UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE EVOLV TECHNOLOGIES HOLDINGS INC. SECURITIES LITIGATION	Case No. 1:24-cv-10761-ADB

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION

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Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, Court-appointed Lead Plaintiff Robert Falk and additional plaintiffs Chris Williams, Tim Carrillo and Chris Swanson (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 April 13, 2026 (the "Stipulation"; ECF No. 124-1); and (ii) approval of the proposed plan of allocation for the Settlement proceeds (the "Plan of Allocation").[1]

I. PRELIMINARY STATEMENT

Plaintiffs and Defendants[2] have agreed to settle all claims in the Action in exchange for a non-reversionary, all cash payment of $15,000,000 (the "Settlement Amount") for the benefit of the Settlement Class. This is an excellent result for the Settlement Class, and it was secured in a procedurally fair manner.

Substantively, the $15 million represents a recovery of approximately 8.99% of the *maximum* damages related to the pending claims. *See infra* Sec. IV.A.3.e; ¶¶9, 57. The recovery is thus more than two and a half times the median recovery of 3.2% of estimated damages for securities class actions

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[1] Unless otherwise defined, all capitalized terms herein have the same meanings as set forth in the Stipulation or the concurrently filed Declaration of Casey E. Sadler in Support of: (I) Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation; and (II) Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Sadler Declaration"). Unless otherwise noted, all citations to "¶__" and "Ex." refer, respectively, to paragraphs in, and exhibits to, the Sadler Declaration. Additionally, unless otherwise noted, internal citations and quotation marks are omitted and all emphasis is added.

[2] Defendants are Evolv Technologies Holdings, Inc. ("Evolv" or the "Company"), Peter George, Mark Donohue, Mario Ramos, Kevin Charlton, Thomas J. Sullivan, Charles Goldman, Charlie Baynes-Reid, Adam Deutsch, Marc Saiontz, Kathleen Harris, Brian Mathis, Neil Glat, and Sezaneh Taherian (collectively, "Individual Defendants"; together with Evolv, "Defendants"; and together with Plaintiffs, the "Parties").

with similar damages settled.[3] When balanced against the many risks of continued litigation, including, but not limited to, the limited sources of recovery in the Action, there can be no doubt that the Settlement is substantively fair, reasonable, and adequate.

The Settlement is also the product of a procedurally fair process. It was negotiated by experienced securities class action litigators after approximately two and a half years of hard-fought litigation. Prior to reaching the Settlement, Lead Counsel, *inter alia*:

- conducted an extensive investigation into Defendants' alleged Exchange and Securities Act violations;
- worked with an investigator to locate and interview former employees of Evolv who have relevant knowledge;
- consulted with experts in the fields of accounting, loss causation and damages;
- drafted two comprehensive amended complaints based on the research, investigation and expert retention;
- reviewed and analyzed Defendants' motions to dismiss the Second Amended Class Action Complaint for Violations of the Federal Securities Laws ("SAC"; ECF No. 84), conducted extensive legal research to rebut Defendants' arguments, and drafted and filed Plaintiffs' opposition briefs, and opposed Defendants' request for judicial notice;
- participated in mediation under the auspices of a well-respected mediator of complex cases – Jed D. Melnick, Esq., of JAMS – which involved, *inter alia*: an exchange of written mediation statements; a full-day formal mediation session, including discussions with Mr. Melnick in which he tested Plaintiffs' arguments and positions; and consultation with Lead Counsel's expert on damages and loss causation;
- drafted, negotiated, and executed the confidential settlement term sheet setting forth the Parties' agreement in principle to resolve the Action, subject to certain conditions including Defendants' production of information to enable Plaintiffs' Counsel to further assess the fairness, reasonableness, and adequacy of that agreement;
- conducted significant due diligence discovery, to analyze the strengths and weaknesses of the Parties' claims and defenses if the Action continued to be litigated, which included: (i) negotiating and executing a confidentiality agreement with Defendants; (ii) reviewing and analyzing Defendants' initial document productions; (iii) making supplemental document requests to Defendants; (iv) receiving additional documents from Defendants in response to Plaintiffs' Counsel's inquiries, and reviewing and analyzing approximately 121,000 pages of documents produced by Defendants relating to the facts alleged in the SAC; and (v) interviewing a former senior Evolv employee, as well as an employee of the financial

