UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

FUNICULAR FUNDS, LP, individually and on behalf of all others similarly situated,

Plaintiff,

v.

PIONEER MERGER CORP., PIONEER MERGER SPONSOR LLC, JONATHAN CHRISTODORO, RICK GERSON, OSCAR SALAZAR, RYAN KHOURY, SCOTT CARPENTER, MATTHEW COREY, MITCHELL CAPLAN, and TODD DAVIS,

Defendants.

Civil Action No. 22-10986-JSR

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION FOR FINAL APPROVAL OF SETTLEMENT AND PLAN OF ALLOCATION

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PRELIMINARY STATEMENT

Lead Plaintiff Funicular Funds ("Lead Plaintiff" or "Funicular") respectfully submits this motion for final approval of the proposed settlement (the "Settlement") of the above-captioned shareholder class action (the "Action") brought on behalf of a Class (as defined below) of former holders of Class A Public Shares of Pioneer Merger Corp. ("Pioneer" or the "SPAC") pursuant to Rule 23 of the Federal Rules of Civil Procedure. The Settlement resolves all claims asserted against the Defendants[1] in the Action. The terms of the Settlement, which were preliminarily approved by the Court on March 14, 2024, are set forth in the Stipulation and Agreement of Settlement, Compromise, and Release, dated February 8, 2024 (the "Settlement Agreement") (ECF 81-1).

The Settlement provides a substantial and immediate benefit to the Class: namely, a cash payment of $13,000,000 to the Class, as well a contingent additional amount consisting of 80% of any proceeds received from the Defendants' Side A Policy (defined below), the aggregate of which will be distributed *pro rata* to all Class A stockholders at the time of the SPAC's redemption. No objections to the Settlement have been submitted to date, and this motion is supported by absent Class members who have contacted Lead Plaintiff. The Settlement resulted from rigorous and contentious litigation and arm's-length negotiations, and should be approved by the Court as fair, reasonable, and adequate.

BACKGROUND

The Settlement resolves class action claims for breach of contract and declaratory judgment arising out of the December 15, 2022 announcement that Pioneer would redeem all outstanding

[1]Defendants include Pioneer, Pioneer Merger Sponsor LLC ("Sponsor"), and Jonathan Christodoro, Rick Gerson, Oscar Salazar, Ryan Khoury, Scott Carpenter, Matthew Corey, Mitchell Caplan, and Todd Davis (collectively, the "Individual Defendants," and together with the Sponsor, the "Sponsor Defendants").

Class A shares without distributing any portion of a $32.5 million Termination Fee that Pioneer received after a collapsed business combination with Acorns Grow, Inc. ("Acorns"). ¶¶ 72-74.[2] Defendants intended, instead, to distribute the entirety of the Termination Fee to themselves as Class B stockholders after the redemption of all Class A Shares.[3] ¶ 16. On December 30, 2022, Lead Plaintiff alleged that Defendants' actions breached their agreement with the SPAC not to siphon its assets (the "Sponsor Agreement"), which stated expressly that Defendants disclaimed all interest in "any . . . asset" of the SPAC. ¶¶ 93-109.

A. The Litigation

Lead Plaintiff's initial complaint alleged claims for breach of contract, breach of fiduciary duty, declaratory judgment, and unjust enrichment, which it amended on January 20, 2023. To preserve the SPAC's assets and prevent redemption of the Class A shares as a matter of Cayman Islands law, Lead Plaintiff also filed a petition for the winding up of the SPAC in the Grand Court of the Cayman Islands (the "Cayman Court"). On May 22, 2023, Lead Plaintiff consented to the dismissal of that petition in exchange for a voluntary liquidation proceeding initiated by Defendants, which Lead Plaintiff and Lead Counsel participated in throughout the prosecution of this Action to the extent necessary to protect the interests of the Class.

On March 6, 2023, Defendants moved to dismiss this Action, and the Court heard argument on April 17, 2023. ECF 12-19. By Order dated May 1, 2023, this Court denied Defendants' motion as to Plaintiff's claims for breach of contract and declaratory judgment and dismissed Plaintiff's claim for breach of fiduciary duty without prejudice to pursue that claim in the Cayman Islands.

[2] "¶__" refers to paragraphs of the Amended Class Action Complaint filed with the Court on January 20, 2023. ECF 9.

