UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

ATG FUND II LLC, individually and on behalf of all others similarly situated,

Plaintiff,

v.

VPC IMPACT ACQUISITION HOLDINGS SPONSOR II, LLC, BRENDAN CARROLL, GORDON WATSON, CARLY ALTIERI, JOHN MARTIN, JOSEPH LIEBERMAN, and KAI SCHMITZ,

Defendants,

-and-

VPC IMPACT ACQUISITION HOLDINGS II,

Nominal Defendant.

Civil Action No. 23-1978-JSR

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR ATTORNEYS' FEES, LITIGATION EXPENSES AND INCENTIVE AWARD

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PRELIMINARY STATEMENT

Lead Plaintiff, ATG Fund II LLC ("Lead Plaintiff" or "ATG") and Lead Counsel, Morris Kandinov LLP ("Lead Counsel" or "Morris Kandinov"), having achieved a Settlement of $7,000,000 in cash for the benefit of the proposed Settlement Class, respectfully submit this memorandum of law in support of their motion for (i) an award of attorneys' fees in the amount of 25% of the Settlement Fund, or $1,750,000 plus interest earned at the same rate as the Settlement Fund; (ii) payment of $144,553.28 in expenses reasonably incurred by Lead Counsel and Lead Plaintiff in prosecuting the Action; and (iii) an incentive award to Lead Plaintiff in the amount of $50,000.00 in connection with its vigorous advancement of the interests of the Class.

Lead Plaintiff and Lead Counsel successfully litigated this action (the "Action") against sophisticated parties and premier opposing counsel to obtain a $7,000,000 cash settlement on behalf of all Class A stockholders of VPC Impact Acquisition Holdings II ("VPCB" or the "SPAC"), which will be paid to stockholders in addition to amounts previously distributed from the SPAC's trust account. The Settlement represents substantial and immediate compensation to the Settlement Class that avoids significant risks and delay associated with continued litigation, including the risk of no recovery at all as well as significant collection risks even if Lead Plaintiff were to prevail at trial. Having achieved this significant monetary recovery after litigating this case on a contingent basis, Lead Plaintiff and Lead Counsel respectfully submit that the requested award of attorneys' fees and expenses to Lead Counsel and incentive award to Lead Plaintiff are warranted and well supported by applicable law.

ARGUMENT

I. LEAD COUNSEL IS ENTITLED TO AN AWARD OF REASONABLE ATTORNEYS' FEES FROM THE COMMON FUND

The Supreme Court has 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 Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 47 (2d Cir. 2000). Courts recognize that awarding attorneys' fees from a common fund "serve[s] to encourage skilled counsel to represent those who seek redress for damages inflicted on entire classes of persons," and therefore "discourage future misconduct of a similar nature." *In re FLAG Telecom Holdings, Ltd. Sec. Litig.*, No. 02- CV-3400 (CM), 2010 WL 4537550, at *23 (S.D.N.Y. Nov. 8, 2010); *see In re Veeco Instruments Inc. Sec. Litig.*, No. 05 MDL 01695 (CM), 2007 WL 4115808, at *2 (S.D.N.Y. Nov. 7, 2007). Private securities actions, in particular, are "an essential supplement to criminal prosecutions and civil enforcement actions." *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 313 (2007); *accord Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. 299, 310 (1985) (private securities actions provide "'a most effective weapon in the enforcement' of the securities laws and are 'a necessary supplement to [SEC] action'") (quoting *J.I. Case Co. v. Borak*, 377 U.S. 426, 432 (1964)). Upon a favorable settlement for class members, compensating lead counsel is essential because "[s]uch actions could not be sustained if plaintiffs' counsel were not to receive remuneration from the settlement fund for its efforts on behalf of the class." *Hicks v. Morgan Stanley*, No. 01 Civ. 10071 (RJH), 2005 WL 2757792, at *9 (S.D.N.Y. Oct. 24, 2005).