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[3] *See* Ex. 1 (Edward Flores, Svetlana Starykh, Ivelina Velikova, *Recent Trends in Securities Class Action Litigation*, 2025 Full-Year Review (NERA, Jan. 21, 2026)) ("NERA Report"), at 27 (Fig. 23).

firm AlixPartners (a management consulting company) who assisted in the restatement at issue in this Action;

- drafted the initial versions of the Stipulation (including the exhibits thereto) and Supplemental Agreement, and then negotiated the terms of those documents with Defendants' Counsel;
- worked with a damages expert to craft a plan of allocation that treats Plaintiffs and all other members of the proposed Settlement Class fairly;
- drafted and filed the preliminary approval motion and supporting papers;
- oversaw the Claims Administrator's implementation of the Court-approved notice process; and
- drafted the motion for final approval and supporting papers. ¶80.

The Settlement is, therefore, the result of arm's-length negotiations, conducted by informed and experienced counsel, in conjunction with a well-respected neutral. In other words, there was no collusion, and the process by which the Settlement was reached was procedurally fair. Because the Settlement is substantively fair, and was achieved in a procedurally fair manner, final approval is appropriate.

As discussed in greater detail below and in the Sadler Declaration, Plaintiffs and Lead Counsel believe the proposed Settlement meets the standards for final approval and is in the best interests of the Settlement Class. Accordingly, Plaintiffs respectfully request that the Court grant final approval to the Settlement.

Plaintiffs also move for approval of the proposed Plan of Allocation of the Net Settlement Fund. 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. No Settlement Class Member is favored over another under the proposed Plan of Allocation; rather, all Settlement Class Members—including Plaintiffs—are treated in the same manner. *See* ¶¶74-76; *see also* Sadler Decl. at Sec. V. Because the Plan of Allocation is fair and reasonable, it too should be approved.

Lastly, Plaintiffs seek final certification of the Settlement Class. The Court provisionally certified the Settlement Class in its Preliminary Approval Order (*see* ECF No. 125; "Preliminary Approval Order"), and no pertinent changes have transpired that would upset or alter the Court's earlier findings and determinations. The Court should, therefore, certify the Settlement Class for settlement purposes.

II. FACTUAL AND PROCEDURAL HISTORY OF THE LITIGATION

The Sadler Declaration is an integral part of this submission and, for the sake of brevity, the Court is respectfully referred to it for a detailed description of, *inter alia*: the factual background and procedural history of the Action; the nature of the claims asserted; the negotiations leading to the Settlement; the risks and uncertainties of continued litigation; the services Plaintiffs' Counsel provided; and terms of the Plan of Allocation of the Net Settlement Fund.

III. THE STANDARDS FOR FINAL APPROVAL UNDER RULE 23(e) AND *GRINNELL*

Rule 23(e) of the Federal Rules of Civil Procedure provides that a class action settlement must be presented to the Court for approval and should be approved if the Court finds it "fair, reasonable, and adequate." FED. R. CIV. P. 23(e)(2). Rule 23(e)(2)—which governs final approval—requires courts to consider the following in determining whether a proposed settlement is fair, reasonable, and adequate:

> (A) have the class representatives and class counsel adequately represented the class;
> (B) was the proposal negotiated at arm's length;
> (C) is the relief provided for the class adequate, taking into account:
>   (i) the costs, risks, and delay of trial and 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 attorneys' fees, including timing of payment; and
>   (iv) any agreement required to be identified under Rule 23(e)(3); and
> (D) does the proposal treat class members equitably relative to each other.

These factors do not "displace" previously adopted factors, but "focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal." Fed. R. Civ. P. 23(e) advisory committee's notes to 2018 amendment, 324 F.R.D. 904, 918.