[3] Capitalized terms not otherwise defined herein have the same meaning ascribed to them in the Settlement Agreement.

ECF 22, 42. The Court also declined to stay the action in favor of liquidation proceedings in the Cayman Islands, which Lead Plaintiff had pursued to prevent, as a technical legal matter, the redemption of Class A shares and protect the assets during litigation.

Following the Court's ruling on the sufficiency of the pleadings, the parties conducted robust and contentious discovery. Lead Plaintiff obtained nearly 37,000 pages of documents, extensive written discovery requests, and depositions of key witnesses, Defendants Christodoro, Corey, Caplan, and Davis, as well as a Rule 30(b)(6) representative of the SPAC. Defendants, for their part, conducted significant discovery pertaining to Lead Plaintiff (even though Funicular was a passive stockholder with no role in the management of the SPAC), including document requests, written discovery requests, and depositions of Lead Plaintiff's principal in his personal capacity and as a Rule 30(b)(6) designee, as well as several non-party subpoenas for documents and testimony directed to Lead Plaintiff's clients, associates, and acquaintances. The parties also engaged multiple experts, who submitted reports and gave testimony. Plaintiff engaged Professors Usha Rodrigues and Michael Stegemoller (tenured professors with academic writing and subject matter expertise regarding SPACs), while Defendants engaged Professor Steven Davidoff Solomon (a Cornerstone Research expert) and Colin McKie, K.C. (a Cayman Islands law expert). Fact and expert discovery were completed on November 2, 2023.

On August 11, 2023, the Company resolved to place the company into voluntary liquidation and appointed Alexander Lawson and Christopher Kennedey of Alvarez & Marsal as joint voluntary liquidators. On August 28, 2023, Lawson and Kennedy applied for an order that the winding up of the Company continue under the supervision of the Cayman Court and that they be appointed as the Joint Official Liquidators (the "JOLs"). The Cayman Court granted the petition

on September 27, 2023. Counsel for Lead Plaintiff continued to appear and participate in these Cayman proceedings on behalf of Class A stockholders.

On September 27, 2023, Lead Plaintiff filed a Motion for Class Certification and Appointment of Class Representative and Class Counsel, which was opposed. ECF 27-29, 32-33, 36. The Court heard argument on October 27, 2023 and ruled from the bench that Lead Plaintiff's motion would be granted. The Court thereafter issued an Order dated November 1, 2023, which certified the class as follows (the "Class"):

> All persons who held Class A Public Shares of Pioneer as of the redemption date of January 13, 2023 whose shares were redeemed, including their legal representatives, heirs, successors-in-interest, transferees, and assignees of all such holders, but excluding (i) Defendants in this action; (ii) any person who is, or was at the time of the redemption, a trustee, officer, director, or partner of Pioneer Merger Sponsor LLC, Alpha Wave Global, LP, Patriot Global Management, LP, or their affiliates; (iii) the immediate family members of any of the foregoing; (iv) the legal representatives, heirs, successors-in-interest, successors, transferees, and assigns of the foregoing; and (v) any trusts, estates, entities, or accounts that held Pioneer Class A Public Shares for the benefit of any of the foregoing.

ECF 43. The Court also appointed Lead Plaintiff as Class Representative and appointed the undersigned as Class Counsel. *Id.*

On September 29, 2023, the JOLs filed a Summons for Directions seeking that the Cayman Court determine to whom the JOLs were required to distribute the SPAC's remaining assets, including the Termination Fee, by way of an *inter partes* proceeding (*i.e.*, a litigation between potential claimants to the assets). Lead Plaintiff submitted filings in the proceeding and opposed adjudication of stockholders' claims in the Cayman Islands given the advanced state of this Action and this Court's subject matter expertise.

On October 19, 2023, the JOLs filed a petition for recognition of a foreign proceeding pursuant to Chapter 15 of the Bankruptcy Code, which sought to stay enforcement of any judgment

entered in this action. *See In re Pioneer Merger Corp. (In Official Liquidation)*, No. 23-BK-11663-DSJ (Bankr. S.D.N.Y.) (the "Chapter 15 Proceeding"). Lead Plaintiff appeared in the Chapter 15 Proceeding and opposed the petition, and Judge Jones, at a hearing on November 15, 2023, declined to grant recognition on the record before him. He directed the parties to meet and confer and submit a proposed order with respect to a schedule for discovery, but in the interim this Court withdrew the reference "with respect to matters bearing on the outcome of this case." ECF 80.

