SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS: COMMERCIAL DIVISION

IN RE ALTICE USA, INC. SECURITIES LITIGATION	)	Master Index No. 711788/2018
	)	Hon. Joseph Risi, J.S.C.

JOINT AFFIRMATION OF WILLIAM C. FREDERICKS AND LAURENCE ROSEN 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 AND SERVICE AWARDS TO PLAINTIFFS

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We, William C. Fredericks and Laurence M. Rosen, attorneys duly admitted to practice before the courts of the State of New York, under penalty of perjury, affirm as follows[1]:

1. I, William C. Fredericks, am a partner at Scott+Scott Attorneys at Law LLP ("Lead State Counsel"), the Court-appointed lead counsel in this action (the "State Action"). I have personal knowledge of the matters set forth herein (excepting those relating solely to the Federal Action), and if called upon as a witness I could and would testify competently thereto.

2. I, Laurence Rosen, am the Managing Attorney of The Rosen Law Firm, P.A. ("Lead Federal Counsel"), which is the lead counsel in *Kupfner v. Altice USA, Inc., et al.*, Case No. 1:18-CV-06601 (E.D.N.Y.) (the "Federal Action"), which (like the State Action in this Court) asserts claims under the federal securities laws on behalf of an identical proposed class. I have personal knowledge of the matters set forth herein (excepting those relating solely to the State Action), and if called upon as a witness I could and would testify competently thereto.

3. We respectfully submit this affirmation in support of Plaintiffs' Motion for Final Approval of Class Action Settlement ("Final Approval Motion"), and Lead Counsel's Motion for an Award of Attorneys' Fees and Litigation Expenses ("Fee and Expense Application").

PRELIMINARY STATEMENT

4. The proposed Settlement, if approved, will resolve all claims brought against all Defendants, in both the State and Federal Actions (the "Actions"), for $4,750,000 in cash, plus Defendants' payment of the first $200,000 in Notice and Administration Costs associated with the Settlement (the "Settlement Consideration"). The Settlement was achieved only after nearly two years of hard-fought litigation, during which Lead State Counsel devoted over 1,500 hours, and

[1] Unless otherwise stated, capitalized terms have the meanings given them in the Stipulation of Settlement dated July 16, 2021, NYSCEF No. 138 (the "Stipulation") or the Memorandum of Law filed concurrently herewith.

Lead Federal Counsel devoted over 400 hours, to investigating, litigating and settling the claims at issue.[2] We respectfully submit that the Settlement represents a good result for the Class given the significant risks of further litigation, and easily passes muster as "fair, reasonable and adequate."

5. Significantly, the proposed Settlement was also reached only after an arm's-length negotiation process under the auspices of a highly experienced mediator, Gregory Lindstrom, Esq, after this Court had dismissed the State Action in July 2020 (but while the Lead Counsel were also continuing to press their claims in the respective Actions through the preparation of separate Motions for Leave to Amend and proposed amended complaints).

6. Plaintiffs also seek approval of the proposed Plan of Allocation (or "POA"). The POA provides that the Net Settlement Fund will be distributed *pro rata* to Settlement Class Members who timely submit valid Proof of Claim forms, in proportion to their Recognized Losses, and was developed by Plaintiffs' damages expert. The POA is consistent with *pro rata* allocation principles that courts routinely approve in securities class actions as fair and reasonable.

7. We also respectfully submit, on behalf all Plaintiffs' Counsel in the Actions, that such counsel have earned an attorneys' fee award equal to one-third (33⅓ %) of the Settlement Consideration.

8. Lead State Counsel diligently pursued this Action in this Court, including by conducting an extensive pre-filing fact investigation, preparing a detailed Complaint, obtaining certain document discovery, and fully briefing Defendants' motion to dismiss. After this Court

[2] Lead State Counsel's time includes the time spent by Jeffrey D. Leibowitz and Scott Fisher of Jaspan Schlesinger LLP ("Jaspan Schlesinger") (plus modest additional time spent by Mr. Leibowitz after he moved to Abrams Fensterman LLP ("Abrams Fensterman ") firm in January 2021) and David Hall of Hedin Hall LLP ("Hedin Hall").

dismissed the State Action, State Lead Counsel then moved promptly for leave to file an amended complaint, and ultimately succeeded in negotiating a stipulation with defendants regarding a schedule for filing an updated and superseding motion to amend and accompanying [proposed] First Amended Complaint. Lead State Counsel also retained a financial expert to prepare an expert opinion to assist them in explaining and pleading in greater detail certain financial economics theory-based foundations for Plaintiffs' related (and relatively novel) legal theories, which this Court had rejected in its dismissal Order.

9. Federal Lead Counsel also pursued their clients' claims with similar diligence, conducting their own separate fact investigation, preparing their own complaints, and thereafter fully briefing Defendants' separate Motion to Dismiss in the Federal Action. Federal Lead Counsel also obtained leave to amend and filed a Second Amended Complaint in that Action.

10. As a result of their tenacity, and despite the State Court's dismissal order (and its negative implications for the Federal Action), Lead Counsel in their respective Actions pressed forward, and were ultimately able to work together to achieve the proposed global Settlement for the Class's benefit.