For "supplemental guidance concerning the factors to be considered in assessing the fairness of a settlement, many courts in this Circuit have looked to those set forth by the Second Circuit Court of Appeals in *City of Detroit v. Grinnell Corp.*, 495 F.2d 448 (2d Cir. 1974) [("Grinnell")], *abrogated by Goldberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000)." *In re Ranbaxy Generic Drug App. Antitrust Litig.*, 630 F. Supp. 3d 241, 244 (D. Mass. 2022). Thus, the *Grinnell* factors utilized to evaluate the propriety of a class action settlement, certain of which overlap with Rule 23(e)(2), are 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; (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

Grinnell, 495 F.2d at 463. "The necessary assessment is, thus, holistic and incorporates 'a wide variety of factors bearing on the central question of whether the settlement is reasonable in light of the uncertainty of litigation'." *Ranbaxy*, 630 F. Supp. 3d at 244 (quoting *Bussie v. Allmerica Fin. Corp.*, 50 F. Supp. 2d 59, 72 (D. Mass. 1999)).

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.

IV. ARGUMENT

A. The Settlement Is Fair, Reasonable, And Adequate In Light Of The Factors Outlined By Rule 23(E)(2) And *Grinnell*

1. Plaintiffs And Lead Counsel Adequately Represented The Class

FED. R. CIV. P. 23(e)(2)(A) requires the Court consider whether "class representatives and class counsel have adequately represented the class." To establish adequacy, the movant must show "first that the interests of the representative party will not conflict with the interests of the class members," and "second, that counsel chosen by the representative party is qualified, experienced and able to vigorously conduct the proposed litigation." *Andrews v. Bechtel Power Corp.*, 780 F.2d 124, 130 (1st Cir. 1985).

Plaintiffs satisfy both prongs. Plaintiffs suffered losses as a result of Defendants' allegedly wrongful conduct in the same manner as the Settlement Class. Thus, Plaintiffs' interest in obtaining the largest possible recovery is aligned with the Settlement Class. *In re Bos. Sci. Corp. Sec. Litig.*, 604 F. Supp. 2d 275, 282 (D. Mass. 2009) (adequacy satisfied where claims did not conflict with interests of class). Plaintiffs also diligently oversaw and communicated with Lead Counsel concerning the case, supporting their adequacy. *Hill v. State St. Corp.*, 2015 WL 127728, at *7 (D. Mass. Jan. 8, 2015) (that lead plaintiffs "were well informed about the strengths and weaknesses of the case at the time the Settlement was achieved" supports approval). Additionally, Plaintiffs retained counsel highly experienced in securities litigation, who have a long and successful track record of representing investors in such cases. *See* Ex. 7-C (Lead Counsel résumé). As the "[P]arties' attorneys are experienced and knowledgeable about the facts and claims, their representations to the court that the settlement provides class relief which is fair, reasonable and adequate should be given significant weight." *Rolland v. Cellucci*, 191 F.R.D. 3, 10 (D. Mass. 2000).

2. The Settlement Is The Result Of Arm's Length Negotiations

Rule 23(e)(2)(B) requires the Court to consider whether "the proposal was negotiated at arm's length." Here, the Parties engaged in arm's-length settlement negotiations with a mediator with substantial experience in complex securities class actions, and this supports the conclusion that the Settlement is fair and achieved free of collusion. *Roberts v. TJX Companies, Inc.*, 2016 WL 8677312, at *6 (D. Mass. Sept. 30, 2016) (Burroughs, J.) ("participation of an experienced mediator[ ] supports the Court's finding that the Settlement is fair, reasonable, and adequate"); *see also Yang v. Focus Media Holding Ltd.*, 2014 WL 4401280, at *5 (S.D.N.Y. Sept. 4, 2014) ("Melnick's role in the settlement negotiations overcomes any hesitation this court might have about approving a settlement"); *Brightk Consulting Inc. v. BMW of N. Am., LLC*, 2023 WL 2347446, at *6 (C.D. Cal. Jan. 3, 2023) (noting that Mr. Melnick is "an experienced complex business litigation mediator who has resolved over 1,000 disputes in his career.").

