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 LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

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Court-appointed lead counsel, Glancy Prongay Wolke & Rotter LLP ("GPWR" or "Lead Counsel") respectfully submits this memorandum of law in support of its Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses.[1]

I. INTRODUCTION[2]

Plaintiffs' Counsel[3] succeeded in obtaining a $15,000,000 non-reversionary, all cash, settlement ("Settlement") for the benefit of the Settlement Class in the above-captioned action ("Action"). This favorable outcome, in the face of substantial risks, is a result of Plaintiffs' Counsel's persistent and skilled efforts. Lead Counsel now respectfully moves this Court for an award of attorneys' fees in the amount of 33⅓% of the Settlement Fund (*i.e.*, $5,000,000, plus interest at the same rate as the Settlement Fund), and reimbursement of $142,235.62 in Litigation Expenses. The Litigation Expenses consist of $107,235.62 in out-of-pocket costs incurred by Plaintiffs' Counsel while prosecuting the Action, and an aggregate of $35,000 to Court-appointed lead plaintiff Robert Falk ("Lead Plaintiff"), and named plaintiffs Chris Williams, Tim Carrillo, and Chris Swanson (collectively, with Lead Plaintiff, "Plaintiffs") for reimbursement of the reasonable costs (including the cost of time

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[1] Unless otherwise defined, all capitalized terms herein have the meanings ascribed to them in the Stipulation and Agreement of Settlement dated April 13, 2026 (the "Stipulation"; ECF No. 124-1), 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 ("Sadler Declaration"). All citations to "¶ __" and "Ex. __" in this memorandum refer, respectively, to paragraphs in, and Exhibits to, the Sadler Declaration.

[2] 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 discussion of, *inter alia*, the Action's history; nature of the claims asserted; negotiations leading to the Settlement; risks and uncertainties of continued litigation; a summary of the services Plaintiffs' Counsel provided for the benefit of the Settlement Class; and additional information on the factors that support the fee and expense application, including the lodestar cross-check.

[3] "Plaintiffs' Counsel" means Lead Counsel and liaison counsel Andrews DeValerio LLP and additional counsel for Plaintiff Chris Swanson, The Law Offices of Frank R. Cruz.

spent) incurred in prosecuting the Action on behalf of the Settlement Class pursuant to the Private Securities Litigation Reform Act of 1995 ("PSLRA"), 15 U.S.C. §§ 77z-1(a)(4), 78u-4(a)(4).

Achieving the Settlement was not easy. Defendants were represented by highly skilled litigators, and Plaintiffs' Counsel faced numerous hurdles and risks from the outset, including the PSLRA's heightened pleading standards and automatic stay of discovery, the high cost of experts and investigators needed to litigate a complex securities fraud case, and a substantial risk of non-payment. These are not idle risks. "To be successful, a securities class action plaintiff must thread the eye of a needle made smaller and smaller over the years by judicial decree and congressional action." *Alaska Elec. Pension Fund v. Flowserve Corp.*, 572 F.3d 221, 235 (5th Cir. 2009) (O'Connor, J., by designation).[4] As a result, a significant number of cases are dismissed at the outset.[5] Nor do the risks end at the pleading stage. Even when a plaintiff is successful at trial, payment is far from guaranteed.[6] Thus, there was a strong possibility that the case would yield little or no recovery after years of costly litigation. *See Silverman v. Motorola Sols., Inc.*, 739 F.3d 956, 958 (7th Cir. 2013) (observing that "Defendants prevail outright in many securities suits."); *In re Ocean Power Tech., Inc., Sec. Litig.*,

[4] Unless otherwise noted, all internal citations and quotations have been omitted and emphasis has been added.

[5] *See* Ex. 1 (excerpt 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 18, Fig. 15 (motion to dismiss filed in 96% of the securities class action cases in the last ten years, and in cases where the motion was decided, 62% were granted with or without prejudice, 21% were partially granted, and only 17% denied in full)).

[6] *See, e.g.*, *Backman v. Polaroid Corp.*, 910 F.2d 10 (1st Cir. 1990) (where the class won a substantial jury verdict and motion for judgment n.o.v. was denied; on appeal, the judgment was reversed and the case was dismissed – after 11 years of litigation); *Glickenhaus & Co. v. Household Int'l, Inc.*, 787 F.3d 408 (7th Cir. 2015) (reversing jury verdict awarding investors $2.46 billion on loss causation and damages grounds, and remanding for new trial on these issues), *reh'g denied* (July 1, 2015); *In re BankAtlantic Bancorp, Inc.*, 2011 WL 1585605 (S.D. Fla. Apr. 25, 2011) (following jury verdict in plaintiff's favor on liability, district court granted defendants' motion for judgment as matter of law because there was insufficient evidence to support finding of loss causation), *aff'd sub nom.*, *Hubbard v. BankAtlantic Bancorp, Inc.*, 688 F.3d 713 (11th Cir. 2012).

2016 WL 6778218, at *28 (D.N.J. Nov. 15, 2016) ("The risk of non-payment is especially high in securities class actions, as they are notably difficult and notoriously uncertain."). Despite these risks, Plaintiffs' Counsel worked 4,222 hours, and advanced $107,235.62 in expenses, on a contingent basis.

As compensation for Plaintiffs' Counsel's significant efforts and achievements on behalf of the Settlement Class, Lead Counsel respectfully request a fee award in the amount of 33⅓% of the Settlement Fund. The requested fee is consistent with fee awards in comparable class action settlements, whether considered as a percentage of the Settlement or in relation to Lead Counsel's lodestar. Indeed, the requested fee represents a multiplier of 1.60 on Plaintiffs' Counsel's lodestar, which is a strong indicator of the reasonableness of the request, and well within the range of multipliers typically awarded in class actions with substantial contingency risks such as this one. *See Roberts v. TJX Companies, Inc.*, 2016 WL 8677312, at *13 (D. Mass. Sept. 30, 2016) (Burroughs, J.) ("Multipliers of 2 and more have been found reasonable in common fund cases."); *Ford v. Takeda Pharms. U.S.A. Inc.*, 2023 WL 3679031, at *2 (D. Mass. Mar. 31, 2023) (a multiplier of 2.41 "[t]o compensate for the risk of non-payment and to reflect the scale of the results achieved by prevailing counsel" was "well within the range of multipliers approved by district courts in the First Circuit").