11. After litigating this high-risk case for more than two years on a ***fully*** contingent fee basis, Lead Counsel seek an attorneys' fee award equal to 33⅓% of the Settlement Consideration (and of the interest earned thereon from the date the Settlement was funded). We respectfully submit that the requested 33⅓% fee is well within the range of percentage-based fees routinely approved by courts in other securities cases that have settled for similar amounts and is fully supported by the relevant fee-award factors applied by New York courts. The reasonableness of the requested fee (which would equal roughly $1,650,000, assuming that the full amount of Defendants' $200,000 contribution to Notice and Administration Costs for the Class's benefit is

ultimately paid as part of the Settlement Consideration) is also confirmed by a "lodestar cross-check," as $1,650,000 (as further discussed below) represents an 8% discount on Lead Counsel's combined lodestar of $1,788,059.30 in this matter.

12. As also discussed below, we respectfully submit that Plaintiffs' Counsel's combined request for reimbursement of litigation expenses totaling $64,748.85 is fair and reasonable, and that each Plaintiff merits a service award of $2,000 for their service to the Class.

13. As stated in the accompanying Affidavit of Kari Schmidt of the Court-appointed Analytics LLC claims administration firm ("Schmidt Aff."), 14,312 copies of the Court-approved "Notice Packet" have been mailed to all potential Class Members who could be identified with reasonable effort. Summary Notice was also disseminated by Internet via *PR Newswire*, and by publication in *The Wall Street Journal*, which referred Class members to copies of the full Notice Packet and other information available at www.AlticeUSAsettlement.com. The Notice Packet advised putative Class Members of the February 3, 2022 deadline for either (a) objecting to the Settlement, POA, and/or Fee and Expense Application, or (b) requesting exclusion ("opting-out") from the Class. ***To date, no objections or "opt-out" requests have been received***.

BACKGROUND

I. THE ALLEGATIONS

14. AlticeUSA (the "Company") was spun-off as a separate company in 2015 by its parent, Altice Europe N.V. ("AlticeNV"), a multi-billion-dollar European-based telecommunications company. AlticeNV intended AlticeUSA to be the broader "Altice Group's" vehicle for expanding into U.S. telecom markets. Complaint, NYSCEF No. 58, ¶56.

15. On June 27, 2017, Defendants registered 71,724,139 shares of AlticeUSA common stock to be sold in AlticeUSA's IPO (the "IPO") pursuant to the Offering Materials. *Id.*, ¶¶67-68.

16. The State Action alleges that Defendants violated the Securities Act of 1933 by conducting the IPO pursuant to defective Offering Materials that contained material misrepresentations and omissions concerning AlticeUSA's implementation of the "Altice Way," and certain operational problems and adverse business trends being experienced at certain Altice affiliates in Europe.

17. The Federal Action asserts the same Securities Act claims, plus certain additional claims on behalf of the same putative class under additional federal securities law provisions based on essentially the same misstatements and omissions at issue in the State Action, as well as substantially similar misstatements and omissions also made by Defendants during the Class Period.

18. Both Actions allege that Defendants' misstatements and omissions artificially inflated the price of AlticeUSA shares during the Class Period. Defendants deny all allegations of wrongdoing and liability.

II. PROCEDURAL HISTORY – STATE ACTION

19. On July 31, 2018, Plaintiff Andrew O' Neill filed the first of several complaints that were consolidated by this Court's Order of March 22, 2019.[3] That Order also appointed the three State Lead Plaintiffs as "lead plaintiffs," and appointed Scott+Scott as "lead counsel," in the resulting consolidated State Action.

20. On June 27, 2019, State Plaintiffs filed their Consolidated Complaint on behalf of a putative class of all those who purchased Altice common stock pursuant or traceable to IPO Offering Materials. In connection with preparing their initial and subsequent Consolidated

[3] These cases, all originally filed in this Court except as otherwise indicated, originally bore docket numbers 709097/2018; 711788/2018; 610261/2018 (Sup. Ct. Nassau Cty); 610258/2018 (Sup. Ct. Nassau Cty); No. 712803/2018; and No. 716650/2018.

Complaint, State Lead Counsel conducted an extensive factual investigation, which included collecting, reviewing, and analyzing (a) AlticeUSA's voluminous IPO Offering Materials; (b) AlticeUSA's extensive post-IPO SEC filings; (c) AlticeUSA's press releases and transcripts of its investor conference calls; and (d) numerous analyst reports, news articles, and other publicly available materials concerning AlticeUSA, its parent Altice Europe N.V., the broader group of "Altice Group" companies wordwide, and the industry within which the Altice Group operated.

A. Defendants' Motion to Stay

21. On July 2, 2019, Defendants moved to stay the State Action in favor of the Federal Action pending in the Eastern District of New York (the "Federal Court"). NYSCEF No. 64. On July 8, 2019, State Plaintiffs opposed Defendants' stay motion, arguing that this State Action was the first filed; that Defendants would suffer no prejudice if their requested stay were denied because they could seek a stay of the Securities Act claims in the Federal Action under the *Colorado River* doctrine; and that Defendants were ultimately engaged in improper forum shopping. NYSCEF No. 70. Thereafter, on June 10, 2020, this Court denied Defendants' stay motion. NYSCEF No. 117.