On November 24, 2023, Lead Plaintiff filed a summons for direction in the Cayman Court, which was listed for hearing on December 7, 2023. At that hearing, the Cayman Court vacated the hearing listed for December 14, 2023 in the *inter partes* proceeding to allow time for issues relevant to both this Action and the Cayman proceedings to be first determined in the action before this Court.

Following discovery and the thwarted efforts above to avoid adjudication in this Court, Lead Plaintiff, Defendants and the JOLs filed three respective motions for summary judgment on November 7, 2023, which were fully briefed on December 4, 2023. ECF 48-79. A hearing was scheduled for December 19, 2023.

In the weeks leading up to the summary judgment hearing, Lead Plaintiff, Defendants, and the JOLs engaged in extensive discussions regarding the potential to resolve all pending claims and avoid further depletion of the SPAC's available assets and potential litigation and collection risk. The JOLs facilitated settlement discussions in the role of quasi-mediators, and Lead Plaintiff and Defendants, both through counsel and directly, engaged in frank exchanges of positions and expected outcomes of the litigation. The day before the scheduled summary judgment hearing, the parties contacted Chambers to advise that a settlement had been reached.

B. Terms Of The Settlement

On December 18, 2023, the parties reached an agreement-in-principle pursuant to which the Class will receive (gross of fees and expenses): (a) $13,000,000 plus (b) 80% of any proceeds received under a Side A insurance policy (the "Side A Policy") providing coverage to the SPAC's officers and directors. As to the latter, Defendants have yet to come to an agreement with respect to a contribution from their Side A carrier. As discussed more fully below, Lead Plaintiff negotiated and agreed to these terms because they are an exceptionally favorable outcome when balanced against the risk of continued reduction in the SPAC's assets and the litigation and collection risks inherent in further pursuit of this Action and the Cayman Action, and exceed market expectations.

The agreement-in-principle above served as the basis for the parties' Settlement Agreement. In exchange for the forementioned consideration, Lead Plaintiff and the Class would release Defendants from all claims, known and unknown, related to the Action and would dismiss this case with prejudice.

ARGUMENT

I. THE SETTLEMENT MERITS FINAL APPROVAL

Federal Rule of Civil Procedure 23(e) requires judicial approval for any compromise or settlement of class-action claims. *See* Fed. R. Civ. P. 23(e). A class-action settlement merits approval where the court finds it "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2).

The Second Circuit has recognized that public policy favors the settlement of disputed claims among private litigants, particularly in class actions. *See Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 116 (2d Cir. 2005) ("*Visa*") ("We are mindful of the 'strong judicial policy in favor of settlements, particularly in the class action context.'") (citation omitted). In ruling on final approval of a class settlement, a court should examine both the negotiating process leading

to the settlement and the settlement's substantive terms. *See Visa*, 396 F.3d at 116; *In re Citigroup Inc. Sec. Litig.*, 2014 WL 2112136, at *2-3 (S.D.N.Y. May 20, 2014).

Rule 23(e)(2) provides that courts should determine whether a proposed settlement is "fair, reasonable, and adequate" after considering whether:

> (A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm's length; (C) the relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3); and (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2).

Similarly, the Second Circuit has historically held that courts should consider following factors from *City of Detroit v. Grinnell Corp.* in evaluating class settlements:

> (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; [and] (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

495 F.2d 448, 463 (2d Cir. 1974) (citations omitted); *see also Visa*, 396 F.3d at 117.

The Advisory Committee Notes to the 2018 amendments to the Federal Rules note that the four factors set forth in Rule 23(e)(2) are not intended to "displace" any factor previously adopted by a Court of Appeals, but "rather [seek] to focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal."

Advisory Committee Notes to 2018 Amendments. For the sake of completeness and efficiency, Lead Plaintiff addresses below the Settlement's "fairness, reasonableness, and adequacy" principally under the four factors listed in Rule 23(e)(2), while also discussing application of relevant, non-duplicative *Grinnell* factors. *See In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 330 F.R.D. 11, 29 (E.D.N.Y. 2019), *aff'd sub nom.*, 62 F.4th 704 (2d Cir. 2023) (noting that "the new Rule 23(e) factors . . . add to, rather than displace, the *Grinnell* factors"). For the reasons below, all relevant factors strongly support approval in this Action.

