UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

IN RE TENARIS S.A. SECURITIES LITIGATION	Case No. 1:18-cv-07059-KAM-SJB Honorable Kiyo A. Matsumoto

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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I. PRELIMINARY STATEMENT

Court-appointed lead counsel, Glancy Prongay & Murray LLP ("GPM" 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]

II. INTRODUCTION[2]

Lead Counsel have succeeded in obtaining a $9,500,000 non-reversionary, all cash, settlement (the "Settlement") for the benefit of the Settlement Class in the above-captioned action (the "Action"). This is an extremely favorable outcome in the face of substantial risks and it is the result of Lead Counsel's vigorous, 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.*, $3,166,667, plus interest at the same rate as the Settlement Fund), and reimbursement of $98,935.26 in Litigation Expenses. The Litigation Expenses consist of $83,935.26 in out-of-pocket costs incurred by Lead Counsel while prosecuting the Action, and an aggregate of $15,000 to Court-appointed lead plaintiffs Jeffrey Lynn Sanders and Starr Sanders (collectively, "Lead Plaintiffs") for reimbursement of the reasonable costs (including the cost of time spent) incurred in prosecuting the Action on behalf of the

[1] Unless otherwise defined, all capitalized terms herein have the meanings ascribed to them in the Stipulation and Agreement of Settlement dated March 3, 2023 (the "Stipulation," ECF No. 111-1), or the concurrently-filed Declaration of Kara M. Wolke in Support of: (I) Lead 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 ("Wolke Declaration" or "Wolke Decl."). All citations to "¶ __" and "Ex. __" in this memorandum refer, respectively, to paragraphs in, and Exhibits to, the Wolke Declaration. Unless otherwise noted, all internal citations and quotations have been omitted and emphasis has been added.

[2] The Wolke 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 Lead 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.

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 Lead 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). As a result, a significant number of cases are dismissed at the outset.[3] Nor do the risks end at the pleading stage. Even when a plaintiff is successful at trial, payment is far from guaranteed.[4] *See Silverman v. Motorola Sols., Inc.*, 739 F.3d 956, 958 (7th Cir. 2013) (observing that "Defendants prevail outright in many securities suits.").

The riskiness and expense of this complex action was further exacerbated by the international dimensions of the case. The conduct at issue took place in Argentina, involved alleged bribery in

[3] *See* Ex. 4 (excerpt from Janeen McIntosh, Svetlana Starykh, and Edward Flores, *Recent Trends in Securities Class Action Litigation: 2022 Full-Year Review* (NERA Jan. 24, 2023) ("NERA Report") at p. 11 (Fig. 11) (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, 61% were granted (with or without prejudice) and only 20% were denied.").

[4] *See, e.g.*, *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).

Venezuela, and Defendants and their related entities are located throughout Europe and Argentina.[5] Lead Counsel's investigation and prosecution of the case required, *inter alia*, the use of a bilingual private investigator to conduct an investigation in Argentina, consultation with an Argentinian lawyer regarding the criminal cases in Argentina and issues of Argentinian law, translators, a bilingual document reviewer, and a thorough understanding of a variety of political, business and legal issues unique to Argentina and Venezuela. Lead Counsel also knew that even if Lead Plaintiffs were to prevail at trial, it could prove difficult to execute on a judgment against Defendants Rocca and Tenaris. There was, therefore, a strong possibility that the case would yield little or no recovery after many years of costly litigation. *See In re Xcel Energy, Inc., Sec., Deriv. & "ERISA" Litig.*, 364 F. Supp. 2d 980, 994 (D. Minn. 2005) ("Precedent is replete with situations in which attorneys representing a class have devoted substantial resources in terms of time and advanced costs yet have lost the case despite their advocacy."); *Great Neck Capital Appreciation Inv. P'ship, L.P. v. PricewaterhouseCoopers*, L.L.P., 212 F.R.D. 400, 409 (E.D. Wis. 2002) ("Shareholder class actions are difficult and unpredictable, and skepticism about optimistic forecasts of recovery is warranted."). Despite these risks, Lead Counsel worked 3,522.60 hours, and advanced $83,935.26 in expenses, all on a fully continent basis.

Lead Counsel respectfully requests a fee award in the amount of 33⅓% of the Settlement Fund, as compensation for its significant efforts and achievements on behalf of the Settlement Class. The requested fee is consistent with fee awards in comparable class action settlements, whether considered

[5] For example, defendant Paolo Rocca ("Rocca") resides in Argentina; defendant Tenaris S.A. ("Tenaris") is incorporated in Luxembourg, with operations throughout the world; former defendant San Faustin S.A. ("San Faustin") is a public limited liability company incorporated under the laws of Luxembourg, with its principal place of business in Luxembourg; San Faustin is owned and controlled by Rocca & Partners Stichting Administratiekantoor Aandelen San Faustin, a private entity organized under the laws of the Netherlands; and former defendant Techint Holdings S.ár.l. (a/k/a the "Techint Group") has headquarters in Italy and Argentina. *See* Complaint (ECF No. 36) at ¶¶3, 25-28.

as a percentage of the Settlement or in relation to Lead Counsel's lodestar. Indeed, the requested fee represents a multiplier of 1.36 on Lead Counsel's lodestar, which is well within the range of multipliers typically awarded in class actions with substantial contingency risks such as this one. *See 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, including this Court.").

Lead Counsel also seeks reimbursement of $83,935.26 in out-of-pocket litigation expenses incurred in prosecuting the Action. *See* ¶91. This amount is below the $145,000 limit on Litigation Expenses disclosed in the Notice—which, by definition, included PSLRA awards to Lead Plaintiffs. The expenses are reasonable in amount and were necessarily 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 $15,000 to compensate Lead Plaintiffs for the time and effort they have expended on behalf of the Settlement Class. Ex. 2. Each Lead Plaintiff, *inter alia*, reviewed the pleadings and briefs filed in the Action, as well as court orders; regularly communicated with Lead Counsel about the litigation and the strengths and weaknesses of the case; were involved in settlement negotiations; and, after extensive discussions with Lead Counsel, authorized settlement of the case. Ex. 2, ¶¶3-6. 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 Wolke Declaration, Lead Counsel respectfully requests that the Court award attorneys' fees of 33⅓% of the Settlement Fund, approve reimbursement of $83,935.26 in out-of-pocket litigation expenses, and grant PSLRA awards of in the aggregate amount of $15,000 (or the equivalent of $7,500 to each Lead Plaintiff).