B. Discovery

22. On July 19, 2019, Plaintiffs filed their First Request for Production of Documents (the "Requests") directed to AlticeUSA and the Individual Defendants. NYSCEF No. 95. AlticeUSA thereafter served objections in August 2019 to producing ***any*** documents, asserting that the "discovery stay" provisions of the federal Private Securities Litigation Reform Act of 1995 (the "PSLRA") applied to securities actions brought in state courts (and not just federal courts), notwithstanding that state procedural rules generally control in state court proceedings.

23. Whether the PSLRA discovery stay applies in state courts is a complex issue as to which courts across the country (and New York) have disagreed. When the parties were unable to resolve their dispute, in September 2019, Lead State Counsel filed a letter-brief with the Court seeking to compel production. NYSCEF No. 94.

24. After filing their letter-brief, the Lead State Counsel ultimately negotiated a successful compromise (reflected in a detailed stipulation) whereby AlticeUSA agreed to produce certain categories of documents, while State Plaintiffs agreed to suspend their efforts to compel production of various other categories until after resolution of Defendants' Motion to Dismiss. NYSCEF No. 114. Defendants ultimately produced 1,261 documents to State Lead Counsel for their review.

C. Defendants' Motion to Dismiss

25. Meanwhile, in late July 2019, Defendants filed their joint Motion to Dismiss the State Action, together with accompanying papers in support (the "Motion to Dismiss"). Defendants argued, *inter alia*, that (a) Plaintiffs' claims were subject to CPLR §3016(b)'s heightened pleading standards; (b) Plaintiffs failed to adequately allege falsity; (c) certain statements were immaterial and inactionable statements of "corporate optimism"; (d) Plaintiffs failed to adequately allege that the alleged adverse trends had materialized as of the IPO, or that Defendants were aware of them; and (e) the Defendants in any event had no duty to disclose information about its ***parent company's*** problematic European operations.

26. Lead State Counsel thereafter prepared comprehensive papers in opposition to Defendants' Motion to Dismiss.

27. On June 26, 2020, this Court issued its Decision and Order granting Defendants' Motion ("MTD Order"), NYSCEF No. 119, holding, *inter alia*, that (1) certain statements at issue

were inactionable "puffery" or mere statements of corporate optimism; (2) State Plaintiffs failed to adequately allege that any deterioration in the Altice Group's European operations were both already occurring and known as of the IPO, and that accordingly, any allegedly actionable misstatements and omissions on such matters were immunized from liability by the "opinion doctrine" and/or adequate "risk factor" disclosures; and (3) Defendants also had no duty to disclose any European operational problems because they involved AlticeUSA's parent corporation (AlticeNV) and AlticeNV's European subsidiaries, and not problems at AlticeUSA.

D. State Plaintiffs Move for Leave to Amend

28. Promptly after this Court issued its MTD Order, State Plaintiffs moved under CPLR §3025(b) to modify that Order to allow them to leave to amend. NYSCEF No. 120. On August 13, 2020, after weeks of negotiations, Lead State Counsel successfully negotiated a stipulation allowing them to file a superseding motion for leave to amend (the "Superseding Motion"), together with a [proposed] First Amended Consolidated Complaint. NYSCEF No. 126.

29. In connection with their Superseding Motion, Lead State Counsel retained Prof. Vladimir Atanasov, Ph.D., a distinguished tenured business school professor, to opine on one deficiency identified by this Court, namely, inadequate support for Plaintiffs' argument that adverse operational trends affecting a parent corporation (*e.g.*, AlticeNV) can also adversely affect the value of that parent's publicly-traded (but still largely owned) subsidiaries (*e.g.*, AlticeUSA), and that there was therefore, reasonable basis for Plaintiffs to allege that this dynamic was, predictably, also at play here.

30. On September 4, 2020, State Plaintiffs filed their Superseding Motion and accompanying [Proposed] First Amended Consolidated Complaint (NYSCEF No. 128), together with Prof. Antanasov's supporting expert affidavit (NYSCEF No. 132), setting forth why State

Plaintiffs believed that their proposed amendments cured at least some of the inadequacies identified in this Court's MTD Order.

31. Defendants opposed State Plaintiffs' Superseding Motion to Amend in October 2020 (NYSCEF No. 133), and Lead State Counsel prepared and filed Reply papers shortly thereafter. NYSCEF No. 134. A decision on Plaintiffs' Superseding Motion was pending when the parties agreed to settle.

III. PROCEDURAL HISTORY — FEDERAL ACTION

32. The Federal Action was filed in the "Federal Court" on November 19, 2018 (ECF No. 1).

33. On January 18, 2019, Andrea Hadzimichalis moved to be appointed lead plaintiff and for the Rosen Firm to be appointed lead counsel. In March 2019, the Federal Court granted that motion. ECF No. 44.

34. Federal Lead Plaintiff, together with additional plaintiffs, Stephanie Garcia, Franck Chauvin, and Garfield Anderson, filed an amended complaint on May 10, 2019. ECF No. 47.

