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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Plaintiffs Jennifer Ortiz, Raymond Ochs, Hesham Ibrahim, and Montgomery Brantley (collectively, "Plaintiffs"), and 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 reply memorandum in further support of: (i) Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation (ECF Nos. 212-213); and (ii) Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (ECF Nos. 214-215, the "Fee and Expense Application").[1]

I. THE REACTION OF THE SETTLEMENT CLASS SUPPORTS THE RELIEF REQUESTED

The Claims Administrator sent approximately 2.2 million notices to potential Settlement Class Members.[2] Although the claims filing deadline is four weeks away, and the majority of claims—including those from institutional investors—will be filed at or near the deadline,[3] potential Settlement Class Members have already filed approximately 6,886 Claims.[4] In contrast, only 27 potential Settlement Class Members requested exclusion, and, of these, only 13 provided transaction information, with a total recognized loss of $11,741.98.[5] Given the number of notices sent, the miniscule number of opt-outs and significant number of claims filed demonstrate overwhelming support for the Settlement.

[1] Unless otherwise defined herein, all capitalized terms 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"; ECF No. 216). Unless otherwise indicated, internal quotations and citations are omitted and emphasis is added.

[2] *See* Supplemental Declaration of Josephine Bravata Concerning: (A) Mailing/Emailing of Notice; (B) Report on Requests for Exclusion and Objections; and (C) Claims Received to Date (the "Suppl. Mailing Decl.") (attached as Exhibit 1 hereto), at ¶4.

[3] *See* Suppl. Mailing Decl., ¶16.

[4] Of these, SCS has preliminarily determined that 5,340 are valid Claims, and 1,546 are wholly deficient, ineligible, or suffered no Recognized Loss. Suppl. Mailing Decl., ¶16.

[5] *See* Suppl. Mailing Decl., Ex. B.

The objections tell a similar story. There are only two purported objections, neither of them from persons who established their status as Settlement Class Members. A third party, the Office of the Attorney General of Massachusetts (the "AG"), raised concerns with the opt-out process and the attorneys' fee request, but not the Settlement itself. As demonstrated below: (i) Lead Counsel already addressed many of the AG's concerns regarding the opt-out process, and its remaining concerns are without merit; (ii) neither objector has provided evidence of membership in the Settlement Class; (iii) the objections are without merit; and (iv) the attorneys' fees have been earned. Moreover, when viewed in their totality, these figures overwhelmingly support the relief request. *See D'Amato v. Deutsche Bank*, 236 F.3d 78, 86 (2d Cir. 2001) (holding that the district court properly concluded that 18 objections from a class of 27,883 "weighed in favor of the settlement"); *In re Merrill Lynch & Co., Inc. Rsch. Reps. Sec. Litig.*, 246 F.R.D. 156, 167–68 (S.D.N.Y. 2007) ("The overwhelmingly positive reaction of the class also weighs heavily in favor of approval of the Settlement" where "[a]fter over 1.8 million Notices were mailed to potential Class Members, only eleven objections to the fairness of the Settlement were submitted, and only 299 investors requested to be excluded from the Settlement.").

II. THE AG'S CONCERNS DO NOT DETRACT FROM THE FAIR, REASONABLE, AND ADEQUATE NATURE OF THE SETTLEMENT AND THE FEE REQUEST, AND, IN ANY EVENT, LEAD COUNSEL HAS ADDRESSED SUCH CONCERNS

The AG raised concerns with the Court-approved process for opting out of the Settlement, arguing that persons should be able to exclude themselves online and should not have to provide trading information or proof thereof. Plaintiffs appreciate the AG's concern, but the approved process was standard, Settlement Class Members were given a full and fair opportunity to request exclusion, and many did just that. Nonetheless, Plaintiffs have accommodated most of the AG's request. And while we understand the AG's concerns, the AG's preferences do not provide grounds to order additional notice with new opt-out procedures, at a huge cost to the Settlement Class.

