UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

RON MILLER, individually and on behalf of all others similarly situated, Plaintiff, v. SONUS NETWORKS, INC., RAYMOND P. DOLAN, MARK T. GREENQUIST, AND MICHAEL SWADE, Defendants.	Case No. 1:18-cv-12344-GAO

MEMORANDUM OF LAW IN SUPPORT OF LEAD COUNSEL'S
MOTION FOR AN AWARD OF ATTORNEYS' FEES AND LITIGATION EXPENSES

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Court-appointed lead counsel, Glancy Prongay & Murray LLP ("GPM") and The Rosen Law Firm, P.A. ("Rosen Law"; and together with GPM, "Lead Counsel") respectfully submit this memorandum of law in support of their Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses.[1]

I. INTRODUCTION[2]

Plaintiffs' Counsel[3] succeeded in obtaining a $4,500,000 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.*, $1,500,000, plus interest at the same rate as the Settlement Fund), and reimbursement of $123,355.46 in Litigation Expenses. The Litigation Expenses consist of $93,355.46 in out-of-pocket costs incurred by Plaintiffs' Counsel while prosecuting the Action, and an aggregate of $30,000 (or $10,000 each) to Court-appointed lead plaintiffs Giuseppe Veleno and Gary Williams and named plaintiff Ron Miller (collectively, "Plaintiffs") for reimbursement of the reasonable costs (including the cost of

[1] Unless otherwise defined, all capitalized terms herein have the meanings ascribed to them in the Stipulation and Agreement of Settlement dated July 21, 2023 (the "Stipulation"; ECF No. 122-1), or the concurrently filed Joint Declaration of Garth A. Spencer and Jacob A. Goldberg in Support of: (1) Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation; and (2) Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses ("Joint Declaration"). All citations to "¶ __" and "Ex. __" in this memorandum refer, respectively, to paragraphs in, and Exhibits to, the Joint Declaration.

[2] The Joint 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 Court-appointed liaison counsel Andrews DeValerio LLP.

time 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. § 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] There was, therefore, a strong possibility that the case would yield little or no recovery after many 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

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

[5] *See* Ex. 11 (excerpt from Edward Flores and Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2023 Full-Year Review* (NERA Jan. 23, 2024) ("NERA Report") at p. 15-16 (Fig. 14) (finding motion to dismissed filed in 96% of securities class action lawsuits, with a decision reached in 73% of the cases, and stating that "[a]mong the case where a decision was reached, 60% were granted (with or without prejudice) while 40% were denied either in part or 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).

securities suits."); *In re Ocean Power Tech., Inc., Sec. Litig.*, 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 2,492.35 hours, and advanced $93,355.46 in expenses, all on a fully 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 fractional multiplier of 0.73, a strong indication of the reasonableness of the requested fee. *See Hill v. State Street*, 2015 WL 127728 at * 18 (D. Mass. Jan. 8, 2015) (O'Toole, J.) ("the fact that counsel are seeking fees below the amount of class counsel's lodestar does support the reasonableness of the requested fee."), citing *In re Initial Pub. Offering Sec. Litig.*, 671 F. Supp. 2d 467, 515 (S.D.N.Y. 2009) (noting that there was "no real danger of overcompensation given that the requested fee represented a discount to counsel's lodestar").

Lead Counsel also seek reimbursement of $93,355.46 in out-of-pocket litigation expenses incurred in prosecuting the Action. *See* ¶69. This amount is below the $140,000 limit on Litigation Expenses disclosed in the Notice—which, by definition, included PSLRA awards to Plaintiffs. The expenses are reasonable in amount and incurred in the successful prosecution of the Action. Accordingly, the Court should approve them.