35. Prior to filing their complaints, Federal Lead Counsel separately conducted its own independent investigation, which also included collecting and analyzing AlticeUSA's voluminous IPO Offering Materials, extensive post-IPO SEC filings, press releases and conference call transcripts – as well as reviewing numerous analyst reports, news articles, and other publicly available materials concerning AlticeUSA, AlticeNV, AlticeNV's European subsidiaries, and the industry within which the Altice Group operated. Lead Federal Counsel also retained a private investigator to interview former Altice employees to develop additional facts to support their clients' claims.

36. Defendants moved to dismiss the Federal Plaintiffs' amended complaint in November 2019. Plaintiffs thereafter prepared thorough papers in opposition.

37. Because of the PSLRA discovery stay that applied in the Federal Action, Federal Plaintiffs (unlike the State Plaintiffs) were unable to commence formal discovery prior to resolution of Defendants' motion to dismiss.

38. After the federal Motion to Dismiss had been pending for several months without decision, additional relevant information came to Federal Lead Counsel's attention, causing them to also seek leave to further amend their operative complaint. In response, on September 18, 2020, the Federal Court dismissed the amended complaint and granted leave to amend.

39. Federal Plaintiffs thereafter prepared and filed their Second Amended Complaint, on October 7, 2020. ECF No. 72.

IV. MEDIATION AND SETTLEMENT NEGOTIATIONS

40. In the spring of 2020, while a decision on Defendants' Motion to Dismiss in the State Action was still pending, State Plaintiffs and Defendants agreed to explore the possibility of commencing a mediation process to see if a settlement might be reached. State Plaintiffs and Defendants ultimately agreed (a) to retain Gregory Lindstrom, Esq. (the "Mediator"), a highly experienced former litigator with significant expertise in mediating complex actions, including securities class actions; and (b) to also invite Federal Plaintiffs to participate in the mediation process to see if a "global" settlement could be reached. All parties initially agreed to participate in a mediation by Zoom on July 8, 2020 under the Mediator's auspices.

41. Lead Counsel in both Actions were actively engaged in preparing and finalizing detailed pre-mediation statements for the Mediator, and were close to finalizing them, when this Court issued its MTD Order dismissing the State Action on June 26, 2020.

42. Shortly after this Court issued its MTD Order, Defendants cancelled the scheduled mediation.

43. As discussed above, however, State Lead Counsel did not give up on their case following this Court's dismissal of the State Action, but instead (a) took prompt action to file an immediate Motion to Amend (and to prevent Defendants from seeking entry of a Judgment against State Plaintiffs); (b) took steps to identify ways in which it might better support some of its original allegations, which steps included, *inter alia*, retaining Prof. Antanasov; and (c) ultimately prepared their [proposed] First Amended Complaint, which they filed together with their Superseding Motion for leave to amend. Nor did the Federal Lead Counsel give up on their case, as they also took steps during the summer of 2020 to strengthen their claims by obtaining leave to file, and ultimately filing, a Second Amended Complaint in the Federal Action.

44. Against this backdrop of efforts to file further amended complaints in both Actions, all parties, with the assistance and participation of Mediator Lindstrom, resumed efforts to explore settlement. Settlement discussions, conducted primarily through the Mediator, took place largely in the first half of the Fall of 2020. At all times, these negotiations were conducted on an arm's length basis.

45. By November 2020, however, the Parties appeared to have reached an impasse in their negotiations. In early November, Mediator Lindstrom, who by this time was fully familiar with both side's positions and their relative strengths and weaknesses, then made a "mediator's proposal" to settle all claims at issue for $4.75 million in cash, plus payment of Notice and Administration Costs of up to $200,000. All parties ultimately agreed to a "settlement in principle" based on those monetary terms.

46. Nonetheless, reaching agreement on various non-monetary terms proved difficult, requiring significant additional negotiations. Accordingly, the Parties were not able to negotiate the final terms of a written Memorandum of Understanding until February 19, 2021, and did not

reach final agreement on all the terms of the Stipulation and related settlement documents, until July 16, 2021. State Lead Counsel, in cooperation with Federal Lead Counsel, thereafter, prepared the requisite preliminary approval papers (including the proposed program for giving notice of the proposed settlement to the Settlement Class (the "Notice Program")), which this Court approved. NYSCEF No. 141. Thereafter, in accordance with the Stipulation, Defendant AlticeUSA caused $4.750 million to be deposited into an escrow account that Lead Counsel had established for the benefit of the Class.

THE PROPOSED SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE AND WARRANTS FINAL APPROVAL

47. In sum, under the terms of the proposed Settlement, the members of the Settlement Class (consisting of all persons or entities who purchased shares of Altice common stock between June 22, 2017, the date of the IPO, and November 2, 2017, inclusive, and were damaged thereby) will settle and release all claims at issue in both Actions in exchange for Defendants' payment of the Settlement Consideration.

