trends in Securities Class Action Litigation, 2025 Full-Year Review* (NERA, Jan. 21, 2026) ("NERA Report")) at 27, Fig. 23.[7] In any case, Defendants vociferously disputed Plaintiffs' damages numbers, and, a "complete and total victory" on liability and loss causation for all of the alleged false statements "occurs with the regularity of unicorn sightings." *W. Palm Beach Police Pension Fund v. DFC Glob. Corp.*, 2017 WL 4167440 (E.D. Pa. Sept. 20, 2017). Accordingly, the Court should reaffirm its determination that the "parties' settlement amount falls within a reasonable range." *Lavin*, 2026 WL 537978, at *11.

c) The Stage of the Proceedings and the Amount of Discovery Completed

This factor examines "whether the parties had adequate information about their claims such that their counsel can intelligently evaluate the merits of plaintiff's claims, the strengths of the defenses asserted by defendants, and the value of plaintiffs' causes of action for purposes of settlement." *In re Bear Stearns Companies, Inc. Sec., Derivative, & ERISA Litig.*, 909 F. Supp. 2d 259, 267 (S.D.N.Y. 2012). Here, the case has been heavily litigated on the pleadings, the Parties have engaged in substantial discovery, class certification was fully briefed, and the Parties engaged in a long, hard-fought mediation process. Under such circumstances, there can be no question that

[7] Total maximum damages including the Dismissed Claims, which Plaintiffs would have had to resurrect on appeal following a trial on the Active Claims, are $1.436 billion. Assuming this unlikely scenario, the recovery equates to 0.59% of maximum damages. While this is less than the 1.3% recovery in cases with similar damages (*see* NERA Report at 27, Fig. 23), the procedural hurdles to recovery would have been imposing.

this factor supports final approval. *See Bear Stearns,* 909 F. Supp. 2d at 267 (parties had requisite knowledge to "gauge the strengths and weaknesses of their claims and the adequacy of the settlement" where they "conducted extensive investigations, obtained and reviewed millions of pages of documents, and briefed and litigated a number of significant legal issues"); *City of Providence v. Aeropostale, Inc.*, 2014 WL 1883494 at *6 (S.D.N.Y. May 9, 2014) (finding that conducting "extensive formal discovery, including the review and analysis of over 1.3 million pages of documents from Defendants and various third parties as well as substantially completing fact depositions" demonstrated that "Lead Plaintiff and Lead Counsel have developed a comprehensive understanding of the key legal and factual issues in the litigation").

d) The Defendants' Ability to Withstand a Greater Judgment

A defendant's ability to withstand a judgment greater than that secured by settlement is generally not one of the determining factors, and, here, "the parties view this factor as immaterial." *Lavin*, 2026 WL 537978, at *10; *see also In re MetLife Demutualization Litig.*, 689 F. Supp. 2d 297, 339 (E.D.N.Y. 2010) ("Courts have recognized that the defendant's ability to pay is much less important than other factors, especially where the other *Grinnell* factors weigh heavily in favor of settlement approval."). Under these circumstances, ability to pay is not a factor in the Settlement and does not weigh either for or against approval. *In re AOL Time Warner, Inc*., 2006 WL 903236, at *12 (S.D.N.Y. Apr. 6, 2006) ("the mere ability to withstand a greater judgment does not suggest that the Settlement is unfair.").

4. The Proposed Method for Distributing Relief is Effective

Plaintiffs propose well-established, effective procedures for processing Settlement Class Members' claims and distributing relief. Here, Strategic Claims Services ("SCS"), the Claims Administrator selected by Lead Counsel, and approved by the Court, will process claims under the guidance of Lead Counsel, allow claimants an opportunity to cure any claim deficiencies or

request the Court to review their claim denial, and, lastly, mail or wire Authorized Claimants their *pro rata* share of the Net Settlement Fund (per the Plan of Allocation), after Court approval. These procedures are effective, as well as necessary, because as neither Plaintiffs nor Defendants possess the individual investor trading data required for a claims-free process to distribute the Net Settlement Fund.[8] *See Lea v. Tal Educ. Grp.*, 2021 WL 5578665, at *11 (S.D.N.Y. Nov. 30, 2021) (approving settlement with a nearly identical distribution process); *see also Becker v. Bank of New York Mellon Trust Co., N.A.*, 2018 WL 6727820, at *7 (E.D. Pa. Dec. 21, 2018) ("The requirement that class members submit documentation to substantiate their holdings . . . will facilitate the filing of legitimate claims, yet is not overly demanding given the range of permissible documentation.").