III. ARGUMENT

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

The Supreme Court and the Second Circuit have long recognized that attorneys whose efforts create a "common fund" are entitled to a reasonable attorneys' fee from that fund. *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 47 (2d Cir. 2000). "The rationale for the doctrine is an equitable one: it prevents unjust enrichment of those benefitting from a lawsuit without contributing to its cost." *Goldberger*, 209 F.3d at 47; *see also In re Veeco Instruments Inc. Sec. Litig.*, 2007 WL 4115808, at *2 (S.D.N.Y. Nov. 7, 2007). Awarding reasonable attorneys' fees from a common fund also serves an important policy goal: it encourages "skilled counsel to represent those who seek redress for damages inflicted on entire classes of persons," and thus discourages "future misconduct of a similar nature." *Veeco*, 2007 WL 4115808, at *2; *see also Hicks v. Morgan Stanley & Co.*, 2005 WL 2757792, at *9 (S.D.N.Y. Oct. 24, 2005).

For the common fund doctrine to apply, "the applicant's efforts must confer a 'substantial benefit on the members of an ascertainable class, and where the court's jurisdiction over the subject matter of the suit makes possible an award that will operate to spread costs proportionately among them,' an award of attorneys' fees must operate to shift the costs of litigation to that group." *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 369 (S.D.N.Y. 2002) (quoting *Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375, 393-94 (1970)). These elements are all present here. Lead Counsel's efforts conferred a substantial benefit—$9.5 million in cash—on an ascertainable class. And a fee award from the common fund will equitably shift the costs of litigation to the group benefitting from the Settlement, *i.e.*, the Settlement Class. Accordingly, the Court should award attorneys' fees from the Settlement Fund. *See Maley*, 186 F.Supp.2d 369.

B. The Court Should Award A Reasonable Percentage Of The Common Fund

In the Second Circuit, "both the lodestar and the percentage of the fund methods are available to district judges in calculating attorneys' fees[.]" *Goldberger*, 209 F.3d at 50. However, "[t]he trend in the Second Circuit is to use the percentage of the fund method in common fund cases like this one, as it directly aligns the interests of the class and its counsel, mimics the compensation system actually used by individual clients to compensate their attorneys, provides a powerful incentive for the efficient prosecution and early resolution of litigation, and preserves judicial resources." *Monzon v. 103W77 Partners, LLC*, 2015 WL 993038, at *2 (S.D.N.Y. Mar. 5, 2015); *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 121 (2d Cir. 2005) ("The trend in this Circuit is toward the percentage method, which 'directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation[.]'").[6] The percentage-of-the-fund method is also supported by the PSLRA, which states that "[t]otal attorneys' fees and expenses awarded by the court to counsel for the plaintiff class shall not exceed a reasonable percentage of the amount" recovered for the class." 15 U.S.C. § 78u-4(a)(6).[7]

Use of the percentage method does not, however, render the lodestar irrelevant. Rather, part of the reasonableness inquiry is a comparison of the lodestar to the fee awarded pursuant to the percentage of the fund method "[a]s a 'cross-check.'" *Wal-Mart*, 396 F.3d at 123 (quoting *Goldberger*, 209 F.3d at 50). "[W]here [the lodestar method is] used as a mere cross-check, the hours documented by counsel

[6] *See also Athale v. Sinotech Energy Ltd.*, 2013 WL 11310686, at *7 (S.D.N.Y. Sept. 4, 2013) ("'the trend in this Circuit has been toward the use of a percentage of recovery as the preferred method of calculating the award for class counsel in common fund cases,' particularly in complex securities class actions.").

[7] *See also In re EVCI Career Colls. Holding Corp. Sec. Litig.*, 2007 WL 2230177, at *16 (S.D.N.Y. July 27, 2007) ("[T]he PSLRA implicitly supports the use of the percentage of the fund method."); *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 355 (S.D.N.Y. 2005) ("apply[ing] the percentage method" due, at least in part, to "the PSLRA's express contemplation that the percentage method will be used to calculate attorneys' fees in securities fraud class actions").

need not be exhaustively scrutinized by the district court." *Goldberger*, 209 F.3d at 50. "Instead, the reasonableness of the claimed lodestar can be tested by the court's familiarity with the case[,]" *id.*, or "[t]he district courts [ ] may rely on summaries submitted by the attorneys and need not review actual billing records." *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 306-07 (3d Cir. 2005); *see also Davis v. J.P. Morgan Chase & Co.*, 827 F. Supp. 2d 172, 184 (W.D.N.Y. 2011); *Johnson v. Brennan*, 2011 WL 4357376, at *14-15 (S.D.N.Y. Sept. 16, 2011).

In sum, the weight of authority suggests that the Court should use the percentage-of-recovery method, with a lodestar cross-check, in determining a reasonable attorneys' fee. *See Bellifemine v. Sanofi-Aventis U.S. LLC*, 2010 WL 3119374, at *6 (S.D.N.Y. Aug. 6, 2010) ("applying a lodestar 'cross-check'"); *In re Bristol-Myers Squibb Sec. Litig.*, 361 F. Supp. 2d 229, 233 (S.D.N.Y. 2005) ("Typically, courts utilize the percentage method and then 'cross-check' the adequacy of the resulting fee by applying the lodestar method."); *Hicks*, 2005 WL 2757792, at *10.