48. A class action settlement should be approved if the court finds it to be fair, reasonable, and adequate. *See, e.g.*, *Hosue v. Calypso St. Barth, Inc.*, No. 160400/2015, 2017 WL 4011213, at *2 (Sup. Ct., NY Cty. Sept. 12, 2017); NEWBERG ON CLASS ACTIONS §13:48 (5th ed. 2011, December 2019 update). As set forth below, we respectfully submit that the proposed Settlement easily meets this standard.

A. The Settlement Was Reached By Informed and Experienced Counsel Following a Thorough Pre-Filing Investigation, Initial Document Discovery, and an Arm's-Length Mediation Under an Independent Mediator's Auspices

49. As a threshold matter, in evaluating whether a settlement is fair, courts often consider whether it was the product of arms'-length negotiation, including whether a neutral

mediator was involved or, by contrast, whether, plaintiffs appear to have rushed into settlement prematurely.

50. Here, the possibility of mediating to try to settle this case did not begin until almost two years after the first Action was filed, and after all parties had exchanged their positions on each other's legal theories, claims, and defenses in extensive briefing on Defendants' motions to dismiss, and after the State Plaintiffs had been able to obtain and review at least a portion of the documents that they had requested. Moreover, all parties obtained additional information regarding the strengths and weaknesses of their respective positions when this Court entered its MTD Order granting Defendants' Motion to Dismiss the State Action. At the same time, this was patently not a case where Plaintiffs "threw in the towel" after receiving this Court's MTD Order; to the contrary, counsel in both actions responded to this Court's dismissal order by immediately taking steps to amend their then-operative complaints to address the deficiencies identified by this Court's MTD Order.

51. In addition, the global Settlement here was only reached after extensive negotiations between experienced counsel that were conducted under the auspices of a highly experienced mediator of complex class actions, Mr. Lindstrom. As discussed above, those negotiations were conducted at arm's-length throughout, and ultimately resulted in a settlement that was based on, and fully consistent with, Mr. Lindstrom's "mediator's proposal."

B. The Settlement Should Be Approved Based Upon Other Relevant Approval Factors

52. Courts in New York analyze proposed class action settlements based on several relevant factors, including: (1) the likelihood of success at trial; (2) the range of possible recovery; (3) the complexity, expense, and duration of litigation; (4) the substance and amount of opposition to the settlement; and (5) the stage of proceedings at which the settlement was achieved. *In re Colt*

Indus. S'holder Litig., 155 A.D.2d 154, 160 (1st Dept. 1990); *see also Gordon v. Verizon Commc'ns, Inc.*, 148 A.D.3d 146, 162 (1st Dept. 2017) (listing nearly identical factors). These factors are briefly discussed below.

C. Likelihood of Success at Trial and Litigation Risk

53. While Lead Counsel believe that the claims asserted have merit, they also recognize that both Actions presented very substantial risks in proving both liability and damages.

54. *First*, at the time the Settlement was reached, this Court had fully dismissed the State Action, finding, *inter alia*, that (1) certain statements contained in the Offering Materials were ***inactionable*** statements of corporate optimism and puffery; (2) State Plaintiffs had failed to adequately allege that certain alleged deterioration in the Altice Group's European operations had both already occurred and was known to Defendants at the time of the IPO; (3) absent such stronger allegations, Defendants' alleged misstatements were protected by the "opinion doctrine" and/or by Defendants' "risk factor" disclosures and other cautionary language that Defendants provided to investors; and (4) Defendants, in any event, were under no obligation to make any disclosures regarding the non-public problems being experienced by its parent corporation (AlticeNV) in Europe because, *inter alia*, adverse trends occurring at a parent corporation do not typically affect the business and financial position of its separate, publicly traded subsidiaries. NYSCEF No. 119.

55. Although State Plaintiffs filed a Motion to Amend (together with a [Proposed] First Amended Complaint) after they received the Court's dismissal Order and believed that their proposed amendment (supported by Prof. Antanasov's expert affidavit), cured the deficiencies identified by the Court, Defendants still had strong arguments for opposing State Plaintiffs' Motion to Amend. Defendants argued, among other things, that (1) State Plaintiffs could not meet the burden required to modify or set aside an Order under CPLR §5015; (2) State Plaintiffs' amendments were futile because they relied on general economic theories about the relationships

between parent and subsidiaries, and in any event, had no legal duty to disclose such problems as they involved a separate company (AlticeNV); and (3) the [Proposed] First Amended Complaint did not include any new information to establish that the adverse events and trends hurting AlticeNV's business in Europe were already occurring, or known to Defendants as of the IPO. State Plaintiffs believed their Motion to Amend had merit but recognized that they faced a significant risk that the Court would still find that their [Proposed] First Amended Complaint was insufficient to withstand dismissal.