3. The Settlement Is An Excellent Result In Light Of Its Benefits And The Risks Of Continued Litigation

Under Rule 23(e)(2)(C), 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."[4] As discussed below, each of these factors supports final approval.

(a) Complexity, Expense And Duration Of Litigation

"This was a complex securities class action" and "[t]he complexity of this case and the expense and delay that would result if this case were litigated through further motion practice, trial and appeals strongly support approval of the Settlement." *Hill*, 2015 WL 127728, at *7. Though Plaintiffs and Lead Counsel believe their claims have merit, the expense and duration of continued proceedings, as well as the substantial hurdles faced in establishing liability, loss causation, and damages (discussed further

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[4] Rule 23(e)(2)(C)(i) incorporates six of the traditional *Grinnell* factors: the 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 the 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.

below), create significant risk. Were the litigation to continue, a potential recovery, if any, would occur years from now. By contrast, the Settlement provides an immediate and substantial recovery.

(b) Establishing Liability

"The proposed [$15] million Settlement must be considered in light of the risks of establishing liability and damages in the Action." *Id.* at *9. At the time the Settlement was reached, the motions to dismiss were pending. While Plaintiffs believe they demonstrated Defendants made materially false and misleading statements in violation of the federal securities laws, Defendants argued, *inter alia*, that their statements were technically accurate and that the revenue recognition statements were not established as false. ECF No. 97 at 12-19. Defendants further argued that scienter was not adequately alleged as Defendants did not possess information contradicting their public statements, and the size of the restatement failed to provide an inference of scienter. ECF No. 97 at 22-29. While Plaintiffs and Lead Counsel strongly disagreed, the arguments were not meritless, and had litigation continued, there is no guarantee that the Court or a jury would have adopted Plaintiffs' view. Indeed, scienter is commonly regarded to be the most difficult element to prove in a securities fraud claim. *Roberts*, 2016 WL 8677312, at *7 (that "Plaintiffs, regardless of the merits of their claims, face a real risk in establishing liability at trial" favors settlement).

(c) Risks To Proving Loss Causation And Damages

Even if Plaintiffs established liability, they faced significant risks in proving loss causation and damages as to their claims under the Exchange Act. *See Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 345-46 (2005) (plaintiffs bear "the burden of proving that the defendant's misrepresentations caused the loss for which the plaintiff seeks to recover"). Defendants argued that Plaintiffs may not recover for *any* of the disclosures alleged in the SAC. Defendants argued the market already knew the information reported on May 23, 2023 and March 13, 2024. ECF No. 97 at 19-20 *citing Bricklayers & Trowel Trades Int'l Pension Fund v. Credit Suisse Sec. (USA) LLC*, 752 F.3d 82, 89 (1st Cir. 2014) (a claim based on an "event [that] was not actually a new disclosure will necessarily fail."). Second, Defendants argued the government investigations announced October 12, 2023 and February 19, 2024 only put "investors on notice of a potential future disclosure of fraudulent conduct." ECF No. 97 at 21 *quoting Loos v. Immersion Corp.*, 762 F.3d 880, 890 (9th Cir. 2014), *as amended* (Sept. 11, 2014). Finally, Defendants argued the restatement was not a corrective disclosure for the full class period. ECF No. 97 at 22. Had Defendants prevailed on their arguments, damages could have been effectively eliminated.

Further, in order to resolve all disputed issues regarding damages and loss causation, the Parties would have relied on expert testimony. This creates further litigation risk because Plaintiffs could not be certain whether a jury would accept the views of their experts. *See Roberts*, 2016 WL 8677312, at *7 ("uncertainty involving the method of calculating damages weighs in favor of finding a settlement agreement fair, reasonable, and adequate, and this Court does as well."); *see also 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.").