A. The Opt-Out Process Is Similar To That Of Other Class Actions And Plaintiffs Have Provided The Relief Requested By The AG Where Possible

Federal Rule of Civil Procedure 23(c)(2)(B) requires the Court to approve notice to the class, and that "the notice must clearly and concisely state in plain, easily understood language: … (v) that the court will exclude from the class any member who requests exclusion; [and] (vi) the time and *manner* for requesting exclusion… ." Fed. R. Civ. P. 23(c)(2)(B) (emphasis added). The Court did just that. *See Lavin v. Virgin Galactic Holdings, Inc.*, 2026 WL 537978, at *16 (E.D.N.Y. Feb. 24, 2026) ("Having carefully reviewed the parties' filings, the Court finds that the proposed notices contain the information required by Rule 23, set forth 'in plain, easily understood language.'"). In fact, the Court required specific revisions to the Notice and Postcard Notice prior to dissemination to address its concerns about the notice process. *Id*. at *4; *see also* ECF No. 204 (Preliminary Approval Hearing Trans. at 18:20-22 ("So we'll have amendments to the long form notice and the short form notice with regard to that.") and 24:11-25:22 (additional changes)). The Court also noted that "you have your opt-outs due 21 days prior to the final approval hearing" and "[t]hat all seems reasonable and standard in these cases." *Id*. at 26:18-20. Thus, the Court knew what was in the notices when approving them and the opt-out procedure and approved them both because they were consistent with what is "reasonable and standard in these cases."[6]

[6] *See also In re Polyurethane Foam Antitrust Litig.*, 168 F. Supp. 3d 985, 998 (N.D. Ohio 2016) ("Andrews . . . challenges the requirements for opting-out" by asking "[w]hy can't opt-outs file their form online instead of having to mail it in" and "[w]hy are opt-outs asked to provide unnecessary information . . . . [E]ven if the occasional suggestion Andrews offers is reasonable, he does not show the existing format is *unreasonable*. And, so long as the settlement agreements and the processes used to effectuate them are fair, reasonable, and adequate . . . this Court has no reason to disapprove them.") (italics in original).

Second, courts in this Circuit regularly approve opt-out provisions similar to those approved by the Court here. *See, e.g.*, *Lavin*, 2026 WL 537978, at *16; *see also Hunter v. Blue Ridge Bankshares, Inc.*, 2025 WL 1649323, at *8 and *23-24 (E.D.N.Y. June 11, 2025) (approving substantially similar opt-out procedure, including mailing of exclusion request, and requiring transaction information and documentary proof of transactions); *In re Northern Dynasty Minerals Ltd. Sec. Litig.*, 2023 WL 5511513, at *20 (E.D.N.Y. Aug. 20, 2023) (M.J. Merkl) (same); *In re 3D Systems Sec. Litig.*, 2023 WL 4621716, at *20 (E.D.N.Y. July 19, 2023) (same); *In re Blue Apron Holdings, Inc. Sec. Litig.*, 2021 WL 345790, at *5 (E.D.N.Y. Feb. 1, 2021) (same). This is because the information requested from opt-outs is necessary to assess the viability of the settlement and the likelihood that it will lead to a global resolution. If a substantial number of shares held by settlement class members are opted out of the settlement, it could trigger the provision in the Stipulation (and Supplemental Agreement) that protects Defendants from unforeseen liability by allowing Defendants to terminate the Settlement if an exclusion threshold is met. *See* Stipulation, ¶35. That is a major event and it is important that the Parties have transactional data and supporting documentation necessary to properly evaluate if the threshold is met. The exclusion procedure was, therefore, consistent with repeatedly approved practices.

Third, Lead Counsel have attempted to address the AG's concerns. Upon receiving the AG's letter, Lead Counsel asked the Claims Administrator (SCS) to add an online opt-out form to the Settlement Website, which it did on June 9, 2026. *See* Suppl. Mailing Decl. ¶8. At Lead Counsel's request, SCS also sent emails to people who had: (i) submitted incomplete opt-outs either online or by mail; or (ii) asked about the process of opting out, but had not actually opted out. In these emails, SCS explained that there was now an online portal where they could request exclusion and provide the necessary information. *Id.* This is most of what the AG requested.