Finally, Lead Counsel respectfully requests PSLRA awards in the aggregate amount of $30,000 (or $10,000 each) to compensate Plaintiffs for the time and effort they have expended on behalf of the Settlement Class. Each Plaintiff, *inter alia*, regularly communicated with Lead Counsel; reviewed the pleadings and briefs filed in the Action, as well as court orders; engaged in

discovery and were deposed; were involved in settlement negotiations; and, after extensive discussions with Lead Counsel, authorized settlement of the case. Exs. 2-4, ¶¶3-6, 9-11. But for their "commitment to pursuing these claims, the successful recovery for the 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 Joint Declaration, Lead Counsel respectfully requests that the Court award attorneys' fees of 33⅓% of the Settlement Fund, approve reimbursement of $93,355.46 in out-of-pocket litigation expenses, and grant PSLRA awards of $10,000 to each Plaintiff.

II. ARGUMENT

A. Plaintiffs' Counsel are Entitled to an Award of Attorneys' Fees From the Common Fund

Plaintiffs' Counsel are entitled to an award of attorneys' fees from the Settlement Fund created by the Settlement. 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).

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 that it is the prevailing method and that it "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. Moreover, the percentage method "appropriately 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*, 2015 WL 127728, at *2 (citing *Neurontin*).[7]

[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.").

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) (O'Toole, J.) (awarding 33⅓ of $18,650,000 settlement fund, 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[.]"); *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 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).[8]

Additionally, attorneys' fees in the range of 33⅓% have been approved in numerous comparable complex 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 award of 33⅓%); *In re Pac. Enterprises Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (affirming award of 33% of common fund).[9]

[8] *See also* Ex.12 (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 "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");

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; *In re Relafen Antitrust Litig.*, 231 F.R.D. 52, 81–82 (D. Mass. 2005) (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 lodestar is used as a cross-check, "the focus is not on the 'necessity and reasonableness of every hour' of the lodestar, 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 determining reasonable attorneys' fees, the hours documented by

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In re Southeastern Milk Antitrust Litig., 2013 WL 2155387, at *3 (E.D. Tenn.) May 17, 2014 (finding that a 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, "Class Counsel's request for one-third of the settlement fund is consistent with the trend in [the Eleventh] Circuit.").

counsel need not be exhaustively scrutinized by the district court."). In this case, the lodestar method—whether used directly or as a "cross-check" on the percentage method—militates in favor of the requested fee.

Plaintiffs' Counsel spent a total of 2,492.35 hours of attorney and other professional support time prosecuting the Action from its inception through March 1, 2024. ¶52. Based on Plaintiffs' Counsel's current rates,[10] their collective lodestar for this period is $2,053,166.75.[11] ¶52. The requested 33⅓% fee, which amounts to $1,500,000 (before interest), represents a fractional (or "negative") multiplier of 0.73 on Plaintiffs' Counsel's lodestar. ¶57.

Courts have routinely recognized that a fractional multiplier weighs in favor of a finding that the requested fee award is reasonable. *See In re Solodyn Antitrust Litig.*, 2018 WL 7075881, at *2 (D. Mass. July 18, 2018) ("negative lodestar multiplier of 0.82 (*i.e.*, the fees sought are 82% of the fees recorded)" supports a finding "that the request for attorneys' fees [of 33⅓%] is reasonable."); *Hill*, 2015 WL 127728, at *18; *Erica P. John Fund v. Halliburton Co.*, 2018 WL 1942227, at *13 (N.D. Tex. Apr. 25, 2018) ("Because there is a strong presumption that the lodestar represents a reasonable fee . . ., the fact that Class Counsel seeks an award less than the lodestar supports finding that the fee award is reasonable."). This is because courts regularly award

[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 $395 to $625 for associates and from $895 to $1,195 for partners, *see* Exs. 8-10, 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. 13 (chart reflecting billable rates of defense firms and plaintiffs-side securities litigation firms, including defense counsel in this Action); *Ford v. Takeda Pharmaceuticals 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.").

fees that yield significant ***positive*** or non-fractional lodestar multipliers to compensate for the "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). Indeed, "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." *Kondash v. Citizens Bank, Nat'l Ass'n*, 2020 WL 7641785, at *5 (D.R.I. Dec. 23, 2020); *Gordan v. Mass. Mutual Life Ins. Co.*, 2016 WL 11272044, at *3 (D. Mass. Nov. 3, 2016) ("multiplier [of 3.66] is eminently reasonable and is within a range approved by numerous other courts."); *Mooney v. Domino's Pizza, Inc.*, 2018 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.").[12] Here the multiplier is fractional, and the requested fee is reasonable.