In this case, Lead Counsel respectfully submits that the Court should award a fee of 25% of the common fund obtained. The Second Circuit has expressly approved the percentage-of-the-fund method, recognizing that "the lodestar method proved vexing" and had resulted in "an

inevitable waste of judicial resources." *Goldberger*, 209 F.3d at 48-50 (holding that either the percentage method or lodestar method may be used to determine appropriate attorneys' fees); *Savoie v. Merchants Bank*, 166 F.3d 456, 460 (2d Cir. 1999) (stating that the "percentage-of-the-fund method has been deemed a solution to certain problems that may arise when the lodestar method is used in common fund cases"). More recently, the Second Circuit has reiterated its approval of the percentage method, stating that it "directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation," and has noted that the "trend in this Circuit is toward the percentage method." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 121 (2d Cir. 2005), *cert. denied*, 544 U.S. 1044 (2005); *see also In re Facebook, Inc., IPO Sec. & Derivative Litig.*, 343 F. Supp. 3d 394, 416 (S.D.N.Y. 2018), *aff'd*, 822 Fed. App'x 40 (2d Cir. 2020); *In re Comverse Tech., Inc. Sec. Litig.*, No. 06-CV-1825 (NGG), 2010 WL 2653354, at *2 (E.D.N.Y. June 24, 2010). Lead Counsel's fee request is well supported under both the percentage and lodestar methods.

A. The Requested Fee Is Reasonable Under The Percentage-Of-The-Fund Method

A 25% attorney fee is well within the range of percentage fees that have been awarded in the Second Circuit in comparable class actions. *See, e.g., In re Bisys Sec. Litig.*, No. 04 CIV. 3840(JSR), 2007 WL 2049726, at *3 (S.D.N.Y. July 16, 2007) (awarding 30% of $65.87 million settlement, representing a 2.99 multiplier); *In re Facebook, Inc. IPO Sec. & Derivative Litig.*, MDL No. 12-2389, 2015 WL 6971424, at *9-10 (S.D.N.Y. Nov. 9, 2015) (awarding 33% of $26.5 million settlement fund), *aff'd*, 674 Fed. App'x 37 (2d Cir. 2016); *Strougo ex rel. Brazilian Equity Fund, Inc. v. Bassini*, 258 F.Supp.2d 254, 262 (S.D.N.Y.2003) (awarding fees equivalent to roughly 33% of the amount recovered); *In re Pfizer Inc. S'holder Derivative Litig.*, 780 F. Supp. 2d 336, 344 (S.D.N.Y. 2011) (awarding fees equivalent to approximately 30% of the $75 million

settlement); *In re Sadia S.A. Sec. Litig.*, No. 08 Civ. 9528 (SAS), 2011 WL 6825235, at *3 (S.D.N.Y. Dec. 28, 2011) (awarding 30% of $27 million settlement); *see also Cent. States Se. & Sw. Areas Health & Welfare Fund v. Merck-Medco Managed Care, LLC*, 504 F.3d 229, 249 (2d Cir. 2007) (affirming district court's award of 30% of $42.5 million settlement fund).

The Supreme Court has recognized that an appropriate court-awarded fee is intended to approximate what counsel would receive if they were bargaining for the services in the marketplace. *See Missouri v. Jenkins*, 491 U.S. 274, 285-86 (1989). If this were a non-representative action, the customary fee arrangement would be contingent, on a percentage basis, and typically up to 33% of the recovery. *See Blum v. Stenson*, 465 U.S. 886, 903 (1984) ("In tort suits, an attorney might receive one-third of whatever amount the plaintiff recovers. In those cases, therefore, the fee is directly proportional to the recovery.") (Brennan, J., concurring).

B. The Requested Fee Is Reasonable Under The Lodestar Method

To ensure the reasonableness of a fee awarded under the percentage-of-the-fund method, courts may cross-check the proposed award against counsel's lodestar. *See Goldberger*, 209 F.3d at 50. Here, Lead Counsel and its staff committed a total of 436.32 hours to this Action. *See* Morris Decl. at ¶ 46. Counsel's collective lodestar, derived by multiplying the hours spent by each professional by their applicable hourly rates, is $462,511.50. *Id*. As a result, the requested fee represents a multiplier of approximately 3.8 relative to lodestar. *Id*. at ¶ 47.

In complex, high-stakes and risky contingent litigation such as this Action, especially where counsel obtains an extraordinary result, a multiple of 3.8 is in line with precedent and recognizes the risk assumed, and outcome obtained, by counsel. *See FLAG Telecom*, 2010 WL 4537550, at *26 ("a positive multiplier is typically applied to the lodestar in recognition of the risk of the litigation, the complexity of the issues, the contingent nature of the engagement, the skill of the attorneys, and other factors"); *Comverse*, 2010 WL 2653354, at *5 ("Where, as here, counsel