The AG's concern is also somewhat misplaced. Anyone with potential damages small enough that it is not worth their effort to go through the exclusion process also will not have a financial interest significant enough to bring his, her, or its own separate action. In other words, the group of people the AG's office is concerned about is the exact group that class actions are meant to benefit, because the class action structure creates opportunities for small shareholders to seek and recover relief that would otherwise be unavailable as a practical matter.[7]

Finally, the Court should not order additional notice to the Settlement Class. Pursuant to the Class Action Fairness Act ("CAFA"), notice was disseminated to the AG on or before November 13, 2025. ECF No. 200. The CAFA notice included, among other things, the proposed notices to be sent to class members and information explaining exactly how Plaintiffs intended to deliver notice to the Settlement Class ("Notice Plan"). The Notice Plan was not approved by the Court until four months later. If the AG wanted to request an amendment to the Notice Plan, it had plenty of time to do so before notice was disseminated to the potential Settlement Class Members at a cost of hundreds of thousands of dollars. Requiring additional notice now would cost hundreds of thousands of dollars more (all of which would be paid out of the settlement fund) and would further delay payments to Settlement Class Members.

All of these points weigh in favor of forgoing this request.

B. The AG's Additional Requests Do Not Affect The Quality Of The Settlement

The AG further requests that the Court inquire into three issues: (i) how many Settlement Class Members are expected to fall into the Dismissed Claims and Active Claims categories; (ii) how many class members are "small shareholders," which the AG defines as those who "receive

[7] Conversely, for any potential class member who had a large enough financial interest and desires to pursue an individual action, the cost of mailing an opt-out form is a reasonable expense to incur to preserve his, her, or its right to pursue recovery through an individual action.

at most a dollar or two in compensation"; and (iii) projections for shareholders who are not likely to file a claim for small amounts. Given that the claims-filing deadline has not occurred, it is impossible to provide authoritative information. However, based on the claims received to date, the chart below provides: (i) the number of claimants in each category; and (ii) the number of claimants who would not receive a distribution because the check would be less than $10 assuming no further claims are filed.

		# of Claims	**Receive Over $10 for Distribution**	**Receive under $10 for Distribution**	**Active Recognized Losses**	**Dismissed Recognized Losses**
Valid Claims:	Active and Dismissed Claims	348	346	2	$156,340	$1,389,897
	Active Claims	146	146	-	$115,741	$0
	Dismissed Claims	4,846	2,093	2,753	$0	$20,327,125
Rejected Claims:		1,546			N/A	N/A
Total		**6,886**			**$272,080**	**$21,717,021**

Suppl. Mailing Dec. ¶16.

The AG's third inquiry is unanswerable. Plaintiffs cannot make projections of the number of Settlement Class Members who are not likely to submit a claim because their losses are too small; Settlement Class Members fail to file claims for all sorts of reasons, not necessarily the size of any payout.[8]

While the AG is rightly concerned with Settlement Class Members who will not receive a payout, minimum payment thresholds benefit the class as a whole by eliminating payments to claimants for whom the cost of printing and mailing checks and related follow-up would be disproportionate to the value of their claim. *See In re Gilat Satellite Networks, Ltd.*, 2007 WL

[8] The AG cites *Lowery v. Rhapsody Int'l, Inc.*, 75 F.4th 985 (9th Cir. 2023), but there, the fund was reversionary (*i.e.*, any unclaimed funds reverted to defendants). *Id.* at 988-89. Here, the Settlement Fund is non-reversionary, and the entire Net Settlement Fund will be distributed to Settlement Class Members regardless of how many claims are filed. *See* Stipulation, ¶32. No money will revert to Defendants.