5. The Proposed Award of Attorneys' Fees is Appropriate

The relief provided for the Settlement Class is also adequate when the terms of the proposed award of attorneys' fees is considered.[9] As detailed in the accompanying fee and expense memorandum, a proposed attorneys' fee of 33⅓% of the Settlement Fund (which, by definition, includes interest earned on the Settlement Amount) is reasonable in light of the work performed and the results obtained. It is also consistent with awards in similar complex class action cases. *See In re Tenaris S.A. Sec. Litig.*, 2024 WL 1719632, at *10 (E.D.N.Y. Apr. 22, 2024) (awarding

[8] This is not a claims-made settlement. If the Settlement is approved, Defendants will not have any right to the return of a portion of the Settlement based on the number or value of the claims submitted. *See* Stipulation ¶13.

[9] Because this is a common fund case, the Court need not engage in the proportionality analysis discussed in *Kurtz v. Kimberly-Clark Corp.*, 142 F.4th 112, 118 (2d Cir. 2025). *See Caccavale v. Hewlett-Packard Co.*, 2025 WL 2960237, at *11 (E.D.N.Y. Oct. 20, 2025) ("Consequently, *Kurtz* did not change the approach taken to assess the fairness of a class settlement in common fund cases, including this action.").

"one third or 33⅓% of the $9,500,000 settlement fund, plus interest" and noting that "District courts within the Second Circuit routinely approve attorneys' fees awards of one third or 33 1/3% as reasonable."); *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"). More importantly, approval of the attorneys' fee request is separate from approval of the Settlement, and the Settlement may not be terminated based on any ruling with respect to attorneys' fees. *See* Stipulation, ¶16.

6. The Parties Have Entered a Side Agreement Regarding Opt-Outs

Rule 23(e)(2)(C)(iv) requires the disclosure of any side agreement. Here, the Parties have entered into a confidential agreement that establishes certain conditions under which Defendants may terminate the Settlement if Settlement Class Members who collectively purchased more than a certain percentage of Virgin Galactic Securities traded during the Settlement Class Period request exclusion (or "opt out") from the Settlement. "This type of agreement is standard in securities class action settlements and has no negative impact on the fairness of the Settlement." *Christine Asia Co. v. Yun Ma*, 2019 WL 5257534, at *15 (S.D.N.Y. Oct. 16, 2019).

7. There Was No Preferential Treatment; The Plan Treats All Class Members Equitably Based on the Strength of Their Claims

Rule 23(e)(2)(D) requires courts to evaluate whether the settlement treats class members equitably relative to one another. The Settlement easily satisfies this standard. Under the proposed Plan of Allocation, detailed in ¶¶28-52 of the proposed Notice (Ex. 3-6), each Authorized Claimant will receive his, her, or its *pro rata* share of the Net Settlement Fund. Specifically, an Authorized Claimant's *pro rata* share shall be the Authorized Claimant's Recognized Loss divided by the total of Recognized Losses of all Authorized Claimants, multiplied by the total amount in the Net Settlement Fund. Courts have repeatedly approved similar plans. *See In re Citigroup, Inc. Sec.*

Litig., 965 F.Supp.2d 369, 386-87 (S.D.N.Y. 2013); *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 145-46 (S.D.N.Y. 2010).