has litigated a complex case under a contingency fee arrangement, they are entitled to a fee in excess of the lodestar"); *Wal-Mart*, 396 F.3d at 123 (upholding multiplier of 3.5 as reasonable on appeal); *In re GSE Bonds Antitrust Litig.*, No. 19-CV-1704 (JSR), 2020 WL 3250593, at *5 (S.D.N.Y. June 16, 2020) ("a 4.09 multiplier is within the range of what has considered reasonable by courts"); *Woburn Ret. Sys. v. Salix Pharm., Ltd.*, 2017 WL 3579892, at *6 (S.D.N.Y. Aug. 18, 2017) (3.14 multiplier); *In re Deutsche Telekom AG Sec. Litig.*, No. 00-CV-9475 (NRB), 2005 WL 7984326, at *4 (S.D.N.Y. June 14, 2005) (3.96 multiplier); *Maley v. Del Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 369 (S.D.N.Y. 2002) (awarding fee equal to a 4.65 multiplier, which was "well within the range awarded by courts in this Circuit and courts throughout the country"); *In re Credit Default Swaps Antitrust Litig.*, No. 13-md-2476 (DLC), 2016 WL 2731524, at *17 (S.D.N.Y. Apr. 26, 2016) (multiplier of "just over 6"); *In re Rite Aid Corp. Sec. Litig.*, 362 F. Supp. 2d 587, 589-90 (E.D. Pa. 2005) (6.96 multiplier).

C. The *Goldberger* Factors Support The Requested Fee

In addition to the lodestar test above, the Second Circuit has set forth the following criteria—often referred to as the "*Goldberger* factors"—that courts should consider when reviewing a request for attorneys' fees:

> (1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations.

Goldberger, 209 F.3d at 50. These factors likewise support Lead Counsel's fee request.

1. Time And Labor Expended By Lead Counsel

Lead Counsel dedicated immediate and meaningful time and resources to this matter from the outset, beginning with the filing of a complaint only five (5) days following Defendants' announcement that they planned to keep the Termination Fee for themselves. Thereafter, Lead

advanced the rights of the Class through briefing of the motion to dismiss, extensive settlement discussions, and confirmatory discovery to confirm the adequacy of the Settlement. As set forth in greater detail in the Morris Declaration, Lead Counsel, among other things:

- conducted an extensive and expedited investigation of the IPO Documents, other SEC filings, press releases, media reports and other public information (¶ 8);
- drafted a detailed Consolidated Amended Class Action and Derivative Complaint and then an Amended Complaint (the "Complaint") based on counsel's ongoing investigation and analysis (¶¶ 8, 13);
- fully briefed Defendants' Motion to Dismiss (¶¶ 14-16);
- appeared in the Chapter 15 Proceedings and obtained a ruling exempting this Action from the bankruptcy stay (¶¶ 8, 21);
- counseled and advised Lead Plaintiff and the proposed Additional Class Representatives (Funicular Funds LP and Camac Fund LP) regarding the Action and evaluation of Plaintiff's claims and the risks of litigation (¶¶ 28-31);
- engaged in difficult multi-party settlement negotiations, which involved the Joint Official Liquidators ("JOLs") as well as the Sponsor and Individual Defendants, in an effort to obtain a favorable result for the Class without the substantial litigation and collection risks associated with proceeding to trial (¶¶ 23-25); and
- conducted confirmatory discovery, including the deposition of the valuation expert retained by the JOLs to evaluate and value the Kredivo securities in dispute. (¶ 27).

Throughout the litigation, Lead Counsel, as a small firm, staffed the matter efficiently and avoided unnecessary duplication and expense. The time and effort devoted to this case by

Plaintiff's Counsel was substantial and entirely necessary to obtain the result achieved in this highly contentious and uncertain litigation.

2. The Risks Of The Litigation Support The Requested Fee

The Second Circuit has recognized that the risks associated with a case undertaken on a contingent fee basis are an important factor in determining an appropriate fee award:

> 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. Nor, particularly in complicated cases producing large recoveries, is it just to make a fee depend solely on the reasonable amount of time expended.

City of Detroit v. Grinnell Corp., 495 F.2d 448, 470 (2d Cir. 1974). "'Little about litigation is risk free, and class actions confront even more substantial risks than other forms of litigation.'" *Comverse*, 2010 WL 2653354, at *5; *see also In re Am. Bank Note Holographics, Inc. Sec. Litig.*, 127 F. Supp. 2d 418, 433 (S.D.N.Y. 2001) (it is "appropriate to take this [contingent-fee] risk into account in determining the appropriate fee to award").