1191048, at *9 (E.D.N.Y. Apr. 19, 2007) ("*de minimus* thresholds for payable claims are beneficial to the class as a whole since they save the settlement fund from being depleted by the administrative costs associated with claims unlikely to exceed those costs and courts have frequently approved such thresholds, often at $10."); *Hefler v. Wells Fargo & Company*, 2018 WL 6619983, at *11 (N.D. Cal. Dec. 18, 2018) ("A $10 threshold . . . is standard in securities class actions and benefits the Settlement Class as a whole because it reduces the costs associated with printing and mailing checks for *de minimis* amounts, as well as costly follow-up to ensure those checks have been received and cashed.") (cleaned up). Courts routinely approve settlements with minimum payment thresholds of $10 or more. *See Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 328-30 (3d Cir. 2011) (court did not abuse its discretion in overruling objections to minimum $10 claim payment, noting that "courts have frequently approved such thresholds."); *In re Glob. Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 463 (S.D.N.Y. 2004) (approving $10 *de minimis* threshold and noting that "Class counsel are entitled to use their discretion to conclude that, at some point, the need to avoid excessive expense to the class as a whole outweighs the minimal loss to the claimants who are not receiving their *de minimis* amounts of relief.").

III. THE TWO OBJECTIONS SHOULD BE OVERRULED

The Court should overrule the objections because neither of the objectors has demonstrated that they have standing to object and, even if they had, their objections are without merit.

A. Neither Objector Has Standing To Object

Two purported Settlement Class Members, Benjamin Wallace and Shiyang Huang, filed objections. ECF Nos. 211 (Wallace), 219-223 (Huang). Though required by the Preliminary Approval Order, neither has provided evidence of membership in the Settlement Class. Mr. Wallace simply states that "I purchased publicly traded shares common stock between 06/2019 and 08/2022." ECF No. 211. However, even if true, if he did not suffer a compensable loss (*i.e.*, a loss tied to the allegedly wrongful conduct), he is excluded from the Settlement Class by definition. *See* Stipulation ¶1(tt).

Mr. Huang does not even affirmatively state that he purchased the stock at issue. Rather, he "vaguely recalls that he may have traded Virgin Galactic Securities in the past." ECF No. 221. He "attempt[ed] to search for his trading histories and he could not find a clear record." *Id.* He was "unable to identify specific records as the brokerage records are also difficult to search and find." *Id.* Given that brokerage statements are available online, or he could have requested them from his broker, it is unclear why Mr. Huang did not submit his records. It may be that Mr. Huang did vaguely recall a transaction in Virgin Galactic Securities but then looked through his brokerage records and did not find any, or found that his trading was outside the Settlement Class Period. That would explain Mr. Huang's rather careful claim that he "*attempt[ed]*" a search but "could not find a *clear* record." Alternatively, it may be that Mr. Huang is not a Settlement Class Member, as has been the case in several other instances where he attempted to object.[9]

It is axiomatic that "[o]nly a Class member may object to the Settlement." *Christine Asia Co., Ltd. v. Yun Ma*, 2019 WL 5257534, at *11 (S.D.N.Y. Oct. 16, 2019); *see also* Fed. R. Civ. P. 23(e)(5) ("Any *class member* may object to the [settlement] proposal…."). Non-class members cannot object. *Cent. States Se. & Sw. Areas Health & Welfare Fund v. Merck-Medco Managed Care, L.L.C.*, 504 F.3d 229, 243-44 (2d Cir. 2007); *Tennessee Ass'n of Health Maint. Organizations, Inc. v. Grier*, 262 F.3d 559, 566 (6th Cir. 2001) ("The plain language of Rule 23(e)