(d) Risks Of Maintaining Class Action Status

While Plaintiffs and Lead Counsel are confident that the Settlement Class meets the requirements for certification (*see* Sec. IV.B., *infra*), the class has not yet been certified, and Plaintiffs are aware that if the case continued to be litigated there is a risk the Court could disagree, or that the class period could be shortened based on decisions related to falsity, scienter, and loss causation. Even if the Court were to certify the class, "the court may decertify [it] at anytime before final judgment." *In re Sonus Networks, Inc. Sec. Litig.*, 229 F.R.D. 339, 348 (D. Mass. 2005) (decertifying class action where sole class representative withdrew). Thus, the risks and uncertainty surrounding class certification support approval, as Defendants likely would have challenged it, and even had they not, it could be decertified at any time before final judgment. *Sonus Networks*, 229 F.R.D. at 348; *Roberts*, 2016 WL 8677312, at *7 (noting "numerous examples of cases in which certification ultimately failed" supports approval).

(e) Range Of Reasonableness In Light Of The Best Possible Recovery And Attendant Risks Of Litigation

The Court must also consider the reasonableness of the settlement, weighing "the present value of the damages plaintiffs would likely recover if successful, appropriately discounted for the risk of not prevailing, should be compared with the amount of the proposed settlement." *In re Lupron Mktg. & Sales Pracs. Litig.*, 228 F.R.D. 75, 97 (D. Mass. 2005). Plaintiffs' damages expert estimates that if Plaintiffs had fully prevailed on all their claims at summary judgment and a jury trial, the total *maximum* damages potentially available would be approximately $166.9 million. The $15 million Settlement Amount therefore represents a recovery of 8.99%, *more than two and a half times* the 3.2% median settlement value for securities class actions with comparable maximum damages. *See* Ex. 1 (NERA Report) at 27 (Fig. 23). Moreover, $53.7 million of the damages were for the Securities Act claims, which, as discussed in the Sadler Declaration at ¶43, had substantial risk of being dismissed. If those claims were dismissed, then the Settlement Amount would represent approximately 13.25% of the potential maximum damages. ¶57. Under either situation, the Settlement is an excellent result considering the significant risks of continued litigation.

4. The Relief Provided For The Class Is Adequate

Courts must also consider whether the relief provided for the class is adequate in light of "the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;" "the terms of any proposed award of attorney's fees, including timing of payment;" and "any agreement required to be identified under Rule 23(e)(3)." FED. R. CIV. P. 23(e)(2)(C)(ii)-(iv). Each of these factors either supports approval of the Settlement or is neutral and does not suggest any basis for inadequacy of the Settlement.

Rule 23(e)(2)(C)(ii): The method for processing Settlement Class Members' claims and distributing relief to eligible claimants includes well-established, effective procedures for processing claims and efficiently distributing the Net Settlement Fund. Here, Epiq Class Action & Claims Solutions, Inc., the Claims Administrator, 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 mail or wire Authorized Claimants their *pro rata* share of the Net Settlement Fund (per the Plan of Allocation), after Court approval. Claims processing, like the method proposed here, is standard in securities class action settlements and has been found to be effective and necessary as neither Plaintiffs nor Defendants possess the individual investor trading data required for a claims-free process to distribute the Net Settlement Fund. *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.").

Rule 23(e)(2)(C)(iii): As disclosed in the Notice and Postcard Notice, Lead Counsel will apply for a percentage of the common fund fee award in an amount not to exceed 33⅓% on behalf of all Plaintiffs' Counsel to compensate them for the services they have rendered on behalf of the Settlement Class. A proposed attorneys' fee of up to 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. *See e.g., Machado v. Endurance Int'l Grp. Holdings, Inc.*, 2019 WL 4409217, at *1 (D. Mass. Sept. 13, 2019) (awarding 33⅓% of settlement fund and stating "[t]he amount of attorneys' fees awarded and expenses to be reimbursed from the Settlement Fund are fair and reasonable and consistent with awards in similar cases"); *Esposito v. Amer. Renal Assoc. Hldgs., Inc. et al.*, No. 16 Civ. 11797 (D. Mass. June 15, 2018) (Burroughs, J.) (33%). Importantly, approval of the requested attorneys' fees 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 at ¶16.