Lead Counsel also seek reimbursement of $107,235.62 in out-of-pocket litigation expenses incurred in prosecuting the Action. *See* ¶¶3, 14. This amount is below the $190,000 limit on Litigation Expenses disclosed in the Notice—which, by definition, included the $35,000 in PSLRA awards being requested for Plaintiffs. The expenses are reasonable in amount and were incurred in the successful prosecution of the Action. Accordingly, they should be approved.

Finally, Lead Counsel respectfully requests PSLRA awards in the aggregate amount of $35,000 (*i.e.*, $20,000 to Lead Plaintiff, a former Evolv employee who provided substantial assistance to Lead Counsel in the prosecution of the Action, and $5,000 to each of the other Plaintiffs) to compensate Plaintiffs for the time and effort they have expended on behalf of the Settlement Class.

Plaintiffs took responsibility for, and were actively involved in prosecuting and settling the Action. Exs. 3-6, ¶¶40, 104-105. But for their "commitment to pursuing these claims, the successful recovery for the [Settlement] Class would not have been possible." *Bell v. Pension Comm. of ATH Holding Co., LLC*, 2019 WL 4193376, at *6 (S.D. Ind. Sept. 4, 2019).

For all the reasons set forth herein, and in the Sadler Declaration, Lead Counsel respectfully requests that the Court award attorneys' fees of 33⅓% of the Settlement Fund, approve reimbursement of $107,235.62 in out-of-pocket litigation expenses, and grant PSLRA awards of $20,000 to Lead Plaintiff, and $5,000 to each of the other three Plaintiffs.

II. ARGUMENT

A. Plaintiffs' Counsel Are Entitled To An Award Of Attorneys' Fees From The Common Fund

The U.S. Supreme Court and the First Circuit have long recognized that "a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *see also In re Thirteen Appeals Arising Out of San Juan Dupont Plaza Hotel Fire Litig.*, 56 F.3d 295, 305 (1st Cir. 1995). Awards of reasonable attorneys' fees from a "common fund" "encourages capable plaintiffs' attorneys to aggressively litigate complex, risky cases like this one" and spread the costs of the litigation "proportionately among those benefitted by the suit." *In re Tyco Int'l, Ltd. Multidistrict Litig.*, 535 F. Supp. 2d 249, 265 (D.N.H. 2007). Accordingly, Plaintiffs' Counsel are entitled to an award of attorneys' fees from the Settlement Fund created by the Settlement.

B. The Requested Attorneys' Fees Are Reasonable Under Either The Percentage-Of-The-Fund Method Or The Lodestar Method

Attorneys' fees awarded to counsel from a common fund can be determined under either the percentage-of-the-fund method or the lodestar method. *See Thirteen Appeals*, 56 F.3d at 307. Under either method, the requested fee is fair and reasonable.

1. The Requested Attorneys' Fees Are Reasonable Under The Percentage-Of-The-Fund Method

The First Circuit has approved of the percentage method in common fund cases, noting it is the prevailing method and "offers significant structural advantages in common fund cases, including ease of administration, efficiency, and a close approximation of the marketplace." *Thirteen Appeals*, 56 F.3d at 308. The percentage method "aligns the interests of the class with the interests of the class counsel[,] . . . is 'less burdensome to administer than the lodestar method,' . . . 'enhances efficiency' and does not create a 'disincentive for the early settlement of cases.'" *Duhaime v. John Hancock Mut. Life Ins. Co.*, 989 F. Supp. 375, 377 (D. Mass. 1997) (quoting *Thirteen Appeals*, 56 F.3d at 307).

The requested fee of 33⅓% is within the typical range of percentage fees awarded in the First Circuit in comparable class action cases. *See In re Neurontin Mktg. & Sales Pracs. Litig.*, 58 F. Supp. 3d 167, 172 (D. Mass. 2014) ("nearly two-thirds of class action fee awards based on the percentage method were between 25% and 35% of the common fund."); *Hill v. State Street Corp.*, 2015 WL 127728 at *2 (D. Mass. Jan. 8, 2015)(same).[7]

A review of attorneys' fees awarded in securities and other complex class actions in this Circuit strongly supports the reasonableness of the 33⅓% fee request here. *See Machado v. Endurance Int'l Grp. Holdings, Inc.*, 2019 WL 4409217, at *1 (D. Mass. Sept. 13, 2019) (awarding 33.3% of $18,650,000 settlement fund as "[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"); *Dahhan v. OvaScience, Inc., et al.*, 2022 WL 23082896, at *1 (D. Mass. Dec. 20, 2022)

[7] Other courts have reached a similar conclusion. *See In re Rite Aid Corp. Sec. Litig.*, 146 F. Supp. 2d 706, 735 (E.D. Pa. 2001) (review of 289 settlements demonstrates "average attorney's fee percentage [of] 31.71%" with a median value that "turns out to be one-third"); *Shaw v. Toshiba Am. Info. Sys., Inc.*, 91 F. Supp. 2d 942, 972 (E.D. Tex. 2000) ("Empirical studies show that, regardless of whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.").