[9] *See Larson v. Allina Health Sys.*, 2020 WL 583082, at *1-2 (D. Minn. Feb. 6, 2020) (denying request of "non-party, non-class member Shiyang Huang" to file amicus brief); *In re Blue Cross Blue Shield Antitrust Litig.*, 2022 WL 4587618, at *40 (N.D. Ala. Aug. 9, 2022) (Huang lacked standing to object because he had opted out of the settlement), *aff'd sub nom. In re Blue Cross Blue Shield Antitrust Litig. MDL 2406*, 85 F.4th 1070 (11th Cir. 2023); *Smith v. Costa Del Mar, Inc.*, 2022 WL 252397, at *3 n.3 (M.D. Fla. Jan. 27, 2022) (denying Huang's request to file amicus brief because, *inter alia*, "Huang is not a member of the class, [and] has not stated a cognizable interest in these proceedings"), *reversed on other grounds, Smith v. Miorelli*, 93 F.4th 1206 (11th Cir. 2024).

clearly contemplates allowing only class members to object… .”). Since Messrs. Wallace and Huang have not demonstrated that they are Settlement Class Members, the Court should find they lack standing to object. *See In re LIBOR-Based Fin. Instruments Antitrust Litig.*, 327 F.R.D. 483, 504 (S.D.N.Y. 2018) (“VIPFA therefore lacks standing, and this lack of standing is sufficient by itself to warrant the overruling of its objection.”); *In re Citigroup Inc. Sec. Litig.*, 965 F. Supp. 2d 369, 379 (S.D.N.Y. 2013) (excluding objections “from individuals who did not provide the required evidence of class membership or who provided evidence indicating they were not class members”).[10]

Even if considered, Messrs. Wallace and Huang’s arguments lack merit.

B. The Court Should Reject Mr. Wallace’s Vague And Unsupported Objections

Plaintiffs and Lead Counsel previously explained in significant detail why the Settlement and Plan of Allocation should be approved as fair, reasonable and adequate, and why the Court should award the requested attorneys’ fees and Litigation Expenses. As Mr. Wallace’s objection provides no legal or factual basis for the insufficiency of the Settlement, and fails to consider the legal or factual context in which the Settlement was reached, nothing in the objection changes the calculus. Indeed, “[c]ourts routinely approve settlements over conclusory objections” (*In re AOL Time Warner, Inc.*, 2006 WL 903236, at *15 (S.D.N.Y. Apr. 6, 2006)), and reject objections to proposed attorneys’ fees as “excessive” for being “conclusory and bereft of factual or legal support.” *In re Bear Stearns Companies, Inc. Sec., Derivative, & ERISA Litig.*, 909 F. Supp. 2d 259, 264 n.3 (S.D.N.Y. 2012). The Court should, therefore, overrule Mr. Wallace’s objections.

[10] If Messrs. Wallace and Huang disagree with this analysis, it is their burden to demonstrate standing. *See LIBOR-Based Fin. Instruments*, 327 F.R.D. at 499 (“The objector, as a party seeking to generate a court ruling, has the burden of demonstrating her standing.”); *Feder v. Elec. Data Sys. Corp.*, 248 F. App'x 579, 581 (5th Cir. 2007) (Objector “Urbanik, as the party seeking to establish jurisdiction, bears the burden of proving standing.”) (citing *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 561 (1992)).

See Vaccaro v. New Source Energy Partners L.P., 2017 WL 6398636, at *5 (S.D.N.Y. Dec. 14, 2017) (rejecting an objection "as factually unsupported and conclusory"); *In re Wachovia Equity Sec. Litig.*, 2012 WL 2774969, at *4 (S.D.N.Y. June 12, 2012) (disregarding an objection that argued "in wholly conclusory fashion that the settlement amount and distribution is insufficient to adequately compensate class members"); *In re Merrill Lynch & Co., Inc. Rsch. Reps. Sec. Litig.*, 246 F.R.D. 156, 168 (S.D.N.Y. 2007) (rejecting an objection because the "conclusory statements are not sufficient to weigh against approval of the Settlement as fair and reasonable").