56. Moreover, at the time of the Settlement, the Federal Action had also not yet survived a motion to dismiss. In addition to being subject to the same arguments that Defendants had successfully asserted in the State Action, Defendants had additional colorable arguments that the Securities Act claims in the Federal Action were time-barred, as that action was filed more than a year after a key alleged corrective disclosure (which arguably triggered the short one-year statute of limitations under that statute). And although the Federal Action (unlike the State Action) also asserted claims under the Exchange Act, those claims had to meet a significantly higher pleading burden to pass muster, namely, the pleading of factual allegations sufficient to support a "strong inference" of scienter. Further, because of the presence of Exchange Act claims in the Federal Action, the Federal Plaintiffs risked a finding by the Federal Court that even their Securities Act claims "sounded in fraud" – thus also exposing those claims to a heightened Federal Rule 9(b) pleading burden. *See, e.g.*, *Rombach v. Chang*, 355 F.3d 164, 170 (2d Cir. 2004). Given this Court's adverse findings even under the CPLR's much lower notice pleading standards, there was obviously very substantial risk that the Federal Court would also dismiss all claims in the Federal Action under higher federal pleading standards.

57. *Second*, even if this Court granted State Plaintiffs' Superseding Motion to Amend, and both Courts denied renewed motions to dismiss by Defendants in the respective Actions, Lead Counsel recognized that Plaintiffs' claims still relied heavily on a relatively novel legal theory, and that proving the necessary facts (even if their legal theory were sustained) was far from certain, and that there was thus certainly no guarantee that either Action would survive summary judgment. (Indeed, with respect to the State Action, State Plaintiffs also faced the additional risk that their claims, even if they survived a renewed motion to dismiss, might well be dismissed on interlocutory appeal to the Second Department).

58. *Third*, even if these complex securities cases survived through summary judgment, cases of this type often come down to "battles of the experts." This case would have been no exception, as it would have likely involved dueling testimony by industry experts regarding the interdependence between AlticeUSA and its other subsidiaries and parent company and the impact that such a relationship had on the share price of AlticeUSA. Here, however, Defendants would have again likely had distinct advantages, given the relative novelty of Plaintiffs' main liability theories.

59. As further discussed below, causation-related issues in both Actions would also have been hotly contested.

60. *Finally*, even if the State and Federal Plaintiffs' respective amended pleadings survived dismissal, and even if they survived Defendants' inevitable summary judgment motions, and then went on to obtain a favorable jury verdict, there could be no assurance that such a verdict would survive the inevitable post-trial motions and appeals that Defendants would file.

61. In sum, this case plainly presented numerous, and significant, litigation risks.

D. Range of Recoverable Damages

62. The proposed $4,950,000 in total Settlement Consideration also represents a commendable recovery compared to the amount of damages that Plaintiffs could have reasonably been expected to recover even if Plaintiffs had prevailed on liability.

63. In this regard, we note that, in addition to facing risks on liability, Plaintiffs also faced serious "negative-causation" and "loss causation" defenses. For example, when the "truth" about the lack of full implementation of the "Altice Way" in Europe was disclosed, the price of AlticeUSA shares actually ***increased*** by 76 cents. Indeed, there is little doubt that Defendants would find experts to testify that ***all*** declines in the stock price of AlticeUSA during the Class Period were caused by factors ***other than*** the matters that Defendants are accused of failing to adequately disclose. Accordingly, and particularly given Defendants' merits arguments which this Court had already largely credited, both State and Federal Lead Counsel strongly believe that the proposed total Settlement Consideration – which was itself proposed by the Mediator in his "mediator's proposal" – is well-within the "range of reasonableness" meriting approval.

E. Complexity and Expense of the Litigation

64. We respectfully submit that securities class action litigation is inherently difficult and complex, and that this matter – based largely on relatively novel liability theories – is assuredly no exception. Similarly, we submit that, although these Actions have already involved significant expenditures of time and money, taking them through summary judgment, trial, and appeals (even if they survived renewed dismissal motions) would multiply these existing expenditures several-fold.

F. Substance and Extent of Opposition to the Settlement

65. As set forth in the accompanying Affidavit of Kari Schmidt (of the Court-appointed claims administration firm, Analytics LLC) ("Schmidt Aff."), to date, no objections to, or opt-outs

from, the Settlement or any aspects thereof have been received. Should any be received, Lead Counsel will address them on reply.

G. Stage of Proceedings at Which Settlement Was Achieved

66. As set forth herein, the Settlement was only reached after the parties had fully briefed Defendants' motion to dismiss in the respective Actions, the State Plaintiffs had commenced document discovery, and this Court had dismissed the State Action – and after Lead Counsel in both Actions had taken affirmative steps following this Court's dismissal order to try to bolster their factual allegations and legal theories. In addition, all sides had the opportunity to further flesh out the respective strengths and weaknesses of their claims and defenses during the mediation process under Mr. Lindstrom's auspices. Accordingly, we respectfully submit that the Settlement was reached at a time when all sides (and the Mediator) had developed a firm understanding of the legal and factual strengths and weaknesses of the claims and defenses asserted.

67. For the foregoing reasons and also based on our own combined experience over many decades litigating and settling securities class actions, we respectfully submit that the proposed Settlement is fair, reasonable, and adequate, and in the Class's best interests.