While Lead Counsel always believed that Lead Plaintiff's claims were meritorious, it also recognized that all litigation is inherently risky and uncertain. For example, Lead Plaintiff faced risk in establishing that that Class A Shareholders had standing to enforce the Sponsor Agreement and that Defendants had violated it. Defendants vehemently denied that Plaintiff had any right to recovery and argued that Class A Shareholders are "neither parties nor third-party beneficiaries of the Sponsor Agreement and thus cannot enforce its terms." ECF 18 at 14.

Defendants further argued that the Sponsor Agreement had been terminated by initiation of the Cayman Action and did not govern the distribution of the Termination Fee. *Id*. at 20. Further, even if the Sponsor Agreement remained in effect and Plaintiff had standing to enforce it,

Defendants insisted that there had been no breach of the agreement because the Termination Fee had not been transferred to Class B shareholders. *Id.* at 22. If Defendants had been successful on any of their arguments, Plaintiff risked forfeiting any potential recovery.

This Action was also among the first of its kind, and the lack of clear precedent further supports the requested fee. *See Mercer v. Duke Univ.*, 401 F.3d 199, 208-09 (4th Cir. 2005) (considering that case was "first of its kind" and would "serve as guidance" for future claims in affirming award of attorneys' fees).

Additionally, even in the event that Lead Plaintiff prevailed at trial, substantial risks remained that could have precluded any recovery, including the diminishing nature of the assets of the SPAC (which after trial and appeal would have been substantially reduced), the likelihood that any judgment would be challenged in the parallel Cayman Action, and collection challenges with respect to the Individual Defendants in light of the availability of indemnity under Cayman Islands law.

In the face of these uncertainties, Lead Counsel undertook this case on a contingent basis, knowing that the litigation could last for years and would require the devotion of a substantial time and resources. Lead Counsel's assumption of this risk, and tremendous effort and result, strongly supports the reasonableness of the requested fee. *See FLAG Telecom*, 2010 WL 4537550, at *27 ("Courts in the Second Circuit have recognized that the risk associated with a case undertaken on a contingent fee basis is an important factor in determining an appropriate fee award."); *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 148 (S.D.N.Y. 2010) ("There was significant risk of non-payment in this case, and Plaintiff's Counsel should be rewarded for having borne and successfully overcome that risk.").

3. The Magnitude And Complexity Of The Action

The magnitude and complexity of this Action also support the requested fee. Courts have recognized that securities class actions and comparable litigation are "notably difficult and notoriously uncertain." *FLAG Telecom*, 2010 WL 4537550, at *27; *see also City of Providence v. Aeropostale, Inc.*, No. 11 Civ. 7132 (CM), 2014 WL 1883494, at *16 (S.D.N.Y. May 9, 2014) ("the complex and multifaceted subject matter involved in a securities class action such as this supports the fee request"), *aff'd*, 607 Fed. App'x 73 (2d Cir. 2015); *Fogarazzo v. Lehman Bros.*, No. 03 Civ. 5194 (SAS), 2011 WL 671745, at *3 (S.D.N.Y. Feb. 23, 2011) ("in general, securities actions are highly complex"). This case was no exception. Not only were Lead Plaintiff's claims untested and subject to multiple defenses and arguments under the SPAC's contracts and governing documents, but the cross-border nature of the case and concurrent liquidation proceedings in the Cayman Islands and Chapter 15 proceedings in bankruptcy court made it more complex than typical domestic cases.

4. The Quality Of Lead Counsel's Representation

Lead Counsel submits that the quality of its representation is evidenced by the litigation results. *See, e.g.*, *Veeco*, 2007 WL 4115808, at *7; *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 467 (S.D.N.Y. 2004). Lead Counsel positioned the Class for a settlement that exceeds by a wide margin the market's expectation for the litigation based on VPCB's final trading price. *See* Morris Decl. at ¶ 52. The value of Lead Counsel's accomplishments is also reflected in feedback from other Class members, who have praised the litigation efforts and the proposed Settlement. *See* Declaration of Gabi Gliksberg ("Gliksberg Decl.") ¶ 25; Declaration of Jacob Ma-Weaver ("Ma-Weaver Decl.") at ¶ 7; Declaration of Eric Shahinian ("Shahinian Decl.") at ¶ 7.