C. Mr. Huang's Objections Should Be Overruled

1. It Is Necessary For Settlement Class Members To Provide Trading Data

Citing a series of inapposite consumer, antitrust and FLSA cases, Mr. Huang asks the Claims Administrator to do the impossible: pre-fill a form for Settlement Class Members with their trading information. Based on his objection history, Mr. Huang is familiar with consumer and antitrust class actions where the defendant often has class members' purchase information and can create such a form.[11] But as the Claims Administrator explained, it did not have trading records for Mr. Huang. *See* ECF No. 220 at p.3 ("We do not have your transaction information. Please contact your broker for this information."). This is because almost all shares, like Mr. Huang's, are held by stock brokers in "street name" (*i.e.*, in the name of a broker, for example, like Charles Schwab and Vanguard). *See* Suppl. Mailing Decl. ¶13; *see also Rodriguez v. CPI Aerostructures,*

[11] *See West v. Rheem Mfg. Co.*, 2026 WL 1192136, at *1 (C.D. Cal. Apr. 30, 2026) (rejecting Mr. Huang's motion to intervene to oppose a consumer class action settlement); *In re Blue Cross Blue Shield Antitrust Litig.*, 2022 WL 4587618, at *40 (N.D. Ala. Aug. 9, 2022); *In re Equifax Inc. Customer Data Sec. Breach Litig.*, 999 F.3d 1247, 1264 (11th Cir. 2021) (rejecting Mr. Huang's objection to data breach class action); *In re Apple Inc. Device Performance Litig.*, 50 F.4th 769, 778 (9th Cir. 2022) (affirming rejection of Mr. Huang's objection to consumer class action); *In re Pork Antitrust Litig.*, 2022 WL 4238416, at *6 (D. Minn. Sept. 14, 2022) (rejecting Mr. Huang's objection to antitrust class action); *In re Conagra Foods, Inc.*, 2021 WL 8153648, at *9 (C.D. Cal. Dec. 22, 2021) (rejecting Mr. Huang's objection to consumer class action but rejecting settlement in light of other objector's argument); *Corrente v. Charles Schwab Corp.*, 2025 WL 3270219, at *20 (E.D. Tex. Nov. 24, 2025) (rejecting Mr. Huang's objection in consumer class action).

Inc., 2023 WL 2184496, at *3 (E.D.N.Y. Feb. 16, 2023) ("the majority of potential Class Members likely are beneficial owners of the securities held in 'street name'").

When Mr. Huang's broker executes a trade, it is not performed under Mr. Huang's name, nor are the shares held with Mr. Huang as the record holder. Rather, the broker executes the trades and holds the shares on behalf of Mr. Huang. Thus, the only way to get Mr. Huang's trading information—and that of the thousands of Settlement Class Members—is through their brokerage firms and other nominees. *See* Suppl. Mailing Decl.¶13; *see also Rodriguez*, 2023 WL 2184496, at *3-4. While the Court approved a process by which brokers and nominees will assist the Claims Administrator in providing notice to the Settlement Class (*i.e.*, by providing shareholder contact information to the Claims Administrator or providing notice themselves), it did not require non-party brokers and nominees to search their records and provide trading data for the millions of trades executed by Settlement Class Members. Counsel is not aware of any Court that has entered such an order given the tremendous burden this would place on thousands of brokers and nominees. And the Claims Administrator—with its 27 years of experience administering 575 class action settlements—is not aware of any, either. Suppl. Mailing Decl. ¶13; *see also In re Facebook, Inc., IPO Sec. and Derivative Litig.*, 343 F.Supp.3d 394, 411 (S.D.N.Y. 2018) ("By sending notice to all persons who could be identified by reasonable efforts–and requesting Nominees provide the names of those that could not–Plaintiffs met the requirements of Rules 23(c), 23(e), and due process."). Mr. Huang was simply unwilling to accept the Claims Administrator's repeated explanation. *See* ECF No. 221 at p.2.