A. Lead Plaintiff and Lead Counsel Have Zealously And Adequately Represented The Class

In weighing approval, a court should consider whether "the class representatives and class counsel have adequately represented the class." Fed. R. Civ. P. 23(e)(2)(A); *see also In re Barrick Gold Sec. Litig.*, 314 F.R.D. 91, 99 (S.D.N.Y. 2016) ("the adequacy requirement 'entails inquiry as to whether: (1) plaintiffs' interests are antagonistic to the interest of other members of the class and (2) plaintiffs' attorneys are qualified, experienced and able to conduct the litigation'").

Here, Lead Plaintiff was the largest holder of Pioneer's Class A shares and thus its interests aligned with the other members of the Class, who, like Lead Plaintiff, had been deprived of their *pro rata* interests in the Termination Fee when Defendants opted to distribute the assets to themselves. The claims Lead Plaintiff would have proved at trial were equally applicable to all members of the Class. *See Amgen Inc. v. Conn. Ret. Plans & Trust Funds*, 568 U.S. 455, 460 (2013) (the investor class "will prevail or fail in unison" because claims are based on common misrepresentations and omissions). Further, Lead Plaintiff and Lead Counsel vigorously prosecuted the claims and each expended substantial out-of-pocket expenses, including Lead Plaintiff's advancement of substantial attorneys' fees to Cayman Islands counsel in pursuit of a favorable outcome for the Class as a whole. Lead Counsel notes that they are qualified and highly

experienced in securities litigation and achieved a successful result against extremely competent and well-resourced Defendants and opposing counsel. *See* Declaration of Aaron T. Morris in Support of (A) Motion for Final Approval of Settlement and Plan of Allocation; and (B) Motion for Attorneys' Fees and Litigation Expenses ("Morris Decl.") ¶¶ 60-61.

B. The Settlement Was Reached After Extensive Negotiation, Discovery And Motion Practice

Courts must also consider whether a proposed settlement "was negotiated at arm's length." Fed. R. Civ. P. 23(e)(2)(B). Traditionally, courts also consider: (i) whether counsel had an adequate understanding of the case's strengths and weakness based on "the stage of the proceedings and the amount of discovery completed,"[4] (ii) any indicia of collusion;[5] and (iii) the involvement of an independent mediator. Here, these factors also strongly support approval of the Settlement.

First, the Settlement was reached only after extensive, contentious, arm's-length negotiations, which were facilitated by the JOLs as quasi-mediators. Initial settlement discussions were unsuccessful given the parties' divergent views of the disputed assets, and the Settlement resulted only after months of conferences between the parties regarding potential structure and terms as well as candid evaluations of the strengths and weaknesses of the claims and defenses. Notably, Lead Plaintiff credited arguments that a ruling in favor of the Class (which Lead Plaintiff fully expected to obtain) would be appealed by the Defendants and opposed in the Cayman Islands

[4] *See Grinnell*, 495 F.2d at 463 (third factor); *see also In re Facebook, Inc. IPO Sec. & Derivative Litig.*, 2015 WL 6971424, at *4 (S.D.N.Y. Nov. 9, 2015) ("the question is whether the parties had adequate information about their claims such that their counsel can intelligently evaluate the merits of plaintiff's claims, the strengths of the defenses asserted by defendants, and the value of plaintiffs' causes of action for purposes of settlement"), *aff'd*, 674 F. App'x 37 (2d Cir. 2016).

[5] *Weinberger v. Kendrick*, 698 F.2d 61, 74 (2d Cir. 1982) ("the absence of any indication of collusion, the protracted settlement negotiations, the ability and experience of plaintiffs' counsel, [and] the extensive discovery preceding settlement . . . are important indicia of the propriety of settlement negotiations").

proceedings, which would further diminish the disputed asset and lead to certain collection risks even in the event of a judgment in favor of the Class.