C. The Requested Attorneys' Fees Are Reasonable

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

The 33⅓% fee requested by Lead Counsel is well within the range of percentage fees awarded in the Second Circuit in comparable complex class actions. *See Maley*, 186 F. Supp. 2d at 370 (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"); *In re Lloyd's Am. Trust Fund Litig.*, 2002 WL 31663577, at *26 (S.D.N.Y. Nov. 26, 2002) (collecting cases and stating "[i]n this district alone, there are scores of common fund cases where fees alone (*i.e.*, where expenses are awarded in addition to the fee percentage) were awarded in the range of 33-1/3% of the settlement fund."); *Kelwin Inkwel, LLC v. PNC Merchant Services Company, L.P.*, 2022 WL 3127633, at *4 (E.D.N.Y. Apr. 12, 2022) (Block, J.) (awarding one-third of $10 million recovery, "which the Court finds to be reasonable and consistent

with awards in similar cases in this Circuit."); *Toure v. Amerigroup Corp.*, 2012 WL 3240461, at *5 (E.D.N.Y. Aug. 6, 2012) (awarding one-third of $4,450,000 settlement fund and noting that a "request for one-third of the fund is reasonable and 'consistent with the norms of class litigation in this circuit.'"); *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."); *In re Restasis (Cyclosporine Ophthalmic Emulsion) Antitrust Litig.*, 2020 WL 6193857, at **5-6 (E.D.N.Y. Oct. 7, 2020) (one-third fee on $51.25 million settlement); *In re PPDAI Group Inc. Sec. Litig.*, 2022 WL 198491, at *17 (E.D.N.Y. Jan. 21, 2022) (awarding one-third of $9 million settlement fund); *In re NYSE Specialists Sec. Litig.*, No. 03-cv-8264, ECF No. 38, slip op. at ¶ 19 (S.D.N.Y. June 10, 2013) (awarding approximately 41% of $18.5 million settlement) (Ex. 7); *Wilson v. LSB Industries, Inc.*, 2019 WL 3542844, at *1 (S.D.N.Y. June 28, 2019) (awarding 33⅓% of $18.45 million settlement); *In re China Media Express Holdings, Inc. S'holder Litig.*, 2015 WL 13639423, at *1 (S.D.N.Y. Sept. 18, 2015) (awarding 33.33% of $12 million settlement); *In re Ubiquiti Networks, Inc. Sec. Litig.*, No. 18-cv-01620 (VM), ECF No. 49 at 6 (S.D.N.Y. March 27, 2020) (awarding 33.3% of $15 million settlement) (Ex. 8); *In re Qudian Inc. Sec. Litig.*, 2021 WL 2328437, at *1 (S.D.N.Y. June 8, 2021) (awarding one-third of $8.5 million settlement); *In re Cnova N.V. Sec. Litig.*, No. 1:16-cv-00444-LTS-OTW (S.D.N.Y. Mar. 20, 2018), ECF No. 148 at 5 (awarding 33.3% of $28.5 million settlement) (Ex. 9).[8]

The requested one-third fee is, therefore, consistent with awards in other similarly complex cases. *See Levine* v. *Atricure, Inc.*, No. 1:06-cv-14324-RJH, ECF No. 85, slip op. at ¶6 (S.D.N.Y. May 27, 2011) (awarding 33⅓% and stating "[t]he requested fee 33⅓% of the settlement is within the

[8] *See also* Ex. 6 (collecting cases); *Mohney v. Shelly's Prime Steak, Stone Crab & Oyster Bar*, 2009 WL 5851465, at *5 (S.D.N.Y. Mar. 31, 2009) (collecting cases and noting that "Class Counsel's request for 33% of the Settlement Fund is typical in class action settlements in the Second Circuit.").

range normally awarded in cases of this nature") (Ex. 10); *Anwar v. Fairfield Greenwich Ltd.*, 2012 WL 1981505, at *3 (S.D.N.Y. June 1, 2012) (33% fee request of the approximate $7.7 million settlement fund "is well within the percentage range that courts within the Second Circuit have awarded in other complex litigations").

2. The Lodestar "Cross-Check" Strongly Supports The Reasonableness Of The Requested Fee

A lodestar "cross-check" confirms the reasonableness of the requested fee award. *See Goldberger*, 209 F.3d at 50. The "lodestar" is calculated by multiplying the number of hours expended on the litigation by each attorney or paralegal by their current reasonable and customary hourly rate, and totaling the amounts for all time-keepers.[9] Additionally, "[u]nder the lodestar method of fee computation, a multiplier is typically applied to the lodestar." *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 468 (S.D.N.Y. 2004). "The multiplier represents the risk of the litigation, the complexity of the issues, the contingent nature of the engagement, the skill of the attorneys, and other factors." *Id.* (citing *Goldberger*, 209 F.3d at 47); *Savoie v. Merchants Bank*, 166 F.3d 456, 460 (2d Cir. 1999). Thus, "[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." *In re Comverse Tech., Inc. Sec. Litig.*, 2010 WL 2653354, at *5 (E.D.N.Y. June 24, 2010).

Here, Lead Counsel (including attorneys, paralegals, and professional support staff) collectively devoted a total of 3,522.60 hours to the prosecution of this Action, resulting in a lodestar of

[9] "[T]he use of current rates to calculate the lodestar figure has been endorsed repeatedly by the Supreme Court, the Second Circuit and district courts within the Second Circuit as a means of accounting for the delay in payment inherent in class actions and for inflation." *In re Hi-Crush Partners L.P. Sec. Litig.*, 2014 WL 7323417, at *15 (S.D.N.Y. Dec. 19, 2014); *Missouri v. Jenkins*, 491 U.S. 274, 283-84 (1989); *LeBlanc-Sternberg v. Fletcher*, 143 F.3d 748, 764 (2d Cir. 1998) ("[C]urrent rates, rather than historical rates, should be applied in order to compensate for the delay in payment[.]").

$2,330,721.50. ¶73.[10] Based on a 33⅓% fee (equal to $3,166,667), Lead Counsel's lodestar of yields a multiplier of 1.36. ¶74. This multiplier is well within the range of multipliers commonly awarded in securities class actions and other complex litigation. *See Wal-Mart*, 396 F.3d at 123 (upholding multiplier of 3.5 as reasonable on appeal); *Kelwin Inkwel*, 2022 WL 3127633, at *5 (collecting cases and awarding one-third of $10 million, stating that a 2.54 multiplier "is within the range of multipliers approved during lodestar cross checks of percentage-of-fund awards."); *Burns v. Falconstor Software, Inc.*, 2014 WL 12917621, at *10 (E.D.N.Y. Apr. 10, 2014) (finding fee award of 33.3% "reasonable" based on cross-check multiplier of 4.75); *Maley*, 186 F. Supp. 2d at 369 (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 Bisys Sec. Litig.*, 2007 WL 2049726, at *3 (S.D.N.Y July 16, 2007) (finding a 2.99 multiplier "falls well within the parameters set in this district and elsewhere"); *Davis*, 827 F. Supp. 2d at 185 (awarding fee representing a multiplier of 5.3, which was "not atypical" in similar cases); *In re Elan Sec. Litig.*, 385 F. Supp. 2d 363, 376 (S.D.N.Y. 2005) (awarding multiplier of 3.47 in light of an early settlement).[11]