2. The Settlement Passes Muster Under Kurtz

Mr. Huang argues that a new Second Circuit case mandates that the Court engage in a proportionality analysis (*i.e.*, "consider[] the allocation of recovery between the class and class counsel") when evaluating the fairness of the Settlement under Rule 23(e)(2). *Kurtz v. Kimberly-*

Clark Corp., 142 F.4th 112, 120 (2d Cir. 2025). But as Plaintiffs' opening final approval brief explained, "'*Kurtz* did not change the approach taken to assess the fairness of a class settlement in common fund cases, including this action.'" Op. Br. at 16 n.9 (*quoting Caccavale v. Hewlett-Packard Co.*, 2025 WL 2960237, at *11 (E.D.N.Y. Oct. 20, 2025)). As *Kurtz* explained, Rule 23(e)(2)(C) was written so that courts would consider "[o]ne of the major risks of class action settlements[,] that class counsel may undervalue the class's claims in exchange for a higher attorney's fee." *Kurtz*, 142 F.4th at 118. *Kurtz* was a claims-made settlement that included separate funds for attorneys' fees and claims. Because the defendant is only concerned with total liability, high attorneys' fees in proportion to the claims fund may tend to show that counsel undervalued the claims in exchange for higher attorneys' fees. Thus, the imbalance may show not just that the fees were too high, but that the valuation of the claims was too low. Non-reversionary common fund settlements, such as this one, do not create similar incentives. Because attorneys' fees and claims are paid from the same fund, counsel have no reason to shortchange claims to get higher attorneys' fees; rather, their incentives are to maximize the class recovery and, thereby, obtain higher attorneys' fees. *See Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 121 (2d Cir. 2005) ("The trend in this Circuit is toward the percentage method, which directly aligns the interests of the class and its counsel … ."). Thus, the concerns animating Rule 23(e) do not apply. *Caccavale*, 2025 WL 2960237, at *11.

Even if *Kurtz* changed the requirements for common-fund non-reversionary settlements, the Settlement easily passes the proportionality test. This is especially true given the circumstances of this case and holistic nature of the inquiry. *See Kurtz*, 142 F.4th at 121 ("[T]he impact of attorney's fees on class relief is just one of multiple factors detailed in Rule 23(e). Our holding today that a court must consider this factor does not render it singularly dispositive.").

The risk that counsel undersold the class is most acute if counsel reached an early settlement without much litigation that provides a rich hourly rate. But fractional lodestar multipliers and high expenses, as here, are "evidence that counsel pursued this case aggressively, fronting payment of the expenses even though there was a risk that they might not get the funds back." *Lozada v. TaskUs, Inc.*, 2025 WL 3125848, at *7 (S.D.N.Y. Nov. 6, 2025), *report and recommendation adopted* 2025 WL 3482752 (S.D.N.Y. Dec. 4, 2025). Counsel spent 5 years, more than $8 million in attorney time, and fronted more than $1.2 million in out-of-pocket expenses litigating this case, "circumstances [that] do not bespeak a scenario in which plaintiffs' counsel accepted an early, cheap settlement that benefited counsel's interests at the expense of the class." *Id*. at *1, 7 (Rule 23(e)(2)(c)(iii) satisfied where "extensive litigation" included partial grant of motion to dismiss, 13 depositions, a 540,000-page document production, and full class certification briefing including expert depositions).

Moreover, overly-difficult claims processes may be evidence of collusion if any unclaimed funds revert to defendants. Then, defendants understand that they will only be liable for a fraction of the nominal settlement value because of unclaimed funds. But here, none of the funds will ever revert to Defendants, so no one has any incentive to make the claims process any more difficult than absolutely necessary.