Further, courts often take into account the quality of the opposing counsel when assessing the quality of plaintiff's counsel, and this Court should do so here. *See, e.g.*, *Veeco*, 2007 WL

4115808, at *7 (among factors supporting 30% award of attorneys' fees was that defendants were represented by "one of the country's largest law firms"); *In re Adelphia Commc'ns Corp. Sec. & Derivative Litig.*, No. 03 MDL 1529 LMM, 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). Defendants retained two of the top defense and bankruptcy law firms in the country, Skadden, Arps, Slate, Meagher & Flom LLP and DLA Piper LLP, and among the best litigators at those firms, to defend this lawsuit. Morris Decl. at ¶ 54. The Court may safely assume that Lead Plaintiff and Lead Counsel met the highest level of resistance available to a potential defendant in the marketplace for attorneys.

5. The Requested Fee In Relation To The Settlement

Courts have interpreted this factor as requiring review of the fee as a percentage of the total recovery. "When determining whether a fee request is reasonable in relation to a settlement amount, 'the court compares the fee application to fees awarded in similar securities class-action settlements of comparable value.'" *Comverse*, 2010 WL 2653354, at *3. As discussed in detail in Part I, *supra*, the requested 25% fee is well within the range of percentage fees that courts in the Second Circuit have awarded in comparable cases.

6. Public Policy Considerations

The Supreme Court has repeatedly recognized the value of stockholder actions as "an essential supplement to criminal prosecutions and civil enforcement actions." *Tellabs*, 551 U.S. at 313; *see also Bateman Eichler*, 472 U.S. at 310. The public policy issues in this Action were significant, and the SEC took no action. In short, Defendants proposed to turn the SPAC structure on its head by treating its operating account as a piggybank (exactly what they agreed not to do when raising money from public stockholders in the SPAC's IPO). The SPAC failed and Public

Stockholders were deprived of a business combination, but Defendants bargained away the SPAC's rights to pursue specific performance and damages in exchange for a monetary payment and other consideration that they intended to keep for themselves. This result would not only have been inequitable, but would have set an extremely poor precedent, including because: (i) SPAC managers are no different than fiduciaries of operating companies and should not be permitted to use corporate resources and assets to negotiate in their own personal interests at the expense of the SPAC and its public stockholders; (ii) SPAC managers should not be permitted to renege on their simple and express contractual promises to the SPAC not to take its assets in the event that it fails to complete a transaction; and (iii) Class A public stockholders contribute the vast majority of capital with which the SPAC may make a deal and should not be treated differently (and worse than) equity holders of operating companies.

7. Reaction Of The Class

The Notice issued to Class members informed 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 25% of the Settlement Fund and up to $150,000 in expenses. *See* Declaration of Emily Young ("Young Decl."), Ex. 1 at ¶ 6. While the time to object to the Fee and Expense Application does not expire until September 5, 2024, to date, no objections have been received. Should any objections be received subsequently, Lead Counsel will address them in its reply papers.

D. Lead Plaintiff Supports The Fee

Lead Plaintiff, which is the largest VPCB stockholder and has actively directed and monitored this litigation from the outset, endorses Lead Counsel's request for a 25% fee. *See* Gliksberg Decl. at ¶ 27. "[W]hen class counsel in a securities lawsuit have negotiated an arm's-length agreement with a sophisticated lead plaintiff possessing a large stake in the litigation, and when that lead plaintiff endorses the application following close supervision of the litigation, the

court should give the terms of that agreement great weight." *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 356 (S.D.N.Y. 2005). Here, Lead Plaintiff is a sophisticated investor with a significant financial stake in this Action; its endorsement of the fee is indicative of the strength of counsel's efforts in this litigation and the exceptional nature of the outcome obtained. Further, the Additional Class Representatives have likewise submitted declarations in support of the Settlement and the fee request. *See* Shahinian Decl. at ¶ 7; Ma-Weaver Decl. at ¶ 6.

II. LEAD COUNSEL'S EXPENSES ARE REASONABLE AND NECESSARY

Lead Plaintiff and Lead Counsel likewise request that the Court award their reasonable litigation expenses incurred in fully prosecuting this Action on behalf of the Class. S*ee Facebook IPO*, 343 F. Supp. 3d at 418 (in a class action, attorneys should be compensated "for reasonable out-of-pocket expenses incurred and customarily charged to their clients, as long as they were incidental and necessary to the representation"); *In re China Sunergy Sec. Litig.*, No. 07 Civ. 7895(DAB), 2011 WL 1899715, at *6 (S.D.N.Y. May 13, 2011) (same); *FLAG Telecom*, 2010 WL 4537550, at *30 ("It is well accepted that counsel who create a common fund are entitled to the reimbursement of expenses that they advanced to a class.").