(awarding one-third of $15 million settlement fund); *Luna v. Carbonite, Inc.*, 2024 WL 6470281, at *1 (D. Mass. May 15, 2024) (awarding 33⅓% of $27.5 million settlement fund); *In re Intuniv Antitrust Litig.*, 2020 WL 8373393, at *4 (D. Mass. Dec. 9, 2020) (Burroughs, J.) (awarding 33.3% of a $19.9 million settlement fund, net of expenses); *In re Biopure Corp. Sec. Litig.*, No. 1:03-cv-12628-NG (ECF No. 180) (D. Mass. Sept. 24, 2007) (awarding one-third of $10.1 million settlement fund); *Natchitoche Par. Hospital Serv. Dist. v. Tyco Int'l, Ltd.*, 2010 WL 11693979, at *4 (D. Mass. March 12, 2010) (awarding one-third of $32.5 million settlement fund); *In re StockerYale, Inc. Sec. Litig.*, 2007 WL 4589772, at *6 (D.N.H. Dec. 18, 2007) (awarding 33.3% of $3,400,000 settlement fund); *Gordan v. Mass. Mut. Life Ins. Co.*, 2016 WL 11272044, at *3 (D. Mass. Nov. 3, 2016) (awarding one-third of $30.9 million settlement fund, net of expenses); *In re Relafen Antitrust Litig.*, 231 F.R.D. 52, 80-82 (D. Mass. Sept. 28, 2005) (awarding 33.3% of $67 million settlement fund); *Ford v. Takeda Pharma. U.S.A., Inc.*, 2023 WL 3679031, at *3 (D. Mass. Mar. 31, 2023) (awarding one-third of $22 million settlement fund, net of expenses); *Miller v. Sonus Networks, Inc., et al.*, 2024 WL 7126849, at *1 (D. Mass. Apr. 24, 2024) (awarding 33⅓% of $4.5 million settlement fund).[8]

Additionally, attorneys' fees in the range of 33⅓% have been approved in numerous comparable class actions in other Circuits. *See, e.g., Maley v. Del Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 370 (S.D.N.Y. 2002) (finding 33⅓% fee request of settlement fund valued at $11.5 million "falls comfortably within the range of fees typically awarded in securities class actions"); *Waters v. Int'l Precious Metals Corp.*, 190 F.3d 1291, 1295 (11th Cir. 1999) (affirming attorneys' fee of 33⅓%); *In re Pac. Enterprises Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (affirming award of 33% of fund).[9]

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[8] *See also* Ex. 10 (collecting First Circuit cases with 33% or higher fee awards).

[9] *See also Nichols v. Noom, Inc.*, 2022 WL 2705354, at *10 (S.D.N.Y. July 12, 2022) (awarding one-third of $56 million cash settlement fund and stating that "[a] fee equal to one-third of a settlement fund is routinely approved in this Circuit."); *Bodnar v. Bank of America, N.A.*, 2016 WL 4582084, at *5 (E.D. Pa. Aug. 4, 2016) (awarding 33% of $27.5 million settlement fund and

The fees commonly awarded in similar complex class actions settlements support the reasonableness of the requested fee.

2. The Requested Attorneys' Fees Are Reasonable Under The Lodestar Method

If fees are awarded on a percentage basis, the lodestar approach may be used as a check on the appropriateness of the percentage fee, but it is not required. *See Thirteen Appeals*, 56 F.3d at 307; *Relafen*, 231 F.R.D. 52, 81–82 (finding that while "[t]he First Circuit does not require a court to cross check[,]" cross-checking provides "a useful *perspective* on the reasonableness of a given percentage award." (emphasis in the original)); *New England Carpenters Health Benefits Fund v. First Databank, Inc.*, 2009 WL 2408560, at *1 (D. Mass. Aug. 3, 2009); *In re Lupron Mktg. & Sales Prac. Litig.*, 2005 WL 2006833, at *3 (D. Mass. Aug. 17, 2005).

When the lodestar method is used as a cross-check, "the focus is not on the 'necessity and reasonableness of every hour'. . . but on the broader question of whether the fee award appropriately reflects the degree of time and effort expended by the attorneys." *Tyco*, 535 F. Supp. 2d at 270 (quoting *Thirteen Appeals*, 56 F.3d at 307); *see also In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 355 (S.D.N.Y. 2005) ("Where the lodestar fee is used as a mere cross-check to the percentage method of

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"find[ing] that an award of 33% of the Settlement Fund is consistent with similar awards throughout the Third Circuit."); *Al's Pals Pet Care v. Woodforest Nat'l Bank, NA*, 2019 WL 387409, at *4 (S.D. Tex. Jan. 30, 2019) ("The fee represents one-third of the $15 million settlement fund, which is an oft-awarded percentage in common fund class action settlements in this Circuit"); *In re Southeastern Milk Antitrust Litig.*, 2013 WL 2155387, at *3 (E.D. Tenn. May 17, 2013) (33.3% fee request is "certainly within the range of fees often awarded in common fund cases, both nationwide and in the Sixth Circuit."); *Hale v. State Farm Mut. Auto. Ins. Co.*, 2018 WL 6606079, at *10 (S.D. Ill. Dec. 16, 2018) ("Courts within the Seventh Circuit, and elsewhere, regularly award percentages of 33.3% or higher to counsel in class action litigation."); *In re Lidoderm Antitrust Litig.*, 2018 WL 4620695, at *4 (N.D. Cal. Sept. 20, 2018) (awarding 33⅓% of $104,750,000 and stating: "a fee award of one-third is within the range of awards in this Circuit."); *Reyes* v. *AT&T Mobility Servs., LLC*, 2013 WL 12219252, at *3 (S.D. Fla. June 21, 2013) (collecting cases and stating, a "request for one-third of the settlement fund is consistent with the trend in [the Eleventh] Circuit.").

determining reasonable attorneys' fees, the hours documented by counsel need not be exhaustively scrutinized by the district court."). Here, Plaintiffs' Counsel spent a total of 4,222 hours of attorney and other professional support time prosecuting the Action. ¶82. Based on Plaintiffs' Counsel's current rates,[10] their collective lodestar is $3,120,466.50.[11] ¶82. The requested 33⅓% fee, which amounts to $5,000,000 (before interest), represents a multiplier of approximately 1.60 on Plaintiffs' Counsel's lodestar. ¶78.