Rule 23(e)(2)(C)(iv): 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 over a certain threshold of securities request exclusion. "This type of agreement is a standard provision in securities class actions and has no negative impact on the fairness of the Settlement." *In re Signet Jewelers Ltd. Sec. Litig.*, 2020 WL 4196468, at *13 (S.D.N.Y. July 21, 2020); *In re Bos. Sci. Corp. Sec. Litig.*, No. 20 Civ. 12225 (D. Mass. April 23, 2024) (Burroughs, J.) (approving settlement with confidential opt-out provision).

5. The Settlement Treats All Settlement Class Members Equitably

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 the proposed Notice (Ex. 2-C), 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 Claim divided by the total of Recognized Claims of all Authorized Claimants, multiplied by the total amount in the Net Settlement Fund. Courts have repeatedly approved similar plans. *See Conley v. Sears, Roebuck & Co.,* 222 B.R. 181, 185 (D. Mass. 1998) ("fund of $25 million to be distributed in *pro rata* shares to the members of the Settlement Class"); *Hill*, 2015 WL 127728, at *11 ("Net Settlement Fund will be allocated to Authorized Claimants on a *pro rata* basis based on the relative size of" claims).

6. The Remaining *Grinnell* Factors Weigh In Favor Of Final Approval

Grinnell provides several factors not coextensive with Rule 23(e)(2) to assist the Court in assessing the fairness of a settlement. These factors also support final approval.

The Stage of the Proceedings: This factor examines whether the settlement was reached "at a stage where both the court and counsel are able to evaluate the merits of the claims." *Hochstadt v. Bos. Sci. Corp.*, 708 F. Supp. 2d 95, 108 (D. Mass. 2010). Here, Plaintiffs conducted an extensive investigation into Evolv prior to filing the two amended complaints, including, *inter alia*: interviewing former employees, analyzing the Company's myriad SEC filings, and consulting with various experts. The Parties also submitted substantial briefing relating to the motions to dismiss, and exchanged detailed mediation briefs. Moreover, before finalizing the Stipulation, Plaintiffs obtained over 100,000 pages of documents from Defendants concerning the matters alleged in the SAC, which Lead Counsel analyzed and used to interview a former senior Evolv employee and a senior employee of a financial services firm that assisted in conducting the restatement core to this case, to further evaluate the fairness, reasonableness, and adequacy of the Parties' agreement in principle to resolve the Action. That the "[P]arties exchanged sufficient information over the course of the mediation process to ensure that both sides were making an informed decision regarding the adequacy of the settlement" including "extensive informal discovery" supports final approval. *Roberts*, 2016 WL 8677312, at *6.

The Ability of Defendants to Withstand a Greater Judgment: Evolv is an emerging technology company, but a "defendant's ability to withstand a greater judgment does not on its own suggest that the settlement is unfair." *Roberts*, 2016 WL 8677312, at *8. Even if Defendants had "classic deep pockets," this factor would be "neutral." *Lupron Mktg. Litig.*, 228 F.R.D. at 97.

B. Certification Of The Settlement Class Remains Appropriate

The Court's April 16, 2026, Preliminary Approval Order certified the Settlement Class for settlement purposes only under Fed. R. Civ. P. 23(a) and (b)(3). *See* ECF No. 125, ¶¶1-4. There have been no changes to alter the propriety of class certification for settlement purposes. Thus, for the reasons stated in Plaintiffs' Preliminary Approval Motion (*see* ECF No. 123, at Sec. V.B), Plaintiffs respectfully request that the Court affirm its determinations in the Preliminary Approval Order certifying the Settlement Class under Rules 23(a) and (b)(3). *See In re Bear Stearns*

Companies, Inc. Securities, Derivative, and ERISA Litig., 909 F.Supp.2d 259, 264 (S.D.N.Y. 2012) ("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 Road Acquisition Corp.*, 2024 WL 3643393, at *11 (C.D. Cal. 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).").