The Plan does, however, allocate a larger portion of the Net Settlement Fund to the Active Claims, than to the Dismissed Claims. *See* Notice, ¶¶32-33 (allocating 88.2% to the Active Claims and 11.8% to the Dismissed Claims). Such a distinction is reasonable because the Dismissed Claims faced an arduous and risky path to recovery. Plaintiffs can only appeal the Court's dismissal after litigating the Active Claims to judgment. Moreover, since the Court's decision on Defendants' motion to dismiss the SAC, the Ninth Circuit has held that investors in SPACs do not have standing to sue based on statements directed to the public investors but nominally about the private company. *In re: CCIV / Lucid Motors Sec. Litig.*, 110 F.4th 1181, 1186 (9th Cir. 2024). While Plaintiffs believe that *Lucid Motors* is distinguishable, the decision reduces Plaintiffs' odds of restoring the Dismissed Claims on appeal. Accordingly, given the procedural posture of the case, and the relatively small likelihood of restoring the Dismissed Claims, the division of the Net Settlement Fund between Active Claims (88.2%) and Dismissed Claims (11.8%) is appropriate. *See In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 343 (S.D.N.Y. 2005) ("Settlement proceeds may be allocated according to the strengths and weaknesses of the various claims possessed by Class Members."); *Lavin*, 2026 WL 537978, at *9.

V. THE SETTLEMENT CLASS SHOULD BE FINALLY CERTIFIED

In granting preliminary approval, the Court found this case appropriate for class certification for settlement purposes, and appointed Plaintiffs as the class representative and GPWR and Rosen Law as class counsel. *See* ECF No. 205 at 35. Nothing has changed since preliminary approval that would undermine the Court's conclusion, and class certification for settlement purposes remains appropriate. *See Bear Stearns*, 909 F.Supp.2d at 264 ("Since there have been no material changes to alter the propriety of these findings regarding the Settlement

Class, this action is hereby finally certified, for the purposes of settlement only, as a class action pursuant to Fed.R.Civ.P. 23(a) and 23(b)(3) . . . In addition, the determinations in the Preliminary Approval Orders regarding Lead Plaintiff and Class Counsel are affirmed."); *In re Stable Rd. Acquisition Corp.*, 2024 WL 3643393, at *11 (C.D. Cal. Apr. 23, 2024) ("Since there have been no changes to alter the propriety of class certification for settlement purposes, the Court affirms its determinations in the Preliminary Approval Order certifying the Settlement Class under Rules 23(a) and (b)(3).").

VI. THE NOTICE PROGRAM SATISFIED THE REQUIREMENTS OF DUE PROCESS, RULE 23 AND THE PSLRA

The Court approved the proposed notice program in the Preliminary Approval Order (*see Lavin*, 2026 WL 537978, at *14-16), and Plaintiffs executed the notice program in accordance with the provisions therein. Ex. 3 (Bravata Decl.), ¶¶3-15. Notice was given to potential Settlement Class Members via mail, email, publication and the Settlement Website (www.VirginGalacticSecuritiesSettlement.com).[10] *Id.* at ¶¶3-11, 13-15. As of May 22, 2026, a copy of the Postcard Notice was mailed, or the Notice and Claim Form emailed, to 2,222,751 potential Settlement Class Members or their nominees. *Id.* at ¶9.

On April 27, 2026, the Court-approved Summary Notice was published in *Investors' Business Daily* and transmitted once over the *PR Newswire*. *Id.* at ¶11 & Ex. D. The published Summary Notice clearly and concisely provided information concerning the Settlement and the means to obtain a copy of the Notice. *See id.*

[10] From this website, potential Settlement Class Members can, *inter alia*, download copies of the Notice and Claim Form, FAC, R&R, and Stipulation, as well as submit claims online. Bravata Decl. at ¶13.

Courts routinely find that comparable notice programs met the requirements of due process and Rule 23. *See In re Advanced Battery Techs., Inc. Secs. Litig.*, 298 F.R.D. 171, 182-83 n.3 (S.D.N.Y. 2014) (collecting cases and stating that "[t]he use of a combination of a mailed postcard directing class members to a more detailed online notice has been approved by courts"); *Mauss v. NuVasive, Inc.*, 2018 WL 6421623, at *2-3 (S.D. Cal. Dec. 12, 2018) (combination of mailed notice, publication of summary notice in *Investor's Business Daily* and over a newswire, and posting of notice on settlement website satisfied requirements of "Rule 23, the [PSLRA], and due process.").