As set forth in detail in the Morris Declaration, Lead Plaintiff, Lead Counsel, and the Additional Class Representatives incurred $144,553.28 of litigation expenses that were reasonable and necessary to obtain the Settlement. *See* Morris Decl. at ¶ 64. The large majority of these expenses related to attorneys' fees in the parallel Cayman Islands action, which have not been reimbursed in that proceeding and were undisputedly critical in reaching a global resolution that returned substantial value to Class A stockholders. These types of expenses are recoverable upon the conclusion of class action litigation. Lead Plaintiff and Lead Counsel were fully aware of their duty to the class to limit expenses where possible—as well as the substantial risk that the expenses would not be recoverable if Defendants prevailed in the litigation—and thus took steps to minimize

expenses wherever practicable without jeopardizing the Class claims in the Action, including with respect to the expenses incurred by the Additional Class Representatives. *See* Morris Decl. at ¶ 63. Reimbursement of these expenses is necessary to ensure that the benefits of the Settlement are received equally by the members of the Class, and that Lead Plaintiff and the Additional Class Representatives are not unfairly penalized for their efforts in achieving this desirable result for stockholders. All expenses are out-of-pocket reimbursements, and no party will realize a profit or surcharge as a result the reimbursements.

Finally, the Notice informed Class Members that litigation expenses would not exceed $150,000, and the total amount requested is below that amount. No objections have been received to date even as to the larger amount noticed. *See* Morris Decl. at ¶ 61.

III. LEAD PLAINTIFF SHOULD BE AWARDED AN INCENTIVE AWARD

Lead Plaintiff respectfully requests an incentive award of $50,000 based on the substantial contributions made by Lead Plaintiff, as set forth in detail in the Gliksberg Declaration.

Lead Plaintiff stepped forward immediately to bring this litigation and has been integral from the outset, including by coordinating with Lead Counsel with respect to investigation of potential claims, litigation strategy, and motion practice. Lead Plaintiff also engaged directly with Defendants in connection with settlement discussions and provided substantial support and insight to Lead Counsel throughout the litigation, especially during settlement negotiations. *See* Gliksberg Decl. at ¶¶ 16-18. Lead Plaintiff's role in this litigation exceeds that of a typical named plaintiff and reflects Lead Plaintiff's vested interest in obtaining the best possible result for the Class, despite the burden and distraction to its business.

Under these circumstances, this Court has sufficient precedent to award an incentive award of $50,000, which is appropriate based on Lead Plaintiff's contributions to prosecution and the favorable resolution of this case and will be paid out of any payment awarded to Lead Counsel so

as not to reduce the amount available for distribution to the Class. *See, e.g.*, *Dial Corp. v. News Corp.*, 317 F.R.D. 426, 438-39 (S.D.N.Y. 2016) (awarding six class representatives $50,000 each in incentive awards when "the decision to fire the first shot on behalf of the Class was fraught with risks"); *Brotherton v. Cleveland*, 141 F. Supp. 2d 907 (S.D. Ohio 2001) (awarding lead plaintiff a $50,000 incentive award when she was "instrumental in bringing [the] lawsuit forward"); *In re Auto. Refinishing Paint Antitrust Litig.*, No. MDL NO 1426, 2008 WL 63269, at *7 (E.D. Pa. Jan. 3, 2008) (awarding $60,000 in incentive award to class representatives when they spent "time assisting and educating counsel" and were active participants in the litigation).

Lead Plaintiff's decision to pursue this action as a class was commendable and should be incentivized through the modest award requested. Its stake was large enough to support the pursuit of an individual action, and such a case may well have been less burdensome and contentious. *See* Gliksberg Decl. at ¶ 30. However, Lead Plaintiff at all times was committed to pursuing this matter equitably and on behalf of all affected parties, and dedicated significant time and effort in order to obtain the favorable Settlement for all Class A stockholders. *See Id*. at ¶¶ 7-19. The Court should approve the requested incentive fee for reasons of policy and principle.

CONCLUSION

For the foregoing reasons, Lead Plaintiff and Lead Counsel respectfully request that the Court award (i) attorneys' fees of 25% of the Settlement Fund, equal to $1,750,000 plus interest accrued at the same rate as earned by the Settlement Fund; (ii) litigation expenses of $144,553.28; and (iii) an incentive award of $50,000.

Dated: August 22, 2024

Respectfully submitted,

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