C. The Court Should Approve The Plan Of Allocation

Plaintiffs respectfully request final approval of the Plan of Allocation. A plan for allocating settlement proceeds, like the settlement itself, should be approved if it is fair, reasonable, and adequate. *See In re Tyco Intern., Ltd. Multidistrict Litig.*, 535 F. Supp. 2d 249, 262 (D.N.H. 2007); *see also City of Providence v. Aeropostale, Inc.*, 2014 WL 1883494, at *10 (S.D.N.Y. May 9, 2014) (holding that "[a] plan of allocation need only have a reasonable, rational basis"). In addition, "[w]hen evaluating the fairness of a Plan of Allocation, courts give weight to the opinion of qualified counsel." *See In re Advanced Battery Techs., Inc. Sec. Litig.*, 298 F.R.D. 171, 180 (S.D.N.Y. 2014).

The Plan of Allocation is detailed in the long form Notice and incorporated by reference into the Stipulation.[5] *See* Stipulation ¶¶2, 9. The full Notice is posted online at

[5] The Plan of Allocation is set forth in the Notice (Ex. 2-C at ¶¶55-83), and discussed in paragraphs 71-77 of the Sadler Declaration.

www.EvolvTechSecuritiesSettlement.com, is downloadable, and is mailed to Settlement Class Members upon request.

The proposed Plan of Allocation was developed by one of Plaintiffs' damages consultants working in conjunction with Lead Counsel. It contains two calculations consistent with the allegations of the Complaint, one based on an out-of-pocket theory of damages consistent with Section 10(b) of the Exchange Act, and a second based on a theory of damages consistent with Section 11 of the Securities 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. Ex. 2-C (Notice) at ¶¶67-68; ¶¶72-74. Regardless of which calculation is applicable, an individual Claimant's recovery will depend on a number of factors, including, *inter alia*: (i) how many shares of publicly traded Evolv common stock the Claimant purchased, acquired, or sold during the Settlement Class Period (*i.e.*, June 28, 2021 to October 25, 2024, both dates inclusive); (ii) when that Claimant bought, acquired, or sold the stock; and (iii) the number of valid claims filed by other Claimants. ¶75.

More specifically, with respect to Exchange Act claims, the Plan of Allocation is predicated on Plaintiffs' allegation that the price of Evolv's securities and common stock was 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 may be used to measure the alleged artificial inflation in the price of Evolv's common stock prior to the disclosures. ¶76; Ex. 2-C (Notice) at ¶¶62-65.

Recognized Loss Amounts under the Exchange Act will be calculated as described in the section titled "Calculation of Recognized Loss Amounts Under the Exchange Act." Recognized

Loss Amounts under the Exchange Act will be calculated for each share of Evolv common stock purchased during the Settlement Class Period. ¶73; Ex. 2-C (Notice) at ¶67.

In general, the Exchange Act Recognized Loss Amount for Evolv common stock 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 date of sale, or the difference between the actual purchase price and sale price, whichever is less. ¶¶75-76; Ex. 2-C (Notice) at ¶62. The Recognized Loss Amount calculation also incorporates the "90-day look back" provision of the PSLRA. ¶73; Ex. 2-C (Notice) at ¶65.

Recognized Loss Amounts under the Securities Act will be calculated as described in the section titled "Calculation of Recognized Loss Amounts Under the Securities Act." Recognized Loss Amounts under the Securities Act will be calculated for each share of Evolv common stock issued in the Business Combination to holders of Evolv Technologies, Inc. securities, and such shares shall be deemed to have been purchased pursuant to or traceable to the Registration Statement at a price of $10.50 per share solely for purposes of the calculations under the Plan of Allocation.[6] For shares sold before November 20, 2024, the date the Securities Act claims were first alleged in the Action, the Recognized Loss Amount will be the purchase price, not to exceed $10.50, minus the sale price. For shares held as of the opening of trading on November 20, 2024, the Recognized Loss Amount will be the purchase price, not to exceed $10.50, minus $2.62, the closing price of Evolv common stock on that date.