Whether calculated as a percentage of the fund or under the lodestar method, the requested fee is well within the range of fees awarded by courts in securities class actions.

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

Though 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 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:

[12] *See also StockerYale*, 2007 WL 4589772, at *6-*7 (awarding 33%, which equated to 2.17 multiplier); *Hoff v. Popular Inc.*, 2011 WL 13209610, at *2 (D.P.R. Nov. 2, 2011) (awarding fee equal to 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); *Spano v. Boeing Co.*, 2016 WL 3791123, at *3 (S.D. Ill. Mar. 31, 2016) ("In risky litigation such as this, lodestar multiplier can be reasonable in the range between 2 and 5"); *Maley*, 186 F. Supp. 2d at 369 (awarding fee representing a 4.65 multiplier, which was "well within the range awarded by . . . courts throughout the country").

> (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 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 $4.5 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 $26.8 million using a two-trader model. Under this scenario, the recovery is approximately 17% of class-wide damages. This recovery is ***more than three times*** the median

recovery for cases of a similar magnitude. *See, e.g.,* ¶21 & Ex. 11 (NERA Report, at p. 25 (Fig. 21) (median recovery was 5.1% for securities class actions with estimated damages between $20-$49 million that settled between January 2014-December 2023)).

The Settlement must 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 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.

Indeed, there existed a very real risk that the Court would dismiss the Amended Complaint 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] Accordingly, from its inception, there was a significant chance that this case—like the earlier *Sousa v. Sonus Networks, Inc.*, 261 F. Supp. 3d 112 (D. Mass. 2017)), which was based in part on certain of the alleged misstatements in 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

[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).

legislation and authoritative precedents have created for plaintiffs in all securities actions formidable challenges to successful pleading.").

Nor did the risks end at the pleading stage. Although Plaintiffs' Counsel believe that the allegations of the Amended Complaint 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 damages [is] equally daunting."). Defendants raised numerous defenses, including that: (i) Plaintiffs' claims were barred by the statute of limitations; (ii) the alleged January misrepresentation was non-actionable corporate puffery and was protected by the PSLRA's safe harbor for forward looking statements; and (iii) Defendants did not act with the requisite fraudulent intent. ¶¶24-26. Moreover, Defendants would have argued to the jury that the SEC cease and desist order only found that Defendants were negligent, not that they had violated 10(b); and that there was no motive for inflating revenue projections that would be proven wrong a few weeks later. If Defendants had prevailed on their liability arguments, 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).

Proving loss causation and damages represented 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."). Here, Plaintiffs' alleged damages were based in part on a leakage theory (*i.e.*, that news of the March 24, 2015, corrective disclosure had "leaked" to the market, and that as a

result, the declines in Sonus' share price on March 20 and March 23, 2015, could be attributed to Defendants' fraud). Defendants would have contested Plaintiffs' leakage theory through expert testimony, and had the trier of fact rejected Plaintiffs' leakage argument, damages would have been reduced by approximately one-third. ¶30. 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."). 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.

Furthermore, the Settlement will benefit a significant number of investors. As of March 1, 2024, the Claims Administrator has caused 18,964 postcard notices or emailed links to the Notice and Claim Form to be sent to potential Class Members, ¶37, and approximately 1,640 Claims have been submitted. *See* Ex. 1, at ¶16. While these Claims have not yet been processed, based on past experience, Lead Counsel expect that the non-reversionary Settlement will benefit hundreds or thousands of investors. 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. 5-7. Plaintiffs' Counsel's used this experience to investigate the case despite the PSLRA's discovery stay, to identify the complex issues involved in this case, to formulate strategies to prosecute it effectively, to overcome a motion 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 of lead counsels' work."), *aff'd*, 272 F. App'x 9 (2d Cir. 2008). Here, Defendants were represented by Wilmer Cutler Pickering Hale and Dorr LLP, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, PC, Morvillo PLLC, Quarles & Brady LLP and Brown Moskowitz & Kallen, P.C., 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, 2006) ("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 litigation, including significant motion practice and discovery efforts spanning 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 more than four years. ¶¶12, 17-18. *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), *aff'd sub nom. Arbuthnot v.*