The requested 1.60 multiplier is well within the range of multipliers commonly awarded in securities class actions and other comparable complex litigation. Indeed, courts regularly award fees that yield significant lodestar multipliers to compensate for "the risk of the litigation, the complexity of the issues, the contingent nature of the engagement, the skill of the attorneys, and other factors." *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 468 (S.D.N.Y. 2004); *see also Kondash v. Citizens Bank, Nat'l Ass'n*, 2020 WL 7641785, at *5-6 (D.R.I. Dec. 23, 2020) (awarding one-third of common fund that equated to a multiplier of 2.7 and stating: "it is common for a court to consider a multiplier of more than two as reflecting a reasonable sum to compensate the attorneys for the risk of nonpayment."); *Mass. Mut.*, 2016 WL 11272044, at *3 ("multiplier [of 3.66] is eminently reasonable and is within a range approved by numerous other courts."); *Mooney v. Domino's Pizza, Inc.*, 2018

[10] The Supreme Court and courts in this Circuit have approved the use of current hourly rates in calculating the base lodestar figure as a means of compensating for the delay in receiving payment and the loss of the interest. *See Missouri v. Jenkins by Agyei*, 491 U.S. 274, 284 (1989); *Cohen v. Brown Univ.*, 2001 WL 1609383, at *1 (D.N.H. Dec. 5, 2001).

[11] Plaintiffs' Counsel's rates range from $575 to $825 for associates and from $750 to $1,390 for partners, *see* Exs. 7-8, and "are comparable to peer plaintiffs and defense-side law firms litigating matters of similar magnitude." *Lea v. Tal Educ. Grp.*, 2021 WL 5578665, at *12 (S.D.N.Y. Nov. 30, 2021); *see also* Ex. 9 (chart reflecting billable rates of defense firms and plaintiffs-side securities litigation firms, including defense counsel in this Action); *Ford v. Takeda Pharma. U.S.A., Inc.*, 2023 WL 3679031, at *2 (D. Mass. March 31, 2023) (finding reasonable rates of "$1,370 for attorneys with at least 25 years of experience; $1,165 for attorneys with 15–24 years of experience; $840 for attorneys with 5–14 years of experience; $635 for attorneys with 0–4 years of experience; and $425 for paralegals and law clerks.").

WL 10232918, at *1 (D. Mass. Jan. 23, 2018) ("the multiplier in this case is approximately 4.77, which is within the bounds of reasonableness for a class action."); *New England Carpenters*, 2009 WL 2408560, at *2 (awarding multiplier of 8.3); *Tyco*, 535 F. Supp. 2d at 271 (2.7 multiplier); *Relafen*, 231 F.R.D. at 82 (finding a "multiplier of 2.02" to be "appropriate" based on comparison of cases); *StockerYale*, 2007 WL 4589772, at *6-7 (2.17 multiplier); *Roberts v. TJX Cos., Inc.*, 2016 WL 8677312, at *13 (D. Mass. Sept. 30, 2016) (1.96 multiplier).[12]

Moreover, additional hours will be expended overseeing the claims process and drafting and filing a distribution motion. As no additional compensation will be sought for this work, the multiplier will decrease by the time the Action concludes. *See In re Facebook, Inc. IPO Sec. & Deriv. Litig.*, 2015 WL 6971424, at *10 (S.D.N.Y. Nov. 9, 2015) ("Considering that the work in this matter is not yet concluded for Plaintiffs' counsel who will necessarily need to oversee the claims process, respond to inquiries, and assist Class Members in submitting their Proof of Claims, the time and labor expended by counsel in this matter support a conclusion that a 33% fee award in this matter is reasonable."). Thus, the lodestar cross-check confirms the reasonableness of the requested attorneys' fees.

III. FACTORS CONSIDERED BY COURTS IN THE FIRST CIRCUIT CONFIRM THAT THE REQUESTED FEE IS FAIR AND REASONABLE

Although the First Circuit has not set forth a comprehensive list of factors to be considered when evaluating an attorneys' fees request pursuant to the percentage-of-the-fund method, District

[12] *See also Hoff v. Popular Inc.*, 2011 WL 13209610, at *2 (D.P.R. Nov. 2, 2011) (3.13 multiplier); *In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 590 (S.D.N.Y. 2008) ("In contingent litigation, lodestar multiples of over 4 are routinely awarded by courts."); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002) (finding multipliers ranged as high as 19.6, though most run from 1.0 to 4.0); *Harman v. Lyphomed, Inc.*, 945 F.2d 976 (7th Cir. 1991) (stating that multipliers of up to 4.0 have been approved); *In re Comverse Tech., Inc. Sec. Litig.*, 2010 WL 2653354, at *5 (E.D.N.Y. June 24, 2010) (awarding fee representing a 2.78 multiplier and noting that, "[w]here, as here, counsel has litigated a complex case under a contingency fee arrangement, they are entitled to a fee in excess of the lodestar"); *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 369 (S.D.N.Y. 2002) (awarding fee representing a 4.65 multiplier, which was "well within the range awarded by . . . courts throughout the country").

Courts within the Circuit have assessed the reasonableness of proposed fees by considering the following factors, which track those used by the Second and Third Circuits:

> (1) the size of the fund and the number of persons benefitted; (2) the skill, experience, and efficiency of the attorneys involved; (3) the complexity and duration of the litigation; (4) the risks of the litigation; (5) the amount of time devoted to the case by counsel; (6) awards in similar cases; and (7) public policy considerations, if any.