[6] Evolv common stock received in the Business Combination in exchange for NHIC securities, including NHIC Class A common stock or NHIC units, shall not be deemed purchased pursuant to or traceable to the Registration Statement and shall not be eligible to recover on the Securities Act claim.

The Recognized Loss Amount for the Exchange Act and the Securities Act is the basis upon which the Net Settlement Fund will be proportionately allocated to the Authorized Claimants. ¶73; Ex. 2-C (Notice) at ¶55. For Evolv common stock that is eligible for a recovery under both the Exchange Act and the Securities Act, the Recognized Loss Amount will be equal to the greater of: (i) the Recognized Loss Amount calculated under the Exchange Act; or (ii) the Recognized Loss Amount calculated under the Securities Act. ¶73; Ex. 2-C (Notice) at ¶60.

The sum of a Claimant's Recognized Loss Amounts is the Claimant's "Recognized Claim," and the Net Settlement Fund will be allocated to Authorized Claimants on a *pro rata* basis based on the relative size of their Recognized Claims, subject to a $10 *de minimis* provision. ¶74; Ex. 2-C (Notice) at ¶¶17, 69, 72. More precisely, an Authorized Claimant's *pro rata* share shall be the Authorized Claimant's Recognized Claim divided by the total of Recognized Claims of all Authorized Claimants, multiplied by the total amount in the Net Settlement Fund. ¶74; Ex. 2-C (Notice) at ¶¶55, 72. If a Claimant has an overall market *gain* with respect to his, her, or its transactions in Evolv common stock during the relevant period, the Claimant is not entitled to recover under the Plan of Allocation. ¶75; Ex. 2-C (Notice) at ¶¶79-80.

Lead Counsel believe the Plan of Allocation will result in a fair and equitable distribution of the Settlement proceeds among Settlement Class Members who submit valid claims. *See Lea*, 2021 WL 5578665, at *11 (finding substantially similar "methodology is appropriate and consistent with many other securities class action settlements' plans of allocation."); *Christine Asia Co. v. Yun Ma*, 2019 WL 5257534, at *15-16 (S.D.N.Y. Oct. 16, 2019) (approving substantially similar plan of allocation). To date, no objections to the Plan of Allocation have been received by Lead Counsel or filed on this Court's docket. ¶¶70, 77. Accordingly, Plaintiffs respectfully request that the Court approve the proposed Plan of Allocation. *See In re Veeco Instruments Inc. Sec. Litig.*, 2007 WL 4115809, at *13-14 (S.D.N.Y. 2007) (finding that no objections supports approval of the plan of allocation); *In re Heritage Bond Litig.*, 2005 WL 1594403, at *12 (C.D. Cal. June 10, 2005) ("In light of the lack of objectors to the plan of allocation at issue, and the competence, expertise, and zeal of counsel in bringing and defending this action, the Court finds the plan of allocation as fair and adequate.").

D. The Notice Program Satisfies The Requirements Of Due Process, Rule 23 And The PSLRA

For any class certified under Rule 23(b)(3), due process and Rule 23 require that class members be given "the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." FED. R. CIV. P. 23(c)(2)(B). The Notice provides all the necessary information required by Rule 23(c)(2)(B) and satisfies the requirements of the PSLRA, 15 U.S.C. § 78u-4(a)(7). This Court has already found that the proposed notice program is adequate and sufficient. *See* ECF No. 125 ¶¶7-8. Lead Counsel and Epiq carried out the notice program as proposed. In sum, the notice program detailed in ¶¶59-68 of the Sadler Declaration fairly apprises Settlement Class Members of their rights with respect to the Settlement, and is the best notice practicable under the circumstances. Courts routinely find that comparable notice programs meet 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 on website satisfied requirements of "Rule 23, the [PSLRA], and due process.").

V. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant the requested relief.

Dated: August 20, 2026

Respectfully submitted,

/s/ Casey E. Sadler

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PROOF OF SERVICE

I hereby certify that on this 20th day of August, 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/ Casey E. Sadler
Casey E. Sadler