The extensive and arm's-length nature of the settlement negotiations supports a finding that the Settlement is procedurally fair and free of collusion. *See, e.g., D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (mediator's involvement in settlement negotiations "helps to ensure that the proceedings were free of collusion and undue pressure"); *Yang v. Focus Media Holding Ltd.*, 2014 WL 4401280, at *5 (S.D.N.Y. Sept. 4, 2014) (participation of highly qualified mediator "strongly supports a finding that negotiations were conducted at arm's length and without collusion."); *In re FLAG Telecom Holdings, Ltd. Sec. Litig.*, 2010 WL 4537550, at *14 (S.D.N.Y. Nov. 8, 2010) (finding that proposed settlement was fair and reasonable "is strengthened by the fact that [it] was reached in an extended mediation").

Further, Lead Counsel was well informed as to the strengths and weaknesses of the Class claims as a result of the months of preceding litigation. Among other things, Lead Counsel had conducted an extensive investigation before filing the Complaint, including thoroughly reviewing the SPAC's Documents, other SEC filings, press releases, media reports, and other public information, and had developed a significant factual record through months of fact and expert discovery followed by extensive summary judgment briefing. *See In re Facebook, Inc. IPO Sec. & Deriv. Lit.*, 343 F.Supp.3d 394, 412 (S.D.N.Y. 2018) (*Grinnell* factor weighs in favor of approval where settlement arises after "discovery was completed, the class had been certified, and numerous pre-trial motions had been briefed and heard"); *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 139 (S.D.N.Y. 2010) ("The advanced stage of the litigation and extensive amount of discovery completed weigh heavily in favor of approval.").

Lead Plaintiff's personal support for the Settlement is another factor that favors approval. Lead Plaintiff is a sophisticated institutional investor and is the largest Class A shareholder, and thus has the most at stake of all members of the Class. A settlement reached "under the supervision and with the endorsement of a sophisticated institutional investor is . . . 'entitled to an even greater presumption of reasonableness.'" *In re Veeco Instruments Inc. Sec. Litig.*, 2007 WL 4115809, at *5 (S.D.N.Y. Nov. 7, 2007).

Finally, the judgment of Lead Counsel, who are highly experienced in corporate and securities litigation, is entitled to "great weight." *Shapiro v. JPMorgan Chase & Co.*, 2014 WL 1224666, at *2 (S.D.N.Y. Mar. 24, 2014); *accord In re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 474 (S.D.N.Y. 1998) (courts consistently give "'great weight' . . . to the recommendations of counsel, who are most closely acquainted with the facts of the underlying litigation").

C. Lead Plaintiff's Analysis Of The Risks Of Further Litigation Support Approval

In determining whether a class action settlement is "fair, reasonable, and adequate," the Court must also consider whether "the relief provided for the class is adequate, taking into account . . . the costs, risks, and delay of trial and appeal" and similarly relevant factors. Fed. R. Civ. P. 23(e)(2)(C); *see Grinnell*, 495 F.2d at 455 ("most important factor" is "strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement.").[6] As a threshold

[6] This factor under Rule 23(e)(2)(C) essentially encompasses at least six of the nine factors of the traditional *Grinnell* analysis. *See Grinnell*, 495 F.2d at 463 ("(1) the complexity, expense and likely duration of the litigation; . . . (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; . . . (8) the range of reasonableness of the settlement fund in light of the best possible recovery; [and] (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation") (citations omitted).

matter, courts "have long recognized that [securities class action] litigation is notably difficult and notoriously uncertain." *FLAG Telecom*, 2010 WL 4537550, at *15. Accordingly, such suits "readily lend themselves to compromise because of the difficulties of proof, the uncertainties of the outcome, and the typical length of the litigation." *In re Luxottica Grp. S.p.A. Sec. Litig.*, 233 F.R.D. 306, 310 (E.D.N.Y. 2006). This case was no exception.

As detailed in the Morris Declaration, litigating this Action to a judgment presented significant risks, including with respect to costs, delays and collectability. The proposed Settlement, in contrast, provides immediate and certain returns and is a highly favorable "bird in the hand." Morris Decl. ¶¶ 33-36.