VII. THE PLAN OF ALLOCATION IS FAIR AND REASONABLE

In the R&R, the Court stated with respect to the proposed Plan of Allocation: "the Court finds that this plan of allocation treats class members equitably relative to each other and to their claims, particularly in light of the challenges to recovery on the dismissed claims if the case were to proceed with further litigation." *Lavin*, 2026 WL 537978, at *9. Since then, nothing has changed, and Plaintiffs respectfully submit that final approval of the proposed Plan of Allocation is appropriate.

"To warrant approval, the plan of allocation must also meet the standards by which the settlement was scrutinized – namely, it must be fair and adequate." *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 344 (S.D.N.Y. 2005). "As numerous courts have held, a plan of allocation need not be perfect." *Christine Asia*, 2019 WL 5257534, at *15. Rather, "[w]hen formulated by competent and experienced counsel, a plan for allocation of net settlement proceeds need have only a reasonable, rational basis." *In re IMAX Sec. Litig.*, 283 F.R.D. 178, 192 (S.D.N.Y. 2012); *see also Christine Asia*, 2019 WL 5257534, at *15-16. A plan that allocates settlement funds to class members based on the extent of their injuries or the strength of their claims is fair and reasonable. *See, e.g., In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 580

(S.D.N.Y. 2008) ("A reasonable plan may consider the relative strength and values of different categories of claims."). Thus, "as a general rule, the adequacy of an allocation plan turns on whether counsel has properly apprised itself of the merits of all claims, and whether the proposed apportionment is fair and reasonable in light of that information." *Chavarria v. New York Airport Serv., LLC*, 875 F. Supp. 2d 164, 175 (E.D.N.Y. 2012).

The proposed Plan of Allocation was developed by one of Plaintiffs' damages consultant working in conjunction with Lead Counsel.[11] It is based on an out-of-pocket theory of damages consistent with Sections 10(b) and 20A of the Exchange Act, and reflects an assessment of the damages that Plaintiffs contend could have been recovered under the theories of liability and damages asserted in the Action. More specifically, the Plan of Allocation is predicated on Plaintiffs' allegation that the prices of Virgin Galactic Securities[12] were artificially inflated during the Settlement Class Period due to Defendants' alleged materially false and misleading statements and omissions, and that the decreases in the stock price that followed the alleged corrective disclosures that occurred on August 4, 2020; December 14, 2020; February 2, 2021; February 26, 2021; September 2, 2021; September 3, 2021; October 15, 2021; January 13, 2022; and August 5, 2022, may be used to measure the alleged artificial inflation in the price of the stock prior to the disclosures. Ex. Notice at ¶30-31.

As discussed above, the proposed Plan of Allocation also considers the Court's ruling on Defendants' motion to dismiss the SAC. To that end, the Settlement will be divided as follows: 11.8% of the Net Settlement Fund to the Dismissed Claims ("Dismissed Claims Settlement

[11] The Plan of Allocation is set forth in the Notice at ¶¶28-53), and is also discussed in Section IV.B.7., *supra*.

[12] "Virgin Galactic Securities" means, collectively, publicly traded shares of Virgin Galactic and Social Capital common stock.

Amount"); 88.2% of the Net Settlement Fund to the Active Claims ("Active Claims Settlement Amount"). The Dismissed Claims Settlement Amount will be divided between holders of Dismissed Claims, while the Active Claims Settlement Amount will be divided between holders of Active Claims. *Id.* at ¶¶32-33.

Finally, the Plan of Allocation considers the insider trading claims (*i.e.*, 20A of the Exchange Act). For purposes of the Plan, any purchase of Virgin Galactic Securities during the period from August 10, 2021 through August 19, 2021, inclusive, will be deemed eligible for treatment as an "Insider Trading Claim." *Id*. at ¶36.

Under the Plan of Allocation, a Recognized Loss Amount will be calculated for each purchase or acquisition of Virgin Galactic Securities during the Settlement Class Period. *Id*. at ¶37. The calculation of Recognized Loss Amounts will depend upon several factors, including when the common stock was purchased during the Settlement Class Period, and in what amounts, whether the stock was sold, and if sold, when it was sold, and for what amounts.[13] The Recognized Loss Amount is not intended to estimate the amount a Settlement Class Member might have been able to recover after a trial, nor to estimate the amount that will be paid to Authorized Claimants pursuant to the Settlement. *Id*. at ¶29. The Recognized Loss Amount is the basis upon which the Net Settlement Fund will be proportionately allocated to the Authorized Claimants. *Id*.