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[10] Lead Counsel's rates range from $675 to $1,100 for partners, and $395 to $725 for non-partners (¶73), 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) (approving GPM's ***2021*** rates of $600 to $995 for partners, and $500 to $750 for associates); *see also* Ex. 5 (chart of rates charged by peer plaintiff and defense counsel in complex litigation). Recently, Judge Cogan in the Eastern District of New York cited with approval Class Counsel's lodestar cross-check, based on the firms' (including GPM's) ***2022*** rates, as supporting a one-third fee award. *In re Akazoo S.A. Sec. Litig.*, 2022 WL 14915812, at *1-2 (E.D.N.Y. Oct. 7, 2022); *see also Rosenfeld v. Lenich*, 2022 WL 2093028, at *4 (E.D.N.Y. Jan. 19, 2022) (conducting lodestar cross-check and finding attorney rates between $225 to $900 "well within the range of reasonableness.").

[11] *See also Sinotech*, 2013 WL 11310686, at *8 (stating that courts routinely award lodestar multipliers of "between four and five"); *Guevoura Fund Ltd. v. Sillerman*, 2019 WL 6889901, at *18 (S.D.N.Y. Dec. 18, 2019) ("multipliers of between three and four times . . . have been routinely awarded in this Circuit."); *In re Interpublic Sec. Litig.*, 2004 WL 2397190, at *12 (S.D.N.Y. Oct. 26, 2004) ("In recent years multipliers of between 3 and 4.5 have been common in federal securities cases."); *In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d 344, 353 (S.D.N.Y. 2014) (awarding fee representing a multiplier of 5.2, which was "large, but not unreasonable."); *Asare v. Change Group of New York*,

In sum, Lead Counsel's requested fee award is well within the range of what courts in this Circuit regularly award in class actions such as this one, whether calculated as a percentage of the fund or in relation to Lead Counsel's lodestar. Moreover, as discussed below, each factor established by the Second Circuit in *Goldberger* supports a finding that the requested fee is reasonable.

D. Factors Considered By Courts In The Second Circuit Confirm That The Requested Fee Is Fair And Reasonable

The Second Circuit set forth the following criteria that courts should consider when reviewing a request for attorneys' fees in a common fund case:

> (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. Consideration of these factors, together with the analyses above, demonstrates that the requested fee is reasonable.

1. Time And Labor Expended Support The Requested Fee

The time and effort expended by Lead Counsel in prosecuting the Action and achieving the Settlement supports the requested fee. As set forth in greater detail in the Wolke Declaration, Lead Counsel, among other things:

- drafted a motion for consolidation and appointment of lead plaintiffs pursuant to the PSLRA;
- conducted an extensive investigation of the claims asserted in the Action, which included, among other things: (a) reviewing and analyzing (i) Tenaris, S.A.'s ("Tenaris" or the "Company") U.S. Securities and Exchange Commission ("SEC") filings; (ii) public reports, research reports prepared by securities and financial analysts, news and wire articles, and other information available on the internet concerning Tenaris; (iii) investor call transcripts; (iv) filings from the Argentine

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Inc., 2013 WL 6144764, at *19 (S.D.N.Y. Nov. 18, 2013) ("Typically, courts use multipliers of 2 to 6 times the lodestar"); *Cornwell v. Credit Suisse Grp.*, 2011 WL 13263367, at *2 (S.D.N.Y. July 18, 2011) (awarding fee representing a 4.7 multiplier); *In re Deutsche Telekom AG Sec. Litig.*, 2005 WL 7984326 at *4 (S.D.N.Y. June 14, 2005) (awarding fee representing a 3.96 multiplier); *Woburn Ret. Sys. v. Salix Pharm., Ltd.*, 2017 WL 3579892, at *6 (S.D.N.Y. Aug. 18, 2017) (awarding fee representing a 3.14 multiplier).

criminal court related to the criminal investigation known as the "Notebooks Case"; and (v) other publicly available material concerning the Notebooks case, Tenaris and related entities; (b) retaining and working with an Argentinian lawyer who assisted in obtaining information from the pending criminal cases and advising on various issues of Argentine law; (c) having relevant documents translated from Spanish to English; (d) retaining and working with a bilingual private investigator who conducted an investigation in Argentina that involved, *inter alia*, numerous interviews of former Tenaris employees and other sources of relevant information; and (d) consulting with loss causation and damages experts;

- researched, drafted and served the 56-page Consolidated Class Action Complaint (the "Complaint"), plus exhibits, asserting claims against Tenaris, Paolo Rocca ("Rocca"), and Edgardo Carlos ("Carlos" and, collectively, the "Company Defendants"), as well as San Faustin S.A. and Techint Holdings S.á r.l. ("Parent Defendants"), under Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act"), and against Parent Defendants, Rocca, and Carlos under Section 20(a) of the Exchange Act;[12]
- researched and drafted an omnibus opposition to the motions to dismiss filed by the Company Defendants and Parent Defendants, as well as replies to the two notices of supplemental authority, that resulted in the Court narrowly sustaining Lead Plaintiffs' claims against defendants Tenaris and Rocca based on alleged false code of conduct and risk disclosure statements;
- successfully opposed Defendants' motion for partial reconsideration or, alternatively, for certification pursuant to 28 U.S.C. § 1292(B);
- engaged in significant discovery efforts, which included, *inter alia*: (a) exchanging initial disclosures; (b) propounding two sets of requests for production of documents, two sets of written interrogatories, and one set of written requests for admission upon Defendants; (c) serving three third-party subpoenas *duces tecum* on relevant third parties, including the Parent Defendants; (d) submitting three Freedom of Information Act ("FOIA") requests to the SEC and two FOIA requests to the U.S. Department of Justice. Over the course of the approximately 15-month discovery period, Lead Counsel reviewed and analyzed approximately 116,046 pages of documents produced by Defendants, including many that were written in Spanish;
- negotiated stipulations governing the treatment of confidential information and documents and the production of ESI, both of which were endorsed by the Court;
- drafted an unsuccessful letter motion to compel Defendants to produce certain categories of documents relating to matters outside the Notebooks Case, as well as letter motions to compel: (a) Tenaris to produce a certain key individual for a deposition; and (b) Defendants to produce categories of documents from the Parent Defendants, both of which were pending at the time of settlement;

[12] Exhibits A through E to the Complaint were copies, with certified English translations, of documents filed in the Notebooks Case.