First, Lead Plaintiff and Lead Counsel weighed the Settlement against the strength of Lead Plaintiff's claims, taking into consideration the risks inherent in prevailing at trial as well as the expected expense and duration of the Action. Lead Plaintiff faced at least some litigation risk in establishing that Class A Stockholders had standing to enforce the Sponsor Agreement and that Defendants had violated it. Defendants argued that Lead Plaintiff was "not a third-party beneficiary to the Sponsor Agreement and cannot enforce its terms," and even though the Court had already rejected that argument, Defendants claimed that they would reopen the issue on the broader evidentiary record at trial. ECF 60 at 17. Defendants further argued that the Sponsor Agreement had been terminated by initiation of the Cayman Action and did not govern the distribution of the Termination Fee. *Id.* at 15. Further, even if the Sponsor Agreement remained in effect and Plaintiff had standing to enforce it, Defendants insisted that there had been no breach of the agreement because the Termination Fee had not been transferred to Class B shareholders. *Id* at 16. Defendants also argued that (a) the Sponsor Agreement did not bar them from taking interest in the Termination Fee, and (b) even it did, the Sponsor Agreement did not create an affirmative entitlement to the

Termination Fee on the part of Class A shareholders, meaning the JOLs could distribute the Termination Fee in their discretion or treat it as *bona vacantia* and tender it to the Cayman Islands government. *Id*. at 13. Lead Plaintiff fully expected to prevail at trial as to each of these defenses, but acknowledged that a loss as to any one of them could risk complete forfeiture of a recovery by the Class.

Perhaps more importantly, Lead Plaintiff also realized that continued litigation would further reduce the assets available to the SPAC for distribution, and a trial and appeal could exhaust all assets. Lead Plaintiff also anticipated an uncertain path to hold the Defendants personally liable for the improper depletion of the Termination Fee under the SPAC's governing documents and Cayman Islands law, although Lead Plaintiff fully intended to enforce such a ruling. *See, e.g.*, *Robbins v. Koger Props., Inc.*, 116 F.3d 1441, 1448-49 (11th Cir. 1997) (jury verdict of $81 million for plaintiffs against accounting firm reversed on appeal on causation grounds, and judgment entered for defendant). Further, Defendants and the JOLs made plain their plans to oppose any judgment in the Cayman Islands, thus creating litigation risk if Lead Plaintiff were to be required to prevail a second time in a Cayman Islands court after prevailing at trial in this action.

D. The Settlement Is Fair And Reasonable In Light Of The Realistically Recoverable Damages

The Settlement is an impressively favorable result when considered in relation to the maximum recovery at trial. Assuming that Lead Plaintiff prevailed, the maximum theoretically possible damages would have been $32.5 million (*i.e.*, the total Termination Fee without reduction for SPAC expenses, including litigation expenses). *See* ¶ 1. Even at that number, the Settlement reflects a 40% recovery. *See e.g.*, *In re Sturm, Ruger, & Co. Sec. Litig.*, 2012 WL 3589610, at *7 (D. Conn. Aug. 20, 2012) (approving settlement representing approximately 3.5% of estimated damages). However, the $32.5 million was significantly diminished by previously accrued

expenses and litigation costs, including (a) amounts owed to the SPAC's creditors; (b) costs related to the Cayman Action, including the fees of the JOLs and their counsel; and (c) litigation costs of Defendants in this Action, who claimed indemnification pursuant to Cayman Islands law and the SPAC's governing documents. Thus, at the time of settlement, less than $20 million remained, reflecting a 65% recovery. While Lead Plaintiff was aware of the possibility of holding Defendants personally liable for the diminution of the Termination Fee, such claims would be potentially challenging under Cayman Islands law and the circumstances of this case, and, in any event, would undoubtedly result in significant additional litigation costs and delays with uncertain returns.

Indeed, the recovery of a minimum of $0.23 per share, which may be increased by a recovery under the Side A Policy, exceeds the market's initial expectations for the litigation. Pioneer's stock closed at $10.20 on its last day of trading, suggesting that the market expected to recover an $0.20 per share after the redemption, which could come only from the litigation. *See* Morris Decl. ¶ 59.

E. The Costs And Delays Of Continued Litigation Support Approval Of The Settlement

For the reasons discussed above, the costs and delays of further litigation were anticipated to be substantial and would have created additional litigation and collection risks, which support the substantial and immediate returns provided by this Settlement. *See In re Gilat Satellite Networks, Ltd.*, 2007 WL 1191048, at *10 (E.D.N.Y. Apr. 19, 2007) (noting that "[s]ecurities class actions are generally complex and expensive to prosecute"). The concerns in this were more acute than other class action litigation because the dispute arose from a limited, diminishing asset.