THE PLAN OF ALLOCATION IS FAIR, AND REASONABLE

68. Lead Counsel developed the POA here in close consultation with a damages expert, using allocation methodologies routinely applied in securities cases of this type. Specifically, the POA is based on the decline in value of AlticeUSA shares that occurred following Defendants' alleged November 3, 2017 corrective disclosure (which all agree ended the Class Period in both Actions, and which Plaintiffs allege reduced the amount of artificial inflation in AlticeUSA's stock price that the alleged misstatements and omissions at issue had allegedly caused). The proposed

POA will therefore result in a fair and equitable distribution of the Net Settlement Fund and should be approved.

69. The POA was set forth in the Notice distributed to all Settlement Class Members. Schmidt Aff., Ex. A, Notice at 9. To date, no objections to the POA have been filed.

LEAD COUNSEL'S REQUEST FOR AN AWARD OF ATTORNEYS' FEES

70. As set forth in Plaintiffs' accompanying brief, New York courts have long recognized that attorneys who represent a class and achieve a benefit for class members are entitled to compensation for their services, and that attorneys who obtain a recovery for a class in the form of a common fund are entitled to an award of fees and expenses from that fund. Here, Lead Counsel seek an award of 33⅓% of the Settlement Consideration for the more than 2,300 hours of total time, with a total lodestar value of more than $1,700,000, that they devoted to this Action.

71. The various factors relevant to assessing the fairness and reasonableness of a proposed fee (enumerated *in Fiala v. Metro. Life Ins. Co.*, 899 N.Y.S. 2d 531, 540 (Sup. Ct. N.Y. Cty. 2010)), are set forth in Plaintiffs' accompanying brief. We summarize below the factual predicates relevant to those factors, organized using largely the same "grouped" category headings as used in discussing the *Colt* factors above to avoid unnecessary duplication.

72. **Risks of Litigation**. For the same reasons set forth at ¶¶53-61 above, we respectfully submit that both Actions involved significant litigation risk on both merits and damages issues. Indeed, this Court had already dismissed the State Action at the time the Settlement was reached. Moreover, the risks undertaken by Lead Counsel in both Actions were heightened by the fact that they undertook their respective representations on a ***fully*** contingent basis, with no assurance they would receive any compensation for their substantial investments of time and money in these Actions.

73. **Presence or Absence of Prior Judgment/Desirability of the Case**. The State Action and the Federal Action were the only securities cases the relevant claims that were pending as of the Settlement. Moreover, there were no parallel government regulatory actions here that Lead Counsel could "piggy-back" on. Lead Counsel were thus required to develop relevant facts and legal theories on their own to obtain a recovery for the Settlement Class.

74. **Lead Counsel's Experience and Expertise**. We respectfully submit that each of our respective firms is highly skilled and experienced in the challenging field of securities litigation. Should the Court require additional information about either Lead Counsel firm, including the experience of the attorneys primarily involved in litigating this matter and their success in litigating other securities class actions, we respectfully refer the Court to Scott+Scott's previously submitted firm resume in this action (*see* NYSCEF No.33), and to the extensive information available on the Rosen Firm at its website, www.Rosenlegal.com.

75. **Magnitude and Complexity of the Litigation**. For the reasons set forth at ¶64 above, it is respectfully submitted that securities class actions are typically highly complex, and that these Actions were no exception.

76. **Results Achieved**. For the reasons set forth at ¶¶62,63 above, it is respectfully submitted that Lead Counsel in the respective Actions achieved a commendably good result for the benefit of the common Class, in the face of very substantial litigation risk.

77. **Work Performed and Lodestar Crosscheck**. In the aggregate, the State and Federal Lead Counsel, together with Messrs. Lebowitz and Fisher of Jaspan Schlesinger and Mr. Hall of Hedin Hall in the State Action, devoted 2343.81 hours (after eliminating certain time entries) to the investigation, litigation, and ultimate resolution of these related Actions over the course of roughly two years, resulting in a total lodestar of $1,788,059.30 based on their respective

current billing rates as accepted by courts in other similarly complex contingent cases. Lead Counsel's extensive efforts in prosecuting the respective Action is summarized at *supra* ¶¶19-39.

78. Lead Counsel's aggregate request for an award of one-third (33⅓%) of the Settlement Consideration equates to roughly $1,650,000 (assuming that, in addition to the $4.75 million already paid by Defendants into escrow, the full amount of Defendants' maximum $200,000 contribution to Notice and Administration costs is paid for the benefit of the Class). The requested fee requests encompass all work that has been performed by both Lead Counsel firms, and by all other additional Plaintiffs' Counsel, in both this Action and in the Federal Action (as well as any additional spent in future on any settlement administration matters). We respectfully submit that a one-third percentage-based fee is reasonable and appropriate in light of both (a) the result obtained in a high-risk case that was litigated throughout on a fully contingent basis, and (b) the discount that the requested fee represents compared to the lodestar value of counsel's time.