- engaged in over a week of arm's-length negotiations with Defendants' Counsel, that included numerous video conferences, telephone calls, and emails, which ultimately culminated in the Parties reaching an agreement in principle to settle the Action;
- drafted and then negotiated the Term Sheet, and then drafted and negotiated the Stipulation (including the exhibits thereto) and Supplemental Agreement with Defendant's Counsel;
- worked with Lead Plaintiffs' damages expert to craft a plan of allocation that treats Lead Plaintiffs and all other members of the proposed Settlement Class fairly;
- drafted the preliminary approval motion and supporting papers;
- oversaw the implementation of the notice process; and
- drafted the motion for final approval. *See* ¶¶10-34.

It is also important to recognize that the legal work related to the Settlement will not end with the Court's approval of the proposed Settlement. Additional hours and resources will necessarily be expended assisting Settlement Class Members with their Proof of Claim forms, responding to Settlement Class Members' inquiries, shepherding the claims process to conclusion and filing a distribution motion. No additional compensation will be sought for this work. Accordingly, this factor supports the requested fee. *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.").

2. The Risks Of Litigation Support The Requested Fee

"[T]he risk of success [is] perhaps the foremost factor to be considered in determining" a reasonable award of attorneys' fees. *Goldberger*, 209 F.3d at 54; *see also Shapiro v. JPMorgan Chase & Co.*, 2014 WL 1224666, at *21 (S.D.N.Y. Mar. 24, 2014) ("The Second Circuit long ago recognized that courts should consider the risks associated with lawyers undertaking a case on a contingent fee basis."). This is because:

> 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). In applying this factor, "'litigation risk must be measured as of when the case is filed,' rather than with the hindsight benefit of subsequent events." *Global Crossing*, 225 F.R.D. at 467 (quoting *Goldberger*, 209 F.3d at 55).

Numerous courts have recognized that "class actions confront even more substantial risks than other forms of litigation[,]" *Comverse*, 2010 WL 2653354, at *5, and that "[s]ecurities class actions such as this are notably difficult and notoriously uncertain." *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, 2010 WL 4537550, at *27 (S.D.N.Y. Nov. 8, 2010); *In re Sumitomo Copper Litig.*, 189 F.R.D. 274, 281 (S.D.N.Y. 1999).[13] This case was no exception. From the outset, Lead Counsel understood that they were embarking on a complex, expensive, and potentially lengthy litigation with no guarantee of ever being compensated for the substantial investment of time and money the case would require. In undertaking that responsibility, "plaintiffs' counsel were obligated to assure that sufficient attorney and para-professional resources were dedicated to the prosecution of the action; counsel also faced the responsibility of advancing litigation and overhead expenses on this case for [many] years." *In re Giant Interactive Grp., Inc. Sec. Litig.*, 279 F.R.D. 151, 164 (S.D.N.Y. 2011). Indeed, "[u]nlike counsel for Defendants, who are paid substantial hourly rates and reimbursed for their expenses on a regular basis, Lead Counsel have not been compensated for any time or expenses since this case began more than [four and a half] years ago." *Flag Telecom*, 2010 WL 4537550, at *27. Lead Counsel's commitment was substantial (*i.e.*, $2,330,721.50 in lodestar (¶73) and $83,935.26 in out-of-pocket hard costs (¶91)), and

[13] *See also Teachers' Ret. Sys. of La. v. A.C.L.N., Ltd.*, 2004 WL 1087261, at *3 (S.D.N.Y. May 14, 2004) ("Little about litigation is risk-free, and class actions confront even more substantial risks than other forms of litigation.").

had they not obtained a recovery, it could have all been lost. *See Gross v. GFI Group, Inc.*, 784 Fed. App'x. 27, 28 (2d Cir. Sept. 13 2019) (affirming grant of summary judgment against plaintiffs in securities fraud class action where GPM served as one of the lead plaintiff's counsel); *Veeco*, 2007 WL 4115808, at *6 ("There are numerous class actions in which counsel expended thousands of hours and yet received no remuneration whatsoever despite their diligence and expertise.").

The risks in this case were particularly acute. Although Lead Counsel believed that the allegations of the Complaint would ultimately translate into a strong case, they were are also keenly aware that Lead Plaintiffs faced numerous hurdles to ***pleading*** and ***proving*** liability and damages. For instance, the alleged misstatements and omissions related to alleged acts of bribery that occurred in 2008, ***six to eight years*** before Lead Plaintiffs' class period of May 1, 2014 to December 5, 2018; the events at issue did not involve bribery by Tenaris directly, but rather related to the subsidiary of a different company (*i.e.*, Ternium S.A. ("Ternium")) that was not a party to the Action; Defendant Rocca was ultimately acquitted of criminal charges in Argentina related to the same acts of bribery alleged in this case; and this case did not include the restatement of hard financial data that is often present in securities fraud cases that survive a motion to dismiss. *See In re Schering-Plough Corp. Enhance Sec. Litig.*, 2013 WL 5505744 at *30 (D.N.J. Oct. 1, 2013) (granting fee request where the case was the antithesis of cases where liability is virtually certain due to a financial restatement); *City of Brockton Ret. Sys.* v. *Avon Prods., Inc.*, 2014 WL 4832321, at *14-16 (S.D.N.Y. Sept. 29, 2014) (statements about the company's commitment to "compliance with all applicable laws, rules and regulations in every country in which we do business" were "too general to cause a reasonable investor to rely upon them").

Moreover, as pointed out by Defendants in a notice of supplemental decision submitted while their motions to dismiss were pending (ECF No. 64), Judge Chen dismissed a consolidated securities

class action complaint brought against Ternium and certain of its officers and directors based on purported misstatements or omissions by Ternium in connection with substantially the same facts and circumstances alleged in this Action. *See Ulbricht v. Ternium S.A.*, 2020 WL 5517313 (E.D.N.Y. Sept. 14, 2020). There was, therefore, at the start of this Action, a substantial risk that this case would not survive the pleading the stage—especially given the PSLRA's heightened pleading standard and automatic stay of discovery. *Compare Ulbricht*, 2020 WL 5517313, at *5 (finding statement that "Ternium will not condone, under any circumstances, the offering or receiving of bribes" non-actionable) *with In re Tenaris S.A. Sec. Litig.*, 493 F.Supp.3d 143, 159-60 (E.D.N.Y. 2020) (finding statement that "Tenaris will not condone, under any circumstances, the offering or receiving of bribes or any other form of improper payments" actionable); *see also sup*ra n. 3 (research regarding high dismissal rates of securities cases).