F. All Other Rule 23(e)(2)(C) Factors Also Support Approval

Rule 23(e)(2)(C) also instructs courts to consider whether the relief provided for the class is adequate in light of "the effectiveness of any proposed method of distributing relief to the class,

including the method of processing class-member claims;" "the terms of any proposed award of attorney's fees, including timing of payment;" and "any agreement required to be identified under Rule 23(e)(3)." Fed. R. Civ. P. 23(e)(2)(C)(ii)-(iv). These factors support approving the Settlement or are simply neutral, and certainly provide no basis to reject the Settlement.

First, the procedures for distributing the Settlement's proceeds to eligible claimants in cases of this type are well-established. Payments will be distributed to Members of the Class pursuant to the Court-approved Plan of Allocation. The Settlement Administrator will cause a *pro rata* distribution of the Net Settlement Fund via the facilities of DTC to all members of the Class eligible to receive payments from the Net Settlement Fund proportionate to the number of Class A Shares held by each Class member as of the effective date of January 13, 2023 (*i.e.*, at the time Pioneer redeemed all Class A Shares).

Second, the relief provided the Class under the Settlement is also adequate when the terms of the proposed attorney's fee award are considered. As discussed in the accompanying Fee Memorandum, the proposed attorneys' fees of 30% of the Settlement Fund, to be paid upon approval by the Court, is fair and reasonable in light of Lead Counsel's work and the results achieved in the face of substantial litigation risk. Moreover, nothing in the Settlement is contingent on the approval of attorneys' fees, which are subject to separate approval by the Court. *See* ECF 83-1 at ¶ 42.

Lastly, courts should consider the fairness of a proposed settlement in light of any other agreements required to be identified under Rule 23(e)(3). See Fed. R. Civ. P. 23(e)(2)(C)(iv). Here, there are no such other agreements, as the only agreement is the Settlement Agreement itself.

G. The Settlement Treats Class Members Equitably Relative to Each Other

The Settlement also treats Class Members equitably relative to one another. As noted at § II below, under the Court-approved Plan of Allocation, all eligible claimants will receive their

pro rata share of the recovery based on the amount of their transactions in Pioneer Class A common stock. And Lead Plaintiff will receive the same *pro rata* recovery, calculated under the same Plan of Allocation provisions, as other Class Members.

H. The Reaction Of The Class To The Settlement Supports Approval

An important factor set forth in *Grinnell*, but not included in Rule 23(e)(2), is the reaction of the class to the Settlement. *See, e.g.*, *In re Bear Stearns Cos., Inc. Sec., Derivative, & ERISA Litig.*, 909 F. Supp. 2d 259, 266 (S.D.N.Y. 2012); *FLAG Telecom*, 2010 WL 4537550, at *16; *Veeco*, 2007 WL 4115809, at *7. Pursuant to the Preliminary Approval Order, the JOLs and the Settlement Administrator obtained in electronic format a list of holders of Pioneer Class A common stock who are part of the Class and provided all Class Members a copy of the Notice either electronically or by U.S. Mail where electronic delivery was not feasible. Further, the Settlement Administrator published the Summary Notice in Investor's Business Daily and on April 1, 2024 the Global Newswire on April 29, 2024.[7] The Notice set out the essential terms of the Settlement and informed Class Members of, among other things, their right to object to any aspect of the Settlement. While the May 14, 2024 deadline set by the Court for Class Members to object has not yet passed, no objections have been received. *See* Morris Decl. ¶ 43. As provided in the Preliminary Approval Order, Lead Plaintiff will address any objections that may be received in reply papers (which are due on May 21, 2024). The Class's reaction thus far has been overwhelming positive and thus this factor strongly supports approval of the Settlement.

[7] Lead Counsel notes that the Administrator failed to publish the Summary Notice on the news wire until after the deadline specified in the Preliminary Approval Order. However, that publication was still made more than four weeks before the Final Approval Hearing scheduled for May 28, 2024. Moreover, Class Members were timely notified of the Settlement through electronic or physical delivery of the Summary Notice, its publication in Investor's Business Daily more than eight weeks before the Final Approval Hearing, and the Settlement website, all of which provided ample opportunity for Class Members to voice any objection to the Settlement. No such objections have been received, but members of the Class are aware of the Settlement. *See* Morris Decl. ¶ 40.