See Hill, 2015 WL 127728, at *17; *Lupron*, 2005 WL 2006833, at *3; *Relafen*, 231 F.R.D. at 79. Courts have also considered whether lead plaintiffs support the requested fee and the reaction of the class. *See Roberts*, 2016 WL 8677312, at *10; *Hill*, 2015 WL 127728, at *19–*20. Consideration of these factors confirms that the requested fee is fair and reasonable.

A. The Size Of The Fund Created And The Number Of Persons Benefited Supports The Requested Fee

Courts have consistently recognized that the result achieved is one of the most important factors to be considered in making a fee award. *See Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) ("[T]he most critical factor is the degree of success obtained."); *see also In re Puerto Rican Cabotage Antitrust Litig.*, 815 F. Supp. 2d 448, 458 (D.P.R. 2011) ("[T]he net dollars and cents results achieved by counsel for their clients is often the most influential factor in assessing the reasonableness of any attorneys' fee award."). Here, Plaintiffs' Counsel have secured a Settlement that provides for a non-reversionary, cash payment of $15 million for the benefit of the Settlement Class. This exceptional result will provide Settlement Class Members with an immediate cash recovery, while avoiding the substantial expense, delay, risk, and uncertainty of further litigation.

Plaintiffs' consulting damages expert estimates that *if* Plaintiffs had prevailed on their claims at both 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 accepted Plaintiffs' damages theory, including proof of loss causation as to each of the stock price drop dates alleged in this case—*i.e.*, Plaintiffs' best-case scenario—estimated total *maximum* class-wide damages would be approximately $166.9 million.

Under this scenario, the recovery is approximately 8.99% of class-wide damages. This recovery is *more than two and a half times* the 3.2% median recovery for cases of a similar magnitude. *See, e.g.,* ¶10, Ex. 1 (NERA Report, at p. 27 (Fig. 23) (median recovery of 3.2% for securities class actions with estimated damages between $100-$199 million that settled between January 2016-December 2025)).

The Settlement must, however, be evaluated in light of the procedural and substantive hurdles that Plaintiffs overcame, and would have had to overcome, in order to prevail in this complex securities fraud litigation. *See In re Facebook, Inc., IPO Sec. and Derivative Litig.*, 343 F.Supp.3d 394, 414 (S.D.N.Y. 2018) ("Because Plaintiffs face serious challenges to establishing liability, consideration of Plaintiffs' best possible recovery must be accompanied by the risk of non-recovery."); *see also Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 55 (2d Cir. 2000) ("It is well-established that litigation risk must be measured as of when the case is filed."). While courts have always recognized that securities class actions carry significant risks, post-PSLRA rulings make it clear that the risk of no recovery has increased significantly. *See In re Ikon Off. Sols., Inc., Sec. Litig.*, 194 F.R.D. 166, 194 (E.D. Pa. 2000) ("securities actions have become more difficult from a plaintiff's perspective in the wake of the PSLRA."); *Alaska Elec.*, 572 F.3d at 235.

From the outset, there existed a very real possibility that the Court would dismiss the Action pursuant to the stringent pleading standards of the PSLRA, and that the PSLRA's automatic stay of discovery would prevent Plaintiffs from obtaining the evidence needed to successfully replead their claims. *See Jorling v. Anthem, Inc.*, 836 F. Supp. 2d 821, 831 (S.D. Ind. 2011) (discussing the PSLRA's "heightened pleading requirements, making it more difficult for plaintiffs to survive a motion to dismiss, and thus receive the keys to unlock the discovery process.").[13] Indeed, in their motions to

[13] *See also Bryant v. Avado Brands, Inc.*, 100 F. Supp. 2d 1368, 1377 (M.D. Ga. 2000) ("An unfortunate byproduct of the PSLRA is that potentially meritorious suits will be short-circuited by the heightened pleading standard."), *rev'd on other grounds sub nom. Bryant v. Dupree*, 252 F.3d 1161 (11th Cir. 2001).

dismiss—which were pending when the Settlement was reached—and during settlement negotiations, Defendants vigorously contested Plaintiffs' allegations. Accordingly, there was a significant chance that this case would not progress past the pleading stage. *See In re BP p.l.c. Sec. Litig.*, 852 F. Supp. 2d 767, 820 (S.D. Tex. 2012) ("The Court is acutely aware that federal legislation and authoritative precedents have created for plaintiffs in all securities actions formidable challenges to successful pleading."); *see also*, *supra*, n. 5 (NERA Report discussing dismissal statistics in PSLRA cases).

Nor did the risks end at the pleading stage. Although Plaintiffs' Counsel believe that the allegations of the Second Amended Complaint ("SAC") would ultimately translate into a strong case, they were also keenly aware they faced numerous hurdles to proving liability and class-wide damages. *See In re AOL Time Warner, Inc. Sec. & ERISA Litig.*, 2006 WL 903236, at *9 (S.D.N.Y. Apr. 6, 2006) (noting that "[t]he difficulty of establishing liability is a common risk of securities litigation" and that "[t]he risk of establish[ing] damages [is] equally daunting."). Defendants raised numerous defenses, including that: (i) the challenged statements about the effectiveness of Evolv Express were technically accurate and/or too generalized to state a claim (ECF No. 97 at 12-17); (ii) Defendants' statements regarding revenue recognition were not established to be false (*id*., at 18-19); (iii) the challenged statements about Evolv's effectiveness attributed to Defendant George were mere puffery, and/or accompanied by robust disclosures (ECF No. 96 at 13-18); (iv) Defendants did not act with the requisite fraudulent intent (ECF No. 97 at 22-29); and (v) Lead Plaintiff lacked standing to bring any claims. *Id.* at 29-30. Moreover, Defendants would have argued to the jury that: (i) while the FTC inquiry was settled, the FTC never found, and Evolv never admitted, any wrongdoing; (ii) the restatement related to revenue recognition timing issues, not fictitious revenue; and (iii) none of "the Individual Defendants sold any stock during the Class Period." ECF No. 97, p.29, n.13. If Defendants had prevailed on their liability arguments (*i.e.*, lack of falsity and scienter), it would have proven fatal to Plaintiffs' claims. *See Gross v. GFI Grp., Inc.*, 784 F. App'x 27, 29 (2d Cir. 2019) (affirming summary judgment on alternative ground that Defendant's "statement did not, as a matter of law, amount to a material misrepresentation or omission actionable under section 10(b)," despite the trial court twice finding the statement actionable); *see also Sousa v. Sonus Networks, Inc.*, 261 F.Supp.3d 112, 120 (D. Mass. 2017) (dismissing securities class action where "plaintiff has not alleged any of the telltale motives that have been found to strengthen an inference of scienter, such as insider stock sales or financial incentives far beyond the usual compensation packages") (Burroughs, J.).