Pierson, 607 F. App'x 73 (2d Cir. 2015) ("[T]he complex and multifaceted subject matter involved in a securities class action such as this supports the fee request").

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). "No one expects a lawyer whose compensation is contingent upon his success to charge, when successful, as little as he would charge a client who in advance had agreed to pay for his services, regardless of success." *Detroit v. Grinnell Corp.*, 495 F.2d 448, 470 (2d Cir. 1974).

As noted above and in the Joint Declaration (¶¶23-33), it was apparent from the outset that Plaintiffs' Counsel faced significant challenges to establishing liability and damages in this Action. Plaintiffs' Counsel undertook representation on a fully contingent basis. ¶¶60-61. 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 Amount of Time Devoted to the Litigation by Plaintiffs' Counsel Supports the Requested Fee

The extensive time and effort expended by Plaintiffs' Counsel in prosecuting the Action and achieving the Settlement also establish that the requested fee is justified and reasonable. *See Hill*, 2015 WL 127728, at *19. The Joint Declaration details the substantial efforts of Plaintiffs' Counsel in prosecuting the Plaintiffs' claims over the course of the litigation. Among other things, Plaintiffs' Counsel (a) conducted an extensive investigation of the claims asserted in the Action, including, among other things, reviewing and analyzing Sonus's SEC filings, public reports, blog posts, research reports prepared by securities and financial analysts, and news articles related to Sonus, investor call transcripts, and other litigation and publicly available material concerning Sonus, as well as retaining and working with a private investigator who conducted an investigation

that involved, *inter alia*, locating and interviewing former employees and other sources of potentially relevant information; and consulting with experts in the fields of loss causation and damages; (b) drafted the initial Complaint and the Amended Complaint; (c) moved for the appointment of Lead Plaintiffs and Lead and Liaison Counsel pursuant to the PSLRA; (d) researched, drafted, and argued the opposition to Defendants' motions to dismiss, after which the Court denied the motion in full (*Miller v. Sonus Networks, Inc.*, 636 F. Supp. 3d 245 (D. Mass. 2022); (e) engaged in substantial discovery, which entailed, *inter alia*, exchanging initial disclosures, negotiating a protective order and ESI protocol, both entered by the Court, serving and responding to document requests and interrogatories, identifying and issuing subpoenas to relevant third parties, preparing Plaintiffs for their depositions and defending the depositions, and reviewing and analyzing over 11,500 documents (spanning 40,607 pages) including transcripts of testimony given by Sonus employees in a factually related SEC investigation; (f) engaged in a mediation, including preparing a detailed mediation statement addressing liability, loss causation, and damages, along with exhibits, reviewing and analyzing Defendants' mediation statement, and participating in a full-day, in-person mediation session with an experienced and highly respected mediator, David Geronemus of JAMS; (g) prepared the initial draft, and negotiated the terms, of the Stipulation (including the exhibits thereto) and the Supplemental Agreement; (h) worked with a consulting damages expert to craft a plan of allocation that treats Plaintiffs and all other members of the proposed Settlement Class fairly; (i) drafted the preliminary approval motion, approved by this Court, and supporting papers; (j) oversaw implementation of the notice process; and (k) drafted the final approval motion and supporting papers. ¶¶3.