79. Indeed, here a "lodestar cross-check" on the requested fee award represents a discount on counsel's time. To perform a lodestar "cross-check," courts consider the total value of the legal services provided, based on (a) the number of hours billed by each professional or paraprofessional timekeeper, multiplied by (b) that timekeeper's reasonable hourly rate. As stated in their respective time and expense affidavits and summarized in the chart below, the time spent by the Plaintiffs firms listed below that were involved in this Action (through November 8, 2021, the date of entry of this Court's Preliminary Approval Order) results in a total combined lodestar of $1,788,059.30:

Law Firm	Hours Billed	Lodestar
Scott+Scott	1545.50	$1,195,382.00
Rosen Firm	405.20	$323,797.50
Jasplan Schlesinger	235.00	$158,202.80
Abrams Fensterman	14.61	$10,277
Hedin Hall	143.50	$100,450.00
Total	2343.81	$1,788,059.30

See the respective Affirmations of William C. Fredericks (Fredericks Aff."), Laurence Rosen ("Rosen Aff."), Joint Jeffrey D. Lebowitz and Scott B. Fisher ("Leibowitz/Fisher Aff.") and David Hall ("Hall Aff."), filed concurrently herewith.[4] The resulting ratio between the requested 33⅓% fee ($1.650 million) and Class Counsel's total lodestar ($1,788,059.30) is 0.92. Ratios of less than 1.0, as here, are referred to as "negative multipliers." Alternatively, this "negative lodestar" can be viewed as an 8% ***discount*** on the total value of Plaintiffs' Counsel's time.

80. Given that multipliers between two and five are commonly awarded in complex class actions with substantial contingency risks (see Plaintiffs' accompanying brief), we respectfully submit that the "negative multiplier" that results from the requested one-third fee here strongly confirms the reasonableness of that fee here.

81. Accordingly, and for all of the additional reasons set forth herein and in Lead Counsel's accompanying brief in support of their Fee and Expense Application, we respectfully submit that the requested 33⅓% fee award is fair, reasonable, and supported by all relevant *Fiala* factors, and should be approved in full.

[4] This table does not include time summaries for certain additional counsel firms that contributed in significantly smaller ways to the litigation of the Actions. Of course, if their additional time were included, it would only increase the amount of the discount on overall attorney "lodestar" time.

THE REQUESTED EXPENSES ARE FAIR AND REASONABLE

82. Lead Counsel also seek reimbursement of $64,748.85 in litigation expenses for expenses incurred in prosecuting the Action, as itemized in the accompanying Fredericks, Rosen, and Leibowitz/Fisher Affirmations.

83. We respectfully submit that the requested expenses are reasonable and were necessary for the successful prosecution of this Litigation, and reflect typical expenditures incurred in the course of litigation, such as the costs of expert-consultant fees, investigator fees, computerized legal research, and mediation fees.

84. The Notice informed potential Settlement Class Members that Lead Counsel would apply for reimbursement of Litigation Expenses of up to $95,000, and to date there have been no objections to that amount – even though that figure is higher than the ***actual*** amount of $64,748.85 in expenses being sought. Should there be any objections to Lead Counsel's expense reimbursement request, we will address them in reply papers.

PLAINTIFFS' REQUESTED SERVICE AWARDS ARE REASONABLE

85. Plaintiffs have requested a modest service award of $2,000 each for their time and effort prosecuting the Litigation on behalf of the Settlement Class.

86. As discussed in each of the Plaintiffs' respective accompanying affidavits, each has sought to fulfilled their fiduciary obligations to the Settlement Class by taking the time to become involved in the Actions, including by retaining experienced counsel, reviewing pleadings, and consulting with their counsel on litigation and settlement matters. We respectfully submit that each Plaintiff merits their requested $2,000 award, and note that in our experience such relatively modest service awards in comparable litigations are typically approved.

87. The Notice advised that each Plaintiff would request a service award of $2,000. To date, no objections have been received.

THE PROPOSED SETTLEMENT CLASS SHOULD BE FINALLY CERTIFIED

88. The Court preliminarily certified the Class in its Preliminary Approval Order, NYSCEF No. 141, ¶6. There has been no change in the facts that amply supported this Court's earlier findings that all necessary certification requirements are met here.

CONCLUSION

89. For the reasons set forth above and in the accompanying papers, the Court should (a) approve the proposed Settlement and POA as fair, adequate, and reasonable; (b) grant Lead Counsel's application for an award of attorneys' fees equal to 33⅓% of the Settlement Consideration, plus reimbursement of $64,748.85 in litigation expenses; and (c) approve service awards of $2,000 to each Named Plaintiff.

We each affirm under penalty of perjury under the laws of the State of New York that the foregoing, subject to the limitations set forth in paragraphs one and two above, is true and correct to the best of our knowledge.

Executed this 20th day of January, 2022, at New York, New York

William C. Fredericks

Laurence Rosen

Laurence M. Rosen

PRINTING SPECIFICATIONS STATEMENT

1. Pursuant to 22 N.Y.C.R.R. §202.70(g), Rule 17, the undersigned counsel certifies that the foregoing affirmation was prepared on a computer using Microsoft Word. A proportionally spaced typeface was used as follows:

Name of Typeface: Times New Roman
Point Size: 12
Line Spacing: Double

2. The total number of words in the affirmation, inclusive of point headings and footnotes and exclusive of the caption, signature block, and this Certification, is 6,829 words.

DATED: January 20, 2021

Respectfully submitted,

SCOTT+SCOTT ATTORNEYS AT LAW LLP

/s/ William C. Fredericks

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