Proving loss causation and damages created further potential roadblocks to any recovery. *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 346 (2005) ("a plaintiff [must] prove that the defendant's misrepresentation (or other fraudulent conduct) proximately caused the plaintiff's economic loss."). In fact, Defendants contested each of the alleged corrective disclosure dates. According to Defendants: (i) the alleged disclosures on May 23, 2023 and March 13, 2024, were already known to the market (ECF No. 97 at 19-20); (ii) the government investigations announced October 12, 2023 and February 19, 2024, did not constitute corrective disclosures as they "simply put investors on notice of a *potential* future disclosure of fraudulent conduct" (ECF No. 97 at 21 (emphasis in the original)); and (iii) to the extent the October 25, 2024 restatement announcement was a corrective disclosure, it did not apply to the full class period. ECF No. 97 at 22. While Plaintiffs believed that they had meritorious arguments in response, the outcome would rely heavily on expert testimony, and if Defendants' arguments were accepted by the Court or a jury, the Settlement Class's maximum potential damages would have been substantially reduced, if not completely eliminated. Proving class-wide damages in this case was, therefore, far from a *fait accompli*. *See In re Bear Stearns Companies, Inc. Sec., Derivative, & ERISA Litig.*, 909 F. Supp. 2d 259, 267 (S.D.N.Y. 2012) ("When the success of a party's case turns on winning a so-called 'battle of experts,' victory is by no means assured."); *In re Oracle Corp. Sec. Litig.*, 627 F.3d 376, 394-95 (9th Cir. 2010) (affirming summary judgment in favor of defendants where plaintiff failed to establish a triable issue on loss causation). Given the range of possible results in this litigation—including no recovery at all—the Settlement constitutes a considerable achievement and weighs heavily in favor of the requested attorneys' fee award.

The Settlement will also benefit a significant number of investors. For example, notice was mailed or emailed to 55,458 potential Settlement Class Members and their nominees. *See* Ex. 2, at ¶12. Because there is no right of reversion, the entire Net Settlement Fund will be distributed to Settlement Class Members who submit valid claims. Accordingly, Lead Counsel expects that the Settlement will benefit hundreds, if not thousands, of investors.[14] This factor strongly supports the requested attorneys' fee.

B. The Skill And Experience Of Counsel Support The Requested Fee

Plaintiffs' Counsel have many years of experience in complex civil litigation such as this. *See* firm résumés, Exs. 7-C; 8-C. Plaintiffs' Counsel used this experience to investigate the case despite the PSLRA's discovery stay, to identify the complex issues involved in this case, to engage suitable experts, to formulate strategies to prosecute it effectively, to contest the motions to dismiss, and to ultimately secure a favorable outcome for the Settlement Class. Plaintiffs' Counsel respectfully submit that the Settlement is a direct result of their skilled work and experience. *Hill*, 2015 WL 127728, at *17 (recognizing that counsel's extensive experience and expertise in securities class action litigation as contributing to the achievement of a settlement).

Courts have recognized that the quality of the opposition faced by plaintiffs' counsel should also be taken into consideration in assessing the quality of plaintiffs' counsel's performance. *See, e.g.*, *In re Adelphia Commc'ns Corp. Sec. & Deriv. Litig.*, 2006 WL 3378705, at *3 (S.D.N.Y. Nov. 16, 2006) ("The fact that the settlements were obtained from defendants represented by formidable opposing counsel from some of the best defense firms in the country also evidences the high quality

[14] Lead Counsel will provide the Court with information on the number of Claims received by the Claims Administrator in conjunction with the Reply Brief filing.

of lead counsels' work."), *aff'd*, 272 F. App'x 9 (2d Cir. 2008). Here, Defendants were represented by Goodwin Procter LLP and Morrison & Foerster LLP, highly experienced and well-respected defense firms that vigorously defended the Action. Thus, this factor supports the reasonableness of the requested fee. *See, e.g.*, *Schwartz v. TXU Corp.*, 2005 WL 3148350, at *30 (N.D. Tex. Jan. 13, 2005) ("The ability of plaintiffs' counsel to obtain such a favorable settlement for the Class in the face of such formidable legal opposition confirms the superior quality of their representation.").

C. The Complexity And Duration Of The Litigation Support The Requested Fee

Courts have long recognized that securities class actions are extremely complex and generally take many years to litigate. *See Hill*, 2015 WL 127728, at *18 (recognizing the complex nature of securities class action that spanned many years as contributing to counsel's fee award); *In re Par Pharm. Sec. Litig.*, 2013 WL 3930091, at *10 (D.N.J. July 29, 2013) ("securities fraud class actions are notably complex, lengthy, and expensive cases to litigate."). This case was no different. The litigation was complex and litigated by both Plaintiffs and Defendants over the course of approximately two and a half years. ¶¶7, 15-30. *A fortiori*, this factor also supports the fee requested. *See City of Providence v. Aeropostale, Inc.*, 2014 WL 1883494, at *16 (S.D.N.Y. May 9, 2014) ("[T]he complex and multifaceted subject matter involved in a securities class action such as this supports the fee request"), *aff'd sub nom. Arbuthnot v. Pierson*, 607 F. App'x 73 (2d Cir. 2015).