Plaintiffs' Counsel spent 2,492.35 hours investigating, prosecuting and resolving the litigation through March 1, 2024, with a total lodestar value of approximately $2,053,166.75 million. ¶48. These numbers reflect Plaintiff's Counsel's commitment to vigorously pursuing this

Action for the benefit of Plaintiffs and the Settlement Class and confirm that the fee request here is reasonable.

F. Awards in Similar Cases Support The Requested Fee

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

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 Securities and Exchange Commission (SEC)." *Tellabs, Inc. v. Makor Issues & Rts., Ltd.*, 551 U.S. 308, 313 (2007); *see also Hill*, 2015 WL 127728, at *19. "[P]ublic 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"); *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, 2010 WL 4537550, at *29 (S.D.N.Y. Nov. 8, 2010) (if the "important public policy [of enforcing the securities laws] is to be carried out, the courts should award fees which will adequately compensate Lead Counsel for the value of their efforts, taking into account the enormous risks they undertook").

H. Plaintiffs Have Approved the Requested Fee

As set forth in Plaintiffs' respective declarations, each Plaintiff played an active role in the prosecuting and resolving the Action, and thus has a sound basis for assessing the reasonableness of the fee request. *See* Exs. 2-4 at ¶¶3-6. 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. 2-4 at ¶¶9-11. 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 Flag Telecom*, 2010 WL 4537550, at *29 ("[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."). Through March 1, 2024, the Claims Administrator had disseminated the Postcard Notice or emailed links to the Notice and Claim Form to 18,964 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 $140,000 in Litigation Expenses—which, by definition, included $30,000 in PSLRA awards to Plaintiffs. While the time to object does not expire until April 3, 2024, to date, not a single objection has been received. ¶6. 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).[14]

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."

[14] *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).

Hill, 2015 WL 127728, at *20; *In re Fid./Micron Sec. Litig.*, 167 F.3d 735, 737 (1st Cir. 1999). Here, Plaintiffs' Counsel expended $93,355.46 in out-of-pocket costs, ¶69, which are divided into categories and itemized in the declarations submitted by each individual firm. *See* Exs. 8-10. These expenses include, among other things, costs for: (a) experts in 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 (these same 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.

Additionally, the Postcard Notice informed potential Settlement Class Members that Lead Counsel would seek reimbursement of Litigation Expenses up to $140,000 (including awards to Plaintiffs of up to $30,000), and, to date, no objection to the expense application has been filed. The requested expenses should, therefore, be awarded. *See Machado*, 2019 WL 4409217, at *2 (awarding expenses in the absence of objections).

V. PLAINTIFFS SHOULD BE GRANTED PSLRA AWARDS

Plaintiffs respectfully request a total of $30,000 (or $10,000 for each Plaintiff) in PSLRA awards to reimburse them for time spent prosecuting the Action. 15 U.S.C. § 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 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, and written responses and objections to Defendants' requests for the production of documents; (d) responding to interrogatories; (e) sitting for depositions; (f) consulting with their attorneys regarding the settlement negotiations; and (g) evaluating and approving the proposed Settlement. *See* Ex. 2-4 at ¶¶3-6. 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).[15] Accordingly, Plaintiffs respectfully request that the Court approve the awards.[16]

[15] *See also In re Veeco Instruments Inc. Sec. Litig.*, 2007 WL 4115808, at *12 (S.D.N.Y. Nov. 7, 2007) (awarding lead plaintiff approximately $15,900 of $5.5 million settlement for time spent supervising litigation, and characterizing such awards as "routine" in this Circuit); *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); *Zacharia v. Straight Path Communications, Inc.*, No. 2:15-cv-08051-JMV-MF, ECF No. 90 at ¶6 (D.N.J. Sept. 7, 2018) (PSLRA award of $30,000).

[16] To date, there has been no objection to this request.

VI. CONCLUSION

For the foregoing reasons, Lead Counsel respectfully request that the Court grant the motion.[17]

Dated: March 20, 2024

Respectfully submitted,

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[17] A proposed Order will be submitted with Plaintiffs' Counsel's reply papers on April 17, 2024, after the deadline for objecting to the motion has passed.