In addition, Lead Counsel assumed the risk that the evidence would not support the allegations,[14] as well as the potential for adverse changes in the law. For example, during the pendency of this litigation, the Supreme Court issued its opinion in *Goldman Sachs Grp. Inc. v. Ark. Tchr. Ret. Sys.*, 141 S.Ct. 1951 (2021). In *Goldman*, the Court held, in part, that when defendants seek to rebut the presumption of reliance established under *Basic Inc. v. Levinson*, 485 U.S. 224 (1988) at the class certification stage, courts must consider ***all*** evidence relevant to price impact, including the "generic" nature of an alleged misrepresentation. If the alleged misrepresentation did not impact the company's stock price, the class could not have relied on the alleged misrepresentation or omission and class

[14] *See e.g.*, *Tenaris* , 493 F.Supp.3d at 153 (noting that while "[o]n November 27, 2018, … an Argentine judge charged Rocca with graft and bribery[,] … in April 2019, an Argentine court 'revoked' the charges against Rocca for insufficient evidence but called on prosecutors to continue their investigation."). Defendant Rocca was ultimately acquitted of all charges in Argentina. *See* Tenaris, SEC Form 6-K filed Aug. 17, 2021 ("the first-instance judge in charge of the Notebooks Case acquitted Tenaris's Chairman and CEO Paolo Rocca of all charges brought against him in the case").

certification would not be appropriate.

That decision was recently interpreted by the Second Circuit, wherein the Court—after approximately 13 years of litigation—decertified the class and effectively ended the case. *Ark. Tchr. Ret. Sys. v. Goldman Sachs Grp., Inc.*, 77 F.4th 74, 81 (2d Cir. 2023). The Court found, in a case involving "generic statements" about Goldman's business practices and its approach to conflicts-of-interest management, that there was not a sufficient nexus between the front-end statement and back-end price decline. *Goldman Sachs*, 77 F.4th at 105 ("Defendants have demonstrated, by a preponderance of the evidence, that the misrepresentations did not impact Goldman's stock price, and, by doing so, rebutted *Basic*'s presumption of reliance."). This is exactly what Defendants argued in their motion to dismiss, and would have no doubt continued to argue it at class certification, summary judgment, trial and on appeal. *See e.g.*, ECF No. 54 at 24 & 25 ("the Complaint's allegations regarding the December 5, 2018 announcement that Argentine prosecutors 'requested that Defendant Rocca be detained' is unconnected to any supposed misleading statements about Tenaris' compliance with its code of conduct and law.").

While it would be Defendants' burden to demonstrate a lack of price impact at the class certification stage (*see Ark. Tchr. Ret. Sys.*, 141 S.Ct. at 1958), the roles would be reversed at summary judgment and trial, and it remained an open question how the Court, at class certification and summary judgment, and the trier of fact, at trial, would have viewed the parties' competing evidence and explanations. This is especially true given that the issue would be the subject of extensive expert reports and testimony. *See In re Cendant Corp. Litig.*, 264 F.3d 201, 239 (3d Cir. 2001) ("[E]stablishing damages at trial would lead to a battle of experts with each side presenting its figures to the jury and with no guarantee whom the jury would believe."); *see also Goldman Sachs*, 77 F.4th at 102-04 (providing "Guidance moving forward" and requiring a "searching price impact analysis"

at the class certification stage in certain cases).[15]

The risks inherent in this case were further magnified by the fact that Tenaris is a Luxembourg company based in Argentina, Rocca is an Argentinian citizen, and much of the conduct at issue occurred in Argentina. The risks were still further heightened by Defendants' repeated arguments that many of the key documents and witnesses sought by Lead Plaintiffs were located abroad, not under the control of Defendants, and could only be obtained from non-parties under the strict limitations of the Hague Evidence Convention. ¶39. Virtually all witnesses and documentary evidence would be located in Argentina, Italy or Luxembourg, and most of the documents were written in Spanish. ¶38.

As a result, discovery was always going to be considerably more complicated, expensive and time intensive than a case involving a U.S.-based company. Documents needed from foreign jurisdictions—if even possible under the Hague Convention—required translations; depositions—if they could be taken at all—required a main interpreter and check interpreters; and third-party discovery has proven extremely hard to obtain. ¶¶38-39. The Court denied one motion to compel, and two others were pending at the time of settlement. *See* ECF Nos. 95, 100-104. Had their motions to compel been denied, Lead Plaintiffs would have to follow appropriate international conventions and/or apply to this Court for letters rogatory, and even then it is likely that their requests would have been denied altogether, or at best produced only sharply limited information. For example, each of Argentina, Italy, and Luxembourg have declared reservations to the Hague Evidence Convention's Article 23 stating that they "will not execute Letters of Request issued for the purpose of obtaining pre-trial discovery of documents."[16] As such, "[c]ourts in the Second Circuit have widely recognized

[15] Questions about price impact are not ordinarily considered in the context of settlement. *In re American Intern. Group, Inc. Sec. Litig.*, 689 F.3d 229, 232 (2d Cir. 2012).

[16] *See* https://www.hcch.net/en/instruments/conventions/full-text/?cid=82 (convention text); https://www.hcch.net/en/states/authorities/details3/?aid=484 (Argentina practical information

that obtaining evidence through the Hague Convention and letters rogatory are cumbersome and inefficient, and hardly make litigation in the United States convenient." *Rabbi Jacob Joseph Sch. v. Allied Irish Banks, P.L.C.*, 2012 WL 3746220, at *7 (E.D.N.Y. Aug. 27, 2012); *see also First Am. Corp. v. Price Waterhouse LLP*, 154 F.3d 16, 23 (2d Cir. 1998) ("the Hague Convention does not really offer a meaningful avenue of discovery in the present case[]"). As a result, Lead Plaintiffs may not have been able to obtain the necessary evidence to prove their case; and even if they could do so, it would be expensive, time-consuming and complicated. *See Giant Interactive*, 279 F.R.D. at 164 ("counsel faced the additional challenges that many documents needed translation, that evidence, witnesses and depositions were overseas, and that discovery motions were heavily contested").