II. THE PLAN OF ALLOCATION IS FAIR AND REASONABLE AND SHOULD BE APPROVED

A plan for allocating settlement proceeds, like the settlement itself, should be approved if it is fair, reasonable, and adequate. *See In re IMAX Sec. Litig.*, 283 F.R.D. 178, 192 (S.D.N.Y. 2012); *Bear Stearns*, 909 F. Supp. 2d at 270. A plan of allocation is fair and reasonable as long as it has a "rational basis." *In re Signet Jewelers Ltd. Sec. Litig.*, 2020 WL 4196468, at *13 (S.D.N.Y. July 21, 2020); *FLAG Telecom*, 2010 WL 4537550, at *21. Generally, a plan of allocation that reimburses class members based on the relative strength and value of their claims is reasonable. *See Signet*, 2020 WL 4196468, at *13. In determining whether a plan of allocation is reasonable, "courts give great weight to the opinion of experienced counsel." *Id*.

As the Court approved in the Preliminary Order, the proposed Plan of Allocation (or "Plan") is for the Settlement Administrator to implement a *pro rata* distribution of the Net Settlement Fund via the facilities of the DTC to all members of the Class eligible to receive payments from the Net Settlement Fund proportionate to the number of Class A Shares held by each Class member as of January 13, 2023 (*i.e.*, at the time Pioneer redeemed all Class A Shares). Settlement Agreement ¶ 35. The Plan is inherently fair and reasonable because it distributes the Settlement proceeds in proportion to each Class member's respective ownership of the SPAC and entitlement to the Termination Fee by reason of their Class A holdings.

III. THE NOTICE TO THE CLASS SATISFIED THE REQUIREMENTS OF RULE 23 AND DUE PROCESS

The Notice to the Class satisfied Rule 23(e)(1), which requires that notice of a settlement be "reasonable"—*i.e.*, it must "fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings." *Visa*, 396 F.3d at 114. Both the substance of the Notice and the method of its dissemination to potential members of the Class satisfied these standards. The Court-approved

Notice included: (i) an explanation of the nature of the Action and the claims asserted; (ii) the definition of the Class; (iii) the amount of the Settlement; (iv) a description of the Plan of Allocation; (v) an explanation of the reasons why the Parties are proposing the Settlement; (vi) a statement indicating the attorneys' fees and costs that will be sought; (vii) a description of Class Members' right to object to the Settlement, the Plan of Allocation, or the requested attorneys' fees or expenses; and (viii) notice of the binding effect of a judgment on Class Members.

As noted above, in accordance with the Court's Preliminary Approval Order, the JOLs and the Settlement Administrator obtained in electronic format a list of holders of Pioneer Class A common stock who are part of the Class and provided all Class Members a copy of the Notice either electronically or by U.S. Mail. Further, the Settlement Administrator published the Summary Notice in Investor's Business Daily and on the Global Newswire, albeit belated as to the latter. The combination of electronic or physical mail to all Class Members who could be identified with reasonable effort, supplemented by notice in an appropriate, widely circulated publication, transmitted over the newswire, and set forth on internet websites, was "the best notice . . . practicable under the circumstances." Fed. R. Civ. P. 23(c)(2)(B); *see, e.g.*, *In re Qudian Inc. Sec. Litig.*, 2021 WL 2383550, at *3 (S.D.N.Y. June 8, 2021); *In re Blue Apron Holdings, Inc. Sec. Litig.*, 2021 WL 345790, at *4 (E.D.N.Y. Feb. 1, 2021); *In re Advanced Battery Techs., Inc. Sec. Litig.*, 298 F.R.D. 171, 182-83 (S.D.N.Y. 2014). Lead Plaintiff has received outreach from other Class members and it appears that the Class is generally aware of the resolution, which suggests that the Notice was adequate.

CONCLUSION

For the reasons stated in this memorandum, the Morris Declaration, and the Ma-Weaver Declaration, Lead Plaintiff respectfully requests that the Court grant final approval of the proposed Settlement and approve the proposed Plan of Allocation.

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Respectfully submitted,

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