Mr. Huang's proportionality analysis is also flawed because it conflates expenses and attorneys' fees. As *Kurtz* explained, the analysis properly focuses only on the fees themselves. 142 F.4th at 120 n.5. Expenses do not benefit counsel; rather, they are part of the total benefit to the settlement class. *See Kurtz v. Kimberly-Clark Corp.*, 2026 WL 717909, at *8, n. 11 (E.D.N.Y. Mar. 12, 2026) ("*Kurtz II*"). Nevertheless, even if the Court excludes the expenses from the settlement amount, the attorneys' fees amount to 38.9%,[12] or an attorneys' fee-to-class recovery ratio of approximately 2:5. This is eminently reasonable. *See Kurtz II*, 2026 WL 717909, at *9 (approving settlement with ratio of 3:1 between attorneys' fees and class recovery); *see also Velez v. Novartis Pharms. Corp.*, 2010 WL 4877852, at *21 (S.D.N.Y. Nov. 30, 2010) (collecting cases and stating: "The federal courts have established that a standard fee in complex class action cases like this one, where plaintiffs' counsel have achieved a good recovery for the class, ranges from 20 to 50 percent of the gross settlement benefit."). Thus, this factor favors approval of the Settlement.

3. Plaintiffs' PSLRA Awards Don't Constitute Inequitable Treatment And Are Well-Deserved

Rule 23(e)(2)(D) requires courts to evaluate whether the settlement treats class members equitably relative to one another. This inquiry is separate from proportionality. *See Kurtz*, 142 F.4th at 121 at n.5 (excluding incentive awards from proportionality analysis). Here, as set forth in the opening fee brief, the requested PSLRA awards are consistent with awards in other securities cases. *See* ECF No. 215, at pp. 23-24, n. 7. As such, they do not constitute inequitable treatment of Settlement Class Members. *See In re Regulus Therapeutics Inc. Sec. Litig.*, 2020 WL 6381898, at *5 (S.D. Cal. Oct. 30, 2020) ("[T]he service award Lead Plaintiff seeks is reasonable and does not constitute inequitable treatment of class members.").

Additionally, unlike Mr. Huang, Lead and Named Plaintiffs oversaw the case for 5 years, reviewed documents, held regular discussions with counsel, and produced documents to their counsel. All Named Plaintiffs had their depositions taken. For this work, they ask for modest, reasonable payments. *See Moses v. The New York Times Co.*, 2026 WL 364231, at *3 (2d Cir.

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[12] $8,500,000 - $1,223,037 (expenses) = $7,276,963. $2,833,333 (requested attorneys' fees)/$7,276,963 = 38.9%.

2026) ("[T]here is near-universal recognition that it is appropriate for the court to approve an incentive award payable from the class recovery, usually within the range of $1,000-$20,000."). Mr. Huang cites no relevant authority to support his argument.[13] And Mr. Huang's stated basis for a reduction—the difficulty absent class members have in filing claims—presumes that Plaintiffs could give absent class members prefilled forms, which they cannot.

IV. CONCLUSION

For the foregoing reasons, as well as those set out in Plaintiffs' opening brief, the Court should: (a) finally approve the Settlement; (b) finally certify the Settlement Class; (c) approve the Plan of Allocation; (d) enter the [Proposed] Judgment, filed herewith; (e) award attorneys' fees of one third of the gross Settlement Fund, or $2,833,333, plus interest; (f) reimburse Litigation Expenses of $1,223,037.21, plus interest; and (g) grant an award to Plaintiffs of $55,000.[14]

[13] *Fikes Wholesale, Inc. v. HSBC Bank USA, N.A.*, 62 F.4th 704, 722-23 (2d Cir. 2023), is by its terms, inapplicable to cases brought under the federal securities laws. *In re Literary Works in Elec. Databases Copyright Litig.*, 654 F.3d 242, 254 (2d Cir. 2011) concerned intra-class conflicts, not conflicts between named plaintiffs and the class.

[14] The Settlement is conditioned on the entry of the [Proposed] Judgment Approving Class Action Settlement. *See* Stipulation, ¶¶30-31(e); Ex. B. The [Proposed] Judgment Approving Class Action Settlement, along with [Proposed] Order Approving the Plan of Allocation and the [Proposed] Order Awarding Attorneys' Fees and Reimbursement of Litigation Expenses, are submitted concurrently herewith.

Dated: July 10, 2026

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 10, 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