D. The Risk Of Non-Payment Was High

"Many cases recognize that the risk of non-payment assumed by an attorney is perhaps the foremost factor in determining an appropriate fee award." *Hill*, 2015 WL 127728, at *18 (cleaned up); *Yedlowski v. Roka Bioscience*, No. 14-cv-8020 (FLW) (TJB), 2016 WL 6661336, at *21-22 (D.N.J. Nov. 10, 2016) (collecting cases and stating, "Courts across the country have consistently recognized that the risk of receiving little or no recovery is a major factor in considering an award of attorneys' fees."). This is because "[n]o one expects a lawyer whose compensation is contingent upon his success to charge, when successful, as little as he would charge a client who in advance had agreed to pay for his services, regardless of success." *Detroit v. Grinnell Corp.*, 495 F.2d 448, 470 (2d Cir. 1974).

As noted above and in the Sadler Declaration, it was apparent from the outset that Plaintiffs' Counsel faced significant challenges to establishing liability and damages in this Action. ¶¶47-49. Plaintiffs' Counsel nevertheless undertook representation on a fully contingent basis. ¶¶90-94. Plaintiffs' assumption of this contingency non-payment risk strongly supports the reasonableness of the requested fee. *See Hill*, 2015 WL 127728, at *18 ("Plaintiffs' Counsel should be rewarded for having borne and successfully overcome" "significant risk of non-payment.").

E. The Time Devoted By Plaintiffs' Counsel Supports The Requested Fee

Plaintiffs' Counsel expended considerable time and effort in independently developing the key facts and theories at issue in this case, prosecuting the Action, and achieving the Settlement. Among other things, Plaintiffs' Counsel:

- conducted an extensive investigation of the claims asserted in the Action, which included, *inter alia*: (i) reviewing and analyzing numerous sources of publicly available information concerning Evolv, such as SEC filings, press releases, analyst reports, investor call transcripts, blog posts, and news articles, (ii) retaining and working with a private investigator to identify and interview former Evolv employees with possible knowledge related to the allegations in the Action; and (iii) consulting with experts in the fields of accounting, loss causation and damages;
- utilized the comprehensive investigation and additional research to draft and file the two detailed amended complaints (including the 94-page, 239 paragraph SAC);
- reviewed and analyzed Defendants' motions to dismiss the SAC, conducted extensive legal research to rebut Defendants' arguments, and drafted and filed Plaintiffs' opposition briefs, and opposed Defendants' request for judicial notice;
- engaged in a rigorous mediation process overseen by a highly experienced neutral mediator, Jed D. Melnick, Esq., of JAMS, which involved, *inter alia*: (a) an exchange of written mediation statements; (b) a full-day formal mediation session, including discussions with Mr. Melnick in which he tested Plaintiffs' arguments and positions; and (c) 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 substantial due diligence discovery to analyze the strengths and weaknesses of the Parties' claims and defenses if the Action continued to be litigated, which included: (a) negotiating and executing a confidentiality agreement with Defendants; (b) reviewing and analyzing Defendants' initial document productions; (c) making supplemental document requests to Defendants; (d) 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 (e) interviewing a former senior Evolv employee, as well as an employee of the financial 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.

Moreover, additional hours will be expended, *inter alia*, overseeing the claims process and drafting and filing a distribution motion. No additional compensation will be sought for this work, which further supports the reasonableness of Lead Counsel's fee request. Accordingly, this factor supports approval of the requested attorneys' fees. *See Leach v. NBC Universal Media, LLC*, 2017 WL 10435878, at ¶49 (S.D.N.Y. Aug. 24, 2017) ("The fact that Class Counsel's fee award will not only compensate them for time and effort already expended, but for the time that they will be required to spend administering the settlement going forward, also supports their fee request.").

F. Awards In Similar Cases Support The Requested Fee

As discussed above in Section II.B.1, Lead Counsel's requested fee is well within the range of fee awards in class action cases in this Circuit and across the country.

G. Public Policy Considerations Support The Requested Fee

The Supreme Court "has long recognized that meritorious private actions to enforce federal antifraud securities laws are an essential supplement to criminal prosecutions and civil enforcement actions brought, respectively, by the Department of Justice and the [SEC].” *Tellabs, Inc. v. Makor Issues & Rts., Ltd.*, 551 U.S. 308, 313 (2007); *see also Hill*, 2015 WL 127728, at *19. Thus, “public policy supports rewarding counsel for prosecuting securities class actions, especially where counsel’s dogged efforts—undertaken on a wholly contingent basis—result in satisfactory resolution for the class.” *Medoff v. CVS Caremark Corp.*, 2016 WL 632238, at *9 (D.R.I. Feb. 17, 2016); *see also Hill*, 2015 WL 127728, at *19 (“public policy favors granting reasonable attorneys’ fees to Plaintiffs’ Counsel that will adequately compensate them for their efforts and the risks they undertook”).

H. Plaintiffs Have Approved The Requested Fee

As set forth in Plaintiffs’ respective declarations, each Plaintiff played an active role in prosecuting and resolving the Action, and thus has a sound basis for assessing the reasonableness of the fee request. *See* Exs. 3-6 at ¶¶7-8. Plaintiffs carefully evaluated the fee request and fully support and approve the fee request as fair and reasonable in light of the result obtained, the work performed by Lead Counsel, and the risks of the litigation. *See* Exs. 3-6 at ¶¶9-10. Accordingly, this factor militates in favor of the requested fee. *See CVS Caremark*, 2016 WL 632238, at *9 (“the court does not wish to discount the fact that co-lead plaintiffs consent to the request”); *Hill*, 2015 WL 127728, at *19 (endorsement of lead plaintiffs supported approval of the requested fees).