In general, the Recognized Loss Amount for Virgin Galactic Securities purchased or acquired during the Settlement Class Period will be the difference between the estimated alleged artificial inflation on the date of acquisition and the estimated alleged artificial inflation on the

[13] "Active Claims" are purchases and acquisitions made during the period from July 12, 2021 through September 2, 2021, inclusive. "Dismissed Claims" are purchases and acquisitions made during: (i) the period from July 10, 2019 through July 11, 2021, inclusive; and (ii) the period from September 3, 2021 through August 4, 2022, inclusive. Notice, at ¶32.

date of sale, or the difference between the actual purchase price and sale price, whichever is less ("Recognized Loss Per Virgin Galactic Security"). *Id*. at ¶39. To the extent the Settlement Class Member's purchase or acquisition is eligible for treatment as an "Insider Trading Claim," the Recognized Loss for such securities shall be the greater of: (i) the "Recognized Loss Per Virgin Galactic Security"; or (ii) the "Recognized Loss Per Virgin Galactic Security on Insider Trading Claims."[14] *Id*. at ¶40. The Recognized Loss is the basis upon which the Dismissed Claims Settlement Amount and Active Claims Settlement Amount will be proportionately allocated to the Authorized Claimants, subject to a $10 *de minimis* distribution. *Id*. at ¶29. If a Claimant has an overall market *gain* with respect to his, her, or its transactions in Virgin Galactic Securities during the Settlement Class Period, or if the stock was not held over one of the corrective disclosure dates, the Claimant is not entitled to recover under the Plan of Allocation. *Id*. at ¶¶49-51.

If any funds remain after an initial distribution to Authorized Claimants, because of uncashed or returned checks or other reasons, subsequent distributions will be conducted as long as they are cost effective. *Id*. at ¶51. If it is determined that the re-distribution of funds remaining in the Net Settlement Fund is not cost-effective, the remaining balance shall be contributed to non-sectarian, not-for-profit organization(s), to be recommended by Lead Counsel and approved by the Court. *Id*.

The Plan of Allocation will result in a fair and equitable distribution of the Settlement proceeds among Settlement Class Members who submit valid claims, and, as such, Lead Counsel

[14] "Recognized Loss Per Virgin Galactic Security on Insider Trading Claims" is calculated as follows: for each share that was purchased during the period from August 10, 2021 through August 19, 2021, inclusive, the Recognized Loss shall be $46,967,439 divided by the total number of shares eligible for an Insider Trading Claim. $46,967,439 represents the amount alleged by Plaintiffs to be the loss avoided in the transactions that are the subject of the alleged violation. Notice, at ¶40, n.5.

respectfully request that the Court approve the proposed Plan of Allocation. *See Schueneman v. Arena Pharm., Inc.*, 2020 WL 3129566, at *7 (S.D. Cal. June 12, 2020) ("A plan which fairly treats class members by awarding a *pro rata* share to every Authorized Claimant, even as it sensibly makes interclass distinctions based upon, *inter alia*, the relative strengths and weaknesses of class members' individual claims and the timing of purchases of the securities at issue should be approved as fair and reasonable.") (cleaned up)); *Rodriguez v. CPI Aerostructures, Inc.*, 2023 WL 2184496, at *12, n.14 (E.D.N.Y. Feb. 16, 2023).

VIII. CONCLUSION

For the foregoing reasons, the Court should: (i) finally approve the Settlement; (ii) finally certify the Settlement Class; and (iii) approve the Plan of Allocation.[15]

Dated: May 27, 2026

Respectfully submitted,

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[15] A proposed Judgment Approving Class Action Settlement and a proposed Order Approving Plan of Allocation will be submitted with Plaintiffs' reply papers on July 2, 2026, after the deadline for objecting to the motion and requesting exclusion from the Settlement Class has passed.

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WORD COUNT CERTIFICATE

Pursuant to Local Civil Rule 7.1(c), I certify that the foregoing document contains 7,685 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