Finally, even if Lead Plaintiffs overcame all of those risks and prevailed at trial for the full amount of damages, they would still face the risk of an adverse decision on post-trial motions or reversal on appeal,[17] and there would have been additional risks related to the collectability of any monetary judgment. Most of Tenaris's assets are located outside of the U.S. in Argentina or Luxembourg, it did not have insurance that would cover this matter, and collecting a judgment in an Argentine or Luxembourg court would be a difficult, if not impossible, task. *See* ¶49; *see also Giant Interactive*, 279 F.R.D. at 161 ("Finally, even assuming a plaintiffs' verdict, obtaining a recovery would likely have been uncommonly difficult and time-consuming, as counsel have explained that this litigation could face unique delays because defendant Giant has no assets outside of China, and any judgment obtained in the United States would have been of uncertain enforceability overseas.").

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including Article 23 reservation); https://www.hcch.net/en/states/authorities/details3/?aid=503 (Italy); https://www.hcch.net/en/states/authorities/details3/?aid=507 (Luxembourg).

[17] *See, e.g.*, *Robbins v. Koger Props., Inc.*, 116 F.3d 1441 (11th Cir. 1997) (reversing $81 million jury verdict and directing entry or judgment for defendant); *Anixter v. Home-Stake Prod. Co.*, 77 F.3d 1215 (10th Cir. 1996) (reversing verdict for plaintiffs in case filed in 1973 and tried in 1988 on the basis of 1994 Supreme Court opinion).

In sum, Lead Plaintiffs faced substantial risks. While Lead Plaintiffs and their counsel believe this case has merit and that they could have successfully navigated each risk presented, the risks remained. If any of them materialized, the Settlement Class might have recovered far less than the proposed Settlement, or nothing at all. In the context of these myriad risks, the $9.5 million Settlement Amount is an excellent result for the Settlement Class, and Lead Counsel's ability to obtain that result given the many obstacles inherent in the Action supports the reasonableness of the fee request. *See 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 Plaintiffs' Counsel should be rewarded for having borne and successfully overcome that risk.").

3. The Magnitude And Complexity Of The Action Support The Fee

Courts have repeatedly recognized the "notorious complexity" of securities class action litigation. *In re AOL Time Warner, Inc. Sec. & "ERISA" Litig.*, 2006 WL 903236, at *8 (S.D.N.Y. Apr. 6, 2006); *Taft v. Ackermans*, 2007 WL 414493, at *10 (S.D.N.Y. Jan. 31, 2007); *La. Mun. Police Emps. Ret. Sys. v. Sealed Air Corp.*, 2009 WL 4730185, at *8 (D.N.J. Dec. 4, 2009) ("securities class actions are inherently complex"). Moreover, "securities actions have become more difficult from a plaintiff's perspective in the wake of the PSLRA," and other changes in the law. *In re Ikon Office Solutions, Inc. Sec. Litig.*, 194 F.R.D. 166, 194 (E.D. Pa. 2000); *see also AOL Time Warner*, 2006 WL 903236, at *9 ("[T]he legal requirements for recovery under the securities laws present considerable challenges, particularly with respect to loss causation and the calculation of damages."). Such was the case here.

As noted above and in the Wolke Declaration, this case raised a number of complex questions concerning liability and damages that required great skill and extensive efforts to litigate. *See* ¶¶12-34. The complexities were especially acute given the case's international dimension, involving foreign parties and witnesses, and foreign-language documents, in a dispute that turned in large part on alleged

wrongdoing that took place six to ten years prior to the filing of the Action, as well as Lead Plaintiffs' ability to collect evidence in Argentina and other foreign countries. Thus, this was an incredibly complex matter—even by the standards of securities class actions.

The magnitude of this Action was similarly unquestionable. This was hard-fought, expensive, multi-year litigation, with millions of dollars of damages at stake, and it required considerable skill and resources to litigate. As such, the magnitude and complexity of the litigation support the requested fee. *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.").

4. The Quality Of Representation Supports The Requested Fee

"To determine the 'quality of the representation,' courts review, among other things, the recovery obtained and the backgrounds of the lawyers involved in the lawsuit." *Ackermans*, 2007 WL 414493, at *10 ; *see also Veeco*, 2007 WL 4115808, at *7. Both factors support the conclusion that a 33⅓% fee award in this case is reasonable under the circumstances.

The Settlement provides a cash payment of $9,500,000 for the benefit of the Settlement Class. This is a highly favorable result in light of the significant risks of continued litigation, lack of D&O insurance and collectability issues. Lead Plaintiffs' damages expert estimates that if Lead Plaintiffs had fully prevailed on all their claims at 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 Lead Plaintiffs' damages theory—*i.e.*, Plaintiffs' ***best case scenario***—the total ***maximum*** damages ***potentially*** available in this Action would be approximately $236.4 million. However, if the trier of fact accepted Defendants' loss causation argument concerning the December 6, 2018 disclosure, damages would be reduced to $189.6 million. ¶50. Under these scenarios, the Settlement represents a recovery of 4.02%-5.01%, which is well above the 1.8% median recovery in securities class actions settled in 2022, and

significantly higher than the 2.4%-2.9% median recovery in securities cases with similar damages that settled between December 2011-December 2022.[18]

Additionally, the quality of Lead Counsel's efforts and commitment to providing the Settlement Class with the best possible representation, together with GPM's substantial experience in securities class actions, provided leverage necessary to negotiate the Settlement. *See* Ex. 3 (GPM firm resumé); *see also Atanasio v. Tenaris S.A.*, 2019 WL 1916197, at *8, *10 (E.D.N.Y. Apr. 29, 2019) (noting that courts have recognized GPM "is experienced in securities class action litigation" and appointing GPM as lead counsel). Indeed, "[n]ot only did [Lead] Counsel's skill and expertise contribute to the favorable settlement for the class, it contributed to the overall efficiency of the case." *Veeco*, 2007 WL 4115808, at *7.