I. The Reaction Of The Settlement Class To Date Supports The Requested Fee

The overwhelmingly positive reaction of the Settlement Class to date supports the requested fee. *See In re Flag Telecom Holdings, Ltd. Sec. Litig.*, 2010 WL 4537550, at *29 (S.D.N.Y. 2010) (“[N]umerous courts have noted that the lack of objection from members of the class is one of the most important factors in determining the reasonableness of a requested fee.”). As of August 7, 2026, notice was mailed or emailed to 55,458 potential Settlement Class Members and their nominees informing them, among other things, that Lead Counsel intended to apply to the Court for an award of attorneys’ fees in an amount not to exceed 33⅓% of the Settlement Fund and up to $190,000 in Litigation

Expenses, which included $35,000 in PSLRA awards to Plaintiffs. While the time to object does not expire until September 3, 2026, to date, not a single objection has been received. The lack of objections is "strong evidence" of the reasonableness of the fee request. *Ressler v. Jacobson*, 149 F.R.D. 651, 656 (M.D. Fla. 1992).[15]

IV. THE LITIGATION EXPENSES SHOULD BE REIMBURSED

"Lawyers who recover a common fund for a class are entitled to reimbursement of litigation expenses that were reasonably and necessarily incurred in connection with the litigation." *Hill*, 2015 WL 127728, at *20; *In re Fid./Micron Sec. Litig.*, 167 F.3d 735, 737 (1st Cir. 1999). Here, Plaintiffs' Counsel expended $107,235.62 in out-of-pocket costs (¶14), which are divided into categories and itemized in the declarations submitted by each individual firm. *See* Exs. 7-B; 8-B. These expenses include, among other things, costs for: (a) experts in accounting, loss causation and damages; (b) PSLRA mandated notice; (c) online legal and factual research; (d) mediation; (e) online document review; (f) travel and lodging; (g) court filing fees; (h) service of process; and (i) investigators. *See id.* Courts routinely permit the reimbursement of similar expenses. *See Global Crossing*, 225 F.R.D. at 468 (similar expenses are the type for which "'the paying, arms' length market' reimburses attorneys. For this reason, they are properly chargeable to the Settlement fund."); *Hill*, 2015 WL 127728, at *21.

V. PLAINTIFFS SHOULD BE GRANTED PSLRA AWARDS

Plaintiffs respectfully request a total of $35,000 (or $20,000 to Lead Plaintiff, and $5,000 to each of the other Plaintiffs) in PSLRA awards to reimburse them for time spent prosecuting the Action. 15 U.S.C. §§ 77z-1(a)(4); 78u-4(a)(4). "Court[s] have found that the PSLRA permits courts to award lead plaintiffs in federal securities actions reimbursement for their time devoted to participating in and

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[15] *See also Hill*, 2015 WL 127728, at *19 ("the favorable reaction of the class … support[s] approval of the requested fees."); *CVS Caremark*, 2016 WL 632238, at *9 (noting significance of fact that no class member objected to the fee request).

directing the litigation on behalf of the class." *Guevoura Fund Ltd. v. Sillerman*, 2019 WL 6889901, at *22 (S.D.N.Y. Dec. 18, 2019); *In re Health Insurance Innovations Sec. Litig.*, 2021 WL 1341881, at *13 (M.D. Fla. Mar. 23, 2021) (PSLRA award to lead plaintiff "for his time"). Reimbursement of such costs "encourages participation of plaintiffs in the active supervision of their counsel." *Varljen v. H.J. Meyers & Co., Inc.*, 2000 WL 1683656, at *5 n.2 (S.D.N.Y. Nov. 8, 2000).

As set forth in their declarations, Plaintiffs have effectively fulfilled their obligations as representatives of the Settlement Class by, among other things: (a) regularly communicating with Lead Counsel regarding the posture and progress of the case; (b) reviewing the pleadings and briefs filed in the Action, as well as Court Orders; (c) providing documents; (d) consulting with their attorneys regarding the settlement negotiations; and (e) evaluating and approving the proposed Settlement. *See* Exs. 3-6 at ¶¶3-6. Indeed, Lead Plaintiff Falk provided valuable assistance to Lead Counsel as a knowledgeable former employee of the Company. These are "precisely the types of activities that support awarding reimbursement of expenses to class representatives." *In re Marsh & McLennan Cos. Sec. Litig.*, 2009 WL 5178546, at *21 (S.D.N.Y. Dec. 23, 2009); *see also Hill*, 2015 WL 127728, at *21 (awarding a total of $40,436 in PSLRA expenses to three lead plaintiffs); *Ahearn v. Credit Suisse First Boston LLC*, No. 03-CV-10956-JLT (D. Mass. June 7, 2006) (ECF No. 82 at 5-6) (awarding a total of $35,000 in PSLRA expenses to two lead plaintiffs).[16] Accordingly, Plaintiffs respectfully request that the Court approve the awards.

VI. CONCLUSION

For the foregoing reasons, Lead Counsel respectfully request that the Court grant the motion.

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[16] *See In re Qudian Inc. Sec. Litig.*, 2021 WL 2328437, at *2 (S.D.N.Y. 2021) (awarding lead plaintiff $25,000, and class representative $12,500); *In re XL Fleet Corp. Sec. Litig.,* 2024 WL 1884483, at *2 (S.D.N.Y. 2024) (PSLRA award of $25,000 to Lead Plaintiff and $15,000 each to the four additional named plaintiffs); *In re Alibaba Grp. Holding Ltd. Sec. Litig.*, 2025 WL 933955, at *2 (S.D.N.Y. Mar. 27, 2025) (PSLRA awards of $25,000 to Lead Plaintiff and $25,000 to each of the three additional named plaintiffs).

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