The quality of the opposition faced by Lead Counsel should also be taken into account. *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 Tenaris and Rocca were represented by Sullivan & Cromwell LLP and Dechert LLP, respectively, two of the country's most prestigious and experienced law firms. ¶85. Notwithstanding this capable opposition, Lead Counsel's thorough investigation, ability to present a strong case, and demonstrated willingness to vigorously prosecute the Action enabled Lead Counsel to achieve the favorable Settlement. Consequently, this factor militates in favor of the requested fee. *See Veeco*, 2007 WL 4115808, at *7 (fee award supported

[18] *See* Ex. 4 (NERA Report, at 18 (Fig. 19) (median recovery in securities class actions in 2022 was approximately 1.8% of estimated damages); at 17 (Fig. 18) (median recovery in securities class actions that settled between December 2011-December 2022 was 2.4% where estimated damages were between $200-399 million and 2.9% where estimated damages were between $100-$199 million)).

by fact that defendants were represented by "one of the country's largest law firms").

5. The Requested Fee In Relation To The Settlement Amount

Courts have interpreted this factor as requiring the review of the fee requested in terms of the percentage it represents 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 Section III.C.1., *supra*, the requested 33⅓% fee is consistent with percentage fees that courts in the Second Circuit have awarded in comparable complex cases. Accordingly, the requested fee is reasonable in relation to the Settlement.

6. Public Policy Considerations Support The Requested Fee

"In considering an award of attorney's fees, the public policy of vigorously enforcing the federal securities laws must be considered." *Del Global*, 186 F. Supp. 2d at 373. This is because private actions such as this one serve to further the objective of the federal securities laws to protect investors. "[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 & Rights, Ltd.*, 551 U.S. 308, 313 (2007). 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." *Flag Telecom*, 2010 WL 4537550, at *29. Practically speaking, "[l]awsuits such as this one can only be maintained if competent counsel can be retained to prosecute them. This will occur if courts award reasonable and adequate compensation for such services where successful results are achieved." *City of Providence*, 2014 WL 1883494, at *18.

Here, Lead Counsel invested substantial amounts of time and money vigorously pursuing

allegedly serious wrongdoing by a public enterprise, and they did so on a fully contingent basis. Had Lead Counsel not done so, the Settlement Class would have received no compensation whatsoever. Accordingly, public policy considerations favor Lead Counsel's attorneys' fee request. *See City of Birmingham Ret. and Relief Sys. v. Credit Suisse Grp. AG*, 2020 WL 7413926, at *2 (S.D.N.Y. Dec. 17, 2020) ("Protecting investors from fraudulent or misleading investments serves the public interest, and Lead Counsel's fees should reflect the important goal of 'serv[ing] as an inducement for lawyers to make similar efforts in the future.'") (quoting *Wal-Mart*, 396 F.3d at 96) (alteration in the original).

E. Lead Counsel's Expenses Should Be Reimbursed

"It is well accepted that counsel who create a common fund are entitled to the reimbursement of expenses that they advanced to a class." *Flag Telecom*, 2010 WL 4537550, at *30; *see also In re Indep. Energy Holdings PLC Sec. Litig.*, 302 F. Supp. 2d 180, 183 n.3 (S.D.N.Y. 2003) ("Attorneys may 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' of those clients.").

Here, Lead Counsel incurred at total of $83,935.26 in out-of-pocket litigation expenses. ¶91. The expenses, and a categorization thereof, are attested to in the Wolke Declaration. *Id*. A significant portion of the expenses were for professional services rendered by Lead Plaintiffs' experts, Argentinean attorney and investigator, the mediator, and the remaining expenses are attributable to the costs of legal and factual research, filing fees, the document review platform, document translation, and other expenses incurred in the course of the litigation. ¶¶91-96. These expenses were critical to Lead Plaintiffs' success in achieving the proposed Settlement, are reasonable in amount, and are customary and necessary expenses for a complex securities action. As such, they should be reimbursed. *See Flag Telecom*, 2010 WL 4537550, at *30; *Global Crossing*, 225 F.R.D. at 468 ("The expenses incurred – which include investigative and expert witnesses, filing fees, service of process, travel, legal research and document production and review – are the type for which 'the paying, arms' length market' reimburses attorneys.

For this reason, they are properly chargeable to the Settlement fund.").

F. Lead Plaintiffs Should Be Granted PSLRA Awards

In connection with their request for reimbursement of Litigation Expenses, Lead Counsel also respectfully requests a PSLRA award to Lead Plaintiffs in the aggregate amount of $15,000 (or $7,500 per Lead Plaintiff) for time spent prosecuting the Action. The PSLRA specifically provides that an "award of reasonable costs and expenses (including lost wages) directly relating to the representation of the class" may be made to "any representative party serving on behalf of a class." 15 U.S.C. § 78u-4(a)(4).

Here, each Lead Plaintiff, *inter alia*, reviewed the pleadings and briefs filed in the Action, as well as court orders; regularly communicated with Lead Counsel about the litigation and the strengths and weaknesses of the case; were involved in settlement negotiations; and, after extensive discussions with Lead Counsel, authorized settlement of the case. Ex. 2, ¶8. These are "precisely the types of activities that support awarding reimbursement of expenses to class representatives[]" (*see In re Marsh & McLennan Cos., Inc. Sec. Litig.*, 2009 WL 5178546, at *21 (S.D.N.Y. Dec. 23, 2009)), and the amount requested is consistent with awards in other complex cases.[19] Consequently, Lead Counsel respectfully requests that the Court approve the awards.

IV. CONCLUSION

For the foregoing reasons, Lead Counsel respectfully requests that the Court grant the requested relief.

[19] *See Veeco*, 2007 WL 4115808, at *12 (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); *TAL Educ. Grp.*, 2021 WL 5578665, at *13 (aggregate award of $15,000 to two lead plaintiffs); *Qudian*, 2021 WL 2328437, at *2 (awarding lead plaintiff $25,000, and class representative $12,500); *In re Signet Jewelers Limited Sec. Litig.*, 2020 WL 4196468, at *24 (S.D.N.Y. July 21, 2020) (collecting cases and awarding $25,410 to lead plaintiff).

Dated: September 14, 2023

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PROOF OF SERVICE

I hereby certify that on this 14th day of September, 2023, 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/ Kara M. Wolke
Kara M. Wolke